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OF THE

PHILIPPINES

FOR THE PERIOD

SEPTEMBER 16 - 21, 2020

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[A.C. No. 8116. September 16, 2020]

HENRIETTA PICZON-HERMOSO and BEZALEL PICZON HERMOSO, *Complainants, v.* **ATTY. SYLVESTER C. PARADO,** *Respondent.*

SYLLABUS

1. LEGAL ETHICS; NOTARIES PUBLIC; 2004 RULES ON NOTARIAL PRACTICE; NOTARIZATION, CONCEPT OF.— Notarization is not an empty, meaningless routinary act, but one invested with substantive public interest. Notarization converts a private document into a public document, making it admissible in evidence without further proof of its authenticity. Thus, a notarized document is, by law, entitled to full faith and credit upon its face. It is for this reason that a notary public must observe with utmost care the basic requirements in the performance of his notarial duties; otherwise, the public's confidence in the integrity of a notarized document would be undermined.

2. ID.; ID.; ID.; BY NOTARIZING THE DEEDS WITHOUT THE PARTIES' APPEARANCE AND MISREPRESENTING HIMSELF TO BE A COMMISSIONED NOTARY PUBLIC, RESPONDENT NOT ONLY VIOLATED THE RULES ON NOTARIAL PRACTICE BUT THE CODE OF PROFESSIONAL RESPONSIBILITY AS WELL.— Atty. Parado's administrative liability is beyond dispute. Despite due

notice, he failed to file any comment or answer to the complaint filed against him or appear at the mandatory conference hearings. As such, the allegations and claims of complainants remain uncontroverted. In any event, the IBP found that Atty. Parado notarized the subject Deeds without Estrella and Michelangelo personally appearing before him on February 15, 2007 due to serious physical illness. Worse, it appears that Atty. Parado was not a commissioned notary public in 2007. On both counts, it is clear that Atty. Parado violated the 2004 Rules on Notarial Practice. By misrepresenting himself as a commissioned notary public at the time of the alleged notarization in 2007, Atty. Parado also violated the provisions of the CPR, particularly Rule 1.01, Canon 1 and Rule 10.01, Canon 10 thereof. His acts undermined the integrity of the office of a notary public and degraded the function of notarization. In so doing, his conduct fell miserably short of the high standards of morality, honesty, integrity and fair dealing required from lawyers, and thus, it is only but proper that he be sanctioned.

3. ID.; ID.; ID.; ID.; PROPER PENALTY.— With respect to the proper penalty, the Court in a similar case imposed upon the erring lawyer the following sanctions: *(a*) suspension from the practice of law for a period of two (2) years; *(b*) immediate revocation of the lawyer's notarial commission, if existing; and *(c*) disqualification for being appointed as notary public for a period of two (2) years. Finding the same to be appropriate in this case, Atty. Parado is accordingly meted the said penalties.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is an administrative complaint[1] for disbarment filed by complainants Henrietta Piczon-Hermoso and Bezalel Piczon Hermoso (complainants) against respondent Atty. Sylvester C. Parado (Atty. Parado) for purportedly notarizing two documents without the affiants personally appearing before him, in violation of the 2004 Rules on Notarial Practice.

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[1] *Rollo*, pp. 1-4.

The Facts

Complainants alleged that they are the successors-in-interest of Estrella Piczon-Patalinghug (Estrella), the declared owner of a parcel of land designated as Lot No. 3545 situated in Simala, Sibonga, Cebu and registered for tax purposes under Tax Declaration No. 12357 (subject property). After the demise of Estrella, portions of the subject property were transferred and conveyed to Spouses Salvador and Darlwin Cesar (Spouses Cesar) by virtue of two (2) Deeds of Absolute Sale[2] (Deeds) both of which were notarized by Atty. Parado on February 15, 2007.[3]

Complainants averred that on the purported date of notarization on February 15, 2007, Estrella could not have personally executed, appeared, or signed the Deeds before Atty. Parado as she had just been discharged from the hospital in the afternoon of the said date after undergoing confinement. As a result of her chemotherapy treatments, Estrella's mental faculties were deteriorating, making it impossible for her to attend to her personal affairs and enter into a contract of sale. Similarly, complainants alleged that Michelangelo C. Patalinghug (Michelangelo), Estrella's blind husband, could not have appeared, signed, and executed the Deeds before Atty. Parado since he was already bedridden even before then and up to his demise on August 13, 2007.[4] Stressing the impossibility of the execution of the Deeds notarized by Atty. Parado, complainants thus filed the present administrative case against him before the Court.

Unfortunately, despite several directives from the Court to file his comment to the administrative complaint, Atty. Parado failed to do so. When the case was referred to the IBP for investigation, report, and recommendation,[5] it also required Atty.

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[2] Id. at 30-31.

[3] Id. at 2-3. The two (2) Deeds have different document numbers, although it pertained to the same property.

[4] See id. at 5-10.

[5] Id. at 94. See Supreme Court Minute Resolution dated July 27, 2017.

Parado to submit his answer[6] and directed the parties to submit their mandatory conference briefs[7] and position papers. However, during the entire proceedings before the IBP, only complainants complied with the submission of their pleadings; Atty. Parado neither submitted any pleading nor appeared during the mandatory conference.[8]

The IBP Recommendation and Report

In a Recommendation and Report[9] dated February 4, 2019, the IBP Investigating Commissioner (IBP Commissioner) recommended that Atty. Parado be disbarred from the practice of law and his notarial commission be revoked effective immediately, if still existing,[10] for having violated Canon 10[11] and Rule 10.01[12] of the Code of Professional Responsibility. The IBP Commissioner found that Atty. Parado notarized the subject Deeds despite the lack of authority to act as notary public in 2007. Likewise, the IBP Commissioner took note of Atty. Parado's various other transgressions, consisting of his failure to comply with the Court's orders, submit his Mandatory Continuing Legal Education (MCLE) compliance or exemption, and update the IBP of his personal circumstances.[13]

In a Resolution[14] dated June 17, 2019, the IBP Board of Governors adopted and approved the Recommendation and

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[6] Id. at 105. See Order dated March 16, 2017.

[7] Id. at 106. See Notice of Mandatory Conference/Hearing dated September 7, 2017.

[8] Id. at 157.

[9] Id. at 155-163. Signed by Investigating Commissioner Atty. Patrick M. Velez, MNSA.

[10] Id. at 162-163.

[11] CANON 10 — A lawyer owes candor, fairness and good faith to the court.

[12] Rule 10.01 — A lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead, or allow the Court to be misled by any artifice.

[13] *Rollo*, pp. 159-162.

[14] Id. at 153-154.

Report of the IBP Commissioner, with the modification imposing the penalty of suspension from the practice of law for one (1) year, immediate revocation of his notarial commission, if subsisting, and disqualification from being appointed as notary public for a period of two (2) years, with a stern warning that a repetition of a similar offense will be dealt with more severely.[15]

The Issue Before the Court

The essential issue in this case is whether or not Atty. Parado should be held administratively liable.

The Court's Ruling

Notarization is not an empty, meaningless routinary act, but one invested with substantive public interest. Notarization converts a private document into a public document, making it admissible in evidence without further proof of its authenticity. Thus, a notarized document is, by law, entitled to full faith and credit upon its face. It is for this reason that a notary public must observe with utmost care the basic requirements in the performance of his notarial duties; otherwise, the public's confidence in the integrity of a notarized document would be undermined.[16]

Section 2 (b), Rule IV of the 2004 Rules on Notarial Practice requires a duly-commissioned notary public to perform a notarial act only **if the person involved as signatory to the instrument or document is: (*a*) in the notary's presence personally at the time of the notarization**; and (*b*) personally known to the notary public or otherwise identified by the notary public through competent evidence of identity as defined by these Rules.[17] In

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[15] Id. at 153.

[16] *Vda. de Miller v. Miranda*, 772 Phil. 449, 455 (2015), citing *De Jesus v. Sanchez-Malit*, 738 Phil. 480, 491-492 (2014).

[17] Section 2. Prohibitions. —

x x x x

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

(1) is not in the notary's presence personally at the time of the notarization; and

other words, a notary public is not allowed to notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him to attest to the contents and truth of what are stated therein. The purpose of this requirement is to enable the notary public to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act and deed.[18]

Parenthetically, in the realm of legal ethics, a breach of the aforesaid provision of the 2004 Rules on Notarial Practice would also constitute a violation of the Code of Professional Responsibility (CPR), considering that an erring lawyer who is found to be remiss in his functions as a notary public is considered to have violated his oath as a lawyer as well.[19] He does not only fail to fulfill his solemn oath of upholding and obeying the law and its legal processes, but he also commits an act of falsehood and engages in an unlawful, dishonest, and deceitful conduct.[20] Thus, Rule 1.01, Canon 1 and Rule 10.01, Canon 10 of the CPR categorically state:

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

Rule 1.01 — **A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.**

x x x x x x x x x

CANON 10 — A lawyer owes candor, fairness and good faith to the court.

Rule 10.01 — **A lawyer shall not do any falsehood, nor consent to the doing of any in Court**; nor shall he mislead, or allow the Court to be misled by any artifice. (Emphases and underscoring supplied)

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(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.

[18] *Fabay v. Resuena*, 779 Phil. 151, 158 (2016).

[19] Id. at 160-162.

[20] See *De Jesus v. Sanchez-Malit*, supra at 491-492.

In this case, Atty. Parado's administrative liability is beyond dispute. Despite due notice, he failed to file any comment or answer to the complaint filed against him or appear at the mandatory conference hearings. As such, the allegations and claims of complainants remain uncontroverted.[21] In any event, the IBP found that Atty. Parado notarized the subject Deeds without Estrella and Michelangelo personally appearing before him on February 15, 2007 due to serious physical illness. Worse, it appears that Atty. Parado was not a commissioned notary public in 2007. On both counts, it is clear that Atty. Parado violated the 2004 Rules on Notarial Practice.

By misrepresenting himself as a commissioned notary public at the time of the alleged notarization in 2007, Atty. Parado also violated the provisions of the CPR, particularly Rule 1.01, Canon 1 and Rule 10.01, Canon 10 thereof.[22] His acts undermined the integrity of the office of a notary public and degraded the function of notarization. In so doing, his conduct fell miserably short of the high standards of morality, honesty, integrity and fair dealing required from lawyers, and thus, it is only but proper that he be sanctioned.[23] Also, he displayed an utter lack of respect for the Court, the IBP, and its proceedings[24] when he failed to comply with the separate directives of the Court and the IBP to file his comment and answer to the complaint. In *Ngayan v. Tugade*,[25] the Court ruled that "[a lawyer's] failure to answer the complaint against him and his failure to appear at the investigation are evidence of his flouting resistance to lawful orders of the court and illustrate his despiciency for his oath of office."[26]

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[21] See *Velasco v. Doroin*, 582 Phil. 1, 10-11 (2008).

[22] See *Baysac v. Aceron-Papa*, 792 Phil. 635, 646 (2016); *Bartolome v. Basilio*, 771 Phil. 1, 9-10 (2015); and *Sappayani v. Gasmen*, 768 Phil. 1, 8-9 (2015).

[23] See *Tenoso v. Echanez*, 709 Phil. 1, 6 (2013); citation omitted.

[24] See *Small v. Banares*, 545 Phil. 226, 230 (2007).

[25] 271 Phil. 654 (1991).

[26] Id. at 659.

With respect to the proper penalty, the Court in a similar case[27] imposed upon the erring lawyer the following sanctions: (*a*) suspension from the practice of law for a period of two (2) years; (*b*) immediate revocation of the lawyer's notarial commission, if existing; and (*c*) disqualification for being appointed as notary public for a period of two (2) years. Finding the same to be appropriate in this case, Atty. Parado is accordingly meted the said penalties.

WHEREFORE, the Court finds respondent Atty. Sylvester C. Parado **GUILTY** of violating the 2004 Rules on Notarial Practice and the Code of Professional Responsibility. Accordingly, the Court hereby **SUSPENDS** him from the practice of law for a period of two (2) years; **PROHIBITS** him from being commissioned as a notary public for a period of two (2) years; and **REVOKES** his incumbent commission as a notary public, if any. 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 notary public, and the revocation of his notarial commission, if any, shall take effect immediately upon receipt of this Decision by Atty. Parado. 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 appended to Atty. Parado's personal record as an attorney; the Integrated Bar of the Philippines for its information and guidance; and the Office of the Court Administrator for circulation to all courts in the country.

SO ORDERED.

Hernando, Inting, and *Delos Santos, JJ.,* concur.

Baltazar-Padilla, J., on leave.

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[27] See *Triol v. Agcaoili, Jr.*, A.C. No. 12011, June 26, 2018, 868 SCRA 175.

SECOND DIVISION

[A.C. No. 10793. September 16, 2020]

ATTY. BRYAN S. LIM and NESTOR R. WONG, *Complainants, v.* **ATTY. JOSE C. TABILIRAN, JR.,** *Respondent.*

SYLLABUS

1. LEGAL ETHICS; NOTARIES PUBLIC; 2004 RULES ON NOTARIAL PRACTICE; NOTARIZATION, CONCEPT OF.— It is well to stress that "notarization is not an empty, meaningless, routinary act, but one invested with substantive public interest. Notarization converts a private document into a public document, making it admissible in evidence without further proof of its authenticity. Thus, a notarized document is, by law, entitled to full faith and credit upon its face. It is for this reason that a notary public must observe with utmost care the basic requirements in the performance of his notarial duties; otherwise, the public's confidence in the integrity of a notarized document would be undermined."

2. ID.; ID.; ID.; PERFORMING NOTARIAL ACTS WITHOUT BEING COMMISSIONED BY THE COURT CONSTITUTES VIOLATIONS NOT ONLY OF THE LAWYER'S OATH TO OBEY THE LAWS BUT ALSO THE CODE OF PROFESSIONAL RESPONSIBILITY.— It is settled that by performing notarial acts without the necessary commission from the court, a lawyer violates not only his oath to obey the laws, particularly the Rules on Notarial Practice, but also Canons 1 and 7 of the Code of Professional Responsibility, which proscribes all lawyers from engaging in unlawful, dishonest, immoral or deceitful conduct and directs them to uphold the integrity and dignity of the legal profession at all times, as in this case.

3. ID.; ID.; ID.; ASSIGNING THE SAME NOTARIAL DETAILS TO DIFFERENT DOCUMENTS AND NOTARIZING DEEDS OF SALE IN FAVOR OF HIS SON ARE CLEAR VIOLATIONS OF THE NOTARIAL RULES.— [I]t was discovered that the **same notarial details** were assigned by

respondent to **different** documents in violation of Section 2 (h), Rule VI. . . . Evidently, the above-mentioned acts of respondent are in violation of Section 2 (e) and Section 2 (h), Rule VI of the Notarial Rules. In this regard, jurisprudence provides that failure to strictly comply with the rules on notarial practice seriously undermines the dependability and efficacy of notarized documents, and thus, is inexcusable and constitutes gross negligence in carefully discharging his duties as a notary public. In addition, it is undisputed that respondent notarized two (2) deeds of sale in favor of his son, Venus, who was privy thereto. Clearly, this is a violation of Section 3 (c), Rule IV of the Notarial Rules, which states that a notary public is disqualified from performing a notarial act if he "is a spouse, common-law partner, ancestor, descendant, or relative by affinity or consanguinity of the principal within the fourth civil degree". Thus, given the express disqualification of the Notarial Rules, it was incumbent upon respondent to have acted with prudence and as such, should have refused notarizing the said documents in compliance with the Notarial Rules.

4. ID.; ID.; ID.; IN VIEW OF RESPONDENT'S WILLFUL MALFEASANCE, THE COURT IMPOSED PERMANENT DISQUALIFICATION FROM BEING COMMISSIONED AS A NOTARY PUBLIC AND TWO (2) YEARS SUSPENSION FROM THE PRACTICE OF LAW.— The Court has ruled that a notary public who fails to discharge his duties as such is meted out the following penalties: (*1*) revocation of notarial commission; (*2*) disqualification from being commissioned as notary public; and (*3*) suspension from the practice of law — the terms of which vary based on the circumstances of each case. Accordingly, in line with existing jurisprudence, and considering the circumstances and the extent of respondent's willful malfeasance, the Court finds that the penalties of permanent disqualification from being commissioned as notary public and suspension from the practice of law for two (2) years are proper.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is an administrative complaint[1] for disbarment filed on May 7, 2015 by complainants Atty. Bryan S. Lim (Atty. Lim) and Nestor R. Wong (Nestor; collectively, complainants), before the Office of the Bar Confidant, against respondent Atty. Jose C. Tabiliran, Jr. (respondent), charging the latter with violation of the Rules on Notarial Practice (Notarial Rules) and pertinent provisions of the Code of Professional Responsibility (Code) and immorality.

The Facts

On separate occasions,[2] Nestor was appointed by his sisters, Elsa Wong (Elsa) and Virginia Wong (Virginia), as their agent to sell their respective properties in Laoy, San Antonio, Katipunan, Zamboanga Del Norte.[3] On December 13, 2011, Nestor, in turn, appointed[4] a sub-agent, Raquel Go Esturco (Esturco),[5] who found a buyer (Naomi Jumanguin[6]) for Virginia's land. Accordingly, on January 3, 2012, Nestor signed the corresponding Deed of Sale of Virginia's land, which was prepared and notarized by respondent, a notary public.[7] After signing the Deed of Sale, Nestor signed other documents given by Esturco, which the latter claimed to be mere copies of the previous Deed of Sale. Thereafter, Nestor received the amount of ₱50,000.00 as the purchase price of the subject lot.[8]

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[1] Dated May 4, 2015; *rollo*, pp. 1-5.

[2] Nestor was appointed by Elsa on November 19, 2010 and by Virginia on December 9, 2011. Special Power of Attorney dated November 19, 2010, id. at 59; and Special Power of Attorney dated December 9, 2011, id. at 69.

[3] Id. at 556.

[4] See Special Power of Attorney dated December 13, 2011; id. at 70.

[5] Id. at 54.

[6] As allegedly indicated in the Deed of Sale; id. at 556.

[7] Id. at 556.

[8] Id.

Several months later, Nestor was approached by Raul Jumanguin, the buyer's father, to borrow money and to disclose that Esturco showed him several deeds of sale,[9] namely: *(a)* Absolute Deed of Sale dated May 24, 2011, in favor of Esturco; *(b)* Absolute Deed of Sale dated May 24, 2012, in favor of Esturco; *(c)* Absolute Deed of Sale dated December 14, 2011, in favor of Esturco and respondent's son, Venus Baybayan Tabiliran (Venus); and *(d)* Absolute Deed of Sale dated February 20, 2012, in favor of Esturco and Venus.[10]

Meanwhile, Esturco went to the Registry of Deeds to register the Absolute Deed of Sale dated May 24, 2011. She was required by Atty. Lim, the Acting Registrar of Deeds of the Province of Zamboanga del Norte,[11] to indicate the name of her spouse but she refused and instead, withdrew all her documents. Thereafter, on May 29, 2013, she filed a petition for *mandamus*, and on September 27, 2013, a disbarment case, against Atty. Lim.

On March 23, 2014, Atty. Lim filed a counter-complaint[12] for disbarment against respondent,[13] claiming that the latter notarized documents with an expired commission, having been commissioned only for February 12, 2007 until December 31, 2008; July 23, 2009 until December 31, 2010; March 31, 2011 until December 31, 2012; and August 28, 2013 until December 31, 2014, but nonetheless, notarized an Authorization on **March 18, 2011** and a Confirmation of Deed of Sale of Land in **June 2013**. Atty. Lim also averred that respondent failed to timely file certified true copies of the documents entered in his notarial register; falsified Nestor's Absolute Deed of Sale dated May 24, 2011; as well as falsified and notarized two (2) deeds of sale in favor of Esturco and his own son, Venus.[14] Furthermore,

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[9] Id. at 556-557.

[10] Id. at 557.

[11] Id. at 361.

[12] Dated March 20, 2014; id. at 379-399.

[13] Id. at 557.

[14] Id. at 557.

it was alleged that respondent notarized instruments not in the presence of Nestor,[15] and even filed false certified true copies of the documents entered in his notarial register.[16]

For his part,[17] respondent averred that: *(a)* the Confirmation of Deed of Sale of Land[18] was signed by the parties sometime in June 2013 but was actually notarized and recorded after the approval of his commission on August 28, 2013; *(b)* the parties to the notarized documents were duly apprised that he was waiting for the renewal of his commission; *(c)* he did not falsify any documents since Nestor freely and voluntarily signed the same at his office; and *(d)* the contract was not immoral, and he has not committed any malpractice or gross misconduct in the exercise of his profession.[19]

In a Resolution[20] dated March 14, 2016, the Court referred the administrative case to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation.

The IBP's Report and Recommendation

In a Report and Recommendation[21] dated October 3, 2018, the Investigating Commissioner found respondent administratively liable for violation of the Notarial Rules, the Code, and the Lawyer's Oath, and accordingly, recommended the penalty of two (2) years suspension from the practice of law, with a warning that a commission of repeated or similar acts will result in the imposition of a more severe penalty against him.[22]

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[15] Id. at 379-380.

[16] See id. at 561.

[17] See respondent's comment dated September 17, 2014, id. at 425-432; and Position Paper dated June 6, 2017, id. at 503-509.

[18] See id. at 387.

[19] Id. at 558.

[20] Id. at 122-123.

[21] Id. at 555-564. Signed by Commissioner Suzette A. Mamon.

[22] Id. at 564.

The Investigating Commissioner found that respondent: *(a)* notarized documents with an expired notarial commission; *(b)* failed to submit to the Clerk of Court the certified true copies of the documents entered in his notarial register together with their duplicate original; *(c)* assigned the same notarial details to different documents; and *(d)* notarized documents in favor of his son, Venus, who was privy thereto. In this regard, the Investigating Commissioner further pointed out that respondent was already disqualified from reappointment as notary public for a period of two (2) years in a June 17, 2016 Resolution of the Executive Judge of the Regional Trial Court of Dipolog City, for violation of the same acts complained of in the instant administrative case. As to the charge of immorality, however, the Investigating Commissioner found insufficient evidence to prove the same.[23]

In a Resolution[24] dated November 7, 2018, the IBP Board of Governors adopted the Investigating Commissioner's Report, with modification, however, as regards the penalty, imposing instead, the penalty of disbarment.[25]

The Issue Before the Court

The essential issue for the Court's resolution is whether or not respondent should be administratively sanctioned for the acts complained of.

The Court's Ruling

The Court concurs and affirms the findings of the IBP Board of Governors with modification as to the penalty.

It is well to stress that "notarization is not an empty, meaningless, routinary act, but one invested with substantive public interest. Notarization converts a private document into a public document, making it admissible in evidence without

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[23] Id. at 559-563.

[24] See Notice of Resolution in CBD Case No. 16-5001 issued by Assistant National Secretary Doroteo L.B. Aguila; id. at 553-554.

[25] Id. at 553.

further proof of its authenticity. Thus, a notarized document is, by law, entitled to full faith and credit upon its face. It is for this reason that a notary public must observe with utmost care the basic requirements in the performance of his notarial duties; otherwise, the public's confidence in the integrity of a notarized document would be undermined."[26]

For being invested with public interest, the Notarial Rules provide that only those who are duly commissioned may act and serve as notaries public.[27] Commission either means the grant of authority to perform notarial or the written evidence of authority. Without a commission, a lawyer is unauthorized to perform any of the notarial acts.[28]

In this case, the Court agrees with the findings of the Investigating Commissioner, as affirmed by the IBP Board of Governors, that respondent was indeed remiss in his duties as a notary public and as a lawyer. Records reveal that respondent was issued a notarial commission for the following periods: February 12, 2007 until December 31, 2008; July 23, 2009 until December 31, 2010; March 31, 2011 until December 31, 2012; and August 28, 2013 until December 31, 2014. However, he notarized an Authorization on **March 18, 2011** and a Confirmation of Deed of Sale of Land in **June 2013**, both of which were clearly done when he was not qualified or authorized to do so. Notably, anent respondent's claim that he had notarized the latter document after his commission was issued on August 28, 2013,[29] the Investigating Commissioner aptly observed:

> While respondent admitted to having prepared the document, he denied notarizing it on said month and year as he was allegedly processing his notarial commission at that time and explained that he had notarized the document after his commission was issued on

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[26] *Triol v. Agcaoili, Jr.*, A.C. No. 12011, June 26, 2018, 868 SCRA 175, 180, citing *Vda. de Miller v. Miranda*, 772 Phil. 449, 455 (2015).

[27] See *Muntuerto v. Alberto*, A.C. No. 12289, April 2, 2019.

[28] See *Spouses Frias v. Abao*, A.C. No. 12467, April 10, 2019.

[29] See respondent's position paper; *rollo*, pp. 503-509.

August 28, 2013. Again records proved that the *Confirmation of Deed of Sale of Land* was received by the Office of the Registry of Deeds of Zamboanga del Norte on **June 19, 2013** and annotated as Entry No. 9512 on **June 19, 2013** at the back of the Transfer Certificate of Title No. T-76725, (Exhibit "M"). As correctly observed by complainant [Nestor] Wong and Lim, the said document was the basis for the cancellation of the said title and issuance of a new one to the buyer, and submitted to the Registry of Deeds on June 19, 2013, hence it was notarized on or before June 19, 2013, or during the time respondent had no valid notarial commission.[30] (Emphases supplied)

It is settled that by performing notarial acts without the necessary commission from the court, a lawyer violates not only his oath to obey the laws, particularly the Rules on Notarial Practice, but also Canons 1 and 7 of the Code of Professional Responsibility, which proscribes all lawyers from engaging in unlawful, dishonest, immoral or deceitful conduct and directs them to uphold the integrity and dignity of the legal profession at all times,[31] as in this case.

To expound, in *Nunga v. Atty. Viray*,[32] the Court held that where the notarization of a document is done by a member of the Philippine Bar at a time when he has no authorization or commission to do so, the offender may be subjected to disciplinary action. For one, performing a notarial [act] without such commission is a violation of the lawyer's oath to obey the laws, more specifically, the Notarial Law. Then, too, by making it appear that he is duly commissioned when he is not, he is, for all legal intents and purposes, indulging in deliberate falsehood, which the lawyer's oath similarly proscribes. These violations fall squarely within the prohibition of Rule 1.01 of Canon 1 of the Code of Professional Responsibility, which provides: "A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct."[33]

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[30] Id. at 559-560.

[31] Supra.

[32] 366 Phil. 155 (1999).

[33] Id. at 161.

Also, as found by the Investigating Commissioner, respondent failed to observe the obligations imposed upon him under Rule VI of the Notarial Rules, to wit:

> Section 2. Entries in the Notarial Register. x x x
>
> x x x x
>
> (e) The **notary public shall give to each instrument or document executed, sworn to, or acknowledged before him a number corresponding to the one in his register**, and shall also state on the instrument or document the page/s of his register on which the same is recorded. No blank line shall be left between entries.
>
> x x x x
>
> (h) A **certified copy of each month's entries and a duplicate original copy of any instrument acknowledged before the notary public shall, within the first ten (10) days of the month following, be forwarded to the Clerk of Court** and shall be under the responsibility of such officer. If there is no entry to certify for the month, the notary shall forward a statement to this effect in lieu of certified copies herein required. (Emphases supplied)

Here, the Clerk of Court certified that as of March 11, 2014, respondent has not submitted copies of any documents which he notarized from August 28, 2013 until December 31, 2014,[34] contrary to Section 2 (3), Rule VI above. Moreover, when respondent eventually submitted his notarial documents to the Clerk of Court sometime in March 2015, it was discovered that the **same notarial details** were assigned by respondent to **different** documents in violation of Section 2 (h), Rule VI. As enumerated by the Investigating Commissioner, these documents are:

Common Notarial Registry No.	**Documents obtained by Complainants**	**Clerk of Court's Records**
Doc. No. 85; Page No. 22; Book No. VI	Special Power of Attorney dated December 13, 2011	Doc. No. 85; Deed of Sale Lot 6-A

[34] See Certification dated March 11, 2014; *rollo*, p. 443.

	Absolute Deed of Sale dated January 3, 2012	Doc. No. 85-A: Absolute Deed of Sale dated January 3, 2012
Doc. No. 11; Page No. 8; Book No. VI; Series of 2011	Special Power of Attorney dated April 29, 2011 by Nestor Wong	Deed of Installation Sale of Lot 1503-A dated December 12, 2011 by Nestor Wong
Doc. No. 151; Page No. 36; Book No. VI; Series of 2012	Authorization dated August 8, 2012 by Nestor Wong	Confirmation dated August 3, 2012 by Nicolas Torot, Dionisio Torot, and Romulo Torot
Doc. No. 18; Page No. 9; Book No. VI; Series of 2011	Absolute Deed of Sale dated May 24, 2011 by Nestor Wong	Absolute Deed of Sale dated May 24, 2012 by Nestor Wong
Doc. No. 82; Page No. 22; Book No. VI; Series of 2011	Absolute Deed of Sale dated December 14, 2011 in favor of Raquel Go Esturco and Venus Baybayan Tabiliran	Affidavit of Late Registration dated December 15, 2011 by Liezyl Capinig Delegencia
Doc. No. 96; Page No. 25; Book No. VI; Series of 2012	Absolute Deed of Sale dated February 20, 2012 in favor of Raquel Go Esturco and Venus Baybayan Tabiliran	Deed of Sale of Inheritance Share dated February 18, 2012 by Welfredo Elopre and Ronald Elopre

Evidently, the above-mentioned acts of respondent are in violation of Section 2 (e) and Section 2 (h), Rule VI of the Notarial Rules. In this regard, jurisprudence provides that failure to strictly comply with the rules on notarial practice seriously undermines the dependability and efficacy of notarized documents, and thus, is inexcusable and constitutes gross negligence in carefully discharging his duties as a notary public.[35]

[35] See *Roa-Buenafe v. Lirazan,* A.C. No. 9361, March 20, 2019.

In addition, it is undisputed that respondent notarized two (2) deeds of sale in favor of his son, Venus, who was privy thereto. Clearly, this is a violation of Section 3 (c), Rule IV of the Notarial Rules, which states that a notary public is disqualified from performing a notarial act if he "is a spouse, common-law partner, ancestor, descendant, or relative by affinity or consanguinity of the principal within the fourth civil degree." Thus, given the express disqualification of the Notarial Rules, it was incumbent upon respondent to have acted with prudence and as such, should have refused notarizing the said documents in compliance with the Notarial Rules.

Meanwhile, as to the charge of immorality, it must be stressed that the burden of proof rests on the complainants, and they must establish the case against respondent by clear, convincing and satisfactory proof, disclosing a case that is free from doubt as to compel the exercise by the Court of its disciplinary power.[36] As such, the Court agrees with the findings of the Investigating Commissioner, as affirmed by the IBP Board of Governors, that the evidence presented by the complainants are insufficient to prove their allegation; thus, respondent cannot be held liable on this charge.

Anent the proper penalty to be imposed upon respondent, the Court finds the need to modify the penalty recommended by the IBP. The Court has ruled that a notary public who fails to discharge his duties as such is meted out the following penalties: *(1)* revocation of notarial commission; *(2)* disqualification from being commissioned as notary public; and *(3)* suspension from the practice of law — the terms of which vary based on the circumstances of each case.[37] Accordingly, in line with existing jurisprudence,[38] and considering the

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[36] Id., citing *Sappayani v. Gasmen*, 768 Phil. 1 (2015).

[37] Id., citing *Sappayani v. Gasmen*, id. at 9.

[38] See *Spouses Gacuya v. Solbita*, 782 Phil. 253 (2016), see also *Tan v. Gonzales*, 557 Phil. 496 (2007), see also *Zoreta v. Simpliciano*, 485 Phil. 395 (2004).

circumstances and the extent of respondent's willful malfeasance, the Court finds that the penalties of permanent disqualification from being commissioned as notary public and suspension from the practice of law for two (2) years are proper.[39]

As a final note, it must be emphasized that membership in the legal profession is a privilege burdened with conditions. A lawyer is required to observe the law and be mindful of his or her actions whether acting in a public or private capacity. Any transgression of this duty on his part would not only diminish his reputation as a lawyer but would also erode the public's faith in the legal profession as a whole.[40] As such, the Court will not hesitate to impose the necessary penalty to a lawyer whose conduct falls short of the exacting standards expected of him as a member of the bar.[41]

WHEREFORE, respondent Atty. Jose C. Tabiliran, Jr. is hereby **SUSPENDED** from the practice of law for a period of two (2) years; his notarial commission, if still existing, is **REVOKED**; and he is **PERMANENTLY BARRED** from being commissioned as notary public. He is **STERNLY WARNED** that a repetition of the same or similar act will be dealt with more severely.

The suspension in the practice of law 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: (1) the Office of the Bar Confidant to be appended to respondent's personal record as an attorney; (2) the Integrated Bar of the Philippines for its information and guidance; and (3) the Office of the Court Administrator for circulation to all courts in the country.

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[39] Id.

[40] See *Nulada v. Paulma*, 784 Phil. 309, 317 (2016).

[41] See id. at 317-318.

SO ORDERED.

Hernando, Inting, and *Delos Santos, JJ.*, concur.

Baltazar-Padilla, J., on leave.

FIRST DIVISION

[A.C. No. 12280. September 16, 2020]

EDWIN JET M. RICARDO, JR., *Complainant, v.* **ATTY. WENDELL L. GO,** *Respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; PROHIBITION TO ACQUIRE PROPERTY SUBJECT MATTER OF LITIGATION; RATIONALE.— [T]he Civil Code, in relation to the canons of professional ethics, prohibit the purchase by lawyers of any interest in the subject matter of the litigation in which they participated by reason of their profession. The rationale behind this prohibition is founded on public policy, which disallows such transactions in view of the fiduciary relationship involved, *i.e.*, the relation of trust and confidence and the peculiar control exercised by these persons. The prohibition seeks to prevent the undue advantage that an attorney, by virtue of his office, may take through the credulity and ignorance of his client. Guided by the foregoing, it should be emphasized that for the prohibition to apply, the sale or assignment of the property must take place during the pendency of the litigation involving the property to which the lawyer participated.

2. ID.; ID.; ID.; WHERE THE PROPERTY WAS NOT INVOLVED IN ANY LITIGATION THAT RESPONDENT WAS HANDLING WHEN HE ACQUIRED THE SAME, THE PROHIBITION DOES NOT APPLY.— [W]e sustain respondent's position that the prohibition under Article 1491(5) is inapplicable. Contrary to complainant's misleading allegations in this case, respondent's interest in the subject property was acquired ***before*** he intervened as collaborating counsel for ICCSC and that said interest is, in fact, not inconsistent with that of his client. Too, it is noteworthy that the authority given by ICCSC to respondent to represent it as collaborating counsel was specifically limited to LRC Case No. 3732, which already attained finality per the Court's Resolution dated February 19,

2018. The fact that his law firm was Standard Chartered's counsel in the extra-judicial foreclosure proceedings is likewise of no moment. Records show that his firm's participation in the proceedings was already concluded after the consolidation of title in ICCSC's name upon Spouses Ricardo's failure to exercise their right of redemption, or even before the institution of Civil Case No. CEB-33420. It is important to emphasize that after said 3732. Evidently, it was not professional misconduct or unethical practice for respondent to acquire the property as the same was not involved in any litigation he was handling when he acquired the same.

3. ID.; ID.; THE CHARGE OF EXTORTION LACKS LEGAL OR FACTUAL BASIS; ADMINISTRATIVE COMPLAINTS AGAINST LAWYERS MUST BE VERIFIED AND SUPPORTED BY EVIDENCE; FAILURE OF THE COMPLAINANT TO PROVE HIS ALLEGATION BY SUBSTANTIAL EVIDENCE WARRANTS DISMISSAL OF THIS CASE.— [T]he charge of extortion lacks legal or factual anchorage to warrant consideration. As it is at present, records show that respondent is the registered owner of the subject property. Needless to say, a property owner's act of issuing a demand letter against persons who unjustifiably occupy his property and refuse to surrender the same does not suffice to prove the serious allegation of extortion. Section 1, Rule 139-B of the Rules of Court, as amended by Bar Matter No. 1645, states that administrative complaints against lawyers must be verified and supported by affidavits of persons who have personal knowledge of the facts alleged therein or by documents which may substantiate said allegations. Jurisprudence dictates that in administrative proceedings, complainants bear the burden of proving the allegations in their complaints by substantial evidence. This, the complainant failed to discharge. Where a lawyer's integrity is questioned through an administrative complaint for disbarment, suspension, or discipline, this Court, as the ultimate arbiter of such proceedings, is duty-bound to ascertain the veracity of the charges involved. When the charges lack merit, as in this case, the Court will not hesitate to dismiss the case.

RESOLUTION

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

In a complaint[1] for malpractice or unethical conduct, Edwin Jet M. Ricardo, Jr. (complainant) charges Atty. Wendell L. Go (respondent) with having interest, and in fact having acquired, a property under litigation. Also, complainant charges respondent with extortion for sending a demand letter dated February 4, 2018 for payment of rentals.

The following are the relevant factual antecedents of the case:

Involved in this administrative case is a house and lot located in Banawa, Cebu City, originally covered by Transfer Certificate of Title (TCT) No. 58099 in the name of Spouses Edwin Ricardo, Sr. and Divinagracia Ricardo (Spouses Ricardo).[2]

On June 13, 1997, Spouses Ricardo executed a real estate mortgage over the property in favor of Standard Chartered Bank (Standard Chartered) to secure their obligation under a credit line agreement.[3] When Spouses Ricardo defaulted on their obligation to pay, Standard Chartered, through its counsel, Atty. Mark Anthony P. Lim of the Go & Lim Offices (respondent's law firm), filed a petition for extrajudicial foreclosure of the mortgage.[4] On May 22, 2006, the property was subjected to a public auction, wherein Integrated Credit and Corporate Services Co. (ICCSC) emerged as the highest bidder. On May 23, 2006, a certificate of sale was issued in favor of ICCSC. On May 24, 2006, the certificate of sale was registered and annotated on TCT No. 58099. Upon failure to redeem the property, ICCSC consolidated its ownership and thus, TCT No. 189957 was issued in the name of ICCSC.[5]

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

[2] Id. at 1.

[3] Id. at 6-9.

[4] Id. at 420-422.

[5] Id. at 284.

On May 30, 2007, complainant and his brother, Jake Ricardo, sons of Spouses Ricardo, filed a complaint for annulment/ reformation of contract, among others, against Standard Chartered, Sheriff Arthur Cabigon of the Regional Trial Court (RTC) of Cebu City, and the Register of Deeds of Cebu City, docketed as **Civil Case No. CEB-33420** before the RTC of Cebu, Branch 10 (Branch 10). The complaint was amended to include ICCSC as additional defendant and to add annulment of the consolidation of ownership as cause of action. This case was anchored on complainant and his brother's claim on the invalidity of the mortgage executed by their parents on their "family home" due to the lack of consent on their part as beneficiaries.[6]

Notably, in Civil Case No. CEB-33420, Standard Chartered's counsels of record were Attys. Joselito Ramon O. Castillo and Leo L. Señires of the Calderon Davide Trinidad Tolentino & Castillo law firm, while ICCSC was represented by Attys. Jose Luis V. Agcaoili and Donald G. Delegencia of Agcaoili & Associates.[7]

While Civil Case No. CEB-33420 was pending, ICCSC, through its counsel, Agcaoili & Associates, filed an *ex parte* issuance of writ of possession, docketed as **LRC Case No. 3732** before the RTC of Cebu, Branch 16 (Branch 16), which was granted in an Order[8] dated November 16, 2011.[9] This Order was affirmed by the Court of Appeals (CA) in its Resolution dated April 24, 2012 in CA-G.R. SP No. 06685.[10] The Court also affirmed the grant of said writ of possession in its Resolution[11] dated September 27, 2017 in G.R. No. 204921.

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[6] Id. at 295.

[7] Id. at 321.

[8] Id. at 18-20.

[9] Id. at 2.

[10] Penned by Associate Justice Gabriel T. Ingles, with Justices Eduardo B. Peralta, Jr. and Pamela Ann Abella Maxino, concurring; id. at 294.

[11] Id. at 294-300.

Complainant and his brother's motion for reconsideration was denied with finality by the Court in its Resolution dated February 19, 2018.[12]

Complainant and his brother moved to intervene in LRC Case No. 3732, praying for Branch 16 to reconsider its November 16, 2011 Order, claiming rights over the subject property adverse to their parents who mortgaged the same without their consent.[13] In an Order[14] dated November 7, 2012, Branch 16 denied said motion for intervention. On September 18, 2013, complainant and his brother's motion for reconsideration was denied.[15] In a Decision[16] dated July 31, 2015 in CA-G.R. No. 08089, the CA affirmed the denial of the motion for intervention. The motion for reconsideration therein was likewise denied in the CA Resolution[17] dated May 4, 2016. The petition for review filed by complainant and his brother, questioning the denial of their motion for intervention suffered the same fate as the Court denied said petition in a Resolution dated October 19, 2016. An entry of judgment was issued thereon on March 29, 2017.[18]

Meanwhile, a Decision[19] dated March 20, 2015 was issued in Civil Case No. CEB-33420. Branch 10 dismissed the complaint for lack of merit. In the said case the RTC found that: (a) complainant and his brother failed to establish that the subject property was a family home; (b) even if it was established as a family home, it is not exempt from execution, forced sale, or attachment pursuant to Article 155 (3) of the Family Code as

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[12] Id. at 301-302.

[13] Id. at 21-34.

[14] Id. at 35-37.

[15] Id. at 196.

[16] Penned by Justice Jhosep Y. Lopez with Justices Pamela Ann Abella Maxino and Germano Francisco D. Legaspi, concurring; id. at 193-203.

[17] Penned by Justice Pamela Ann Abella Maxino with Justices Gabriel T. Ingles and Germano Francisco D. Legaspi, concurring; id. at 204-209.

[18] *Rollo*, p. 50.

[19] Id. at 284-291.

it was made as a security for a loan; (c) complainant and his brother are strangers to the mortgage contract entered into by their parents, who notably are still alive and not assailing the validity of the mortgage as well as its foreclosure, and as such, have no standing to assail the validity of the contract entered into by their parents; and (d) complainant and his brother cannot be considered as beneficiaries of a family home as they are not dependent upon their parents for legal support. On October 7, 2016, the motion for reconsideration was denied.[20] An appeal to the CA was then filed, pending at present per allegations in the complaint before us.[21]

On April 1, 2017, ICCSC, as seller, and respondent, as buyer, executed a Deed of Absolute Sale[22] for the sale of the subject property. On October 12, 2017, TCT No. 107-2017005446[23] was then issued in respondent's name. Sometime in February 2018, respondent, through counsel, sent a demand letter[24] to complainant and his brother for payment of rentals for the use of the property until possession thereof is surrendered.

Relevant in this administrative case, as well, is the fact that on January 11, 2018, Go & Lim Offices, through respondent, entered its appearance as collaborating counsel for ICCSC in LRC Case No. 3732.[25]

These developments prompted complainant to file the instant administrative case. Complainant charges respondent of having interest over a property under litigation; and of extorting money by sending a demand letter for payment of rentals.

In his Comment,[26] respondent vehemently denies the charges against him. He avers that he did not represent any party in

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[20] Id. at 178.

[21] Id. at 1.

[22] Id. at 318-320.

[23] Id. at 417-419.

[24] Id. at 57-58.

[25] Id. at 59-60.

[26] Id. at 170-182.

any of the cases above-cited prior to his acquisition of the property in April 2017, until his appearance as collaborating counsel for ICCSC in LRC Case No. 3732. He emphasizes that he was already the legal owner of the property when he stood as collaborating counsel for ICCSC, particularly for the writ of possession case. As such, respondent maintains that the prohibition under Article 1491 (5) is inapplicable. Respondent further points out that as legal owner of the property, he has every right to appear as collaborating counsel and avail all legal remedies in order to protect his rights and interests as the owner, particularly the recovery of possession of the property, which complainant and his brother had deprived him of, as well as his predecessor-in-interest, ICCSC. Lastly, his legal remedies as owner of the property include his right to send a demand letter for the payment of rentals as he was continuously deprived of the use and possession of his property due to complainant and his brother's unjustified insistence that their parents wrongfully mortgaged their "family home."

We resolve.

Basically, complainant alleges connivance among Standard Chartered, ICCSC, and respondent to dispossess him and his brother of their family home. It is complainant's contention that respondent, as Standard Chartered's counsel in the extra-judicial foreclosure, and later on as ICCSC's collaborating counsel in LRC Case No. 3732, cannot acquire the property subject of litigation without violating the Civil Code and his ethical duties as a member of the Bar.

The Court does not agree.

Article 1491 (5) of the Civil Code provides:

> Article 1491. The following persons cannot acquire by purchase, even at a public or judicial auction, either in person or through the mediation of another:
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> x x x x
>
> (5) Justices, judges, prosecuting attorneys, clerks of superior and inferior courts, and other officers and employees connected with the

administration of justice, the property and rights in litigation or levied upon an execution before the court within whose jurisdiction or territory they exercise their respective functions; this prohibition includes the act of acquiring by assignment and **shall apply to lawyers, with respect to the property and rights which may be the object of any litigation in which they may take part by virtue of their profession**. (Emphasis supplied)

Undeniably, the Civil Code, in relation to the canons of professional ethics, prohibit the purchase by lawyers of any interest in the subject matter of the litigation in which they participated by reason of their profession. The rationale behind this prohibition is founded on public policy, which disallows such transactions in view of the fiduciary relationship involved, *i.e.*, the relation of trust and confidence and the peculiar control exercised by these persons. The prohibition seeks to prevent the undue advantage that an attorney, by virtue of his office, may take through the credulity and ignorance of his client.[27]

Guided by the foregoing, it should be emphasized that for the prohibition to apply, the sale or assignment of the property must take place during the pendency of the litigation involving the property to which the lawyer participated.

In this regard, we sustain respondent's position that the prohibition under Article 1491 (5) is inapplicable.

Contrary to complainant's misleading allegations in this case, respondent's interest in the subject property was acquired ***before*** he intervened as collaborating counsel for ICCSC and that said interest is, in fact, not inconsistent with that of his client.[28] Too, it is noteworthy that the authority given by ICCSC to respondent to represent it as collaborating counsel was specifically limited to LRC Case No. 3732,[29] which already

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[27] *Santos v. Atty. Arrojado*, A.C. No. 8502 citing *Peña v. Delos Santos*, 782 Phil. 123 (2016).

[28] *See Del Rosario v. Millado*, 136 Phil. 94 (1969).

[29] Secretary's Certificate, *Rollo*, pp. 61-62.

attained finality per the Court's Resolution dated February 19, 2018.

The fact that his law firm was Standard Chartered's counsel in the extra-judicial foreclosure proceedings is likewise of no moment. Records show that his firm's participation in the proceedings was already concluded after the consolidation of title in ICCSC's name upon Spouses Ricardo's failure to exercise their right of redemption, or even before the institution of Civil Case No. CEB-33420. It is important to emphasize that after said 3732. Evidently, it was not professional misconduct or unethical practice for respondent to acquire the property as the same was not involved in any litigation he was handling when he acquired the same.[30]

It is also important to point out that aside from complainant's bare allegations, the records are bereft of any shred of evidence that ICCSC acted or mediated on behalf of respondent or that the latter was the ultimate beneficiary when it acquired the property at the public auction. Neither was there any proof adduced, much less substantial evidence, to prove complainant's claim of connivance among Standard Chartered, ICCSC, and respondent for the latter to acquire the mortgaged property.

Likewise, the charge of extortion lacks legal or factual anchorage to warrant consideration. As it is at present, records show that respondent is the registered owner of the subject property. Needless to say, a property owner's act of issuing a demand letter against persons who unjustifiably occupy his property and refuse to surrender the same does not suffice to prove the serious allegation of extortion.

Section 1, Rule 139-B of the Rules of Court, as amended by Bar Matter No. 1645, states that administrative complaints against lawyers must be verified and supported by affidavits of persons who have personal knowledge of the facts alleged therein or by documents which may substantiate said allegations. Jurisprudence dictates that in administrative proceedings,

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[30] *See Guevara v. Calalang*, 202 Phil. 328, 332 (1982).

complainants bear the burden of proving the allegations in their complaints by substantial evidence.[31] This, the complainant failed to discharge.

Where a lawyer's integrity is questioned through an administrative complaint for disbarment, suspension, or discipline, this Court, as the ultimate arbiter of such proceedings, is duty-bound to ascertain the veracity of the charges involved. When the charges lack merit, as in this case, the Court will not hesitate to dismiss the case.

WHEREFORE, the present administrative case is **DISMISSED** for lack of merit.

SO ORDERED.

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

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[31] *Re: Letter of Lucena Ofendoreyes Alleging Illicit Activities of a Certain Atty. Cajayon Involving Cases in the Court of Appeals, Cagayan de Oro City*, 810 Phil. 369, 374 (2017).

SECOND DIVISION

[A.C. No. 12624. September 16, 2020]
(Formerly CBD Case No. 15-4508)

MANUEL R. LEONOR, *Complainant, v.* **ATTYS. DICKSON C. AYON-AYON AND EULOGIO C. MANANQUIL, JR.,** *Respondents*.

SYLLABUS

LEGAL ETHICS; NOTARIES PUBLIC; 2004 RULES ON NOTARIAL PRACTICE; A NOTARY PUBLIC MUST PERFORM ALL ACTS NECESSARY TO ASCERTAIN THE ENTITIES OF THE PERSONS WHO APPEAR BEFORE HIM PRIOR TO THE NOTARIZATION OF THE DOCUMENT.— Atty. Ayon-Ayon substantially complied with the provisions of the 2004 Rules on Notarial Practice, and he observed utmost care and diligence in the performance of his duty as notary public. First, the persons who appeared before Atty. Ayon-Ayon and claimed to be the sellers of the subject property were able to present the Deed. Second, before Atty. Ayon-Ayon affixed his signature on the Acknowledgment and his notarial seal on the Deed, he required the persons appearing before him to present their respective identification cards . . . . Third, the mentioned identification cards, presented by the persons who appeared before Atty. Ayon-Ayon, are considered competent evidence of identity pursuant to Section 12, Rule II of the 2004 Rules on Notarial Practice that provides that a "competent evidence of identity" refers to the identification of an individual based on at least one current identification document issued by an official agency bearing the photograph and signature of the individual. In the present case, the identification cards presented by the persons who appeared before Atty. Ayon-Ayon were sufficient for him to reasonably believe that the persons were the same persons indicated as owners in the Deed. Lastly, the persons who appeared before Atty. Ayon-Ayon manifested that they voluntarily affixed their signatures on the Deed and even declared that they had executed it as

> their free and voluntary act and deed. . . . Thus, Atty. Ayon-Ayon is justified in believing that the persons who appeared before him were the true owners of the subject property considering that they were able to present not only their respective identification cards, but also TCT No. 46664 of the subject property. . . . Atty. Ayon-Ayon reasonably relied in good faith that the persons who appeared before him were indeed the persons that they purport to be. . . . Atty. Ayon-Ayon had indeed performed all acts necessary as required under the 2004 Rules on Notarial Practice to ascertain the identities of the persons who appeared before him prior to the notarization of the document.

APPEARANCES OF COUNSEL

Lachica Gatmaitan and Omadto Law Offices for complainant.
Ester Tuy Azurin for respondent Mananquil.

D E C I S I O N

INTING, *J.*:

This is a verified Complaint[1] filed by Manuel R. Leonor (complainant) with the Integrated Bar of the Philippines (IBP)-Commission on Bar Discipline (CBD) filed on January 29, 2015 against Atty. Dickson C. Ayon-Ayon (Atty. Ayon-Ayon) and Atty. Eulogio C. Mananquil, Jr. (Atty. Mananquil) for notarizing the Deed of Absolute Sale[2] (Deed) dated March 13, 2014 and Sworn Statement[3] dated April 15, 2014, respectively, without them requiring the physical appearance of complainant and his wife, Teresita R. Leonor (Teresita) (collectively, Spouses Leonor), in violation of Administrative Matter (A.M.) No. 02-8-13-SC, or the 2004 Rules on Notarial Practice.

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

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

[3] *Id.* at 16.

The Antecedents

Complainant is the registered owner of a parcel of land located in Project 6, Quezon City (subject property) covered by Transfer Certificate of Title (TCT) No. 46664.[4] Sometime in September 2013, he learned that a certain "Frederick Bonamy" (Bonamy) was in possession of a Deed of Absolute Sale (Deed) over the subject property allegedly signed by him and his wife, Teresita. Acting on this information, complainant personally informed Bonamy that the subject property, where he lives, was not for sale and that he and his wife, Teresita, did not sign any Deed involving the subject property.[5]

Sometime in June 2014, complainant discovered that the title over the subject property was cancelled, and a new one was issued in the name of Bonamy and his wife, Jane Anne C. Bonamy (collectively, Spouses Bonamy). The successful transfer of title to Spouses Bonamy was made possible by the registration of the Deed notarized by Atty. Ayon-Ayon on March 13, 2014[6] with the Registry of Deeds of Quezon City; and the Sworn Statement notarized by Atty. Mananquil on April 15, 2014.[7] The names and purported signatures of Spouses Leonor appear in the questioned documents.[8]

Complainant averred that he neither signed the questioned documents nor appeared before Atty. Ayon-Ayon and Atty. Mananquil. Complainant further alleged that Teresita, on the other hand, did not and could not sign and appear before Atty. Ayon-Ayon and Atty. Mananquil considering that she was already residing in the United States of America since December 2013.[9]

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[4] *Id.* at 180-184.

[5] *Id.* at 224.

[6] *Id.* at 15.

[7] *Id.* at 16.

[8] *Id.* at 224.

[9] *Id.* at 224-225.

Given the circumstances, complainant caused the annotation of his adverse claim on Bonamy's title. Also, he filed a Complaint-Affidavit[10] for Falsification and another Complaint[11] for Reconveyance of Title with Damages of the subject property against Spouses Bonamy.[12]

On January 29, 2015, complainant then filed a complaint for disbarment/disciplinary action against Atty. Ayon-Ayon and Atty. Mananquil with the IBP-CBD.

In his Answer to the Complaint-Affidavit,[13] Atty. Mananquil argued that he did not notarize the Sworn Statement. He attached a Certification[14] dated March 3, 2015 issued by the Office of the Clerk of Court (OCC)-Regional Trial Court (RTC), Caloocan City as proof that the Sworn Statement was not among the documents submitted or reported by Atty. Mananquil. He likewise alleged that the signature appearing above his name in the Sworn Statement was not his as based on the specimen signatures on file with the OCC-RTC. He further alleged that sometime in December 2012, he discovered that unscrupulous persons had been using his name and notarial seal, and falsifying his signature as notary public in Caloocan City. In connection with the unscrupulous acts of those persons, he filed a criminal complaint against them with the Northern Metro Manila Criminal Investigation and Detection Team of Caloocan City.

On the other hand, Atty. Ayon-Ayon, in his Answer,[15] explained that the Spouses Leonor and Bonamy personally appeared before him to have the Deed notarized; that he and his staff inspected the questioned documents pertinent to the sale; that he requested the parties to submit proof of their identities; and that he asked the Spouses Leonor whether they

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[10] *Id.* at 23-25.

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

[12] *Id.* at 225.

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

[14] *Id.* at 35.

[15] *Id.* at 55-57.

voluntarily executed and signed the Deed. He argued that, at the time of the notarization, he ascertained the true identities of the sellers, herein Spouses Leonor.[16] Hence, he asserted that he did not commit any infraction of the 2004 Rules on Notarial Practice.

In Complainant's Position Paper,[17] he alleged that after verifying with the OCC-RTC Notarial Division of Caloocan City, he was able to confirm that the Sworn Statement was not, in fact, notarized by Atty. Mananquil; that the document number, page number, and book number therein indicated pertained to a different document found in Atty. Mananquil's notarial book.[18] Hence, he withdrew his complaint against Atty. Mananquil, but maintained his allegations against Atty. Ayon-Ayon.

Report and Recommendation of the IBP-CBD

On January 11, 2016, Investigating Commissioner Rico A. Limpingco (Investigating Commissioner Limpingco) submitted his Report and Recommendation[19] recommending that: (1) the complaint against Atty. Mananquil be dismissed; (2) Atty. Ayon-Ayon's notarial commission be revoked; and (3) that he be suspended from the practice of law for a period of three months for his negligence in the performance of his duty as a notary public.[20]

Resolution of the IBP-Board of Governors (BOG)

On September 24, 2016, the IBP-BOG issued an Extended Resolution[21] adopting the findings of fact and recommendation of the Investigating Commissioner Limpingco dismissing the complaint against Atty. Mananquil, and further adopting the findings of fact and recommendation of the Investigating

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[16] *Id.* at 56-58.

[17] *Id.* at 118-129.

[18] *Id.* at 123.

[19] *Id.* at 215-222.

[20] *Id.* at 221.

[21] *Id.* at 223-236.

Commissioner Limpingco against Atty. Ayon-Ayon with modification as to the penalty to be imposed, to wit: (a) increasing the suspension from the practice of law for a period of six months; and (b) imposing disqualification on Atty. Ayon-Ayon from being commissioned as notary public for a period of two years. Further, the IBP-BOG likewise ordered Atty. Ayon-Ayon's current notarial commission, if any, revoked.[22]

Aggrieved, Atty. Ayon-Ayon filed his Motion for Reconsideration of Resolution No. XXII-2016-530 dated September 24, 201[6][23] stating the following grounds, to wit:

I.

THE HONORABLE BOARD OF GOVERNORS COMMITTED A REVERSIBLE ERROR WHEN IT SAID THAT HEREIN RESPONDENT FAILED TO EXERCISE DUE DILIGENCE IN THE PERFORMANCE OF HIS DUTIES AS NOTARY PUBLIC.

II.

THE HONORABLE BOARD OF GOVERNORS COMMITTED A REVERSIBLE ERROR WHEN THEY FAILED TO CONSIDER THE FACT THAT HEREIN RESPONDENT'S ACT OF REQUIRING THE SUPPOSED SELLERS TO PRESENT AND SUBMIT COPIES OF PROOFS OF THEIR IDENTITIES AS FAITHFUL AND SUBSTANTIAL COMPLIANCE OF HIS DUTY.

III.

ASSUMING *ARGUENDO* THAT HEREIN RESPONDENT IS LIABLE THE PENALTY TO BE IMPOSED SHOULD BE TEMPERED AND REDUCED CONSIDERING THAT HE NOTARIZED THE SUBJECT DEED OF SALE IN GOOD FAITH WITHOUT INTENTION TO CAUSE DAMAGE OR INJURY TO ANY PARTY.[24]

Then, Atty. Ayon-Ayon filed a Supplemental Motion for Reconsideration of Resolution No. XXII-2016-530 dated

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[22] *Id.* at 236.

[23] *Id.* at 237-244.

[24] *Id.* at 238-239.

September 24, 201[6][25] alleging that the notarized document, in question, pertained only to the Deed which he attached to his answer to the complaint;[26] that the Deed attached to his answer did not contain any alteration and/or intercalation as against the one submitted by the complainant that contain several intercalations, which were obviously done after its notarization without his knowledge and participation.[27]

On May 9, 2019, the IBP-BOG issued an Extended Resolution[28] absolving Atty. Ayon-Ayon of any administrative liability arising from the complaint considering that he performed all acts necessary and consistent with what was required under the Rules on Notarial Practice, *i.e.*, to ascertain the identities of the persons appearing before him prior to his notarization of the Deed, and that the alleged intercalations and alterations to the Deed were done after he notarized it.[29]

Per Office of the Bar Confidant, no motion for reconsideration or petition for review was filed as of September 2019.

Our Ruling

The Court adopts the findings and approves the IBP-BOG's Extended Resolution dated September 24, 2016 dismissing the complaint against Atty. Mananquil. With respect to Atty. Ayon-Ayon, the Court adopts the findings and approves the Extended Resolution[30] dated May 9, 2019 reversing the prior resolution of the IBP-BOG, and dismissing the case against Atty. Ayon-Ayon on the ground that the latter had exhausted all means to determine the identities of the parties.[31]

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[25] *Id.* at 246-249.

[26] *Id.* at 247.

[27] *Id.*

[28] *Id.* at 260-271.

[29] *Id.* at 270-271.

[30] *Id.* at 260-271.

[31] *Id.* at 270-271.

Under Section 1, Rule II of the 2004 Rules on Notarial Practice, provides that:

SECTION 1. *Acknowledgment*. — "Acknowledgment" refers to an act in which an individual on a single occasion:

(a) *appears in person before the notary public and presents an integrally complete instrument or document*;

(b) is attested to be personally known to the notary public *or identified by the notary public through competent evidence of identity as defined by these Rules*; and

(c) *represents to the notary public that the signature on the instrument or document was voluntarily affixed by him for the purposes stated in the instrument or document, declares that he has executed the instrument or document as his free and voluntary act and deed, and, if he acts in a particular representative capacity, that he has the authority to sign in that capacity*. (Italics supplied.)

As correctly found by the IBP-BOG, Atty. Ayon-Ayon substantially complied with the provisions of the 2004 Rules on Notarial Practice, and he observed utmost care and diligence in the performance of his duty as notary public.[32]

First, the persons who appeared before Atty. Ayon-Ayon and claimed to be the sellers of the subject property were able to present the Deed.[33]

Second, before Atty. Ayon-Ayon affixed his signature on the Acknowledgment and his notarial seal on the Deed, he required the persons appearing before him to present their respective identification cards, and the following were shown to him:

(a) Unified Multi-Purpose ID No. CRN-0003-6696782-9 issued in the name of Teresita Leonor;

(b) Tax Identification Number 103-090-285 issued in the name of Manuel Leonor; and

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[32] *Id.* at 267-268.

[33] *Id.* at 268.

(c) Driver's License No. N09-75-024598 issued in the name of Manuel Leonor.[34]

Third, the mentioned identification cards, presented by the persons who appeared before Atty. Ayon-Ayon, are considered competent evidence of identity pursuant to Section 12, Rule II of the 2004 Rules on Notarial Practice that provides that a "competent evidence of identity" refers to the identification of an individual based on at least one current identification document issued by an official agency bearing the photograph and signature of the individual.[35]

In the present case, the identification cards presented by the persons who appeared before Atty. Ayon-Ayon were sufficient for him to reasonably believe that the persons were the same persons indicated as owners in the Deed.[36]

Lastly, the persons who appeared before Atty. Ayon-Ayon manifested that they voluntarily affixed their signatures on the Deed and even declared that they had executed it as their free and voluntary act and deed.[37]

Equally important to note, the persons who appeared before Atty. Ayon-Ayon also presented an original copy of TCT No. 46664 of the subject property bearing the same names in the identification cards presented to him.[38] Thus, Atty. Ayon-Ayon is justified in believing that the persons who appeared before him were the true owners of the subject property considering that they were able to present not only their respective identification cards, but also TCT No. 46664 of the subject property. As found by the IBP-BOG, Atty. Ayon-Ayon reasonably relied in good faith that the persons who appeared before him were indeed the persons that they purport to be.[39]

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[34] *Id.*

[35] *Id.*

[36] *Id.* at 269.

[37] *Id.*

[38] *Id.*

[39] *Id.* at 270.

Further, in the Supplemental Motion for Reconsideration of Resolution No. XXII-2016-530 dated September 24, 201[6][40] of Atty. Ayon-Ayon, he alleged that the Deed he notarized is attached to his answer to the complaint; and that the Deed he attached to his answer is different from what was submitted by the complainant and contains alterations and intercalations that were not present at the time of notarization, to wit:

> "the abbreviated word "*Sps*." placed before the name of FREDERICK BONAMY and the typewritten phrase "*and JANE ANNE C. BONAMY both*" which was included as one of the buyers were inserted after the deed of sale was already notarized, and the same were done without the knowledge and participation of herein respondent."[41]

All told, Atty. Ayon-Ayon had indeed performed all acts necessary as required under the 2004 Rules on Notarial Practice to ascertain the identities of the persons who appeared before him prior to the notarization of the document. Also, the alterations and intercalations appearing on the Deed submitted by the complainant were made after the notarization of Atty. Ayon-Ayon.

WHEREFORE, the complaint for disbarment/disciplinary action against respondents Atty. Dickson C. Ayon-Ayon and Atty. Eulogio C. Mananquil, Jr. is **DISMISSED**.

SO ORDERED.

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

Baltazar-Padilla, J., on leave.

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[40] *Id.* at 246-249.

[41] *Id.*

FIRST DIVISION

[A.C. No. 12829. September 16, 2020]
(Formerly CBD Case No. 15-4821)

MYRIAM TAN-TE SENG, *Complainant, v.* **ATTY. DENNIS C. PANGAN,** *Respondent*.

[A.C. No. 12830. September 16, 2020]
(Formerly CBD Case No. 16-4966)

MYRIAM TAN-TE SENG, *Complainant, v.* **ATTY. DENNIS C. PANGAN,** *Respondent*.

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; LAWYER-CLIENT RELATIONSHIP; PROFESSIONAL EMPLOYMENT OR LAWYER-CLIENT RELATIONSHIP EXISTS NOTWITHSTANDING THE ABSENCE OF RETAINER AGREEMENT BETWEEN THEM AND NON-PAYMENT OF FEES.— Respondent was bound to protect complainant's interest the moment the latter sought the former's advice regarding the settlement of her deceased son's estate. To constitute professional employment, it is not essential that the client should have employed the attorney professionally on any previous occasion. If a person, in respect to his business affairs or troubles of any kind, consults with his attorney in his professional capacity with the view to obtaining professional advice or assistance, and the attorney voluntarily permits or acquiesces in such consultation, then the professional employment must be regarded as established.

Here, a lawyer-client relationship was established when complainant sought respondent's legal services for the settlement of her son's estate. To be sure, complainant was introduced to respondent to discuss the properties her deceased son Patrick left behind. Thereafter, they had several meetings at respondent's law office for the preparation and drafting of the Extrajudicial Settlement. Respondent even sent complainant and April the list of pertinent documents he would be needing. From

respondent's own actions, it is crystal clear that a lawyer-client relationship between him and complainant had been forged.

. . .

The absence of retainer agreement and non-payment of fees do not negate the existence of lawyer-client relationship. In ***Burbe v. Atty. Magulta,*** the Court held that to constitute professional employment, it is not essential that any retainer be paid, promised, or charged; neither is it material that the attorney consulted did not afterward handle the case for which his service had been sought.

2. ID.; ID.; CONFLICT OF INTEREST; A LAWYER WHOSE PROFESSIONAL ADVICE WAS SOUGHT BY A PARTY CANNOT LATER REPRESENT THE OPPOSING PARTY; LACK OF OPPOSITION DOES NOT CURE VIOLATION OF THE PROHIBITION.— A lawyer may not, without being guilty of professional misconduct, act as counsel for a person whose interest conflicts with that of his present or former client. The rule covers not only cases in which confidential communications have been confided, but also those in which no confidence has been bestowed or will be used. The rule holds even if the inconsistency is remote, merely probable, or the lawyer has acted in good faith and with no intention to represent conflicting interests.

In this case, respondent abandoned complainant's cause and openly represented April as his client during mediation conferences. Per Certificate of Appearance dated September 28, 2015, Myriam C. Tan Te Seng appeared before the Philippine Mediation Center with Atty. Rita Linda V. Jimeno and Atty. Mary Sayeh P. Hassani while April Marie Paguio Te Seng appeared with respondent Atty. Dennis C. Pangan. Certainly, this is a case of a lawyer representing conflicting interests.

We are not persuaded by respondent's defense that the two (2) lawyers who assisted complainant during the mediation never opposed his appearance as April's representative. The lack of opposition did not cure respondent's violation of the prohibition on representing conflicting interests.

3. ID.; ID.; A LAWYER WHO DISREGARDS THE LAW ON SUCCESSION BY EXCLUDING AN HEIR IN THE

EXTRAJUDICIAL SETTLEMENT HE PREPARED VIOLATES THE CODE OF PROFESSIONAL RESPONSIBILITY.— Rule 1.02 of the CPR ordains: "**RULE 1.02** A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system."

Respondent violated the aforecited rule when he disregarded the law on succession and excluded complainant as heir to her son's estate. Pertinently, Article 985 of the Civil Code decrees: "**Article 985.** In default of legitimate children and descendants of the deceased, his parents and ascendants shall inherit from him, to the exclusion of collateral relatives."

As stated, the absence of legitimate descendants entitles the direct ascendants to inherit from the deceased's estate. Notably though, the Extrajudicial Settlement of Patrick's estate excluded complainant as heir despite the fact that Patrick did not have a legitimate offspring.

4. ID.; ID.; A LAWYER VIOLATES THE CODE OF PROFESSIONAL RESPONSIBILITY (CPR) WHEN HE CHARGED A CLIENT WITH A CRIME USING THE DOCUMENTS ENTRUSTED TO HIM BY THE LATTER IN CONFIDENCE.— Rule 138, Sec. 20 (e) mandates the lawyer to maintain inviolate the confidence, and at every peril to himself, to preserve his client's secrets. . . .

Here, respondent violated the CPR when he charged complainant with falsification using the documents complainant herself entrusted to him in confidence. . . .

In so doing, respondent eroded the public's trust and confidence in the legal profession. For he gave the impression that anything submitted to the lawyer engaged to protect the client's interest may be used against him or her later on when the lawyer-client relationship shall have turned sour.

5. ID.; ID.; USING OFFENSIVE LANGUAGE AGAINST A PARTY IN A PLEADING EXPOSES THE LAWYER TO ADMINISTRATIVE LIABILITY.— Membership in the Bar imposes upon lawyer's certain obligations. Mandated to maintain the dignity of the legal profession, they must conduct themselves honorably and fairly. Any violation of these standards exposes them to administrative liability. . . .

. . .

> Respondent's use of the words "devil," "with a devil smile," and "*atat na atat*" to describe complainant and her actuations during the meetings held for the preparation and drafting of the Extrajudicial Settlement of her son's estate fell short of his sworn duty to act with dignity and civility. The use of these distasteful words in his counter affidavit was uncalled for, to say the least.

APPEARANCES OF COUNSEL

Jimeno Cope & David Law Office for complainant.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

In **CBD 15-4821**, Myriam Tan-Te Seng charged respondent Atty. Dennis C. Pangan with violations of Canon 1, Rules 1.01 and 1.02; Canon 15, Rules 15.02 and 15.03; and Canon 21, Rule 21.02 of the Code of Professional Responsibility (CPR), the Lawyer's Oath, and Rule 138, Section 20 of the Rules of Court. On the other hand, in **CBD 16-4966**, complainant charged respondent with violation of Canon 8, Rule 8.01 of the CPR.

The Complaints

In **CBD 15-4821**,[1] complainant essentially alleged:

On September 18, 2005, her son Patrick Marcel T. Te Seng married April Marie M. Paguio. Patrick, however, was under severe depression and confided to her (complainant) that he was unhappy with his marriage. On July 28, 2014, about nine (9) years into the marriage, Patrick took his own life.

After Patrick's death, she discovered that her daughter-in-law April was previously married to one Neil Paul M. Bermundo

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[1] A.C. No. 12829, *rollo*, pp. 2-19.

on June 23, 2000. April's marriage to Neil did not last long. Eventually, Neil filed a petition for declaration of nullity of his marriage to April which the Regional Trial Court (RTC) for Ligao City granted. The decree of nullity of marriage became final on July 14, 2003.

On February 24, 2001, while April's marriage to Neil was still subsisting, April gave birth to Patricia Beatrice Paguio. On August 12, 2002, Patrick executed an Affidavit of Acknowledgement and Affidavit for Delayed Registration of Birth, claiming to be Patricia's father. These affidavits were submitted to the National Statistics Office (NSO).

Her sister's best friend Paz Paguio subsequently introduced her to respondent for the settlement of Patrick's estate. Paz even accompanied her and April to respondent's office for a meeting. After officially engaging his services, respondent sent an email addressed to her and April, requesting for documents relevant to the Extrajudicial Settlement of Patrick's estate. Respondent quoted his legal service fee at ₱25,000.00. During one of her visits to respondent's office, she gave respondent pomelos from Davao.

On September 23, 2014, she and respondent had a meeting at Gloria Maris Restaurant together with April and Patricia. Respondent informed them that April and Patricia's share in Patrick's estate would be minimal, about ₱100,000.00 only. Thus, she offered ₱500,000.00 to Patricia as full settlement of her share. Respondent persuaded Patricia to accept her kind gesture as it would pay for her college education. They also agreed that April and Patricia would convey to her their interest in the Quezon City Townhouse which Patrick had paid in full.

Sometime in November 2014, she requested an update from respondent. To her surprise, the Extrajudicial Settlement drafted by respondent excluded her as a legal heir. Based on her consultations with other people though, she and her husband were entitled to one half of their son's estate because Patrick had no legitimate child of his own. She later confirmed this

through another lawyer who enlightened her on the application of Article 997[2] of the Civil Code.

As stated, however, respondent's draft of the Extrajudicial Settlement deliberately omitted Patricia's status. Had it disclosed that Patricia was Neil's illegitimate daughter, it would have stripped Patricia of her entitlement to Patrick's estate in favor of her (complainant) and her husband. The Extrajudicial Settlement, too, failed to state that Patricia was then only thirteen (13) years of age and had no capacity to sign legal documents.

More, respondent deliberately excluded Patrick's 35% ownership of Sweetcraft Corporation from the Extrajudicial Settlement. Earlier, respondent had assisted April in transferring Patrick's shares in the said company to the newly incorporated AMPB Sweetcraft Corporation for purposes of circumventing corporation and tax laws, and to prevent her from acquiring Patrick's share.

Saddened by this turn of events, she engaged a new counsel who invited April to a conference to settle the issue amicably. But April declined. Thus, she was forced to file a case for Annulment/Rescission of Extrajudicial Settlement of Estate, Issuance of Letters of Administration before RTC, Mandaluyong City.

Meanwhile, on August 7, 2015, respondent sued her before the Office of the City Prosecutor, Pasig City for Falsification of Public Documents. A Deed of Sale which she handed before to respondent in confidence was the subject of the complaint.

April was represented by two (2) lawyers in the cases pending between them. But in reality, April's lawyer was actually respondent. In fact, in one of their cases, respondent openly represented April before the Philippine Mediation Center.

Respondent and April must have developed some liking for each other. According to her sources, the two left for Hong

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[2] **ARTICLE 997.** When the widow or widower survives with legitimate parents or ascendants, the surviving spouse shall be entitled to one-half of the estate, and the legitimate parents or ascendants to the other half.

Kong on November 15, 2015 on the same flight and came back together on November 18, 2015. As confirmed by Certification[3] dated June 17, 2016 of the Philippine Statistics Authority (PSA), respondent married April on November 27, 2015 in Bacolor, Pampanga.

In **CBD 16-4966**,[4] complainant charged respondent with using abusive, offensive, and improper language against her in his Counter-Affidavit dated November 16, 2015. The same contained respondent's response to a complaint she filed against him and April before the Office of the City Prosecutor in Manila for Falsification of Public Document under Articles 171 and 172 of the Revised Penal Code.

In particular, paragraph 17 of respondent's counter-affidavit described her as overly persistent or "*atat na atat*" to sell the property of her deceased son barely a month after his death. On the other hand, in paragraph 27, respondent described her as a devil wearing a devil's smile.

Respondent's Defenses

In **CBD 15-4821**,[5] respondent essentially countered:

There was no attorney-client relationship between him and complainant. He only came to know of complainant on September 10, 2014 when real estate broker and longtime client Paz Paguio introduced them to each other. That day, Paz and her client Myriam (complainant) appeared before his office for documentation of the sale of a property located in Quezon City. For this purpose, complainant handed him a Deed of Absolute Sale dated June 13, 2012 and Transfer Certificate of Title No. 004-2012011774. He learned that the property was registered in the name of Myriam C. Tan, single, and deceased Patrick T. Te Seng married to April Marie P. Te Seng.

He informed Paz and complainant that April should personally visit the office so that they could sign before him and the notary

[3] A.C. No. 12829, *rollo*, p. 359.

[4] A.C. No. 12830, *rollo*, pp. 2-9.

[5] *Id.* at 108-119.

public. As instructed, Paz, complainant, and April appeared before him the following week. During their discussion, he learned that April had a daughter with Patrick, named Patricia. He did not want Patricia to be left in the dark saying "*Ayokong kasuhan ako ng batang yan paglaki niya at sabihing mali ang documentation natin*." They then agreed to bring Patricia to him during their next meeting.

This meeting subsequently took place in Gloria Maris Restaurant. There, they all agreed that the Extrajudicial Settlement will be signed by April and Patricia, sans complainant. In fact, it was complainant who approved the final draft of the Extrajudicial Settlement. It took more than a month before Patricia finally signed the Extrajudicial Settlement because she was mad at complainant when she offered ₱500,000.00 in exchange for her share.

As signed, the Extrajudicial Settlement was later on handed to complainant. It was published by Lecson Publishing and Services, Inc. in its November 5, 12, and 19, 2014 issues.

On June 22, 2015, he was surprised that complainant filed a case for settlement of estate before the RTC-Mandaluyong City *via* SP Proc. Case No. MC-15-9510.

Complainant was excluded from the Extrajudicial Settlement since Patricia was Patrick's legitimate daughter and, by law, excludes Patrick's ascendants from inheriting *ab intestato* from Patrick's estate. Per Patricia's Birth Certificate, there was no impediment for her parents to marry at the time she was born. Thus, the subsequent marriage of April and Patrick made Patricia a legitimated child with the same status as legitimate. He was not informed of April's previous marriage with Neil and it was not his duty to investigate nor inquire with the Philippine Statistics Authority regarding the matter.

Complainant could not cry foul as she was on top of the documentation all through its drafting until its publication. Complainant even gave him one (1) box of pomelos to show her gratitude. He gave the pomelos to his staff because he does not like pomelos.

There was no conflict of interests because complainant was never his client. At any rate, his appearance in the Mediation Proceedings was not a violation of his oath because he merely assisted April upon the latter's request since he was the one who drafted the Extrajudicial Settlement upon complainant's instructions. He never represented April in any of the cases between her and complainant.

Anent the alleged exclusion of Patrick's shares of stock in Sweetcraft Corporation, he was never informed of such ownership. Too, AMPB Sweetcraft Corporation was legally incorporated. It's supposed illegality was only in the mind of complainant who was on a fault-finding mission.

In **CBD 16-4966**,[6] respondent countered, in the main:

There was nothing wrong with describing complainant as a "devil" because at that time, while the whole family was grieving, complainant was trying to get everything she could. He called her a devil because her actuations were not those of a person believing in God's existence. Too, there was nothing wrong with the use of the word "*atat na atat*" because he had difficulty finding the appropriate word in English. The word "persistent" was too light to describe complainant's actuations in trying to amass everything she could shortly after her son's death, leaving nothing to his son's immediate family.

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

By its Consolidated Report and Recommendation[7] dated July 31, 2017, Commissioner Gilbert L. Macatangay recommended that respondent be suspended from the practice of law for one (1) year, thus:

WHEREFORE, premises considered **ATTY. DENNIS C. PANGAN** violated his Lawyer's Oath and pertinent provisions of

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[6] *Id.* at 43-46.

[7] A.C. No. 12829, *rollo*, pp. 364-373.

the Code of Professional [R]esponsibility and the undersigned Commissioner respectfully recommends that a penalty of suspension from practice of law for a period of one (1) year at the discretion of the Board of Governors be imposed with warning that repetition of similar conduct in the future will warrant a more severe penalty.

RESPECTFULLY SUBMITTTED.

In **CBD 15-4821**, the Commissioner held that as a lawyer, respondent knew that complainant and her husband had the right to inherit from their son, Patrick because Patrick had no legitimate child. Further, respondent committed the following irregularities in the Extrajudicial Settlement:

First. Respondent deliberately hid the fact that Patricia was April's legitimate child from her first marriage.

Second. He made Patricia sign the Extrajudicial Settlement and made it appear that the latter was of legal age when in truth and in fact, she was then only thirteen (13) years old.

Third. He made it appear in the Extrajudicial Settlement that Patrick left no personal property, to the complainant's extreme prejudice.

Respondent, therefore, violated Canons 1, 7, 15, 17, 18 and 19 of the CPR: he violated Canon 1 when he disregarded the applicable laws in succession and taxation; he violated Canon 7 when he took advantage of his client's trust and confidence, undermining the legal profession's integrity and dignity; he violated Canon 15 when he deprived complainant of what was due her from her son's estate and used the same documents entrusted him to charge complainant with falsification of documents; he violated Canon 17 when he dumped complainant as client and openly represented April against complainant; and lastly, respondent's erroneous declarations in the Extrajudicial Settlement constituted violations of Canons 18 and 19 of the CPR.

Meanwhile, in **CBD 16-4966**, the Commissioner held that respondent violated Canon 8, Rule 8.01 of the CPR when he described complainant as a devil with a devil's smile, and "*atat na atat*."

Resolutions of the IBP-Board of Governors (BOG)

Under its assailed Resolution[8] dated October 4, 2018, the IBP-Board of Governors affirmed with modification, *viz.*:

CBD Case No. 15-4821
Myriam Tan-Te Seng vs.
Atty. Dennis C. Pangan

RESOLVED to ADOPT the findings of fact and recommendation of the Investigating Commissioner to impose upon Respondent the penalty of ***SUSPENSION from the practice of law for a period of one (1) year****.*

CBD Case No. 16-4966
Myriam Tan-Te Seng vs.
Atty. Dennis C. Pangan

RESOLVED to ADOPT the findings of fact and recommendation of the Investigating Commissioner, ***with modification****, that respondent be* ***SUSPENDED from the practice of law for six (6) months****.*

The IBP elevated the entire records for the Court's final *imprimatur* since the IBP resolutions were mere recommendatory in nature. Per verification, no motion for reconsideration or petition for review was filed by either party as of March 5, 2020.

Threshold Issues

1. Did respondent violate the Lawyer's Oath and the CPR when he neglected complainant's interest in favor of April?
2. Did respondent act in defiance of the law when he excluded complainant as heir to her son's estate?
3. Did respondent commit dishonesty when he excluded Patrick's personal properties from the Extrajudicial Settlement he prepared?

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[8] *Id.* at 362-363.

4. Did respondent fail to maintain complainant's secrets when he criminally charged her through a document entrusted him in confidence?

5. Are respondent's description of complainant as "*atat na atat*" and a devil with devil's smile offensive enough to warrant respondent's disbarment?

Ruling

We resolve.

When respondent took the lawyer's oath, he swore to obey the laws and conduct himself with all good fidelity to his clients, *viz.*:

> I, do solemnly swear that I will maintain allegiance to the Republic of the Philippines; I will support its Constitution and obey laws as well as the legal orders of the duly constituted authorities therein; I will do no falsehood, nor consent to the doing of any in court; I will not wittingly nor willingly promote or sue any groundless, false or unlawful suit, or give aid nor consent to the same; I will delay no man for money or malice, and will conduct myself as a lawyer according to the best of my knowledge and discretion, with all good fidelity as well to the courts as to my clients; and I impose upon myself these voluntary obligations without any mental reservation or purpose of evasion. So help me God.

The sworn duty to obey the laws of the land was reiterated in Canon 1 of the CPR, thus:

> **CANON 1** — A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and for legal processes.[9]

As will be discussed, respondent failed to live up to his sworn duties and responsibilities in his dealings with complainant.

Respondent was bound to protect complainant's interests

a. There existed a lawyer-client relationship between respondent and complainant

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

Respondent was bound to protect complainant's interest the moment the latter sought the former's advice regarding the settlement of her deceased son's estate. To constitute professional employment, it is not essential that the client should have employed the attorney professionally on any previous occasion. If a person, in respect to his business affairs or troubles of any kind, consults with his attorney in his professional capacity with the view to obtaining professional advice or assistance, and the attorney voluntarily permits or acquiesces in such consultation, then the professional employment must be regarded as established.[10]

Here, a lawyer-client relationship was established when complainant sought respondent's legal services for the settlement of her son's estate. To be sure, complainant was introduced to respondent to discuss the properties her deceased son Patrick left behind. Thereafter, they had several meetings at respondent's law office for the preparation and drafting of the Extrajudicial Settlement. Respondent even sent complainant and April the list of pertinent documents he would be needing. From respondent's own actions, it is crystal clear that a lawyer-client relationship between him and complainant had been forged.

Respondent nevertheless denies his supposed lawyer-client relationship with complainant simply because there was no retainer agreement between them and the fact that he did not receive a single centavo from complainant for his services.

We do not agree.

The absence of retainer agreement and non-payment of fees do not negate the existence of lawyer-client relationship. In ***Burbe v. Atty. Magulta***,[11] the Court held that to constitute professional employment, it is not essential that any retainer be paid, promised, or charged; neither is it material that the attorney consulted did not afterward handle the case for which his service had been sought.

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[10] See *Hilado v. David*, 84 Phil. 569-581 (1949).

[11] 432 Phil. 840 (2002).

At any rate, respondent's denial of lawyer-client relationship between him and complainant was belied by his own statement in his Answer, *viz.*:

> 27. Assu[m]ing arguendo by the stretch of imagination that complainant is the client of respondent, the latter's appearance in the Mediation Proceedings is not a violation of his Oath. Respondent went to the Mediation Proceedings because the latter asked him to do so ***because he is the one who prepared the Extrajudicial Settlement at the instruction of complainant***.[12] *(Emphases supplied)*

b. Respondent abandoned complainant's cause in favor of April

In view of their lawyer-client relationship, respondent was duty bound to protect complainant's cause and refrain from representing interests in conflict therewith in accordance with Canon 15, Rules 15.02 and 15.03, *viz.*:

> **CANON 15** — A lawyer shall observe candor, fairness and loyalty in all his dealings and transactions with his client.
>
> x x x x
>
> **RULE 15.02** A lawyer shall be bound by the rule on privilege communication in respect of matters disclosed to him by a prospective client.
>
> **RULE 15.03** A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts.[13]

A lawyer may not, without being guilty of professional misconduct, act as counsel for a person whose interest conflicts with that of his present or former client. The rule covers not only cases in which confidential communications have been confided, but also those in which no confidence has been bestowed or will be used. The rule holds even if the inconsistency is remote, merely probable, or the lawyer has acted in good faith and with no intention to represent conflicting interests.[14]

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[12] A.C. No. 12829, *rollo*, p. 116.

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

[14] See *Heirs of Lydio Falame v. Atty. Baguio*, 571 Phil. 428, 441 (2008).

In this case, respondent abandoned complainant's cause and openly represented April as his client during mediation conferences. Per Certificate of Appearance[15] dated September 28, 2015, Myriam C. Tan Te Seng appeared before the Philippine Mediation Center with Atty. Rita Linda V. Jimeno and Atty. Mary Sayeh P. Hassani while April Marie Paguio Te Seng appeared with respondent Atty. Dennis C. Pangan. Certainly, this is a case of a lawyer representing conflicting interests.

We are not persuaded by respondent's defense that the two (2) lawyers who assisted complainant during the mediation never opposed his appearance as April's representative. The lack of opposition did not cure respondent's violation of the prohibition on representing conflicting interests.

In ***Senior Marketing Corp. v. Bolinas***,[16] the Court suspended Atty. Aquilino P. Bolinas from the practice of law for six (6) months for violation of Canon 15, Rules 15.01 and 15.03, and Canon 21. According to the Court, Atty. Bolinas clearly violated the prohibition against representing conflicting interests when he handled the cases filed against complainant by its employees though he was previously complainant's retained counsel and had access to documents pertinent to the cases filed.

Respondent disregarded the law on succession in excluding complainant as heir

Rule 1.02 of the CPR ordains:

RULE 1.02 A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system.[17]

Respondent violated the aforecited rule when he disregarded the law on succession and excluded complainant as heir to her son's estate. Pertinently, Article 985 of the Civil Code decrees:

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[15] A.C. No. 12829, *rollo*, p. 99.

[16] A.C. No. 6740, February 26, 2014.

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

Article 985. In default of legitimate children and descendants of the deceased, his parents and ascendants shall inherit from him, to the exclusion of collateral relatives.[18]

As stated, the absence of legitimate descendants entitles the direct ascendants to inherit from the deceased's estate. Notably though, the Extrajudicial Settlement of Patrick's estate excluded complainant as heir despite the fact that Patrick did not have a legitimate offspring.

As reflected in her birth record, Patricia was born on February 24, 2001. At that time, April's marriage to Neil was still subsisting. The nullity of April's marriage to Neil became final only on July 14, 2003. For lack of evidence on the ground invoked for the nullity of April's marriage to Neil, the Court presents two (2) scenarios:

First. If the ground relied upon was either Article 36[19] or 53[20] of the Family Code, Patricia is deemed the legitimate daughter of April and Neil in accordance with Article 54[21] of

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[18] Civil Code of the Philippines, Republic Act No. 386, June 18, 1949.

[19] **ARTICLE 36.** A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.

The action for declaration of nullity of the marriage under this Article shall prescribe in ten years after its celebration. (Family Code of the Philippines, Executive Order No. 209, July 6, 1987).

[20] **ARTICLE 53.** Either of the former spouses may marry again after complying with the requirements of the immediately preceding Article; otherwise, the subsequent marriage shall be null and void. (Family Code of the Philippines, Executive Order No. 209, July 6, 1987).

[21] **ARTICLE 54.** Children conceived or born before the judgment of annulment or absolute nullity of the marriage under Article 36 has become final and executory, shall be considered legitimate. Children conceived or born of the subsequent marriage under Article 53 shall likewise be legitimate. (Family Code of the Philippines, Executive Order No. 209, July 6, 1987).

the Family Code. Patrick's acknowledgment of Patricia as his daughter, by itself, could not have diminished Patricia's status into that of an illegitimate child. For under Art. 170[22] of the Family Code, it was April's then husband Neil, not Patrick, who could have impugned Patricia's legitimacy.

Second. If the ground relied upon was neither Article 36 nor 53 of the Family Code, Patricia would be considered an illegitimate child. To be sure, Article 177 of the Family Code[23] expressly precludes the legitimation of children conceived and born outside of wedlock of parents who, at the time of the conception of the former, were disqualified by any impediment to marry each other. Thus, neither Patrick and April's subsequent marriage on September 18, 2005, nor his Affidavit of Acknowledgment could have raised Patricia's status to that of a legitimated child. For at the time Patricia was conceived and born, there existed a legal impediment for Patrick to marry April; April's marriage to Neil was still subsisting.[24]

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born of the subsequent marriage under Article 53 shall likewise be legitimate. (Family Code of the Philippines, Executive Order No. 209, July 6, 1987).

[22] **ARTICLE 170.** The action to impugn the legitimacy of the child shall be brought within one year from the knowledge of the birth or its recording in the civil register, if the husband or, in a proper case, any of his heirs, should reside in the city or municipality where the birth took place or was recorded.

If the husband or, in his default, all of his heirs do not reside at the place of birth as defined in the first paragraph or where it was recorded, the period shall be two years if they should reside in the Philippines; and three years if abroad. If the birth of the child has been concealed from or was unknown to the husband or his heirs, the period shall be counted from the discovery or knowledge of the birth of the child or of the fact of registration of said birth, whichever is earlier. (263a) (Family Code of the Philippines, Executive Order No. 209, July 6, 1987).

[23] **ARTICLE 177.** Only children conceived and born outside of wedlock of parents who, at the time of the conception of the former, were not disqualified by any impediment to marry each other may be legitimated. (Family Code of the Philippines, Executive Order No. 209, July 6, 1987).

[24] **ARTICLE. 40.** The absolute nullity of a previous marriage may be invoked for purposes of remarriage on the basis solely of a final judgment declaring such previous marriage void.

In either scenario, complainant and her husband would still have been able to inherit half of Patrick's estate:

> **Article 997.** When the widow or widower survives with legitimate parents or ascendants, the surviving spouse shall be entitled to one-half of the estate, and the legitimate parents or ascendants to the other half.[25]
>
> x x x x
>
> **Article 1000.** If legitimate ascendants, the surviving spouse, and illegitimate children are left, the ascendants shall be entitled to one-half of the inheritance, and the other half shall be divided between the surviving spouse and the illegitimate children so that such widow or widower shall have one-fourth of the estate, and the illegitimate children the other fourth.[26]

In the first scenario, Article 997 of the Civil Code is applicable while in the second, Article 1000. Either way, respondent violated Rule 1.02 of the CPR when he excluded complainant as heir in the Extrajudicial Settlement.

Respondent nevertheless reasons out that no one dared inform him of April's previous marriage to Neil; it was not his duty to investigate and make inquiries at the NSO (now PSA); and he merely relied on the information as laid down by the parties. Respondent's claim, however, is belied by the fact that complainant incessantly insisted that she and her husband were heirs to Patrick's estate. Complainant made this clear from the time she first met respondent and reiterated it with persistent follow ups with respondent. Respondent cannot now feign ignorance thereof.

At any rate, records show that respondent eventually married April on November 27, 2015 at Bacolor, Pampanga. April's CENOMAR would have indicated her previous marriages and their duration. Respondent would then have discovered that Patricia was born during the subsistence of April's marriage to

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[25] Civil Code of the Philippines, Republic Act No. 386, June 18, 1949.

[26] *Id.*

Neil and, hence, could not be considered as Patrick's legitimated offspring. Yet, he did nothing to rectify the Extrajudicial Settlement and continued to deny complainant and her husband their share in Patrick's estate.

Respondent is exonerated from the charge for dishonesty for lack of merit

Rule 1.01 of the CPR proscribes dishonesty and deceitful conduct, thus:

RULE 1.01 A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.[27]

Here, complainant claims that respondent committed falsehood when he declared in the Extrajudicial Settlement that the deceased left no personal properties when in truth and in fact, Patrick owned 33.65% of Sweetcraft Corporation's outstanding capital stock at the time of his death per the corporation's General Information Sheet.[28] Paragraph 3 of the Extrajudicial Settlement reads:

3. No personal properties are involved in this Extrajudicial Settlement.[29]

The Court, however, cannot fathom how respondent committed falsehood and dishonesty from such declaration. For the provision could have meant that the Extrajudicial Settlement did not cover Patrick's personal properties which could have been the subject of another settlement, or in case of disagreement, be the subject of a separate proceeding for such purpose. What is clear is that the Extrajudicial Settlement prepared by respondent did not include Patrick's personal properties, nothing more.

Meanwhile, the alleged anomalous incorporation of AMPB Sweetcraft Corporation is unsubstantiated. Complainant alleges that respondent assisted April in incorporating AMPB Sweetcraft

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

[28] A.C. No. 12829, *rollo*, p. 73.

[29] *Id.* at 32.

Corporation in fraud of the other stockholders of Sweetcraft Corporation including complainant. They allegedly transferred Patrick's share to the new corporation a week before executing the Extrajudicial Settlement.

To support her allegation, complainant attached AMPB Sweetcraft Corporation's Articles of Incorporation to the complaint, nothing more. This document, however, does not paint a picture of the anomalies which supposedly attended AMPB Sweetcraft's incorporation nor the alleged fraudulent transfer of Patrick's shares.

Thus, respondent is exonerated from the charge of dishonesty.

Respondent criminally charged complainant using a document entrusted to him in confidence

Rule 138, Sec. 20 (e)[30] mandates the lawyer to maintain inviolate the confidence, and at every peril to himself, to preserve his client's secrets. This duty is reiterated in Canon 21, Rules 21.01 and 21.02 of the CPR:

CANON 21 — A lawyer shall preserve the confidences or secrets of his client even after the attorney-client relation is terminated.

RULE 21.01 A lawyer shall not reveal the confidences or secrets of his client except:

a) when authorized by the client after acquainting him of the consequences of the disclosure;

b) when required by law;

c) when necessary to collect his fees or to defend himself, his employees or associates or by judicial action.

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[30] Section 20. Duties of attorneys. — It is the duty of an attorney:

x x x x

(e) To maintain inviolate the confidence, and at every peril to himself, to preserve the secrets of his client, and to accept no compensation in connection with his client's business except from him or with his knowledge and approval;

x x x x

RULE 21.02 A lawyer shall not, to the disadvantage of his client, use information acquired in the course of employment, nor shall he use the same to his own advantage or that of a third person, unless the client with full knowledge of the circumstances consents thereto.[31]

Here, respondent violated the CPR when he charged complainant with falsification using the documents complainant herself entrusted to him in confidence. By Affidavit-Complaint[32] dated August 7, 2015, he averred:

28. In the course of the documentation, I was misled by respondent Myriam that she is single and she can dispose of her share in the co-ownership on her own without the need for the signature of her husband.

29. ***One of the documents given by respondent and Paz Paguio to me is the Deed of Absolute Sale dated 13 July 2012*** executed by Cambridge Realty and Development Corp. in favour of Myriam C. Tan, single and Patrick Marcel T. Te Seng married to April Marie P. Te Seng (Annex "A").

30. Clearly, in the said Deed of Absolute Sale (Annex "G"), respondent committed falsification of public document by misrepresenting herself as single when she is very much married to Oscar Te Seng.[33] *(Emphases supplied)*

x x x x

In so doing, respondent eroded the public's trust and confidence in the legal profession. For he gave the impression that anything submitted to the lawyer engaged to protect the client's interest may be used against him or her later on when the lawyer-client relationship shall have turned sour. As the IBP-CBD aptly held:

x x x x

Respondent lawyer violated his duties as a lawyer by acting against the interest of his client and keeping her from lawfully receiving

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

[32] A.C. No. 12829, *rollo*, pp. 35-43.

[33] *Id.* at 41.

what was due her from her son's estate. When Atty. Pangan obtained information and received document from the complainant, he was already bound to protect her interest. Worst, respondent used the documents entrusted to him by complainant to file a flimsy criminal case for falsification against her on the ground that she allegedly put her status as "single" when she was still married, although separated de facto.[34]

x x x x

In ***Palacios v. Amora, Jr.***,[35] Atty. Bienvenido Braulio M. Amora, Jr. was suspended from the practice of law for two (2) years for violating the Lawyer's Oath, Canon 15, Rule 15.03; Canon 21, Rules 21.01 and 21.02 of the CPR. Among the violations he committed, Atty. Amora, Jr. accused his former client of several violations using confidential information he secured from complainant while he was the latter's counsel. Thus, Atty. Amora, Jr. was found guilty of violating Canon 21, Rules 21.01 and 21.02 of the CPR.

Respondent's descriptions of complainant in his Counter-affidavit were offensive

Membership in the Bar imposes upon lawyer's certain obligations. Mandated to maintain the dignity of the legal profession, they must conduct themselves honorably and fairly. Any violation of these standards exposes them to administrative liability.[36] Rule 8.01 of the CPR provides:

RULE 8.01 A lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper.[37]

In his Counter-Affidavit[38] dated November 16, 2015 before the Office of the City Prosecutor of Manila, I.S. No. XV-07-

[34] *Id.* at 372.

[35] 815 Phil. 9 (2017).

[36] See *Nava II v. Artuz*, A.C. No. 7253 & A.M. No. MTJ-08-1717, February 18, 2020.

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

[38] A.C. No. 12830, *rollo*, pp. 10-33.

INV-151-05480 for Falsification of Public Document filed by complainant, respondent averred:

x x x x

17. Here we could see who is so persistent (in Tagalog "***atat na atat***") to sell the property of the deceased barely less than a month after his death. This confirms the character of the complainant Myriam who, according to respondent April Marie P. Te Seng (please see her Counter-Affidavit), right after the death of the deceased Patrick Marcel T. Te Seng and before his cadaver could even be put inside the coffin already asked him about the money and other properties left by her dead son.[39]

x x x x

27. When this fact was conveyed to the complainant Myriam, she did not show remorse but even offered a ***devil smile*** saying "malaking amount na yun Attorney, please convince her to accept the amount." The complainant Myriam also sought the help of herein respondent to follow up the check payments of the respondent April [M]arie for the amount she spent in helping her. Right there, I saw the ***devil*** in her person because while the whole family was grieving, here is a mother who is supposed to protect her family but was there to get what the whole family has.[40] (*Emphases supplied*)

Respondent's use of the words "devil," "with a devil smile," and "*atat na atat*" to describe complainant and her actuations during the meetings held for the preparation and drafting of the Extrajudicial Settlement of her son's estate fell short of his sworn duty to act with dignity and civility. The use of these distasteful words in his counter affidavit was uncalled for, to say the least.

In ***Lim v. Mendoza***,[41] the Court held that respondent failed to use temperate and respectful language in his pleading against complainant. In his eagerness to advance his client's cause, respondent imputed on Rufina derogatory traits that are damaging

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[39] *Id.* at 24.

[40] *Id.* at 26.

[41] A.C. No. 10261, July 16, 2019.

to her reputation. He averred that Rufina collected "BILLIONS OF PESOS" in rent which were "DISSIPATED ON HER GAMBLING VICES." There, the Court reminded that lawyers are instructed to be gracious and must use such words as may be properly addressed by one gentleman to another. Our language is rich with expressions that are emphatic but respectful, convincing but not derogatory, illuminating but not offensive.

Penalty

In **A.C. No. 12829** (formerly CBD 15-4821), respondent is found guilty of violating the Lawyer's Oath, Rule 1.02; Canon 15, Rules 15.02 and 15.03; and Canon 21, Rules 21.01 and 21.02 of the CPR. The Court deems it sufficient to impose one (1) year suspension upon respondent in accordance with ***Lim, Jr. v. Villarosa***,[42] where the Court suspended Atty. Nicanor V. Villarosa when he represented conflicting interests in violation of Canons 15 and 22 of the CPR.

In **A.C. No. 12830** (formerly CBD 16-4966), respondent is found guilty of violating Rule 8.01 of the CPR. But respondent's violation is not grave enough to merit suspension, let alone, dismissal. The Court, therefore, deems it proper to reduce the IBP-Board of Governor's imposition of six (6)-month suspension to admonition.

In ***Parks v. Misa, Jr.***,[43] the Court admonished Atty. Joaquin L. Misa, Jr. to refrain from using abusive, offensive or otherwise improper language in his pleadings. There, Atty. Misa executed a counter-affidavit containing defamatory and libelous statement against complainant, even if she was not a party to the complaint for Malicious Mischief and Less Serious Physical Injuries filed by her father against Atty. Misa and several others. In the counter-affidavit, Roselyn was described as a known drug addict, a fraud, and making insinuation that her marriage was a "fixed marriage." According to the Court, Atty. Misa is found guilty of violating Rule 8.01, Canon 8 of the CPR because the statements

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[42] 524 Phil. 37 (2006).

[43] A.C. No. 11639, February 5, 2020.

were pointless and uncalled for, intended as they were to humiliate or insult Roselyn.

So must it be.

WHEREFORE, the Court finds **Atty. Dennis C. Pangan GUILTY** of the following:

In **A.C. No. 12829 (**formerly CBD 15-4821), he is **GUILTY** of violation of Rule 1.02; Canon 15, Rules 15.02 and 15.03; and Canon 21, Rules 21.01 and 21.02 of the Code of Professional Responsibility. He is **SUSPENDED** from the practice of law for one (1) year.

In **A.C. No. 12830** (formerly CBD 16-4966), he is **GUILTY** of violating Rule 8.01 of the Code of Professional Responsibility. He is **ADMONISHED** to refrain from using abusive and offensive language in his pleadings and is **STERNLY WARNED** that a repetition of the same or similar acts will be dealt with more severely.

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

Respondent must inform the Office of the Bar Confidant of the exact date of receipt of this Decision for the purpose of reckoning the period of his suspension from the practice of law. After completing his suspension, respondent is required to submit to the Office of the Bar Confidant the Certifications from the Office of the Executive Judge of the court where he principally practices his profession and from the Integrated Bar of the Philippines Local Chapter of his affiliation affirming that he had ceased and desisted from the practice of law during his suspension.

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

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 192578. September 16, 2020]

PHILIPPINE SINTER CORPORATION, *Petitioner, v.* **NATIONAL TRANSMISSION CORPORATION AND CAGAYAN ELECTRIC POWER AND LIGHT COMPANY, INC.,** *Respondents*.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; THE ENERGY REGULATORY COMMISSION (ERC) HAS THE SOLE AUTHORITY TO SET THE STANDARDS OF THE TRANSMISSION VOLTAGES AND OTHER FACTORS THAT SHALL DISTINGUISH TRANSMISSION ASSETS FROM SUB-TRANSMISSION ASSETS.— [T]he Energy Regulatory Commission (ERC) has the sole authority to set the standards of the transmission voltages and other factors that shall distinguish transmission assets from sub-transmission assets, pursuant to the provisions of the Electric Power Industry Reform Act of 2000 (EPIRA) and its Implementing Rules and Regulations (IRR). x x x Therefore, the so-called mutual agreement of the Philippine Sinter Corporation (PSC) and National Transmission Corporation (TRANSCO) in their Contract for the Supply of Electricity (CSE) or through their exchange of letters to classify the 138kV Aplaya-PSC line as a transmission asset is immaterial and without any binding legal effect since the legal authority to classify transmission and sub-transmission assets lies with the ERC, and not to either TRANSCO or PSC.

2. ID.; ID.; ID.; THE CLASSIFICATION OF THE 138KV APLAYA-PSC LINE AS A SUB-TRANSMISSION ASSET IS IN ACCORDANCE WITH EXISTING LAWS.— This Court finds that respondents have sufficiently proven that in accordance with existing laws, the 138kV Aplaya-PSC Line is a sub-transmission asset which is subject to divestment by TRANSCO. Section 4(b) and (c), Rule 6 of the EPIRA's IRR provides the criteria to be considered in distinguishing transmission assets from sub-transmission assets[.] x x x

We cite in agreement the following findings of the appellate court: [T]he 138 kV [line] is primarily radial in character as it directly connects PSC to the TRANSCO-Aplaya 100 MVA substation. It has a single simultaneous path of power flow to the load and has only one electrical path from the substation to the petitioner's sinter plant, as an end-user. The classification of the 138kV [line] as a sub-transmission line is therefore unequivocal as Section 2(b) of Article III of the guidelines clearly states that "*Radial lines, power transformers, related protection equipment, control systems and other assets held by TRANSCO or its Buyer or Concessionaire which directly connect an End-User or group of End-Users to a Grid and are exclusively dedicated to the service of that End-User or group of End-Users shall be classified as Sub-transmission Assets*."

3. REMEDIAL LAW; EVIDENCE; FACTUAL FINDINGS OF ERC BASED ON SUBSTANTIAL EVIDENCE, RESPECTED.— [W]ell-settled is the rule that findings of fact of administrative bodies, such as the ERC in the instant case, if based on substantial evidence, are controlling on the reviewing authority. Administrative decisions on matters within their jurisdiction are entitled to respect and can only be set aside on proof of grave abuse of discretion, fraud or error of law, none of which obtains in this case.

APPEARANCES OF COUNSEL

Sapalo Velez Bundang & Bulilan for petitioner.

Quiason Makalintal Barot Torres & Ibarra for respondent Cagayan Electric Power and Light Co., Inc.

D E C I S I O N

HERNANDO, *J.*:

Challenged in this appeal is the December 17, 2009 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP. No. 108069 which

[1] *Rollo*, pp. 27-38; penned by Associate Justice Josefina Guevara-Salonga and concurred in by Associate Justices Celia C. Librea-Leagogo and Priscilla J. Baltazar-Padilla (now a member of this Court).

upheld the findings of the Energy Regulatory Commission (ERC) that the 138kV Aplaya-PSC Line is a sub-transmission asset and thus may be subject for divestment, and its June 9, 2010 Resolution[2] denying the Motion for Reconsideration thereof.

The Parties

Petitioner Philippine Sinter Corporation (PSC) is a domestic corporation which operates a sinter plant at the Phividec Industrial Estate, Villanueva, Misamis Oriental.[3]

On the other hand, respondent National Transmission Corporation (TRANSCO) is a government owned and controlled corporation created under Republic Act (R.A.) No. 9136,[4] otherwise known as the Electric Power Industry Reform Act of 2000 (EPIRA).

Lastly, respondent Cagayan Electric Power & Light Company, Inc. (CEPALCO) is a domestic corporation and a distribution facility, as per its franchise under R.A. No. 3427, as amended.[5] As a distribution facility, CEPALCO has the authority to distribute electric power within its franchise area, which includes Villanueva, Misamis Oriental.[6]

The Antecedents

PSC is a directly-connected customer of the National Power Corporation (NAPOCOR) for the supply of electricity to its sinter plant. Under their Contract for the Supply of Electricity (CSE), NAPOCOR obliged itself to supply power to PSC through the 138kV Aplaya-PSC line. With the enactment of R.A. No. 9136, the generation and transmission functions of the NAPOCOR have been unbundled and the operation and maintenance of the 138kV Aplaya-PSC line was transferred to TRANSCO.[7]

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[2] Id. at 80-81.

[3] Id. at 9.

[4] Id.

[5] Id. at 10.

[6] Id. at 29.

[7] Id.

Sometime in 2002, CEPALCO expressed interest in acquiring the 138kV Aplaya-PSC line. CEPALCO contended that said line is a sub-transmission asset which can be sold by TRANSCO to a qualified distribution facility or consortium under the EPIRA. However, TRANSCO classified the 138kV Aplaya-PSC line as a transmission asset, and therefore cannot be sold or disposed of or even offered for sale to CEPALCO.[8]

Disagreeing with the foregoing classification by TRANSCO, CEPALCO brought the matter for dispute resolution before the ERC under the ERC Guidelines to the Sale and Transfer of the TRANSCO Sub-Transmission Assets and the Franchising of Qualified Consortiums (Guidelines).[9] The petition[10] filed by CEPALCO against TRANSCO was entitled, "*In the Matter of the Dispute Resolution Pursuant to the Guidelines to the Sale and Transfer of the TRANSCO's Sub-Transmission Assets and the Franchising of Qualified Consortiums*" and docketed as ERC Case No. 2005-248MC.

TRANSCO moved to dismiss the petition arguing that the 138kV Aplaya-PSC line is a transmission asset and not a sub-transmission asset, therefore incapable of acquisition by CEPALCO or any other distribution facility. However, the ERC denied the motion to dismiss for lack of merit[11] and proceeded to rule on the merits of the petition.

Ruling of the Energy Regulatory Commission:

In its June 25, 2008 Decision,[12] the ERC granted CEPALCO's petition and classified the 138kV Aplaya-PSC line as a sub-transmission asset. In addition, the ERC ordered said line to be restored in TRANSCO's list of sub-transmission lines which

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[8] Id.

[9] Id.

[10] *CA rollo,* pp. 131-141.

[11] *Rollo,* p. 29.

[12] *CA rollo,* pp. 51-64; issued by Commissioners Rodolfo B. Albano, Jr., Rauf A. Tan, Maria Teresa R. Castañeda, and Jose C. Reyes.

can be purchased by a qualified distribution facility or consortium under the EPIRA's provisions.[13] The dispositive portion of the ERC's Decision reads:

> WHEREFORE, the foregoing premises considered, the petition to classify the 138 kV Aplaya-PSC Line as a sub-transmission asset filed by Cagayan Electric Power and Light Company, Incorporated (CEPALCO) is hereby APPROVED.
>
> Accordingly, TRANSCO is hereby directed to restore the 138 kV [Aplaya]-PSC Line in the list of its sub-transmission assets.
>
> SO ORDERED.[14]

Unsatisfied with the ERC's disposition, PSC filed a Motion for Reconsideration which was denied in the ERC's February 9, 2009 Order.[15]

Ruling of the Court of Appeals:

PSC then filed a petition for review under Rule 43 of the Rules of Court before the CA. In its December 17, 2009 Decision, the appellate court found the petition to be bereft of merit and upheld the findings of the ERC. It found no error on the part of the ERC in classifying the 138kV Aplaya-PSC line as a sub-transmission asset, which can be divested by TRANSCO. The appellate court further pointed out that classifying the 138kV Aplaya-PSC line as a sub-transmission asset is in accord with Sections 7 and 8 of EPIRA, and Section 4 of Rule 6 of EPIRA's Implementing Rules and Regulations (IRR).[16]

The dispositive portion of the Decision of the CA reads:

> WHEREFORE, the foregoing considered, the instant petition for review is hereby DENIED and the assailed Decision and Order are AFFIRMED *in toto*. No costs.
>
> SO ORDERED.[17]

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[13] *Rollo*, p. 30.

[14] *CA rollo*, p. 64.

[15] *Rollo*, p. 28.

[16] Id. at 32.

[17] Id. at 38.

PSC's Motion for Reconsideration was denied by the CA in its June 9, 2010 Resolution.[18] Thus, PSC filed the instant Petition for Review on *Certiorari*[19] under Rule 45 of the Rules of Court.

Issue

Whether or not the CA erred in affirming the ERC's Decision in classifying the 138kV Aplaya-PSC Line as a sub-transmission asset, and restoring the same to TRANSCO's list of assets that can be sold or disposed under the EPIRA to a qualified distribution facility or consortium.

The Court's Ruling

The petition lacks merit. The appellate court properly upheld the findings of the ERC.

ERC has the sole authority to set the standards to distinguish transmission assets from sub-transmission assets.

PSC asserts that a CSE exists between NAPOCOR as supplier and PSC as customer, wherein the parties have clearly expressed their intention to treat the 138kV Aplaya-PSC line as a transmission asset. PSC further explains that upon the enactment of the EPIRA, TRANSCO assumed the functions of NAPOCOR to provide transmission services. PSC also claims that the CSE further stipulates that it (PSC) has the right to continue to avail of transmission services, while NAPOCOR, and TRANSCO, as its successor-in-interest, has the obligation to continue to provide such transmission services.[20] Thus, PSC argues that the re-classification of the 138kV Aplaya-PSC line from a transmission asset to a sub-transmission asset would impair TRANSCO's contractual obligations under the CSE.

This argument is untenable.

As properly held by the CA, the ERC has the sole authority to set the standards of the transmission voltages and other factors

[18] Id. at 80-81.

[19] Id. at 8-25.

[20] Id. at 21.

that shall distinguish transmission assets from sub-transmission assets, pursuant to the provisions of the EPIRA and its IRR. Section 7 of the EPIRA pertinently states:

> SECTION 7. *Transmission Sector*. — The transmission of electric power shall be a regulated common electricity carrier business, subject to the ratemaking powers of the ERC.
>
> The **ERC shall set the standards of the voltage transmission that shall distinguish the transmission from the subtransmission assets**. Pending the issuance of such new standards, the distinction between the transmission and subtransmission assets shall be as follows: 230 kilovolts and above in the Luzon Grid, 69 kilovolts and above in the Visayas and in the isolated distribution systems, and 138 kilovolts and above in the Mindanao Grid: *Provided*, That for the Visayas and the isolated distribution system, should the 69 kilovolt line not form part of the main transmission grid and be directly connected to the substation of the distribution utility, it shall form part of the subtransmission system. *(Emphasis supplied)*.

Similarly, Section 4, Rule 6 of the EPIRA's IRR states as follows:

> RULE 6: Transmission Sector
>
> SECTION 4. *Separation between Transmission and Subtransmission*. — **The ERC shall set the standards of the transmission voltages and other factors that shall distinguish transmission assets from Subtransmission Assets.** Towards this end, ERC shall issue appropriate guidelines to distinguish between these categories of assets according to voltage level and function. [x x x] *(Emphasis supplied)*.

Therefore, the so-called mutual agreement of the PSC and TRANSCO in their CSE or through their exchange of letters to classify the 138kV Aplaya-PSC line as a transmission asset is immaterial and without any binding legal effect since the legal authority to classify transmission and sub-transmission assets lies with the ERC, and not to either TRANSCO or PSC. The foregoing relevant provisions are clear that the ERC is vested with the sole authority to set the standards of the transmission voltages and other factors that shall distinguish transmission assets from sub-transmission assets.

The classification of the 138kV Aplaya-PSC line as a sub-transmission asset is in accordance with existing laws.

This Court finds that respondents have sufficiently proven that in accordance with existing laws, the 138kV Aplaya-PSC Line is a sub-transmission asset which is subject to divestment by TRANSCO.

Section 4 (b) and (c), Rule 6 of the EPIRA's IRR provides the criteria to be considered in distinguishing transmission assets from sub-transmission assets, as follows:

RULE 6 Transmission Sector

SECTION 4. *Separation between Transmission and Subtransmission.* — The ERC shall set the standards of the transmission voltages and other factors that shall distinguish transmission assets from Subtransmission Assets. Towards this end, ERC shall issue appropriate guidelines to distinguish between these categories of assets according to voltage level and function. The ERC shall take into account the objective of allowing non-discriminatory Open Access to the transmission and Subtransmission Systems. **The technical and functional criteria to be considered in distinguishing transmission assets from Subtransmission Assets shall include, but not limited to**:

(a) Subtransmission Assets are normally in close proximity to retail customers;

(b) Subtransmission Assets are primarily radial in character;

(c) Power flows into Subtransmission Assets; it rarely, if ever, flows out;

(d) When power enters Subtransmission Assets, it is not reconsigned or transported on to some other market;

(e) Power entering Subtransmission Assets is consumed in a comparatively restricted geographic area;

(f) Meters are based at the interface of transmission and Subtransmission Assets to measure flows into the Subtransmission; and

(g) Subtransmission Assets will be of reduced voltage. *(Emphasis supplied)*

Similarly, Section 2 (b), Article III of the Guidelines states the following standards in distinguishing transmission assets from sub-transmission assets:

> ARTICLE III: Criteria to Distinguish Transmission Assets from Sub-transmission Assets
>
> SECTION 2. *Technical and Functional Criteria*. — The assets shall be classified based on the technical and functional criteria enumerated in Sections 4 and 6, Rule 6, Part II of the IRR of the Act, including, but not necessarily limited to, the following:
>
> a) Directly Connected Generators
> Lines, power transformers and other assets held by TRANSCO or its Buyer or Concessionaire, which allow the transmission of electricity to a Grid from one or more Directly Connected Generators, shall be classified as Transmission Assets.
>
> b) Directly Connected End-Users
> **Radial lines, power transformers, related protection equipment, control systems and other assets held by TRANSCO or its Buyer or Concessionaire which directly connect an End-User or group of End-Users to a Grid and are exclusively dedicated to the service of that End-User or group of End-Users shall be classified as Subtransmission Assets.** *(Emphasis supplied)*

We cite in agreement the following findings of the appellate court:

> [T]he 138 kV [line] is primarily radial in character as it directly connects PSC to the TRANSCO-Aplaya 100 MVA substation. It has a single simultaneous path of power flow to the load and has only one electrical path from the substation to the petitioner's sinter plant, as an end-user. The classification of the 138kV [line] as a sub-transmission line is therefore unequivocal as Section 2(b) of Article III of the guidelines clearly states that "*Radial lines, power transformers, related protection equipment, control systems and other assets held by TRANSCO or its Buyer or Concessionaire which directly connect an End-User or group of End-Users to a Grid and are exclusively dedicated to the service of that End-User or group of End-Users shall be classified as Sub-transmission Assets*."[21]

[21] *Rollo*, p. 34.

Issue at hand is confined only as to whether or not the 138kV Aplaya-PSC line is a sub-transmission asset.

PSC further asserts that the CA and ERC should have dismissed the case on the ground that CEPALCO had no legal personality since it is not allegedly connected to the 138kV Aplaya-PSC line.

We find the foregoing argument unmeritorious.

As properly held by the CA, the eligibility of CEPALCO to acquire said line was not delved into by the ERC, since it is an issue beyond its province and was not even among the reliefs sought by CEPALCO.

Both the ERC and the appellate COURT had made identical and sound dispositions on the same issues posed by PSC before them.

Finally, well-settled is the rule that findings of fact of administrative bodies, such as the ERC in the instant case, if based on substantial evidence, are controlling on the reviewing authority. Administrative decisions on matters within their jurisdiction are entitled to respect and can only be set aside on proof of grave abuse of discretion, fraud or error of law, none of which obtains in this case.[22]

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. The December 17, 2009 Decision of the Court of Appeals in CA-G.R. SP. No. 108069 upholding the June 25, 2008 Decision of the Energy Regulatory Commission in ERC Case No. 2005-248MC that the subject 138kV Aplaya-PSC Line is a sub-transmission asset, is **AFFIRMED**.

SO ORDERED.

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

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[22] *Geronimo v. Commission on Audit*, G.R. No. 224163, December 4, 2018.

[*] Designated as additional member vice *J.* Baltazar-Padilla, who recused from the case due to prior action in the Court of Appeals, per raffle dated September 7, 2020.

FIRST DIVISION

[G.R. No. 193358. September 16, 2020]

REPUBLIC OF THE PHILIPPINES, *Petitioner, v.* **HEIRS OF THE LATE LEOPOLDO DE GRANO, ET AL.,** *Respondents,*

VIOLETA SEVILLA, *Oppositor-Respondent*.

[G.R. No. 193399. September 16, 2020]

VIOLETA SEVILLA, *Petitioner, v.* **HEIRS OF THE LATE LEOPOLDO DE GRANO, ET AL.,** *Respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PROOF OF SERVICE; PROOF OF ACTUAL RECEIPT OF COUNSEL IN THE FORM OF A MAIL BILL AND A CERTIFICATION BY THE POSTMASTER OF RESPONDENTS' RECEIPT CONSTITUTE SUBSTANTIAL COMPLIANCE.— The purpose of Section 13, Rule 13 of the 1997 Rules of Civil Procedure is to ensure service of a contentious motion upon the other parties. This purpose is deemed fulfilled based on confirmation of the date of actual receipt by said parties. Petitioner Republic furnished proof of actual receipt by counsel of respondents in the form of a mail bill of the Office of the Solicitor General (OSG) and a Certification by the Postmaster that respondents received copy of the motion on October 7, 2009. Hence, it was error on the part of the CA to deny the motion for reconsideration on a procedural ground, despite substantial compliance by petitioner Republic of the Philippines with Section 13 of Rule 13.

2. CIVIL LAW; PROPERTY REGISTRATION DECREE (PD NO. 1529); THE SUBSEQUENT DIMINUTION OF THE SUBJECT LOT DID NOT MAKE THE ALLEGATION AS TO THE IDENTITY OF THE SAME ANY LESS PRECISE; THE AWARD OF A PORTION OF THE LAND TO THE OPPOSITOR DID NOT DEPRIVE THE REGIONAL

TRIAL COURT OF JURISDICTION OVER THE REMAINING LOT SOUGHT TO BE REGISTERED BY RESPONDENTS.— The Court begins with a preliminary point that there is no question as to the sufficiency of the allegation on the identity of the land which is the object of LRC No. TG-394 dated September 17, 1991. The allegation expressly and specifically refers to Lot No. 7467, Cad. 355-D, Tagaytay Cadastre and details its location and metes and bounds. No issue has been raised as to the precise location and identification of Lot No. 7467. These details are affirmed by the DENR National Mapping and Resource Information Authority (NAMRIA) in a Certification dated 14 April 1998.

. . .

The subsequent diminution of the Lot 7467 in view of the award by the DENR/OP of a portion thereof to Sevilla does not make the allegation as to the identity of the land object of LRC No. TG-394 any less precise. The portion awarded to Sevilla is well-defined, making the portion of Lot 7467 which remains under the jurisdiction of the RTC and CA ascertainable. As the CA held, the award of a defined 5-hectare portion to Sevilla did not deprive the RTC of jurisdiction of the remaining 8.4120 hectare of Lot 7467 sought to be registered by respondents. This did not give rise to a necessity for respondents to amend their registration application, especially as they had opposed Sevilla's application.

Moreover, the sufficiency of the allegation as to the precise location and identity of Lot No. 7467 and the ascertainability of the remaining portion of Lot No. 7467 is not diminished by the subsistence of issues regarding the sufficiency of the evidence of the respondents as to the classification [ ] of Lot 7467 as alienable and disposable and the period and extent of their possession.

3. ID.; ID.; REGISTRATION OF TITLE TO PROPERTY; ACQUIRED THROUGH ACQUISITIVE PRESCRIPTION; EVIDENCE THAT MUST BE PRESENTED TO ESTABLISH THE ALIENABLE AND DISPOSABLE CHARACTER OF THE LAND; CERTIFICATION ISSUED BY DENR NATIONAL MAPPING AND RESOURCE INFORMATION AUTHORITY (DENR NAMRIA) IS NOT AUTHORITATIVE EVIDENCE OF THE ALIENABLE AND DISPOSABLE CHARACTER OF THE LAND.—

> Registration of title to private property acquired through acquisitive prescription applies to public land, subject to evidence that at the commencement of possession, said public land had been classified as alienable and disposable and converted to non-public use. When the subject matter of the application is agricultural public land, evidence of its classification and conversion to non-public use at some point in the period of possession will suffice.
>
> . . .
>
> The prevailing rule is that to establish the alienable and disposable character of the land the following evidence must be presented with the application: (1) a certification by the Community Environment and Natural Resources Office (CENRO) or Provincial Environment and Natural Resources Office (PENRO); and (2) a copy of the original land classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records. . . .
>
> . . . Accordingly, the DENR NAMRIA certification that respondents filed with their application failed to meet the requirement, for NAMRIA is not among the agencies of DENR authorized to certify on land classifications. It even lacked authority to issue a copy of such certification.

4. ID.; ID.; ID.; RULES REGARDING EVIDENCE OF ACQUISITIVE POSSESSION.— [T]he Court need not proceed to examine the evidence of possession or occupation for the land, not being proven to be alienable or disposable, is incapable of private acquisition. Nonetheless, it is worthwhile to reiterate the rules regarding evidence of acquisitive possession.

> First, possession and occupation of the public land subject of application presupposes its precise identification. This requirement is jurisdictional for it is not only the location of the land, but also its classification, which determine jurisdiction. It is likewise a substantive requirement for the burden is upon the applicant to demonstrate that the land has been carved out from the public domain and that he/she occupied the same. Exclusive possession requires a defined limit of the object of possession. . . .

Second, peaceful possession and occupation of said land presupposes lack of other claimants. Respondents alleged in their application that "to the best of their knowledge and belief, there is no x x x other person having any interest therein, legal or equitable, or in possession." The DENR Orders and OP Resolution which the CA declared as binding controvert this claim.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Jimenez Gonzales Liwanag Bello Valdez Caluya & Fernandez for Violeta Sevilla.

Abbas Alejandro-Abbas Francisco & Associates for respondents.

D E C I S I O N

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

The consolidated Petitions for Review on *Certiorari* before the Court assail the Amended Decision dated September 15, 2009 of the Court of Appeals (CA) in CA-G.R. CV No. 84123, modifying the Order dated September 30, 2004 of the Regional Trial Court (RTC), Branch 18, Tagaytay City, (RTC) in LRC No. TG-394, and the CA Resolution dated August 13, 2010 denying the separate motions for reconsideration of petitioners.

Antecedent Facts

LRC No. TG-394 is an amended application filed on September 17, 1991 with the RTC by respondents Heirs of the Late Leopoldo de Grano for registration under Presidential Decree (PD) No. 1529 of Lot 7467, Cad. 355-D, Tagaytay Cadastre.[1] They alleged that Lot 7467 is alienable and disposable public land;[2] that their family has been in possession and ownership thereof for more

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[1] *Rollo* (G.R. No. 193399), pp. 52-58. The application was later amended to correct errors noted in the report of the Land Registration Authority.

[2] Id. at 59-61.

than 30 years, as evidenced by Tax Declaration No. 019-0163;[3] and that there is no third person having an interest in the property.[4] During the hearing, tenants on the property testified that they have been farming it for respondents.[5]

Petitioner Republic of the Philippines (petitioner Republic) opposed the application on the ground that the property is part of the public domain and there is no evidence that it has been declared alienable and disposable.[6] Moreover, there is no evidence of possession by respondents, as "only three (3) hectares are covered by tax declarations" in their name.[7] Respondents failed to prove bona fide acquisition of the property, for even the alleged Spanish title of their predecessors was not registered within six months from February 16, 1976, as required by Presidential Decree No. 892.[8]

Another oppositor, petitioner Violeta Sevilla (petitioner Sevilla), argued that as early as 1987 the Department of Environment and Natural Resources (DENR) acquired primary jurisdiction over Lot 7467 when it entertained her Miscellaneous Sales Application No. (IV-4) 290 over the property as well as several opposing claims, including respondents'.[9]

The RTC disregarded the opposition of petitioner Sevilla for making no claim to title to the property[10] as well as the opposition of petitioner Republic on the ground that the law requires only evidence of "open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a bona fide claim of ownership

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[3] Id. at 62.

[4] Id.

[5] *Rollo* (G.R. No. 193358), pp. 73-75.

[6] Id. at 70-71.

[7] Id. at 70.

[8] Id.

[9] Id. at 78-79.

[10] Id. at 82.

since June 12, 1945 or earlier."[11] In its view, respondents "have more than sufficiently established by clear and convincing evidence that their predecessor-in-interest . . . occupied and possessed the land from as far back as 1894" and that respondents continuously occupied and possessed the property by paying taxes thereon up to 1994 and farming the same through their tenants.[12] The RTC thus held:

> WHEREFORE, in view of the foregoing, let a decree of registration in accordance with the Torrens Act covering Lot No. 7467, Cad 355, Tagaytay Cadastre, with an area of 134,120 square meters be issued in favor of the HEIRS OF THE LATE LEOPOLDO DE GRANO.
>
> SO ORDERED.[13]

Only petitioner Sevilla filed a motion for reconsideration on the ground that the DENR had exercised primary jurisdiction over the property, to the exclusion of the RTC, and resolved the status of the property in an Order of the DENR Regional Director dated July 16, 1991[14] and Order of the DENR Secretary dated February 2, 1993[15] (DENR Orders). These were sustained in a Resolution dated August 2, 2002[16] of the Office of the President (OP). Respondents earlier recourse to this Court from the OP resolution failed.

Over the opposition of respondents,[17] the RTC granted the motion for reconsideration in the following Order:

> WHEREFORE, premises considered the motion for reconsideration of oppositor Sevilla is hereby GRANTED and the decision dated

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[11] Id. at 84-85.

[12] Id. at 86.

[13] Id.

[14] *Rollo* (G.R. No. 193399), pp. 69-73.

[15] Id. at 77-83. A separate order dated October 2, 1996 of the DENR Secretary denied the motion for reconsideration of respondents De Grano, *et al.* No copy is found in the record.

[16] Id. at 105-111.

[17] Id. at 181-194.

December 15, 2003 is RECONSIDERED. Therefore, the application for original registration of title over Lot No. 7477, Cad. 355, Tagaytay Cadastre, is DENIED.

SO ORDERED.[18]

The RTC recognized the binding effect of the OP Resolution and DENR Orders.[19] It also found the application of respondent lacking merit for their "earliest tax declarations and other documents . . . pertained to the year 1948, three (3) years short of the required period"[20] and there is no government certification that the property had been reclassified as alienable and disposable public land.[21] It also lacks a tracing cloth plan.[22]

In their appeal to the CA, respondents relied mainly on the arguments that the OP Resolution constitutes *res judicata* only on MSA No. (IV-4) 290[23] and left the remaining portion of the property unresolved.[24] They argued that the tracing cloth can be dispensed with for their survey plan had been approved by the Director of Lands and its correctness has not been challenged.[25]

Citing *Director of Lands v. Intermediate Appellate Court* (1986),[26] *Director of Land v. Bengzon* (1987)[27] and *De Ocsio v. Court of Appeals*,[28] respondents argue that the duration and

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[18] Id. at 199.

[19] Id. at 197-198.

[20] Id. at 198.

[21] Id.

[22] Id.

[23] Id. at 213-219.

[24] Id. at 228-229.

[25] Id. at 228-229, citing *Director of Lands v. Intermediate Appellate Court*, G.R. No. 73002, December 24, 1986, 195 SCRA 38, 44.

[26] 230 Phil. 590 (1986).

[27] 236 Phil. 396 (1987).

[28] 252 Phil. 754 (1989).

nature of their possession automatically converted Lot 7467 into patrimonial property subject to prescriptive acquisition. [29] Such possession was established by their documentary and testimonial evidence, in particular the "decision in Reg. Case No. N-406, LRC No. N-15455 rendered by the Seventh Judicial District, Court of First Instant (CFI) of Cavite dated November 4, 1958" regarding their predecessor's possession going as far back as 1894.[30] Their earliest tax declaration is dated 1948 because Tagaytay City began issuing tax declarations only in that year.[31]

Petitioner Sevilla opposed the appeal on the same grounds raised in her earlier motion for reconsideration from the RTC Decision.[32]

Petitioner argued that, since the amended application was filed in 1993, the law in force was Commonwealth Act No. 141 as amended by PD No. 1073, which imposes the burden on respondents to prove possession dating back to June 12, 1945 or earlier.[33] Respondents failed to discharge this burden not only because their earliest tax declaration was dated 1948 but also because these tax declarations refer to a 3-hectare property which differs in location, boundaries and area to those of Lot 7467.[34] These disparities cast doubt on respondents' possession of the entire or major portion of Lot 7467.[35] Finally, respondents' possession can hardly be characterized as peaceful given that petitioner Sevilla had filed MSA IV-4 in 1987 and the same was given due course by the OP.[36]

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[29] Id. at 215-219.

[30] Id. at 226-227.

[31] Id. at 227.

[32] Id. at 249-262.

[33] Id. at 284-287.

[34] Id. at 287-292.

[35] Id.

[36] Id. at 293-294.

Respondents' reply addressed only petitioner Sevilla's issues.[37]

In its Decision dated January 9, 2009, the CA dismissed the appeal and sustained the order of the RTC on the grounds of *res judicata*[38] and failure of respondents to prove ownership since 1945 or earlier.[39]

Respondents' motion for reconsideration raised for the first time the argument that *res judicata* applies only to the 5 hectares covered by petitioner Sevilla's MSA, thereby leaving their application to the rest of Lot 7467 unresolved.[40] The alienable and disposable nature of the remaining portion is established by the very same DENR and OP decisions on petitioner Sevilla's MSA.[41] This is reinforced by their witness' documentary evidence consisting of a DENR certification that a 96,342-sq. m. portion of the property is alienable and disposable public land.[42]

Petitioner Republic's comment dwelt on countering the new points raised by respondents. According to petitioner Republic, the DENR certification is insufficient evidence of the nature of the property.[43] Neither does the OP resolution constitute proof that the property was alienable and disposable public land at the time that respondent filed their original petition in 1991.[44]

The CA amended its decision and modified the RTC order to the following effect:

WHEREFORE, in view of the foregoing, let a decree of registration in accordance with the Torrens Act covering Lot No. 7467, Cad.

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[37] Id. at 299-302.

[38] Id. at 316-320.

[39] Id. at 321-322.

[40] Id. at 326-328.

[41] Id. at 329-330.

[42] Id. at 331-332.

[43] Id. at 352-353, citing *Republic v. T.A.N. Properties, Inc.*, 578 Phil. 441 (2008).

[44] Id. at 355-358.

355, Tagaytay Cadastre, with an area of 8.4120 hectares be issued in favor of the HEIRS OF THE LATE LEOPOLDO DE GRANO.[45]

The CA based the amendment of the decision on the finding that the OP decision affected only 5 hectares of the property and did not deprive the RTC of jurisdiction over the remaining portion.[46] On the substantive issue, the CA relied on *Buenaventura v. Republic*[47] and *Republic v. CA*[48] to hold that the DENR certification constituted a positive act of government declaring the property alienable.[49] Moreover, the CA cited an evidence adduced by respondents consisting of a 1958 CFI decision pertaining to a 50 hectare property referred to as Lot 7467, and recognizing respondents' predecessors prior possession.[50]

In its motion for reconsideration from the CA amended decision, petitioner Republic pointed out that the DENR Certification relied upon by the CA refers to the status of the property as of 1997, or six years after respondents filed their application. Hence, it does not satisfy the evidentiary requirement of the law.

CA denied the motion for reconsideration of petitioner Republic due to its failure to attach the registry receipt to the affidavit of service.[51] Petitioner Sevilla's partial motion for reconsideration was also denied.[52]

Issues and Arguments

In its petition before the Court, petitioner Republic raised the following arguments:

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[45] *Rollo* (G.R. No. 193358), p. 64.

[46] Id. at 58-59.

[47] 546 Phil. 101 (2007).

[48] 440 Phil. 697 (2002).

[49] *Rollo*, pp. 60-61.

[50] Id. at 61-63.

[51] Id. at 50-51.

[52] Id.

I

THERE IS SUBSTANTIAL COMPLIANCE WITH SECTION 13, RULE 13 OF THE RULES OF COURT ON PROOF OF SERVICE.

II

RESPONDENTS-APPELLANTS HAVE NOT COMPLIED WITH THE PROCEDURAL AND SUBSTANTIVE REQUIREMENTS OF SECTION 14 (1) OF PD 1529.

III

RESPONDENTS-APPELLANTS CANNOT PROPERLY INVOKE SECTION 14 (2) OF PD 1529 AS BASIS FOR THEIR APPLICATION FOR ORIGINAL LAND REGISTRATION.[53]

On the part of petitioner Sevilla, her main arguments are:

I

THE [CA] GRAVELY AND PALPABLY ERRED IN RULING THAT THE DOCTRINE OF PRIMARY JURISDICTION ONLY COVER FIVE (5) HECTARES AND NOT THE ENTIRE LOT NO. 7467 SUBJECT OF PETITIONER'S SALE APPLICATION.

II

THE [CA] GRAVELY AND PALPABLY ERRED IN RULING THAT RESPONDENTS HAVE REGISTRABLE RIGHT OVER THE SUBJECT PROPERTY AT THE TIME OF THE FILING OF THEIR APPLICATION FOR REGISTRATION.[54]

The Court's Ruling

The petitions are meritorious. The assailed decision of the CA is reversed and set aside.

The purpose of Section 13, Rule 13 of the 1997 Rules of Civil Procedure is to ensure service of a contentious motion upon the other parties. This purpose is deemed fulfilled based on confirmation of the date of actual receipt by said parties.[55]

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[53] Id. at 27-28.

[54] *Rollo* (G.R. No. 193399), pp. 19-20.

[55] *Calo v. Spouses Villanueva*, 516 Phil. 340 (2006).

Petitioner Republic furnished proof of actual receipt by counsel of respondents in the form of a mail bill of the Office of the Solicitor General (OSG) and a Certification by the Postmaster that respondents received copy of the motion on October 7, 2009.[56] Hence, it was error on the part of the CA to deny the motion for reconsideration on a procedural ground, despite substantial compliance by petitioner Republic of the Philippines with Section 13 of Rule 13.

With the procedural obstacle out of the way, the substantive questions will now be resolved.

The Court begins with a preliminary point that there is no question as to the sufficiency of the allegation on the identity of the land which is the object of LRC No. TG-394 dated September 17, 1991. The allegation expressly and specifically refers to Lot No. 7467, Cad. 355-D, Tagaytay Cadastre and details its location and metes and bounds. No issue has been raised as to the precise location and identification of Lot No. 7467. These details are affirmed by the DENR National Mapping and Resource Information Authority (NAMRIA) in a Certification dated 14 April 1998.[57]

There being sufficient allegation as to the precise location and identification of Lot No. 7467 as the piece of land object of LRC No. TG-394, jurisdiction properly vested in the RTC and the CA.

The subsequent diminution of the Lot 7467 in view of the award by the DENR/OP of a portion thereof to Sevilla does not make the allegation as to the identity of the land object of LRC No. TG-394 any less precise. The portion awarded to Sevilla is well-defined, making the portion of Lot 7467 which remains under the jurisdiction of the RTC and CA ascertainable. As the CA held, the award of a defined 5-hectare portion to Sevilla did not deprive the RTC of jurisdiction of the remaining 8.4120 hectare of Lot 7467 sought to be registered by respondents.

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[56] *Rollo* (G.R. No. 193399), pp. 403-404.

[57] *Rollo* (G.R. No. 193358), p. 101.

This did not give rise to a necessity for respondents to amend their registration application, especially as they had opposed Sevilla's application.

Moreover, the sufficiency of the allegation as to the precise location and identity of Lot No. 7467 and the ascertainability of the remaining portion of Lot No. 7467 is not diminished by the subsistence of issues regarding the sufficiency of the evidence of the respondents as to the classification of Lot 7467 as alienable and disposable and the period and extent of their possession.

It is notable that the petitioners did not raise the identification of the Lot 7467 as an issue; they did not question the jurisdiction of the RTC and CA to resolve the application for registration, which has been lingering in the dockets of the courts for almost 40 years. What the petitioners question is the factual finding of the CA that testimonial evidence and the CFI decision established respondents' possession of the remaining portion of Lot 7467 *vis-a-vis* evidence consisting of respondents' own tax declaration that referred to a different property under their possession. As the following discussion will demonstrate, before the Court can review the factual finding of the CA, it must first determine the classification of Lot 7467. If it is shown that Lot 7467 is not capable of private acquisition, it would be superfluous to review the factual finding of the CA on the issue of possession for no amount of evidence of possession by respondents will give rise to a registrable right.

Evidence of Alienable and Disposable Nature of Public Land

Petitioner Republic argues that there is no evidence of the alienable and disposable nature of Lot 7467 from the beginning of possession by respondents' predecessors and for the duration of the possession by respondents themselves.[58] Petitioner Sevilla agrees that the evidence required is the alienable and disposable status of the public property at the time of the application of

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[58] Id. at 405-406.

respondents in 1991.[59] Either way, the DENR certification relied upon by respondents fail to meet these requirements.

Registration of title to private property acquired through acquisitive prescription applies to public land, subject to evidence that at the commencement of possession, said public land had been classified as alienable and disposable and converted to non-public use. When the subject matter of the application is agricultural public land, evidence of its classification and conversion to non-public use at some point in the period of possession will suffice.

It is important to recall that respondents' original application includes Plan of Lot 7467, dated August 10, 1991, describing the property as public land, setting out the boundaries thereof and stating that it is 134,120 sq. m in size.[60] There is also the 1948 tax declaration covering Lot 7467 but describing a different set of boundaries and measuring it at only 2.9134 hectares or 29,134 sq. m.[61] These material disparities in respondents' own documents heighten their burden of meeting the evidentiary requirements of Sec. 14 of PD 1529.[62]

Respondents relied on the DENR National Mapping and Resource Information Authority (NAMRIA) Certification dated 14 April 1998, which reads:

> This is to certify that a parcel of land (lot 7467, Cad 355, Tagaytay Cadastre) with an area of one hundred thirty four thousand one hundred twenty (134,120) square meters, as shown and described in the attached plan hereof, was verified based on the given tieline/point including field validation and inspection and from the records of this office, was found that only ninety-six thousand three hundred forty two (96,342) square meters is inside alienable or disposable block, Project No. 3-A, Tagaytay, province of Cavite, based on map LC-3553 certified on September 10, 1997 per DENR Administrative Order No. 97-29.[63]

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[59] Id. at 23-26.

[60] Id. at 62.

[61] Supra note 3.

[62] *Republic v. Santos*, 735 Phil. 166-173 (2014).

[63] *Rollo*, p. 132.

Without first commenting on the sufficiency of the certification as evidence, the Court notes that it ostensibly indicates the alienable and disposable status of Lot 7467 as of 1997, or six years after the filing of the application in 1991 or fifty years from the date of respondents' earliest tax declaration.

However, it should be pointed out that in its Order dated July 26, 1991, the DENR Regional Director declared that Lot 7467 "shall be disposed of only thru sales by public auction" under CA 141.[64] This order was issued in connection with MSA No. (IV-4) 290 of petitioner Sevilla. In said order the DENR also declared that none of the opposing claimants, including respondents, established a preferential right to the property.[65] As for MSA (IV-4) 290 itself, this was dismissed for non-appearance of petitioner Sevilla.[66] Thus, without commenting on the sufficiency of this DENR Order as evidence, the Court notes that it does indicate the alienable and disposable status of the property as of July 16, 1991 or two month prior to the filing of the application on September 17, 1991.

Moreover, the foregoing Order of the DENR Regional Director was upheld by the Order of the DENR Secretary. The Secretary ordered that MSA No. (IV-4) 290 "be reinstated and given due course" to the extent of five (5) hectares, as this was the limit set by Memorandum Circular No. 22, series of 1989.[67] The Secretary further directed that the remaining portion of Lot 7647 be sold at public auction "in accordance with the decision of the Regional Director."[68] Again, without commenting on the sufficiency of this Order of the DENR Secretary as evidence, it does seem to affirm the alienable and disposable status of the property as of July 16, 1991.

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[64] Id. at 71.

[65] Id. at 70-71.

[66] Id. at 70.

[67] Id. at 83.

[68] Id.

The foregoing DENR Orders were later upheld by the OP Resolution.[69] The DENR NAMRIA Certification of respondents is consistent with the DENR Orders and OP Resolution. Together, they ostensibly indicate the status of the property as alienable and disposable as of July 26, 1991.

Thus, assuming the foregoing evidence to be authoritative, they would enable respondents to meet only the requirement that the alienable and disposable status of the public land be established to be subsisting as of the date of the filing of the application. These documents are insufficient that, as of 1948, the property was already declared alienable and disposable and withdrawn from the public uses for which it was originally intended. Petitioner Republic is correct on this point.

The examination of the sufficiency of the foregoing evidence will be ascertained according to the rules pertaining to judicial confirmation of imperfect title to public land. The examination is situated in the unique context of this case where there are administrative adjudications on the status of the land and a declaration by the courts that such adjudications are binding.

The prevailing rule is that to establish the alienable and disposable character of the land the following evidence must be presented with the application: (1) a certification by the Community Environment and Natural Resources Office (CENRO) or Provincial Environment and Natural Resources Office (PENRO); and (2) a copy of the original land classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records.[70] Strict compliance with this requirement has been enjoined since *Republic v. T.A.N.* in 2008,[71] although substantial compliance has been accepted in cases resolved prior to *Republic v. T.A.N.*[72]

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[69] Id. at 105-111.

[70] *Republic v. T.A.N. Properties, Inc.*, 578 Phil. 441-464 (2008).

[71] *D.M. Consunji, Inc. v. Republic*, G.R. No. 233339, February 13, 2019.

[72] *Republic v. Vega*, 654 Phil. 511-528 (2011).

Undoubtedly, strict compliance is required in this case as the CA amended decision partly allowing the application was rendered in 2009. There is no excuse for its reliance on *Buenaventura v. Republic* and *Republic v. CA* for the controlling doctrine was already *Republic v. T.A.N.* Accordingly, the DENR NAMRIA certification that respondents filed with their application failed to meet the requirement,[73] for NAMRIA is not among the agencies of DENR authorized to certify on land classifications.[74] It even lacked authority to issue a copy of such certification.

The DENR Orders and the OP Resolution are a different matter. The DENR Orders and OP Resolution are administrative decisions rendered on MSA (IV-4) 290 pertaining to the status of Lot 7467. They were relied upon by petitioners Republic and Sevilla and declared by the RTC and CA as binding. The question is whether they can be treated as evidence that Lot 7467 is alienable and disposable public land?

The DENR Orders and OP Resolution, *per se*, are undoubtedly authoritative pronouncements of the alienable and disposable classification of Lot 7467. They were rendered by the proper authorities that can decide on the classification of public lands and the alienability and disposability thereof through public auction.[75]

It is notable that respondents invoke the finding in the foregoing administrative decisions that Lot 7467 is alienable and disposable public land, and yet they argue that the DENR and OP have no jurisdiction over the said lot and that these administrative decisions do not bar their application for judicial confirmation of title to the remaining portion. In effect, respondents question the jurisdiction of DENR and OP but invoke the latter's findings. This will not do. It is either respondents

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[73] *Republic v. Alora*, 762 Phil. 695-706 (2015).

[74] See DENR Administrative Order No. 2012-09, November 14, 2012; DENR Administrative Order No. 98-24, June 2, 1998; and DENR Administrative Order No. 2000-11, February 8, 2011.

[75] Secs. 4 and 63 and Chapter II, CA 141.

recognize the jurisdiction of the DENR and OP and avail of the latter's administrative findings as evidence of the classification of Lot 7467, or they do not. The findings are only as good as the authority with which they were rendered.

To sum up, the CA erred in relying upon the DENR NAMRIA certification as it is not authoritative evidence of the alienable and disposable classification of Lot 7467 as of September 17, 1991, when the application for registration was filed. The DENR Orders and OP Resolution are authoritative evidence of said status but they are beyond the reach of respondents.

Evidence of registrable right

With the foregoing discussion on the lack of evidence of the alienable and disposable status of Lot 7467, it is no longer necessary to examine whether there is evidence of the preferential right of respondents to the property. Concretely, the Court need not proceed to examine the evidence of possession or occupation for the land, not being proven to be alienable or disposable, is incapable of private acquisition. Nonetheless, it is worthwhile to reiterate the rules regarding evidence of acquisitive possession.

First, possession and occupation of the public land subject of application presupposes its precise identification. This requirement is jurisdictional for it is not only the location of the land but also its, classification which determine jurisdiction.[76] It is likewise a substantive requirement for the burden is upon the applicant to demonstrate that the land has been carved out from the public domain and that he/she occupied the same.[77] Exclusive possession requires a defined limit of the object of possession. Here, while there is no question as to the precise identity of the land object of the application for registration, there is doubt as to the extent of the land that was occupied or possessed by respondent. This is not to say that an applicant must prove to be in physical possession of every square inch of the land. The latter must at least prove control of the land

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[76] *Dream Village v. BCDA*, 715 Phil. 211-244 (2013).

[77] *Remman Enterprises, Inc. v. Republic*, 748 Phil. 600-608 (2014).

emanating from occupation or possession of a defined portion. In this case, petitioner Republic argues that respondents' tax declaration cast doubt on the location and extent of their possession. On the other hand, the CA finding is that respondents established through testimonial evidence and the CFI decision that their predecessors' possession pertained to Lot 7467. To reiterate, the Court is precluded from delving into this matter for, to begin with, the land object of the registration application was not even alienable, disposable or capable of private possession. No amount of evidence of possession by respondents will give rise to a registrable right.

Second, peaceful possession and occupation of said land presupposes lack of other claimants. Respondents alleged in their application that "to the best of their knowledge and belief, there is no x x x other person having any interest therein, legal or equitable, or in possession."[78] The DENR Orders and OP Resolution which the CA declared as binding controvert this claim.

WHEREFORE, the consolidated Petitions are **GRANTED**. The Amended Decision dated September 15, 2009 and Resolution dated August 13, 2010 of the Court of Appeals (CA) in CA-G.R. CV No. 84123 are **REVERSED and SET ASIDE**.

SO ORDERED.

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

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[78] *Rollo* (G.R. No. 193399), p. 54.

THIRD DIVISION

[G.R. Nos. 207340 and 207349. September 16, 2020]

REPUBLIC OF THE PHILIPPINES, *Petitioner*, *v.* **SANDIGANBAYAN (SPECIAL SECOND DIVISION), OFFICE OF THE OMBUDSMAN, OFFICE OF THE SPECIAL PROSECUTOR AND MAJ. GEN. CARLOS F. GARCIA (RET.),** *Respondents*.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; EXECUTIVE ORDER NO. 292 (THE 1987 ADMINISTRATIVE CODE); OFFICE OF THE SOLICITOR GENERAL (OSG), POWERS AND FUNCTIONS; THE OSG'S MANDATE UNDER THE ADMINISTRATIVE CODE MUST BE RECKONED ALONGSIDE OTHER STATUTES ENDOWING OTHER GOVERNMENT BODIES WITH THE POWER OF ALSO REPRESENTING THE GOVERNMENT BEFORE COURTS.— The Office of the Solicitor General is an autonomous and independent office attached to the Department of Justice. It is headed by the Solicitor General who is considered to be the "principal law officer and legal defender of the Government" and its powers and functions can be found in Book 4, Title III, Chapter 12, Section 35 of Executive Order No. 292 or the 1987 Administrative Code. . . .

Gonzales v. Chavez traced the statutory origins of the Office of the Solicitor General and its role of representing the government, and concluded that the clear intention was to consolidate in one official the responsibility of representing the government in all manners of legal proceedings. *Gonzales* explained the policy objective behind the creation of the Office of the Solicitor General. . . .

Nonetheless, despite the Office of the Solicitor General's seemingly broad and unqualified power to represent the government, *Office of the Solicitor General v. Court of Appeals*, clarified that its mandate under the Administrative Code must be reckoned alongside other statutes which likewise endow other

government bodies with the power of also representing the government before courts.

2. ID.; CONSTITUTIONAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; OFFICE OF THE OMBUDSMAN (OMB); ITS POWER OF INVESTIGATION AND PROSECUTION COVERS CASES COGNIZABLE BY THE SANDIGANBAYAN AND ALL KINDS OF MALFEASANCE, MISFEASANCE AND NON-FEASANCE COMMITTED BY PUBLIC OFFICERS AND EMPLOYEES DURING TENURE OF OFFICE.— [T]he power and authority of the present Office of the Ombudsman emanate from the 1987 Constitution and Republic Act No. 6770 or The Ombudsman Act of 1989.

. . .

In recognition of the Office of the Ombudsman's mandate as the people's protector and its specific role of prosecuting erring government officials, the Ombudsman Act of 1989 bestowed the Office of the Ombudsman with "primary jurisdiction over cases cognizable by the Sandiganbayan" and "it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases."

Uy v. Sandiganbayan explains that while the Ombudsman has primary jurisdiction over cases which may be filed before the Sandiganbayan, his or her power of investigation and prosecution is not limited to cases cognizable by the Sandiganbayan but covers "all kinds of malfeasance, misfeasance and non-feasance committed by public officers and employees during their tenure of office."

3. ID.; ID.; ID.; ID.; ID.; THE OMB'S PRIMARY JURISDICTION TO INVESTIGATE AND PROSECUTE COMPLAINTS AGAINST GOVERNMENT EMPLOYEES IS NOT AN EXCLUSIVE POWER.— [T]he grant of primary jurisdiction to the Office of the Ombudsman to investigate and prosecute complaints against government employees is not an exclusive power as it is shared with other government agencies with similar authorities.

4. ID.; ADMINISTRATIVE LAW; EXECUTIVE ORDER NO. 14; PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG); OSG; IT IS THE PCGG,

REPRESENTED BY THE OSG, THAT IS AUTHORIZED TO INVESTIGATE AND PROSECUTE CIVIL AND CRIMINAL CASES INVOLVING MARCOS' ILL-GOTTEN WEALTH.— Executive Order No. 14, series of 1986 which defined the Presidential Commission on Good Government's jurisdiction over cases involving the ill-gotten wealth of former President Marcos, his family members, relatives, associates, and dummies, empowered the Office of the Solicitor General to assist the Presidential Commission on Good Government in filing and prosecuting cases before the Sandiganbayan, which had exclusive and original jurisdiction over ill-gotten wealth cases.

Thus, the general rule is that while the Office of the Ombudsman has primary jurisdiction over cases filed before the Sandiganbayan, when it comes to civil and criminal cases involving the Marcos' ill-gotten wealth, it is the Presidential Commission on Good Government, represented by the Office of the Solicitor General as the "law office of the [Presidential Commission on Good Government]," who is authorized to investigate and prosecute these cases before the Sandiganbayan.

5. ID.; ID.; EXECUTIVE ORDER NO. 292 (THE 1987 ADMINISTRATIVE CODE); OSG; OMB; POWERS AND FUNCTIONS; THE OSG'S BROAD MANDATE TO REPRESENT THE GOVERNMENT DOES NOT INVOLVE THE POWER OF CONTROL OR EVEN SUPERVISION OVER THE SPECIAL PROSECUTOR OR THE OMB OR OTHER AGENCIES WHICH ALSO REPRESENT THE GOVERNMENT.— The Office of the Solicitor General's authority to represent the Government is not plenary or all-encompassing. Book IV, Title III, Chapter 12, Section 35(11) of the Administrative Code does not give it carte blanche authority to swoop in at any time and in any circumstance simply because it believes that the people's welfare and the ends of justice require its intervention, especially if the government is already represented by the appropriate agency.

The mandate to represent the government in proceedings before the Sandiganbayan generally lies with the Office of the Ombudsman, with the Office of the Solicitor General allowed to prosecute a case before the Sandiganbayan in Marcos ill-gotten wealth cases and only in representation of the Presidential

Commission on Good Government. The present case does not involve Marcos ill-gotten wealth, thus, the Office of the Ombudsman rightfully represented the government in the plunder case against private respondent Garcia before the Sandiganbayan.

More importantly, the Office of the Solicitor General, which is a statutory creation, cannot be expressly or impliedly allowed to have personality or the power of supervision or control over the actions of the Special Prosecutor and the Office of the Ombudsman which is a constitutional body.

To allow the Office of the Solicitor General to cherry-pick its jurisdiction under the pretext that it believes its intervention is warranted by the greater good and the ends of justice, would be to impliedly give it supervisory powers or even control over other agencies with a similar mandate of representing the government in different courts and fora. This cannot be allowed, as the Office of the Solicitor General's broad mandate under the Administrative Code to represent the Government does not involve the power of control or even supervision over other agencies which also represent the government.

. . .

The government was already rightfully represented by the Office of the Ombudsman in the plunder case before the Sandiganbayan. Thus, the Office of the Solicitor General overstepped its bounds by insisting on providing additional representation. Further, the Office of the Solicitor General had no power of control or supervision over the Office of the Ombudsman, an independent constitutional body. It had no authority to impose on the latter's handling of the Plea Bargaining Agreement, even if it strongly believed that the Plea Bargaining Agreement was grossly disadvantageous to the government and the people's welfare.

6. REMEDIAL LAW; CRIMINAL PROCEDURE; ARRAIGNMENT AND PLEA; PLEA BARGAINING; DEFINITION AND PARTS OF PLEA BARGAINING; PLEA BARGAINING IS MADE DURING THE PRE-TRIAL STAGE.— Plea bargaining is defined as "a process whereby the accused and the prosecution work out a mutually satisfactory disposition of the case subject to court approval." Generally, plea bargaining is made during the pre-trial stage

and the accused pleads guilty to a lesser offense in exchange for a lighter sentence. Pleading to a lesser offense is provided for under Rule 116, Section 2 of the Revised Rules of Criminal Procedure. . . .

A careful reading of this provision shows that the plea bargaining process consists of two parts: (1) the out of court agreement between the offended party and the prosecutor; and (2) the presentation of the plea bargain before the court for its approval.

7. ID.; ID.; ID.; ID.; PROSECUTORIAL CONSENT IS A CONDITION PRECEDENT TO A VALID PLEA BARGAINING AGREEMENT.— The prosecutorial discretion inherent in a plea bargaining agreement is further emphasized in Rule 118, Section 1(a) of the Revised Rules of Criminal Procedure which mandates courts, including the Sandiganbayan, to consider plea bargaining during pre-trial . . . .

Further, *People v. Villarama* stressed that the prosecutor enjoyed full control over the prosecution of criminal actions, thus, prosecutorial consent "is a condition precedent to a valid plea of guilty to a lesser offense."

8. ID.; ID.; ID.; ID.; THE TRIAL COURT'S DISCRETION TO ACCEPT PLEA BARGAINING MUST BE GROUNDED ON THE SUFFICIENCY OF THE PROSECUTION'S EVIDENCE.— *Daan v. Sandiganbayan* summarized the requirements of a valid plea bargaining and emphasized that the trial courts exercise full discretion on whether to accept the plea bargaining proffered by the parties . . . .

Nonetheless, the trial court's discretion must be grounded on the sufficiency of the prosecution's evidence . . . .

9. CRIMINAL LAW; REPUBLIC ACT NO. 7080 (AN ACT DEFINING AND PENALIZING THE CRIME OF PLUNDER), AS AMENDED; PLUNDER, ELEMENTS OF.— Private respondent Garcia was charged with the crime of plunder, which is defined in Section 2 of Republic Act No. 7080, as amended by Republic Act No. 7659 . . . .

Enrile v. People specified the three (3) elements of plunder:

(1) That the offender is a public officer who acts by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates, or other persons;

(2) That he amassed, accumulated or acquired ill-gotten wealth through a combination or series of the following overt or criminal acts:

a. through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;

b. by receiving, directly or indirectly, any commission, gift, share, percentage, kickback or any other form of pecuniary benefits from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer;

c. by the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities of Government-owned or -controlled corporations or their subsidiaries;

d. by obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking;

e. by establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or

f. by taking advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines; and,

(3) That the aggregate amount or total value of the ill-gotten wealth amassed, accumulated or acquired is at least ₱50,000,000.00.

10. ID.; DIRECT BRIBERY; ELEMENTS THEREOF.— [D]irect bribery is defined in Article 210 of the Revised Penal Code . . . .

Magno v. Commission on Elections lists down the elements of direct bribery:

1. the offender is a public officer;

2. the offender accepts an offer or promise or receives a gift or present by himself or through another;

3. such offer or promise be accepted or gift or present be received by the public officer with a view to committing some crime, or in consideration of the execution of an act which does not constitute a crime but the act must be unjust, or to refrain from doing something which it is his official duty to do; and

4. the act which the offender agrees to perform or which he executes is connected with the performance of his official duties.

11. ID.; ID.; PLUNDER; DIRECT BRIBERY IS NECESSARILY INCLUDED IN THE OFFENSE OF PLUNDER.— Both plunder and direct bribery involve public officers who capitalize on their official positions to commit a crime or an unjust act which would lead to their financial benefit. Thus, the plea of guilt to the lesser offense of direct bribery is necessarily included in the charged offense of plunder, because some of the essential elements of the crime of plunder constitute direct bribery.

12. ID.; ANTI-MONEY LAUNDERING ACT (AMLA); FACILITATING MONEY LAUNDERING (SECTION 4[b]) IS NECESSARILY INCLUDED IN THE OFFENSE OF MONEY LAUNDERING (SECTION 4[a]).— In the same manner, the new charge of violation of Section 4(b) of the Anti-Money Laundering Act, or facilitating money laundering, is necessarily included in the original charge of violation of Section 4(a), or money laundering, against respondent Garcia.

13. POLITICAL LAW; CONSTITUTIONAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; OMB; SPECIAL PROSECUTOR; POWER TO ENTER A PLEA BARGAINING AGREEMENT; THE SUPREME COURT WILL NOT INTERFERE WITH THE SUBSTANCE OF OR WISDOM BEHIND A PLEA BARGAINING AGREEMENT ENTERED INTO BY THE OMB ABSENT ANY BLATANT EVIDENCE OF IRREGULARITY OR GRAVE ABUSE OF DISCRETION.— [I]t is not disputed that the Office of the Special Prosecutor, upon the authority of the Ombudsman, has

the power to enter into a plea bargaining agreement. Here, Special Prosecutor Wendell Barrera-Sulit, under the direct supervision and control of Ombudsman Gutierrez, entered into the assailed Plea Bargaining Agreement with private respondent Garcia.

At this juncture, it must be emphasized that this Court will not interfere with the substance of or the wisdom behind the Plea Bargaining Agreement, as that falls squarely within the Office of the Ombudsman's mandate of investigating and prosecuting erring government employees. Absent any blatant evidence of irregularity or grave abuse of discretion, this Court will generally confine itself to the legal and technical issues surrounding a plea bargaining agreement or any similar agreement.

14. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI;* ANY REVIEW OF A PLEA BARGAIN APPROVED BY THE OMB IS TANTAMOUNT TO AN APPEAL ON A QUESTION OF FACT, AND NOT A PROPER SUBJECT OF A PETITION FOR *CERTIORARI*.— The acceptance of a plea bargain is purely upon the discretion of the prosecutor, while the approval of the plea bargain is subject to the judicial discretion of the court trying the facts. Hence, any review of a plea bargain approved by the Office of the Ombudsman would be tantamount to an appeal on a question of fact and not the proper subject of a petition for certiorari.

15. CRIMINAL LAW; REPUBLIC ACT NO. 7080 (AN ACT DEFINING AND PENALIZING THE CRIME OF PLUNDER), AS AMENDED; PLUNDER; THE PROSECUTION MUST PROVE BEYOND REASONABLE DOUBT THAT A PUBLIC OFFICER AMASSED ILL-GOTTEN WEALTH OF AT LEAST ₱50,000.00 THROUGH A COMBINATION OR SERIES OF OVERT CRIMINAL ACTS.— For a successful prosecution of plunder, the prosecution must prove beyond reasonable doubt that a public officer amassed ill-gotten wealth of at least ₱50,000.00 through a combination or series of overt criminal acts defined in Section 1 (d) of Republic Act No. 7080 . . . .

There is no quibble that private respondent Garcia was a public officer, being a general with the Armed Forces of the Philippines, at the time the alleged plunder took place. Clarita's

letters likewise show that respondent Garcia received gifts in connection with his position as army comptroller. However, the letters do not show that the gifts he received amounted to more than ₱50,000.00.

The prosecution's failure to provide evidence of ill-gotten wealth within the threshold for plunder is primarily due to its failure to find a military contractor or supplier who could provide concrete and supporting details to Clarita's admissions as shown in the hearing for the Office of the Solicitor General's motion for intervention before the Sandiganbayan . . . .

Even Mendoza's testimony over the missing funds of the Armed Forces of the Philippines could not be directly attributed to private respondent Garcia's misuse. Further, witnesses from the Armed Forces of the Philippines belied Mendoza's testimony that ₱50,000,000.00 from the ₱200,000,000.00 received by the Armed Forces of the Philippines from the United Nations was missing. Instead, they testified that the entire amount had been accounted for and had eventually been used for the Armed Forces of the Philippines contingent to East Timor.

16. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI;* GRAVE ABUSE OF DISCRETION, DEFINED; CRIMINAL PROCEDURE; PLEA BARGAINING; IN THE ABSENCE OF PROOF OF PLUNDER AND MONEY LAUNDERING, THE APPROVAL OF A PLEA TO THE LESSER OFFENSE OF DIRECT BRIBERY CANNOT BE SAID TO BE TAINTED WITH GRAVE ABUSE OF DISCRETION.— Grave abuse of discretion is defined as a "capricious or whimsical exercise of judgment that is patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law." Considering the prosecution's failure to prove private respondent Garcia's guilt for plunder and money laundering beyond reasonable doubt, respondent Sandiganbayan cannot be said to have gravely abused its discretion in approving the assailed Plea Bargaining Agreement.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Office of the Special Prosecutor for Sandiganbayan.
De Jesus Manimtim & Associates for respondent Garcia.

D E C I S I O N

LEONEN, *J.*:

As the government's law office, the Office of the Solicitor General is given broad powers to be able to fully perform its function of representing the government. However, its power of representation is neither absolute nor limitless, as its mandate under the Administrative Code must be harmonized with statutes which also endow other government bodies with the power to represent the government. Further, allowing the Solicitor General to question the prosecutorial discretion exercised by the Special Prosecutor, with the approval of the Ombudsman, impliedly grants a statutory authority supervision over a Constitutional organ. This cannot be countenanced.

This resolves the Petition for Certiorari[1] filed by the Republic of the Philippines, represented by the Office of the Solicitor General, assailing the Plea Bargaining Agreement between the Office of the Special Prosecutor and retired Major General Carlos F. Garcia (Garcia).

On December 19, 2003, customs agents at the San Francisco International Airport, United States of America, seized US$100,000.00 of undeclared cash from brothers Juan Paolo Garcia (Juan Paolo) and Ian Carl Garcia (Ian Carl).[2]

United States Customs officials charged Juan Paolo and Ian Carl with bulk cash smuggling and making false statements. They both pleaded guilty to the charges against them.[3]

On April 6, 2004, their mother, Clarita Garcia (Clarita) executed two statements,[4] which were witnessed by Agent

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[1] *Rollo*, pp. 9-116.

[2] Id. at 412-413.

[3] *US turns over $100,000 seized from retired military comptroller's sons*, INQUIRER, <https://globalnation.inquirer.net/22699/us-turns-over-100000-seized-from-retired-military-comptrollers-sons> [Last accessed on September 24, 2019].

[4] *Rollo*, pp. 659-662 and 663-666.

Matthew Van Dyke of the United States Customs, in support of her petition for the release of the seized US$100,000.00.[5] Clarita attested that the funds were sourced from her husband's salary as a two-star general in the Philippines and their family's two (2) corporations, IJT Mango Orchard, Inc. and IJT Katamnan Corp., as well as a daycare.[6] Further, Clarita wrote that aside from receiving a salary, her husband was a military comptroller who often received gratuities from businesses that were awarded military contracts:

> My husband Carlos Garcia (Two Star General in the Armed Forces) was assigned to the Comptrollers Officer until April 4, 2004. He receives a salary that is declared for income tax purposes. In addition, Carlos receives travel money and expenses in excess of several thousands of dollars. I often travel with my husband on business and my travel, expenses and shopping money in excess of US$10,000 to $20,000 is provided to me. He also receives cash for travel and expenses from the businesses that are awarded contracts for military hardware. These businesses are in Europe and Asia. He also receives gifts and gratitude money from several Philippine companies that are awarded military contracts to build roads, bridges and military housing.[7]

She then narrated that the privileges her husband received was common and that as the wife of a general, she was also entitled to privileges such as a "4,000-gallon per month gasoline allowance, security detail and five drivers. [She also has] a military cook that also provides piano music upon request."[8]

On April 5, 2005, the Office of the Special Prosecutor filed an Information[9] for plunder against Garcia, Clarita, and their children Ian Carl, Juan Paulo, and Timothy Mark Garcia (Timothy Mark). The accusatory portion of the Information read:

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[5] Id. at 414.

[6] Id. at 659-660.

[7] Id. at 660.

[8] Id. at 661.

[9] Id. at 379-381.

That during the period from 1993 or sometime prior thereto, until 17 November 2004, in Quezon City, Philippines, the above-named accused **MAJ. GEN. CARLOS F. GARCIA,** a high-ranking public officer, having been a colonel of the Armed Forces of the Philippines since 1990 until his retirement with the rank of Major General in November 2004, by himself and in connivance/conspiracy with his co-accused members of his family **CLARITA D. GARCIA, IAN CARL D. GARCIA, JUAN PAULO D. GARCIA, TIMOTHY MARK D. GARCIA,** and in connivance/conspiracy with his other co-accused persons **JOHN DOES, JAMES DOES,** and **JANE DOES,** did then and there, willfully, unlawfully, and criminally, amass, accumulate and acquire ill-gotten wealth in the form of funds, landholdings and other real and personal properties, in the aggregate amount of at least **THREE HUNDRED THREE MILLION TWO HUNDRED SEVENTY-TWO THOUSAND FIVE AND 99/100 PESOS (₱303,272,005.99)**, more or less, by himself, and in conspiracy with the above-named persons, through a series and/or combination of overt or criminal acts or similar schemes or means, by receiving commissions, gifts, shares, percentages, kickbacks or other forms of pecuniary benefits like "shopping money or gratitude money" from said **JAMES DOES** and **JANE DOES** and/or entities, in connection with government contracts or projects and/or by reason of the public office of position held by accused **MAJ. GEN. CARLOS F. GARCIA** and/or by his taking undue advantage of his official position, thereby unjustly enriching himself at the expense and to the damage of the Filipino People and the Republic of the Philippines.

ALL WITHIN THE JURISDICTION OF THE COURT AND CONTRARY TO LAW.[10] (Emphasis in the original)

Separate cases for plunder and money laundering,[11] which were eventually consolidated, were filed against the Garcia family before the Sandiganbayan. Only Garcia was arraigned for both cases, to which he pleaded not guilty.[12]

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[10] Id. at 380.

[11] Id. at 206-207. The cases for plunder and money laundering were docketed as Criminal Case Nos. 28107 and SB-09-CRM-019, respectively and were ordered to be consolidated on January 7, 2010.

[12] Id. at 382 and 443.

On May 4, 2007, Garcia filed an Urgent Petition for Bail for his plunder charge, claiming that the Office of the Special Prosecutor failed to show strong evidence of his guilt.[13]

The Office of the Special Prosecutor opposed the petition for bail and was allowed to present evidence to support its contention that evidence of Garcia's guilt was strong.[14]

On December 11, 2009, an Information for violation of Section 4 (a) of Republic Act No. 9160 or the Anti-Money Laundering Act was filed against Garcia and his family. This was consolidated with the plunder case.[15]

On January 7, 2010, the Sandiganbayan[16] denied Garcia's petition for bail.

In denying the petition for bail, the Sandiganbayan ruled that the mass of evidence presented by the prosecution was strong which militated against the grant of bail.[17] Further it held that the admission of Clarita's Sworn Statement and handwritten statement into evidence did not violate her constitutional right to remain silent because "she was neither an accused nor a respondent at the time she voluntarily gave her statement."[18] The Sandiganbayan emphasized that neither she nor members of her family were under investigation and that she executed the statements in an attempt to retrieve the seized US$100,000.00.[19]

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[13] Id. at 383.

[14] Id. at 383-384.

[15] Id. at 1538.

[16] Id. at 382-423. The Resolution was penned by Associate Justice Teresita V. Diaz-Baldos, concurred in by Associate Justices Samuel R. Martires and Roland B. Jurado, and dissented to by Associate Justices Edilberto G. Sandoval (Chairperson) and Alex D. Quiroz, of the Special Second Division, Sandiganbayan, Quezon City.

[17] Id. at 420-422.

[18] Id. at 414.

[19] Id. at 414-415.

The dispositive of the January 7, 2010 Resolution read:

WHEREFORE, in light of all the foregoing, and in the exercise of sound judicial discretion, the Court hereby resolves to deny, as it hereby ***DENIES,*** the Petition for Bail of Major General Carlos F. Garcia for lack of merit.

SO ORDERED.[20] (Emphasis in the original)

On March 16, 2010, as the prosecution was about to rest its case, the Office of the Special Prosecutor and Garcia filed a Joint Motion for Approval of Plea Bargaining Agreement.[21] The agreement was approved and signed by then Ombudsman Merceditas N. Gutierrez (Ombudsman Gutierrez).[22]

In the Plea Bargaining Agreement,[23] Garcia withdrew his plea of not guilty to the crime of plunder and offered to enter a plea of guilty to the lesser offense of indirect bribery.[24]

In addition, Garcia entered a plea of not guilty to the charge of money laundering, but then withdrew it for purposes of plea bargaining and offered to enter a plea of guilty to the lesser offense of facilitating money laundering.[25] He also stated that his family members, who were charged in the same cases, had no participation in the cases filed against them.[26]

As part of the Plea Bargaining Agreement, Garcia offered to cede ₱135,433,387.84 worth of cash, real and personal properties owned by himself and his family in favor of the government.[27]

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[20] Id. at 422.

[21] Id. at 440-441.

[22] Id. at 440.

[23] Id. at 442-449.

[24] Id. at 443.

[25] Id. at 443.

[26] Id. at 444.

[27] Id. at 444-447.

In consenting to the Plea Bargaining Agreement, the Office of the Ombudsman, citing *People v. Kayanan*,[28] stated that such an agreement was allowed when there was no "sufficient evidence to establish the guilt" of the accused.[29]

On May 4, 2010, the Sandiganbayan,[30] without acting on the Joint Motion for Approval of Plea Bargaining Agreement and the Plea Bargaining Agreement, directed Garcia to execute the necessary deeds of conveyance to transfer the properties covered in the Plea Bargaining Agreement in favor of the State.[31]

The Sandiganbayan held that Garcia's change of plea under the Plea Bargaining Agreement was warranted because it complied with the applicable rules and guidelines contained in jurisprudence. It also pointed out that Garcia voluntarily agreed to the Plea Bargaining Agreement and was apprised of its consequences.[32]

The dispositive portion of the Resolution reads:

ACCORDINGLY, and to this end, the Court hereby orders accused Gen. Carlos F. Garcia to execute immediately the appropriate deeds of conveyance in order to transfer, convey, cede, surrender, and relinquish to the Republic of the Philippines his ownership and any and all interests which he may personally have over the real properties in his own name, and in the names of spouse Clarita Depakakibo Garcia, children Ian Carl D. Garcia, Juan Paolo D. Garcia, and Timothy Mark D. Garcia, as well as all the personal properties itemized and identified in the inventory of properties in the Plea Bargaining Agreement belonging to him, his spouse and three children, and thereafter to present to the Court within sixty (60) days from receipt

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[28] 172 Phil. 728 (1978) [Per J. Barredo, En Banc].

[29] *Rollo*, pp. 447-448.

[30] Id. at 191-201. The Resolution was penned by Associate Justice Teresita V. Diaz-Baldoz and concurred in by Associate Justices Edilberto G. Sandoval and Samuel R. Martires of the Special Second Division, Sandiganbayan, Quezon City.

[31] Id. at 200-201.

[32] Id. at 199.

hereof, such resultant titles and certificates of ownership in the name of the Republic of the Philippines.[33]

Meanwhile, in a separate civil forfeiture case against Garcia before Branch 27 of the Regional Trial Court of Manila and docketed as AMLC Case No. 09-003, the Office of the Solicitor General filed a motion[34] to allow the transfer of the Garcia family's assets to the government.

There, the Office of the Solicitor General, representing the Anti-Money Laundering Council, recognized the Plea Bargaining Agreement between the Office of the Special Prosecutor and Garcia. The Office of the Solicitor General stated that the Office of the Special Prosecutor wrote to ask for assistance from the Anti-Money Laundering Council in light of the common properties covered by both the Plea Bargaining Agreement and civil forfeiture case.[35]

On November 5, 2010,[36] noting that Garcia's counsel interposed no objection to the Office of the Solicitor General's motion for transfer of assets and that a Plea Bargaining Agreement duly approved by Ombudsman Gutierrez had already been executed between the Office of the Special Prosecutor and Garcia, the Regional Trial Court granted the motion. The dispositive portion of the Regional Trial Court's Order read:

> WHEREFORE, premises considered, the assets of the respondent M/Gen. Carlos F. Garcia and his wife and children are hereby ordered transferred to the Republic of the Philippines pursuant to the February 26, 2010 Plea Bargaining Agreement which was approved by the 2nd Division of the Sandiganbayan in its Resolution dated May 4, 2010 covering Crim. Case No. 28107 and Crim. Case No. SB 09CR MO 194, for Plunder and Violation of R.A. 9160 otherwise known as Anti-Money Laundering Law, respectively.
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> So ordered.[37]

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[33] Id. at 200-201.

[34] Id. at 1705-1718.

[35] Id. at 1712-1713.

[36] Id. at 1719. The Order was penned by Executive Judge Amor A. Reyes.

[37] Id. at 1719.

On November 18, 2010, the Office of the Special Prosecutor filed a Manifestation of Substantial Compliance[38] informing the Sandiganbayan that Garcia had executed the appropriate deeds of conveyances and turned them over to the Office of the Special Prosecutor.[39]

On December 16, 2010, Garcia pleaded guilty to the lesser offense of direct bribery[40] and to the offense of violation of Section 4 (b) of Republic Act No. 9160 or Facilitating Money Laundering.[41]

That same day, Garcia filed an Urgent Motion to Post Bail,[42] and the Sandiganbayan allowed him to post bail in the amount of ₱30,000.00 per case or ₱60,000.00 in total.[43]

On January 5, 2011, the Office of the Solicitor General filed a Motion to Intervene and to admit its attached Omnibus Motion in Intervention.[44]

In its Motion for Intervention, the Office of the Solicitor General declared that it had the necessary personality to intervene because it had the mandate of promoting and protecting public weal.[45] The Office of the Solicitor General likewise stated that the Armed Forces of the Philippines sought guidance on what

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[38] Id. at 468-473.

[39] Id. at 469-472.

[40] Id. at 476.

[41] Id. at 477.

[42] Id. at 478-480.

[43] Id. at 480-481.

[44] Id. at 482-498. Urgent Motion for Leave to Intervene and to Admit Attached Omnibus Motion-in-Intervention to (1) Nullify the Plea Bargaining Agreement between Accused Maj. Gen. Carlos F. Garcia (ret.) and the Office of the Special Prosecutor, (2) Set Aside the Honorable Court's Resolution Promulgated on May 4, 2010 Approving Said Plea Bargaining Agreement, (3) Recall the Resolution of the Honorable Court Promulgated on December 16, 2010 which Granted Accused Garcia's Motion for Bail.

[45] Id. at 484.

its available remedies were in light of the fact that Plea Bargaining Agreement included some of its funds. The Office of the Solicitor General thus emphasized that the Armed Forces of the Philippines was an indispensable party for the Plea Bargaining Agreement to be valid.[46]

In its Omnibus Motion-in-Intervention,[47] the Office of the Solicitor General underscored that the Sandiganbayan's reliance on Section 5, Rule 116 of the Revised Rules of Criminal Procedure was misplaced because the said rule dealt with the withdrawal of an improvident plea of guilty, which was not applicable to Garcia.[48]

The Office of the Solicitor General continued that the Sandiganbayan's reliance on *People v. Camay*[49] was misplaced because the requirements listed in *Camay* only applied to an accused who pleaded guilty to a capital offense. It pointed out that indirect bribery and facilitating money laundering were not capital offenses.[50] It likewise insisted that the evidence of guilt against Garcia was very strong, as the Sandiganbayan itself declared when it denied his first motion to post bail.[51]

It stressed that the Plea Bargaining Agreement was without the Republic's consent.[52] Further, the lopsided terms of the Plea Bargaining Agreement greatly favored Garcia but worked against the Filipino people, as Garcia was accused of plundering ₱300,000,000.00 from the State coffers yet the Plea Bargaining Agreement only agreed to return ₱135,000,000.00 in cash and properties.[53] It then called out the Sandiganbayan's undue haste

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[46] Id. at 486-489.

[47] Id. at 500-532.

[48] Id. at 505-506.

[49] 236 Phil. 431 (1987) [Per J. Sarmiento, First Division].

[50] *Rollo*, pp. 506-507.

[51] Id. at 511-519.

[52] Id. at 522-526.

[53] Id. at 521-522.

in implementing the Plea Bargaining Agreement which violated the Rules of Court and well-settled jurisprudence.[54]

In its Supplement to the Omnibus Motion,[55] the Office of the Solicitor General added that Garcia's arraignment for the lesser crime of direct bribery was a nullity because it was not necessarily included in the allegations in the Information charging him with plunder.[56]

On May 6, 2011, Ombudsman Gutierrez tendered her resignation as Ombudsman to President Benigno Aquino, Jr., who accepted it.[57]

On May 9, 2011, the Sandiganbayan[58] denied the Motion for Intervention and Omnibus Motion-in-Intervention.

In denying the motion for intervention, the Sandiganbayan maintained that the statutory authority to represent the government in the case lay with the Office of the Ombudsman as it had the primary jurisdiction over cases cognizable by the Sandiganbayan. It stated that it was only in the cases of recovery of Marcos' ill-gotten wealth that the Office of the Solicitor General could represent the Republic of the Philippines before the Sandiganbayan.[59]

The Sandiganbayan then emphasized that Republic Act No. 6770 or the Ombudsman Act of 1988 explicitly stated that the Special Prosecutor had "the power to enter into plea bargaining agreement[s]" in cases under the Sandiganbayan's jurisdiction.[60]

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[54] Id. at 526-527.

[55] Id. at 533-545.

[56] Id. at 537-540.

[57] *Ombudsman submits resignation to PNoy*, ABS-CBN NEWS, <https://news.abs-cbn.com/nation/04/29/11/ombudsman-submits-resignation-pnoy-sources> (Last accessed on October 15, 2019).

[58] *Rollo*, pp. 202-357. The Resolution was penned by Associate Justice Samuel R. Martires and concurred in by Associate Justices Edilberto G. Sandoval and Teresita V. Diaz-Baldos of the Second Division, Sandiganbayan, Quezon City.

[59] Id. at 225-227, Sandiganbayan Resolution.

[60] Id. at 230-231.

Additionally, the Sandiganbayan opined that plunder was a crime against the State, hence, the offended party was the State and not the Armed Forces of the Philippines, which is a part of the State[61] and has no legal personality that is "separate and distinct from the State."[62]

The Sandiganbayan also stressed that the Office of the Special Prosecution was unable to prove Garcia's guilt beyond reasonable doubt because it "failed to mention the name of a contractor, supplier, host country, or any individual from whom the accused and his alleged co-conspirators allegedly received gifts, commissions, kickbacks and/or percentages."[63]

The dispositive of the Sandiganbayan May 9, 2011 Resolution reads:

WHEREFORE, the Urgent Motion for Leave to Intervene and the attached Omnibus Motion-in-Intervention are hereby DENIED for utter paucity of merit.[64] (Emphasis in the original)

Also on May 9, 2011, the Sandiganbayan[65] approved both the Joint Motion and Plea Bargaining Agreement.

In approving the Plea Bargaining Agreement, the Sandiganbayan pointed out that a change of plea was allowed under the Rules.[66] Further, it referred to its Resolution of even date which denied the Motion for Intervention to substantiate its stand that the totality of the evidence presented by the Office of the Special Prosecutor was weak and did not support the allegations in the "equally weak Information for plunder."[67]

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[61] Id. at 235.

[62] Id. at 236.

[63] Id. at 247.

[64] Id. at 357.

[65] Id. at 358-378. The Resolution was penned by Associate Justice Teresita V. Diaz-Baldos and concurred in by Associate Justices Edilberto G. Sandoval and Samuel R. Martires of the Second Division, Sandiganbayan.

[66] Id. at 366-368 and 373-375.

[67] Id. at 368.

Nonetheless, instead of allowing Garcia to plead guilty to indirect bribery, the Sandiganbayan allowed Garcia to plead guilty to direct bribery under Article 210 of the Revised Penal Code as the latter was a predicate offense to plunder.[68]

The dispositive of the Sandiganbayan May 9, 2011 Resolution reads:

WHEREFORE, in view of all the foregoing, this Court hereby ***APPROVES*** the Plea Bargaining Agreement between the Office of the Ombudsman and Major General Carlos F. Garcia.

SO ORDERED.[69] (Emphasis in the original)

The Office of the Solicitor General moved for a reconsideration[70] of the denial of its Motion for Intervention. While this was pending, retired Supreme Court Justice Conchita Carpio-Morales (Ombudsman Carpio-Morales) was appointed as Ombudsman on July 26, 2011.[71]

On August 12, 2011, Ombudsman Carpio-Morales filed before the Sandiganbayan a motion to hold in abeyance its final action on the Office of the Solicitor General's pending motion for reconsideration and to grant her 30 days to submit a position paper. Her motion was granted.[72]

In her Position Paper,[73] Ombudsman Carpio-Morales declared that the Plea Bargaining Agreement was received and approved by the Sandiganbayan before the prosecution rested its case. Hence, it was premature to conclude that the evidence against Garcia was weak.[74]

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[68] Id. at 373-374.

[69] Id. at 378.

[70] Id. at 1328-1451.

[71] *Conchita Carpio Morales*, <http://www.ombudsman.gov.ph/about-us/precious-ombudsmen/conchita-carpio-morales/> (Last accessed on October 15, 2019).

[72] *Rollo*, p. 919.

[73] Id. at 927-945.

[74] Id. at 928-929.

She likewise stated that as a compromise, the Plea Bargaining Agreement was an implied admission of Garcia's guilt and may be received as evidence in the plunder case against him.[75]

Ombudsman Carpio-Morales further contended that the Sandiganbayan erred in denying the Office of the Solicitor General's motion to intervene because the Sandiganbayan failed to cite any specific law which expressly prohibited the Office of the Solicitor General from participating when the Ombudsman or the Office of the Special Prosecutor had already entered an appearance.[76] She emphasized that as the "law office of the Government[,]"[77] the Office of the Solicitor General's power was broad, thus, it was empowered to represent the government in any manner of legal controversy which would affect the people's welfare.[78]

Ombudsman Carpio-Morales thus prayed on September 15, 2011 that: (1) the Office of the Solicitor General be allowed to intervene; (2) the May 9, 2011 Resolution approving the Plea Bargaining Agreement be nullified; and (3) the trial against Garcia be allowed to proceed.[79]

On April 10, 2013,[80] the Sandiganbayan denied the Office of the Solicitor General's Motion for Reconsideration.

The Sandiganbayan noted that Ombudsman Carpio-Morales in her Position Paper presented a "turnabout position"[81] to the

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[75] Id. at 937-942.

[76] Id. at 930-931.

[77] Id. at 931.

[78] Id. at 931-932.

[79] Id. at 944.

[80] Id. at 118-190. The Joint Resolution was penned by Associate Justice Samuel R. Martires and concurred in by Associate Justices Teresita V. Diaz-Baldos (Chairperson), Roland B. Jurado and Alex L. Quiroz, and dissented by Associate Justice Oscar C. Herrera, Jr. of the Special Second Division, Sandiganbayan, Quezon City.

[81] Id. at 123.

Plea Bargaining Agreement, which was jointly submitted to it by former Ombudsman Gutierrez and Garcia, prompting the Sandiganbayan to set a clarificatory hearing for the Office of the Ombudsman to explain its final position on the Plea Bargaining Agreement.[82]

However, during the clarificatory hearing, representatives from the Office of the Ombudsman stated that Ombudsman Carpio-Morales was not repudiating the Plea Bargaining Agreement, and instead, merely voiced out her views and stand in her Position Paper. Thus, it should not be treated as a motion to set aside the Plea Bargaining Agreement.[83] Quoting portions from the clarificatory hearing, the Sandiganbayan wrote:

> During the clarificatory hearing, the Court asked the panel representing Honorable Ombudsman Morales if they would convert the Position Paper into a motion so that the accused, with whom it had entered into plea bargaining, could be directed to file his comment. Surprisingly, however, Atty. Christian Uy, a member of the Ombudsman panel, categorically declared that the Position Paper ***should not be treated as a motion*** *(which the accused could comment or oppose)* ***as it was only an expression of the new Ombudsman's views and stand and that basically it was just food for thought. Neither did Atty. Uy admit that the new Ombudsman was repudiating the action of the previous Ombudsman.***
>
> In view of the ambivalent stance posted by the Office of the Ombudsman, there was no way by which the Court could grant the prayer in the Position Paper without according due process to Maj. Gen. Garcia who was of one mind with the Ombudsman in seeking for the Court's approval of the Plea Bargaining Agreement. ***Hence, since the Ombudsman, for reasons which the Court cannot fathom, was not willing to have its Position Paper converted into a motion so that the nullification of the Plea Bargaining Agreement, among others, could be passed upon***, the Court found no reason to require the accused Maj. Gen. Garcia to comment.
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> This is very clear from the transcript of stenographic notes taken during the clarificatory hearing where the Office of the Ombudsman is quoted to have said that:

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[82] Id.

[83] Id. at 123-127.

JUSTICE BALDOS: *(Chairperson)*
As we all know the Position Paper maybe cognizable in the Office of the Ombudsman or even in other agencies like the NLRC but in Court the significance of a Position Paper is not really that much, inasmuch as the Position Paper contradictory prayed for affirmative relief. So would you want the motion, your Position Paper to be treated as a motion?

ATTY. UY:
Your Honor, the —

JUSTICE MARTIRES:
You stand up when you make a manifestation.

ATTY. UY:
Yes, your Honor. **The Position Paper should be treated as such a Position Paper not as a motion.** It is basically just an expression of a new Ombudsman's views and stand on the matter. We would just like to point out that the Court should be thrown off by the fact that the Position Paper also contains a prayer. We believe it does not detract from its character and standing as a Position Paper, merely as an expression over views and her stand on the matters which were discussed therein.

JUSTICE BALDOS: *(Chairperson)*
If it were to be treated *per se* as a Position Paper, so we disregarded the prayer for affirmative relief contained in another portion of the Position Paper.

ATTY. UY:
Yes, your Honor. Actually, we leave it up to the Court, to the Honorable Justices to dispose of it as it is basically just food for thought.

JUSTICE BALDOS: *(Chairperson)*
Because if there is nothing that you want the Court to do, then we will just note the Position Paper.

ATTY. UY:
Yes, your Honor. If the Court is so inclined.

JUSTICE BALDOS: (chairperson)
Because you also prayed for the setting aside of [sic] the May 9 Resolution denying the OSG's Motion for Intervention.

ATTY. UY:
Yes, your Honor.

JUSTICE BALDOS: (chairperson)
So which is which?

ATTY. UY:
As I mentioned a while ago, your Honor, please do not be thrown off by the prayer. It just so happens as I said a while ago the new Ombudsman, this is her stand. And naturally, if someone makes a stand it can imply from the contents thereof whether explicitly or implicitly that this is what she hopes for. That is what she wants to accomplish by the solution of the Position Paper. Hopefully it will shed light, it can be tackled from a different point of view and [maybe] help the justices in resolving the Motion for Intervention, that is all.

JUSTICE BALDOS: (chairperson)
You also prayed for the nullification of the plea bargaining?

ATTY. UY:
Yes, your Honor.

JUSTICE BALDOS: (chairperson)
Are you aware that when the plea bargaining agreement was submitted for approval by the Court, it was through a joint motion for approval. So can a nullification be unilaterally made?

ATTY. UY:
Your Honor, the Ombudsman recognizes that these are very complex issued [sic] and therefore these cannot just be easily resolved because there are actually so many persons involved. So I will not even venture, to venture an opinion as to whether the Joint Motion to Approve the Plea Bargaining Agreement shall be nullified unilaterally. All that the new Ombudsman wants is to set her view points, set her thoughts on the matter. It is basically just an expression of her opinion.

JUSTICE BALDOS: (chairperson)
So if this is just an opinion, we disregard the prayer?

ATTY. UY:
Yes, your Honor.[84] (Emphasis in the original)

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[84] Id. at 123-126.

Considering the Office of the Ombudsman's pronouncements during the clarificatory hearing, the Sandiganbayan merely noted its Position Paper and did not consider it as a motion to set aside the Plea Bargaining Agreement.[85]

The Sandiganbayan also added that the Office of the Ombudsman cannot unilaterally withdraw from the Plea Bargaining Agreement because the same had already been approved.[86]

The Sandiganbayan then reiterated its earlier ruling that the Office of the Solicitor General did not have the authority to intervene in the case against Garcia.[87] It further declared that there was no private offended party in the case before it, as the Armed Forces of the Philippines was a government institution with no separate personality from the government.[88]

The Sandiganbayan declared that it deliberately did not make a pronouncement on the weakness of the prosecution evidence in its May 4, 2010 Resolution, which directed Garcia to execute the necessary deeds of conveyance, so that Garcia will not withdraw his offer for a plea bargain agreement and so that his family members will not withdraw the special power of attorney they executed in his favor authorizing him to transfer the properties in their name to the government.[89]

The dispositive portion of the Joint Resolution reads:

WHEREFORE, for utter paucity of merit, the Motion for Reconsideration to allow the Office of the Solicitor General to intervene is hereby **DENIED**.

Correspondingly, for lack of legal personality/authority to intervene in this case and considering further that the Plea Bargaining Agreement

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[85] Id. at 131.

[86] Id. at 176.

[87] Id. at 139.

[88] Id. at 145.

[89] Id. at 162-163.

is in accord with law and jurisprudence and is for the best interest of the government, the prayer of the Office of the Solicitor General to set aside the plea bargaining agreement is also **DENIED**.

SO ORDERED.[90] (Emphasis in the original)

On June 7, 2013, petitioner Republic of the Philippines, represented by the Office of the Solicitor General, filed a Petition for Certiorari[91] claiming that the Special Second Division of the Sandiganbayan acted with grave abuse of discretion in approving the "scandalously and grossly disadvantageous"[92] Plea Bargaining Agreement despite its own admission of the strong evidence against private respondent Carlos Garcia presented by public respondent Office of the Special Prosecutor.[93]

Petitioner likewise avers that the Sandiganbayan committed grave abuse of discretion in granting the Plea Bargaining Agreement despite the lack of consent thereto from the Armed Forces of the Philippines, the offended party.[94] It then reiterates its standing to intervene as provided by the Administrative Code of 1987.[95]

It asserts that the Plea Bargaining Agreement was actually a "compromise agreement" between the Office of the Private Prosecutor and private respondent Garcia.[96] Moreover, it points out that public respondent Sandiganbayan gravely erred when it allowed private respondent to plead guilty to the lesser offenses of direct bribery and facilitating money laundering prior to approving the Plea Bargaining Agreement.[97]

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[90] Id. at 190.

[91] Id. at 9-113.

[92] Id. at 27.

[93] Id. at 31-32.

[94] Id. at 69-74.

[95] Id. at 97-100.

[96] Id. at 74-77.

[97] Id. at 86-87.

Petitioner likewise highlights that direct bribery was "not necessarily included" in plunder and the Information for plunder did not allege all the elements for direct bribery.[98] Finally, it underscores that Clarita's letters were "admissible in evidence" and could be considered as admissions by a conspirator.[99]

On July 1, 2013,[100] this Court directed respondents to file their respective comments to the Petition and issued a temporary restraining order enjoining public respondent Sandiganbayan from continuing with the proceedings against private respondent. The temporary restraining order reads:

> **NOW THEREFORE,** You, your agents, representatives and/or any person or persons acting upon your orders or in your place or stead, are hereby **ENJOINED** from continuing with proceedings below in Criminal Case Nos. 28107 and SB-09-SRM-0194, both entitled "*People of the Philippines, Plaintiff versus Major General Carlos F. Garcia (Ret.), Accused, et al.*" and promulgating judgment based on the assailed plea bargaining agreement, and (2) enjoining the respondent Sandiganbayan from implementing the December 16, 2010 resolution granting approval of respondent Major Gen. Carlos F. Garcia's request for bail, effective immediately and continuing until further orders from the Court.[101] (Emphasis in the original)

In their Compliance with Manifestation and Motion (In Lieu of Comment),[102] Sandiganbayan Associate Justices Teresita V. Baldos, Roland B. Jurado and Samuel R. Martires state that they were adopting[103] their previous rulings in their assailed resolutions as their comment to the Petition for Certiorari.

In his separate Comment,[104] Sandiganbayan Associate Justice Alex L. Quiroz (Associate Justice Quiroz) underscores that he

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[98] Id. at 89-93.

[99] Id. at 36-43.

[100] Id. at 901-902.

[101] Id. at 905.

[102] Id. at 1069-1072.

[103] Id. at 1070.

[104] Id. at 1312-1327.

was limiting his comment to the issue of whether the Office of the Solicitor General had standing to intervene in the Plea Bargaining Agreement between public respondent Office of the Special Prosecutor and private respondent and not the merits of the Plea Bargaining Agreement, as he did not participate in its approval.[105]

Associate Justice Quiroz opines that the Office of the Solicitor General's motion for intervention was correctly denied because it was the Ombudsman who was empowered to represent the government in the case before the Sandiganbayan. He likewise emphasizes that contrary to the Office of the Solicitor General's statements, the government was the offended party in the disputed Plea Bargaining Agreement, not the Armed Forces of the Philippines.[106]

Further, he points out that the Office of the Solicitor General's reliance on the Administrative Code of 1987 was misplaced as it may only act for or represent the Republic upon authorization of the President, which is lacking in this case.[107]

In his separate Comment,[108] Sandiganbayan Associate Justice Oscar C. Herrera (Associate Justice Herrera) stated that he dissented from the April 10, 2013 Joint Resolution which denied the Office of the Solicitor General's Motion for Reconsideration over the denial of its Motion for Intervention and the approval of the Plea Bargaining Agreement.[109]

Associate Justice Herrera likewise recounts that because he dissented from the April 10, 2013 Joint Resolution, a special division of five members had to be created. He states that instead of choosing the two other members by raffle as provided for

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[105] Id. at 1320.

[106] Id. at 1322-1324.

[107] Id. at 1320-1321.

[108] Id. at 1484-1487.

[109] Id. at 1484. Associate Justice Herrera's dissenting opinion can be found in *Rollo*, pp. 946-988.

in the Sandiganbayan Internal Rules, then Presiding Justice Francisco Villaruz, Jr. picked Associate Justices Roland B. Jurado and Alex L. Quiroz to become part of the special division because of their familiarity with the cases. Four[110] of the five members of the Special Division then voted to deny the Office of the Solicitor General's Motion for Reconsideration, while he maintained his dissent.[111]

In its Comment,[112] the Office of the Special Prosecutor echoes the Sandiganbayan's position that the Office of the Solicitor General did not have the requisite personality to assail the Plea Bargaining Agreement. It likewise underscores that there was no substantial difference between "People of the Philippines" and "Republic of the Philippines," such that the Office of the Ombudsman would represent the "People of the Philippines" in a plunder case before the Sandiganbayan, while the Office of the Solicitor General would represent the "Republic of the Philippines."[113] It maintains that the only time the Office of the Solicitor General may appear before the Sandiganbayan is when it represents the Presidential Commission on Good Government in prosecuting cases of ill-gotten wealth against former President Ferdinand E. Marcos, his relatives and cronies.[114]

The Office of the Special Prosecutor likewise disputes petitioner's claim that the Armed Forces of the Philippines' consent was needed in the Plea Bargaining Agreement as it was never mentioned as a complainant nor as an offended party in the Information against Garcia.[115] It adds that assuming Armed

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[110] The April 10, 2013 Joint Resolution was penned by Associate Justice Samuel R. Martires and concurred in by Associate Justices Teresita V. Diaz-Baldos, Rolando B. Jurado and Alex L. Quiroz.

[111] *Rollo*, pp. 1485-1486.

[112] Id. at 1080-1199.

[113] Id. at 1091-1092.

[114] Id. at 1093.

[115] Id. at 1096-1097.

Forces of the Philippines funds were used, it was already represented before the Sandiganbayan by the Office of the Special Prosecutor as it is part of the "People of the Philippines," and did not need additional representation from the Office of the Solicitor General.[116]

As for the sufficiency of evidence against Garcia to prove the charge of plunder against him, the Office of the Special Prosecutor admits that it continued to look for evidence against Garcia even after the Information for plunder was filed, since it was convinced that Clarita's statements before the US Customs was not sufficient for a plunder conviction.[117] The Office of the Special Prosecutor also admits that it was unable to uncover the identities of the John Does, James Does and Janes Does in the Information who supposedly connived and conspired with private respondent and his family to commit the crime of plunder.[118]

The Office of the Special Prosecutor then concedes that it was unable to specify private respondent's specific criminal acts, which led to his unjust enrichment to the damage and prejudice of the Filipino people.[119]

The Office of the Special Prosecutor maintains that it was only able to establish the Garcia family's ownership of various properties, but that it was unable to prove beyond reasonable doubt that the acquired wealth was due to criminal acts.[120]

Ombudsman Conchita Carpio-Morales in her Manifestation in Lieu of Comment,[121] in turn, clarified that she had no hand in the preparation and submission of the contested Plea

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[116] Id. at 1099.

[117] Id. at 1111-1112.

[118] Id. at 1113-1118.

[119] Id. at 1120.

[120] Id. at 1130-1132.

[121] Id. at 917-925.

Bargaining Agreement to the Sandiganbayan, as this was done under the tenure of her predecessor, Ombudsman Gutierrez.[122]

Further, Ombudsman Carpio-Morales recounts that when she assumed office and reviewed the records which led to the Plea Bargaining Agreement, she filed a motion to hold in abeyance the Sandiganbayan's final action on petitioner's motion for reconsideration of the Sandiganbayan's May 9, 2011 denying petitioner's motion for intervention. She then filed a Position Paper[123] impugning and repudiating the Plea Bargaining Agreement as the prosecution had not yet rested its case and evidence of Garcia's guilt was strong.[124]

Ombudsman Carpio-Morales concludes by manifesting that she was adopting *in toto* the allegations of the Petition for Certiorari as well as its prayer before the Court.[125]

In his Comment,[126] private respondent Garcia also avers that the Office of the Solicitor General's motion for intervention was rightly denied by the Sandiganbayan because there was no concurrence of jurisdiction between the Office of the Solicitor General and the Ombudsman in prosecuting criminal cases before it. He stresses that the Ombudsman had primary jurisdiction, to the exclusion of everyone else, to prosecute cases cognizable by the Sandiganbayan under Republic Act No. 6770 or the Ombudsman Act of 1989.[127] He points out that the power to enter into a plea bargaining agreement in cases within the Sandiganbayan's jurisdiction was conferred by Republic Act No. 6770 upon the Office of the Special Prosecutor, under the Ombudsman's supervision.[128]

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[122] Id. at 917-918.

[123] Id. at 927-945.

[124] Id. at 918-920.

[125] Id. at 923.

[126] Id. at 1527-1704.

[127] Id. at 1565-1574.

[128] Id. at 1575-1578.

He also adds that contrary to the Office of the Solicitor General's claims, the Armed Forces of the Philippines was neither an indispensable nor necessary party in the plunder case against him as it was not an offended party in the plunder case and it already had its day in court in the proceedings against him before the General Court Martial.[129]

Respondent Garcia then underscores that the Office of the Solicitor General acted in bad faith in filing its Motion for Intervention after it actively participated in the approval and implementation of the Plea Bargaining Agreement.[130] He also points out that the Office of the Solicitor General kept the surrendered assets subject of the Plea Bargaining Agreement while moving to nullify the same in its petition in intervention before the Sandiganbayan.[131]

In its Consolidated Reply,[132] petitioner reiterates the authority and duty of the Office of the Solicitor General to intervene in the Plea Bargaining Agreement between the Office of the Special Prosecutor and private respondent Garcia pursuant to its mandate under the Administrative Code of 1987.[133] Petitioner points out that there was no inconsistency between the Office of the Solicitor General's mandate under the Administrative Code and the Ombudsman's own mandate under the Ombudsman Act of 1989.[134]

Petitioner then asserts that as the actual offended party, the Armed Forces of the Philippines needed to give its consent to the Plea Bargaining Agreement for its validity.[135]

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[129] Id. at 1581-1587.

[130] Id. at 1647-1648.

[131] Id. at 1695.

[132] Id. at 1760-1822.

[133] Id. at 1763-1764 and 1770-1773.

[134] Id. at 1769.

[135] Id. at 1773-1777.

Finally, petitioner denies that it was estopped from questioning the Plea Bargaining Agreement because of its supposed participation in the transfer of assets before the Regional Trial Court as it was not privy to the circumstances surrounding the Plea Bargaining Agreement's execution.[136]

On June 30, 2014, this Court resolved to give due course to the Petition and directed the parties to file their respective memoranda.[137]

Respondents Sandiganbayan[138] and the Office of the Special Prosecutor[139] filed manifestations in lieu of their memoranda where Sandiganbayan stated that it would not be filing a memorandum in light of the separate comments filed by the members of its Special Second Division,[140] and the Office of the Special Prosecutor stated that with the Ombudsman's submission of her position, there was no reason for it to submit one as it was under the Ombudsman's supervision and authority.[141]

In its Memorandum,[142] petitioner reiterates that respondent Sandiganbayan acted with grave abuse of discretion in approving the "grossly disadvantageous"[143] Plea Bargaining Agreement, despite proof beyond reasonable doubt of private respondent Garcia's guilt for plunder.[144] Petitioner states:

As consistently shown by the totality of the prosecution evidence presented during the bail hearings and trial of the main case, there is

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[136] Id. at 1815-1817.

[137] Id. at 1887-1888.

[138] Id. at 1895-1898.

[139] Id. at 1911-1914.

[140] Id. at 1897.

[141] Id. at 1912.

[142] Id. at 1916-2031.

[143] Id. at 1933.

[144] Id. at 1940-1944.

in fact a combination of series of at least two (2) different predicate acts constituting the offense of Plunder. The admissions of Clarita Garcia, the testimony of Heidi Mendoza and the additional evidence presented by the prosecution all show a combination of series of at least two (2) predicate acts, namely: 1) receiving pecuniary benefits in connection with government contracts or by reason of office; and 2) taking undue advantage of official position — used as means or schemes in acquiring, amassing and accumulating ill-gotten wealth totaling Php303,272,005.99.

Simply put, there is evidence "sufficient to establish beyond reasonable doubt a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy" to commit the crime of Plunder.

Unfortunately, instead of weighing the evidence presented by the prosecution during the bail hearing and trial on the main case as a whole, the respondent Court separately "analyzed" segments of the prosecution evidence to determine absolute certainty of guilt. It then ruled on its inadmissibility and/or lack of weight to prove beyond reasonable doubt the guilt of respondent Garcia and his co-accused for the crime of Plunder.[145] (Citation omitted, emphasis in the original)

It also stresses that Heidi Mendoza's (Mendoza) testimony coupled with several documentary evidence show that there was ₱50,000,000.00 unaccounted for from the ₱200,000,000.00 transferred to the Armed Forces of the Philippines fund. It insists that this could have only been facilitated by private respondent Garcia.[146]

In his Memorandum,[147] private respondent Garcia emphasizes that the Plea Bargaining Agreement was validly entered into and that he surrendered and transferred ₱135,433,387.87 worth of assets to the government in compliance with its terms. Thus, the government cannot now nullify the Plea Bargaining Agreement after it enjoyed its benefits.[148] He also points out

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[145] Id. at 1943-1944.

[146] Id. at 1960-1968.

[147] Id. at 2212-2569.

[148] Id. at 2213-2214.

that despite the execution of the Plea Bargaining Agreement, he continues to be detained without a conviction.[149]

Private respondent Garcia maintains that despite respondent Office of the Special Prosecutor's voluminous documentary exhibits and 40 witnesses, respondent Sandiganbayan still found them insufficient to support a conviction for plunder. He insists that being the trier of facts, respondent Sandiganbayan's findings must be duly respected.[150]

Finally, private respondent Garcia posits that the Plea Bargaining Agreement, which he relied upon with good faith, has the force and effect of *res judicata*.[151]

On September 15, 2015, former Ombudsman Simeon V. Marcelo (Marcelo) filed a Motion [For Leave to Intervene, Adopt the *Petition for Certiorari* Dated 14 June 2013 Filed by the Office of the Solicitor General for and on Behalf of the Republic of the Philippines and Admit the Attached Reply].[152]

In his motion for intervention, aside from asserting his status as a taxpayer who has the right to be vigilant in the disbursement of public funds,[153] Marcelo also claims to possess legal interest in the matter under litigation in light of its transcendental importance.[154]

In his Reply,[155] Marcelo argues that the prosecution's evidence proved respondent Garcia's guilt for plunder beyond reasonable doubt. He points out that Clarita's statements in her Sworn Statement could be considered as an admission by a conspirator.[156]

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[149] Id. at 2212, Footnote No. 2.

[150] Id. at 2329.

[151] Id. at 2542-2554.

[152] Id. at 2571-2581.

[153] Id. at 2575-2578.

[154] Id. at 2574-2575.

[155] Id. at 2582-2655.

[156] Id. at 2585-2596.

Additionally, he contends that the Plea Bargaining Agreement should be struck down for being grossly disadvantageous to the government due to the Office of the Special Prosecutor's "sheer inexcusable gross incompetence"[157] which amounted to an abandonment[158] of its duties and a deliberate sabotage[159] of its case against private respondent Garcia. He also claims that the reopening of the criminal prosecution against private respondent will not result in double jeopardy because of the "grave prosecutorial misconduct which deprived the state of its right to due process."[160]

On April 24, 2017,[161] this Court granted Marcelo's motion to intervene and adopt petitioner's Petition, and also noted his Reply.

The two issues for this Court's resolution are:

(1) Whether or not the Office of the Solicitor General could validly intervene in the plunder case against private respondent Garcia before the Sandiganbayan; and

(2) Whether or not the Plea Bargaining Agreement was validly entered into by respondents Office of the Special Prosecutor and Garcia.

The Petition must be denied.

I

The Office of the Solicitor General is an autonomous and independent office attached to the Department of Justice.[162] It is headed by the Solicitor General who is considered to be the "principal law officer and legal defender of the Government"[163]

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[157] Id. at 2596.

[158] Id. at 2609.

[159] Id. at 2615-2623.

[160] Id. at 2647.

[161] Id. at 3582-3583.

[162] Executive Order No. 300 (1987), Sec. 1.

[163] Executive Order No. 300 (1987), Sec. 2.

and its powers and functions can be found in Book 4, Title III, Chapter 12, Section 35 of Executive Order No. 292 or the 1987 Administrative Code, which provides:

SECTION 35. *Powers and Functions*. — The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer. When authorized by the President or head of the office concerned, it shall also represent government-owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the services of a lawyer. It shall have the following specific powers and functions:

(1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party.

(2) Investigate, initiate court action, or in any manner proceed against any person, corporation or firm for the enforcement of any contract, bond, guarantee, mortgage, pledge or other collateral executed in favor of the Government. Where proceedings are to be conducted outside of the Philippines the Solicitor General may employ counsel to assist in the discharge of the aforementioned responsibilities.

(3) Appear in any court in any action involving the validity of any treaty, law, executive order or proclamation, rule or regulation when in his judgment his intervention is necessary or when requested by the Court.

(4) Appear in all proceedings involving the acquisition or loss of Philippine citizenship.

(5) Represent the Government in all land registration and related proceedings. Institute actions for the reversion to the Government of lands of the public domain and improvements thereon as well as lands held in violation of the Constitution.

(6) Prepare, upon request of the President or other proper officer of the National Government, rules and guidelines for government

entities governing the preparation of contracts, making of investments, undertaking of transactions, and drafting of forms or other writings needed for official use, with the end in view of facilitating their enforcement and insuring that they are entered into or prepared conformably with law and for the best interests of the public.

(7) Deputize, whenever in the opinion of the Solicitor General the public interest requires, any provincial or city fiscal to assist him in the performance of any function or discharge of any duty incumbent upon him, within the jurisdiction of the aforesaid provincial or city fiscal. When so deputized, the fiscal shall be under the control and supervision of the Solicitor General with regard to the conduct of the proceedings assigned to the fiscal, and he may be required to render reports or furnish information regarding the assignment.

(8) Deputize legal officers of government departments, bureaus, agencies and offices to assist the Solicitor General and appear or represent the Government in cases involving their respective offices, brought before the courts, and exercise supervision and control over such legal officers with respect to such cases.

(9) Call on any department, bureau, office, agency or instrumentality of the Government for such service, assistance and cooperation as may be necessary in fulfilling its functions and responsibilities and for this purpose enlist the services of any government official or employee in the pursuit of his tasks.

Departments, bureaus, agencies, offices, instrumentalities and corporations to whom the Office of the Solicitor General renders legal services are authorized to disburse funds from their sundry operating and other funds for the latter Office. For this purpose, the Solicitor General and his staff are specifically authorized to receive allowances as may be provided by the Government offices, instrumentalities and corporations concerned, in addition to their regular compensation.

(10) Represent, upon the instructions of the President, the Republic of the Philippines in international litigations, negotiations or conferences where the legal position of the Republic must be defended or presented.

(11) Act and represent the Republic and/or the people before any court, tribunal, body or commission in any matter, action or

proceeding which, in his opinion, affects the welfare of the people as the ends of justice may require; and

(12) Perform such other functions as may be provided by law.

Gonzales v. Chavez[164] traced the statutory origins of the Office of the Solicitor General and its role of representing the government, and concluded that the clear intention was to consolidate in one official the responsibility of representing the government in all manners of legal proceedings.[165] *Gonzales* explained the policy objective behind the creation of the Office of the Solicitor General:

> The rationale behind this step is not difficult to comprehend. Sound government operations require consistency in legal policies and practices among the instrumentalities of the State. Moreover, an official learned in the law and skilled in advocacy could best plan and coordinate the strategies and moves of the legal battles of the different arms of the government. Surely, the economy factor, too, must have weighed heavily in arriving at such a decision.
>
> It is patent that the intent of the lawmaker was to give the designated official, the Solicitor General, in this case, the unequivocal mandate to appear for the government in legal proceedings. Spread out in the laws creating the office is the discernible intent which may be gathered from the term "shall," which is invariably employed, from Act No. 136 (1901) to the more recent Executive Order No. 292 (1987).[166]

Nonetheless, despite the Office of the Solicitor General's seemingly broad and unqualified power to represent the government, *Office of the Solicitor General v. Court of Appeals*,[167] clarified that its mandate under the Administrative Code must be reckoned alongside other statutes which likewise endow other government bodies with the power of also representing the government before courts.[168]

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[164] 282 Phil. 858 (1992) [J. Romero, En Banc].

[165] Id.

[166] Id. at 879 Phil. 880.

[167] 735 Phil. 622 (2014) [Per J. Reyes, First Division].

[168] Id.

In *Office of the Solicitor General*, the Court of Appeals directed the Office of the Solicitor General, as the purported legal representative of the Municipality of Saguiaran, Lanao Del Sur, to file a memorandum for the Municipality. The Office of the Solicitor General denied being the Municipality's rightful representative as the Local Government Code provided that the municipal legal officer should represent the local government unit in civil actions or special proceedings in court proceedings.[169]

In granting the Office of the Solicitor General's petition and holding that the Local Government Code and not the Administrative Code was the controlling law, *Office of the Solicitor General* emphasized that the Office of the Solicitor General's power to represent the government was not only limited by statute but also by jurisprudence:

> It bears mentioning that notwithstanding the broad language of the Administrative Code on the OSG's functions, the LGC is not the only qualification to its scope. Jurisprudence also provides limits to its authority. In *Urbano v. Chavez*, for example, the Court ruled that the OSG could not represent at any stage a public official who was accused in a criminal case. This was necessary to prevent a clear conflict of interest in the event that the OSG would become the appellate counsel of the People of the Philippines once a judgment of the public official's conviction was brought on appeal.[170] (Citation omitted)

On the other hand, the power and authority of the present Office of the Ombudsman emanate from the 1987 Constitution and Republic Act No. 6770 or The Ombudsman Act of 1989.

The concept of a people's protector was first institutionalized in the 1973 Constitution with the creation of the Tanodbayan.[171] Article XIII, Section 6 of the 1973 Constitution provided:

> SECTION 6. The Batasang Pambansa shall create an office of the Ombudsman, to be known as Tanodbayan, which shall receive and

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[169] Id.

[170] Id. at 631.

[171] *Gonzales III v. Office of the President of the Philippines*, 694 Phil. 52 (2012) [Per J. Perlas-Bernabe, En Banc].

investigate complaints relative to public office, including those in government-owned or controlled corporations, make appropriate recommendations, and in case of failure of justice as defined by law, file and prosecute the corresponding criminal, civil, or administrative case before the proper court or body.

Presidential Decree No. 1487 or the Tanodbayan Decree of 1977 then established the position of the Tanodbayan, with two deputies in Luzon and one deputy each in Visayas and Mindanao.[172] The Tanodbayan was vested with the twin powers of investigation[173] and prosecution.[174]

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[172] Presidential Decree No. 1487 (1988), sec. 2.

[173] Presidential Decree No. 1487 (1988), sec. 10 provides:

SECTION 10. *Powers*. — The Tanodbayan shall have the following powers:

(a) He may investigate, on complaint, any administrative act of any administrative agency including any government-owned or controlled corporation;

(b) He may prescribe the methods by which complaints are to be made, received, and acted upon; he may determine the scope and manner of investigations to be made; and, subject to the requirements of this Decree, he may determine the form, frequency, and distribution of his conclusions and recommendations;

(c) He may request and shall be given by each administrative agency the assistance and information he deems necessary for the discharge of his responsibilities; he may examine the records and documents of all administrative agencies; and he may enter and inspect premises within any administrative agency's control, provided, however, that where the President in writing certifies that such information, examination or inspection might prejudice the national interest, the Tanodbayan shall desist. All information so obtained shall be confidential, unless the President, in the interest of public service, decides otherwise;

(d) He may issue a subpoena to compel any person to appear, give sworn testimony, or produce documentary or other evidence the Tanodbayan deems relevant to a matter under his inquiry;

(e) He may undertake, participate in, or cooperate with general studies or inquiries, whether or not related to any particular administrative agency or any particular administrative act, if he believes that they may enhance knowledge about or lead to improvements in the functioning of administrative agencies.

[174] Presidential Decree No. 1487 (1988), sec. 17 provides:

Years later, the framers of the 1987 Constitution endeavored to strengthen and increase the Tanodbayan's authority to make it more effective in its mandate of investigating and prosecuting erring government employees.[175] As a result, the 1987 Constitution made the Office of the Ombudsman an independent[176] and fiscally autonomous body[177] with the following powers, functions and duties:

SECTION 13. The Office of the Ombudsman shall have the following powers, functions, and duties:

(1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.

(2) Direct, upon complaint or at its own instance, any public official or employee of the Government, or any subdivision, agency or instrumentality thereof, as well as of any government-owned or controlled corporation with original charter, to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties.

(3) Direct the officer concerned to take appropriate action against a public official or employee at fault, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith.

(4) Direct the officer concerned, in any appropriate case, and subject to such limitations as may be provided by law, to furnish it with copies of documents relating to contracts or transactions entered into by his office involving the disbursement or use of public funds or properties,

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SECTION 17. *Prosecution of public personnel*. — If the Tanodbayan has reason to believe that any public official, employee, or other person has acted in a manner resulting in a failure of justice, he shall file and prosecute the corresponding criminal, civil, or administrative case before the Sandiganbayan or the proper court or body.

[175] *Gonzales III v. Office of the President of the Philippines*, 694 Phil. 52 (2012) [Per J. Perlas-Bernabe, En Banc] citing Bernas, S.J., The Intent of the 1986 Constitution Writers, 771 (1995).

[176] CONST., art. XI, sec. 5.

[177] CONST., art. XI, sec. 14.

and report any irregularity to the Commission on Audit for appropriate action.

(5) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents.

(6) Publicize matters covered by its investigation when circumstances so warrant and with due prudence.

(7) Determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the Government and make recommendations for their elimination and the observance of high standards of ethics and efficiency.

(8) Promulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law.[178]

Executive Order No. 243[179] then created the Office of the Ombudsman, while Executive Order No. 244[180] created the Office of the Special Prosecutor which inherited the powers exercised by the Tanodbayan prior to the 1987 Constitution.[181] The Ombudsman Act of 1989 eventually placed the Office of the Special Prosecutor under the Ombudsman's supervision and control.[182]

The Office of the Ombudsman, as the people's protector, is mandated to act promptly on all complaints filed against government employees and initiate prosecution against them if warranted by the evidence to promote efficient government service to the people.[183]

In recognition of the Office of the Ombudsman's mandate as the people's protector and its specific role of prosecuting

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[178] CONST., art. XI, sec. 13.

[179] Declaring the Effectivity of the Creation of the Office of the Ombudsman as Provided for in the 1987 Constitution.

[180] Declaring the Effectivity of the Creation of the Office of the Special Prosecutor as Provided for in the 1987 Constitution.

[181] Executive Order No. 244 (1987), sec. 2.

[182] Republic Act No. 6770 (1989), sec. 11.

[183] Republic Act No. 6770 (1989), sec. 13.

erring government officials, the Ombudsman Act of 1989 bestowed the Office of the Ombudsman with "primary jurisdiction over cases cognizable by the Sandiganbayan"[184] and "it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases."[185]

Uy v. Sandiganbayan[186] explains that while the Ombudsman has primary jurisdiction over cases which may be filed before the Sandiganbayan, his or her power of investigation and prosecution is not limited to cases cognizable by the Sandiganbayan but covers "all kinds of malfeasance, misfeasance and non-feasance committed by public officers and employees during their tenure of office."[187]

Nonetheless, the grant of primary jurisdiction to the Office of the Ombudsman to investigate and prosecute complaints against government employees is not an exclusive power as it is shared with other government agencies with similar authorities.[188]

Executive Order No. 14, series of 1986 which defined the Presidential Commission on Good Government's jurisdiction over cases involving the ill-gotten wealth of former President Marcos, his family members, relatives, associates, and dummies, empowered the Office of the Solicitor General[189] to assist the

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[184] Republic Act No. 6770 (1989), sec. 15 (1).

[185] Republic Act No. 6770 (1989), sec. 15 (1).

[186] 407 Phil. 154 (2001) [Per J. Pardo, En Banc].

[187] Id. at 165.

[188] *Office of the Ombudsman v. Galicia*, 589 Phil. 314 (2008) [Per J. Reyes, R.T., En Banc], citing *Panlilio v. Sandiganbayan*, 285 Phil. 927 (1992) [Per J. Nocon, En Banc]; and *Cojuangco, Jr. v. Presidential Commission on Good Government*, 268 Phil. 235 (1990) [Per J. Gancayco, En Banc].

[189] Executive Order No. 14 (1986), sec. 1 provides:

SECTION 1. Any provision of the law to the contrary notwithstanding,

Presidential Commission on Good Government in filing and prosecuting cases before the Sandiganbayan, which had exclusive and original jurisdiction over ill-gotten wealth cases.[190]

Thus, the general rule is that while the Office of the Ombudsman has primary jurisdiction over cases filed before the Sandiganbayan, when it comes to civil and criminal cases involving the Marcos' ill-gotten wealth, it is the Presidential Commission on Good Government, represented by the Office of the Solicitor General as the "law office of the [Presidential Commission on Good Government]," [191] who is authorized to investigate and prosecute these cases before the Sandiganbayan.

Here, the Office of the Solicitor General relies upon its mandate to represent the Government under the Administrative Code to substantiate its right to intervene[192] in the Plea Bargaining Agreement, which it claimed to be "grossly disadvantageous and prejudicial to the interest of the Republic of the Philippines and the welfare of the . . . Filipino people."[193]

The Office of the Solicitor General does not dispute the Office of the Ombudsman's authority to file the plunder case against respondent Garcia and enter into a plea bargaining agreement,[194] rather, it claims that due to its mandate to protect and promote the interests of the people, and its representation of the Armed

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the Presidential Commission on Good Government, with the assistance of the Office of the Solicitor General and other government agencies, is hereby empowered to file and prosecute all cases investigated by it under Executive Order No. 1, dated February 28, 1986, and Executive Order No. 2, dated March 12, 1986, as may be warranted by its findings.

[190] Executive Order No. 14 (1986), sec. 2 provides:

SECTION 2. The Presidential Commission on Good Government shall file all such cases, whether civil or criminal, with the Sandiganbayan, which shall have exclusive and original jurisdiction thereof.

[191] *Gonzales v. Chavez*, 282 Phil. 858, 859 (1992) [J. Romero, En Banc].

[192] *Rollo*, pp. 2013-2015.

[193] Id. at 2013.

[194] Id. at 2014-2016.

Forces of the Philippines, it had the right to intervene in the Plea Bargaining Agreement.[195]

Petitioner is mistaken.

The Office of the Solicitor General's authority to represent the Government is not plenary or all-encompassing. Book IV, Title III, Chapter 12, Section 35 (11)[196] of the Administrative Code does not give it carte blanche authority to swoop in at any time and in any circumstance simply because it believes that the people's welfare and the ends of justice require its intervention, especially if the government is already represented by the appropriate agency.

The mandate to represent the government in proceedings before the Sandiganbayan generally lies with the Office of the Ombudsman, with the Office of the Solicitor General allowed to prosecute a case before the Sandiganbayan in Marcos ill-gotten wealth cases and only in representation of the Presidential Commission on Good Government. The present case does not involve Marcos ill-gotten wealth, thus, the Office of the Ombudsman rightfully represented the government in the plunder case against private respondent Garcia before the Sandiganbayan.

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[195] Id. at 2016.

[196] SECTION 35. *Powers and Functions*. — The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer. When authorized by the President or head of the office concerned, it shall also represent government-owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the services of a lawyer. It shall have the following specific powers and functions:

. . . .

(11) Act and represent the Republic and/or the people before any court, tribunal, body or commission in any matter, action or proceeding which, in his opinion, affects the welfare of the people as the ends of justice may require[.]

More importantly, the Office of the Solicitor General, which is a statutory creation, cannot be expressly or impliedly allowed to have personality or the power of supervision or control over the actions of the Special Prosecutor and the Office of the Ombudsman which is a constitutional body.

To allow the Office of the Solicitor General to cherry-pick its jurisdiction under the pretext that it believes its intervention is warranted by the greater good and the ends of justice, would be to impliedly give it supervisory powers or even control over other agencies with a similar mandate of representing the government in different courts and fora. This cannot be allowed, as the Office of the Solicitor General's broad mandate under the Administrative Code to represent the Government does not involve the power of control or even supervision over other agencies which also represent the government.

Pimentel, Jr. v. Aguirre,[197] citing *Drilon v. Lim*,[198] differentiated between control and supervision as follows:

> In a more recent case, *Drilon v. Lim*, the difference between control and supervision was further delineated. Officers in control lay down the rules in the performance or accomplishment of an act. If these rules are not followed, they may, in their discretion, order the act undone or redone by their subordinates or even decide to do it themselves. On the other hand, supervision does not cover such authority. Supervising officials merely see to it that the rules are followed, but they themselves do not lay down such rules, nor do they have the discretion to modify or replace them. If the rules are not observed, they may order the work done or redone, but only to conform to such rules. They may not prescribe their own manner of execution of the act. They have no discretion on this matter except to see to it that the rules are followed.[199]

Here, the Office of the Solicitor General believed that the Plea Bargaining Agreement brokered by the Office of the Special Prosecutor under Ombudsman Gonzales' control, was

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[197] 391 Phil. 84 (2000) [Per J. Panganiban, En Banc].

[198] 305 Phil. 146 (1994) [Per J. Cruz, En Banc].

[199] *Pimentel, Jr. v. Aguirre*, 391 Phil. 85, 99-100 (2000) [Per J. Panganiban, En Banc].

disadvantageous to the government and public welfare since it allowed respondent Garcia to plead to a lesser offense despite the strong evidence of respondent Garcia's guilt. Hence, it opines that it was within its mandate, as the government's law firm, to ensure that the people's interests were protected and promoted, and also, impliedly, to correct the Office of the Ombudsman's error.

Again, the Office of the Solicitor General is mistaken.

The government was already rightfully represented by the Office of the Ombudsman in the plunder case before the Sandiganbayan. Thus, the Office of the Solicitor General overstepped its bounds by insisting on providing additional representation. Further, the Office of the Solicitor General had no power of control or supervision over the Office of the Ombudsman, an independent constitutional body. It had no authority to impose on the latter's handling of the Plea Bargaining Agreement, even if it strongly believed that the Plea Bargaining Agreement was grossly disadvantageous to the government and the people's welfare.

II

Plea bargaining is defined as "a process whereby the accused and the prosecution work out a mutually satisfactory disposition of the case subject to court approval."[200] Generally, plea bargaining is made during the pre-trial stage and the accused pleads guilty to a lesser offense in exchange for a lighter sentence.[201] Pleading to a lesser offense is provided for under Rule 116, Section 2 of the Revised Rules of Criminal Procedure:

SECTION 2. *Plea of Guilty to a Lesser Offense*. — At arraignment, the accused, with the consent of the offended party and the prosecutor, may be allowed by the trial court to plead guilty to a lesser offense which is necessarily included in the offense charged. After arraignment but before trial, the accused may still be allowed to plead guilty to

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[200] *People v. Villarama*, 285 Phil. 723, 730 (1992) [Per J. Medialdea, First Division].

[201] Id.

said lesser offense after withdrawing his plea of not guilty. No amendment of the complaint or information is necessary.

A careful reading of this provision shows that the plea bargaining process consists of two parts: (1) the out of court agreement between the offended party and the prosecutor; and (2) the presentation of the plea bargain before the court for its approval.

The prosecutorial discretion inherent in a plea bargaining agreement is further emphasized in Rule 118, Section 1 (a) of the Revised Rules of Criminal Procedure which mandates courts, including the Sandiganbayan, to consider plea bargaining during pre-trial:

> SECTION 1. *Pre-trial; Mandatory in Criminal Cases*. — In all criminal cases cognizable by the Sandiganbayan, Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court and Municipal Circuit Trial Court, the court shall, after arraignment and within thirty (30) days from the date the court acquires jurisdiction over the person of the accused, unless a shorter period is provided for in special laws or circulars of the Supreme Court, order a pre-trial conference to consider the following:
>
> (a) plea bargaining;
> (b) stipulation of facts;
> (c) marking for identification of evidence of the parties;
> (d) waiver of objections to admissibility of evidence;
> (e) modification of the order of trial if the accused admits the charge but interposes a lawful defense; and
> (f) such matters as will promote a fair and expeditious trial of the criminal and civil aspects of the case.

Further, *People v. Villarama*[202] stressed that the prosecutor enjoyed full control over the prosecution of criminal actions, thus, prosecutorial consent "is a condition precedent to a valid plea of guilty to a lesser offense."[203]

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[202] 285 Phil. 723 (1992) [Per J. Medialdea, First Division].

[203] Id. at 725.

Daan v. Sandiganbayan[204] summarized the requirements of a valid plea bargaining and emphasized that the trial courts exercise full discretion on whether to accept the plea bargaining proffered by the parties:

> Section 2, Rule 116 of the Rules of Court presents the basic requisites upon which plea bargaining may be made, *i.e.*, that it should be with the consent of the offended party and the prosecutor, and that the plea of guilt should be to a lesser offense which is necessarily included in the offense charged. The rules however use word *may* in the second sentence of Section 2, denoting an exercise of discretion upon the trial court on whether to allow the accused to make such plea. Trial courts are exhorted to keep in mind that a plea of guilty for a lighter offense than that actually charged is not supposed to be allowed as a matter of bargaining or compromise for the convenience of the accused.[205] (Citations omitted)

Nonetheless, the trial court's discretion must be grounded on the sufficiency of the prosecution's evidence:

> In the case at bar, the private respondent (accused) moved to plead guilty to a lesser offense after the prosecution had already rested its case. In such situation, jurisprudence has provided the trial court and the Office of the Prosecutor with yardstick within which their discretion may be properly exercised. Thus, in *People v. Kayanan* (L-39355, May 31, 1978, 83 SCRA 437, 450), We held that the *rules allow such a plea only when the prosecution does not have sufficient evidence to establish guilt of the crime charged*. In his concurring opinion in *People v. Parohinog* (G.R. No. L-47462, February 28, 1980, 96 SCRA 373, 377), then Justice Antonio Barredo explained clearly and tersely the rationale of the law:
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> > . . . (A)fter the prosecution had already rested, *the only basis on which the fiscal and the court could rightfully act in allowing the appellant to charge his former plea of not guilty to murder to guilty to the lesser crime of homicide could be nothing more nothing less than the evidence already in the record*. The reason for this being that Section 4 of Rule 118 (now Section 2, Rule 116) under which a plea for a lesser offense is allowed was not and could not have been intended as a procedure for compromise,

[204] 573 Phil. 368 (2008) [Per J. Austria-Martinez, Third Division].

[205] Id. at 376-377.

much less bargaining.[206] (Citations omitted; emphasis in the original)

Private respondent Garcia was charged with the crime of plunder, which is defined in Section 2 of Republic Act No. 7080,[207] as amended by Republic Act No. 7659, as follows:

SECTION 2. *Definition of the Crime of Plunder; Penalties*. — Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt criminal acts as described in Section 1 (d) hereof, in the aggregate amount or total value of at least [Fifty million] pesos [₱50,000,000.00] shall be guilty of the crime of plunder and shall be punished by reclusion perpetua to death. Any person who participated with the said public officer in the commission of an offense contributing to the crime of plunder shall likewise be punished for such offense. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances, as provided by the Revised Penal Code, shall be considered by the court. The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stocks derived from the deposit or investment thereof forfeited in favor of the State.

Enrile v. People[208] specified the three (3) elements of plunder:

(1) That the offender is a public officer who acts by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates, or other persons;

(2) That he amassed, accumulated or acquired ill-gotten wealth through a combination or series of the following overt or criminal acts:

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[206] *People v. Villarama, Jr.*, 285 Phil. 723, 730-731 (1992) [Per J. Medialdea, First Division] citing *People v. Kayanan*, 172 Phil. 728 (1978) [Per J. Barredo, En Banc]; and J. Barredo, Concurring Opinion in *People v. Parohinog*, 185 Phil. 266 (1980) [Per J. Abad Santos, Second Division].

[207] An Act Defining and Penalizing the Crime of Plunder.

[208] 766 Phil. 75 (2015) [Per J. Brion, En Banc].

a. through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;

b. by receiving, directly or indirectly, any commission, gift, share, percentage, kickback or any other form of pecuniary benefits from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer;

c. by the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities of Government-owned or -controlled corporations or their subsidiaries;

d. by obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking;

e. by establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or

f. by taking advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines; and,

(3) That the aggregate amount or total value of the ill-gotten wealth amassed, accumulated or acquired is at least ₱50,000,000.00.[209]

On the other hand, direct bribery is defined in Article 210 of the Revised Penal Code:

ARTICLE 210. *Direct bribery*. — Any public officer who shall agree to perform an act constituting a crime, in connection with the performance of his official duties, in consideration of any offer, promise, gift or present received by such officer, personally or through the mediation of another, shall suffer the penalty of *prision mayor* in its minimum and medium periods and a fine of not less than the value of the gift and not less than three times the value of the gift in addition to the penalty corresponding to the crime agreed upon, if the same shall have been committed.

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[209] Id. at 115-116.

If the gift was accepted by the officer in consideration of the execution of an act which does not constitute a crime, and the officer executed said act, he shall suffer the sane penalty provided in the preceding paragraph; and if said act shall not have been accomplished, the officer shall suffer the penalties of *prision correccional*, in its medium period and a fine of not less than twice the value of such gift.

If the object for which the gift was received or promised was to make the public officer refrain from doing something which it was his official duty to do, he shall suffer the penalties of prision correccional in its maximum period and a fine of not less than the value of the gift and not less than three times the value of such gift.

In addition to the penalties provided in the preceding paragraphs, the culprit shall suffer the penalty of special temporary disqualification.

The provisions contained in the preceding paragraphs shall be made applicable to assessors, arbitrators, appraisal and claim commissioners, experts or any other persons performing public duties.

Magno v. Commission on Elections[210] lists down the elements of direct bribery:

1. the offender is a public officer;

2. the offender accepts an offer or promise or receives a gift or present by himself or through another;

3. such offer or promise be accepted or gift or present be received by the public officer with a view to committing some crime, or in consideration of the execution of an act which does not constitute a crime but the act must be unjust, or to refrain from doing something which it is his official duty to do; and

4. the act which the offender agrees to perform or which he executes is connected with the performance of his official duties.[211] (Citation omitted)

Both plunder and direct bribery involve public officers who capitalize on their official positions to commit a crime or an

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[210] 439 Phil. 339 (2002) [Per J. Corona, En Banc].

[211] Id. at 346.

unjust act which would lead to their financial benefit. Thus, the plea of guilt to the lesser offense of direct bribery is necessarily included in the charged offense of plunder, because some of the essential elements of the crime of plunder constitute direct bribery.[212]

In the same manner, the new charge of violation of Section 4 (b)[213] of the Anti-Money Laundering Act, or facilitating money laundering, is necessarily included in the original charge of violation of Section 4 (a),[214] or money laundering, against respondent Garcia.

Additionally, it is not disputed that the Office of the Special Prosecutor, upon the authority of the Ombudsman, has the power to enter into a plea bargaining agreement.[215] Here, Special

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[212] RULES OF COURT, Rule 120, sec. 5 provides:

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

[213] SECTION 4. *Money Laundering Offense*. — Money laundering is a crime whereby the proceeds of an unlawful activity are transacted, thereby making them appear to have originated from legitimate sources. It is committed by the following:

. . . .

(b) Any person knowing that any monetary instrument or property involves the proceeds of any unlawful activity, performs or fails to perform any act as a result of which he facilitates the offense of money laundering referred to in paragraph (a) above[.]

[214] SECTION 4. *Money Laundering Offense*. — Money laundering is a crime whereby the proceeds of an unlawful activity are transacted, thereby making them appear to have originated from legitimate sources. It is committed by the following:

(a) Any person knowing that any monetary instrument or property represents, involves, or relates to, the proceeds of any unlawful activity, transacts or attempts to transact said monetary instrument or property[.]

[215] Republic Act No. 6770 (1989), sec. 11 (4) (b) provides:

Prosecutor Wendell Barrera-Sulit, under the direct supervision and control of Ombudsman Gutierrez, entered into the assailed Plea Bargaining Agreement with private respondent Garcia.

At this juncture, it must be emphasized that this Court will not interfere with the substance of or the wisdom behind the Plea Bargaining Agreement, as that falls squarely within the Office of the Ombudsman's mandate of investigating and prosecuting erring government employees.[216] Absent any blatant evidence of irregularity or grave abuse of discretion, this Court will generally confine itself to the legal and technical issues surrounding a plea bargaining agreement or any similar agreement.

The acceptance of a plea bargain is purely upon the discretion of the prosecutor, while the approval of the plea bargain is subject to the judicial discretion of the court trying the facts. Hence, any review of a plea bargain approved by the Office of the Ombudsman would be tantamount to an appeal on a question of fact and not the proper subject of a petition for certiorari.

Here, the Plea Bargaining Agreement appears to be procedurally sound, thus, the only remaining issue is if the prosecution was able to prove respondent Garcia's guilt for

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SECTION 11. *Structural Organization.* — The authority and responsibility for the exercise of the mandate of the Office of the Ombudsman and for the discharge of its powers and functions shall be vested in the Ombudsman, who shall have supervision and control of the said office.

. . . .

(4) The Office of the Special Prosecutor shall, under the supervision and control and upon the authority of the Ombudsman, have the following powers:

(a) To conduct preliminary investigation and prosecute criminal cases within the jurisdiction of the Sandiganbayan;
(b) To enter into plea bargaining agreements; and
(c) To perform such other duties assigned to it by the Ombudsman.

The Special Prosecutor shall have the rank and salary of a Deputy Ombudsman[.]

[216] *Joson v. Office of the Ombudsman*, 816 Phil. 288 (2017) [Per J. Leonen, Second Division].

plunder and money laundering beyond reasonable doubt, thereby rendering the Plea Bargaining Agreement unnecessary.

Former Ombudsman Marcelo insists that private respondent Garcia's wife, Clarita, admitted the illicit nature of their family's source of funds and the predicate crimes from which their funds came from.[217] He maintains that Clarita's two written declarations before the United States Customs agent already served as an exception to the *res inter alios* rule, since they could be considered as admissions by a co-conspirator, hence, the prosecution no longer needed to find a whistleblower who would admit to paying off respondent Garcia in exchange for military contracts.[218]

On the other hand, the Sandiganbayan pointed out that the United States Customs agent's testimony on Clarita's letters was only to their authenticity and did not mean to prove the truth of their content.[219] Additionally, the Sandiganbayan emphasized that Clarita's letters did "not contain details of any amount given to them, who gave them, or the circumstances of how they were given."[220]

For a successful prosecution of plunder, the prosecution must prove beyond reasonable doubt that a public officer amassed ill-gotten wealth of at least ₱50,000,000.00 through a combination or series of overt criminal acts defined in Section 1 (d) of Republic Act No. 7080, which provides:

SECTION 1. *Definition of Terms*. — As used in this Act, the term —

. . . .

d) "Ill-gotten wealth" means any asset, property, business enterprise or material possession of any person within the purview of Section Two (2) hereof, acquired by him directly or indirectly through dummies,

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[217] *Rollo*, p. 2585.

[218] Id. at 2585-2596.

[219] Id. at 152.

[220] Id. at 153.

nominees, agents, subordinates and/or business associates by any combination or series of the following means or similar schemes:

1. Through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;
2. By receiving, directly or indirectly, any commission, gift, share, percentage, kickbacks or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer concerned;
3. By the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities or government-owned or -controlled corporations and their subsidiaries;
4. By obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including promise of future employment in any business enterprise or undertaking;
5. By establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or
6. By taking undue advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines.

There is no quibble that private respondent Garcia was a public officer, being a general with the Armed Forces of the Philippines, at the time the alleged plunder took place. Clarita's letters likewise show that respondent Garcia received gifts in connection with his position as army comptroller. However, the letters do not show that the gifts he received amounted to more than ₱50,000,000.00.

The prosecution's failure to provide evidence of ill-gotten wealth within the threshold for plunder is primarily due to its failure to find a military contractor or supplier who could provide concrete and supporting details to Clarita's admissions, as shown

in the hearing for the Office of the Solicitor General's motion for intervention before the Sandiganbayan:

JUSTICE BALDOS:
What among the elements of plunder do you think you were not able to prove beyond reasonable doubt that gave you no option but to enter into a Plea Bargaining Agreement with the accused as subsequent evidence and facts would show?

PROSEC. CAPISTRANO:
More particularly, Your Honors, on the basis of the information, contractors and suppliers, in other words with reference to the elements of the crime of plunder and as regards the overt act.

JUSTICE BALDOS:
Overt act?

PROSEC. CAPISTRANO:
Yes, Your Honor. As regards the information, the plunder was allegedly committed by receiving gifts, kickbacks and commission from the suppliers and the contractors.

JUSTICE BALDOS:
And the prosecution was unable to?

PROSEC. CAPISTRANO:
To be candid with the Court, Your Honors, we do not have any contractors and suppliers.

JUSTICE BALDOS:
Were you able to get in touch with any of the contractors? St. John *(sic)* did not want to testify?

PROSEC. CAPISTRANO:
We failed to find any supplier or contractor that would substantiate these wordings of the information, Your Honor.

JUSTICE BALDOS:
And because of that you felt that you would not be able to prove beyond reasonable doubt for (*sic*) plunder?

PROSEC. CAPISTRANO:
Yes, Your Honor, that is very [sic] big risk that we will not be able to prove that, [sic] Your Honor.

JUSTICE BALDOS:
Is the testimony of the contractor the only substantiating factor?

PROSEC. CAPISTRANO:
Well, it is the very wordings of the information, Your Honor, we just took into consideration that there is a possibility that the Court might rule on the technical side of this issue merely on the basis of the information.

JUSTICE BALDOS:
Are you practically admitting that the words of the information filed by the prosecution were quite defective or insufficient?

PROSEC. CAPISTRANO:
I would say that there is no corresponding evidence to support the wordings of the information, Your Honor, insofar as the records of the case are concerned when we took over the case.

JUSTICE BALDOS:
What about your evidence?

PROSEC. CAPISTRANO.
We tried to present as many as possible evidence we can get even those evidence that are not even available at the onset of the case we conducted additional investigation just to be able to possibly looking for support the very wordings of the information, [sic] Your Honor, we failed to do that.

JUSTICE BALDOS:
So because of that, you entered into a Plea Bargaining Agreement with the accused?

PROSEC. CAPISTRANO:
It's one of the options, Your Honor, in order to protect the interest of the state[,] we weighed in each evidence and the we find that there might be a possible consequence.[221]

Even Mendoza's testimony over the missing funds of the Armed Forces of the Philippines could not be directly attributed to private respondent Garcia's misuse.[222] Further, witnesses from the Armed Forces of the Philippines belied Mendoza's

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[221] *Rollo*, pp. 173-175.

[222] Id. at 154-155.

testimony that ₱50,000,000.00 from the ₱200,000,000.00 received by the Armed Forces of the Philippines from the United Nations was missing. Instead, they testified that the entire amount had been accounted for and had eventually been used for the Armed Forces of the Philippines contingent to East Timor.[223]

Grave abuse of discretion is defined as a "capricious or whimsical exercise of judgment that is patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law."[224] Considering the prosecution's failure to prove private respondent Garcia's guilt for plunder and money laundering beyond reasonable doubt, respondent Sandiganbayan cannot be said to have gravely abused its discretion in approving the assailed Plea Bargaining Agreement.

WHEREFORE, premises considered, the Petition for Certiorari is **DISMISSED**. The Temporary Restraining Order enjoining the Sandiganbayan from continuing with the proceedings in Criminal Case Nos. 28107 and SB-09-CRM-0194, both entitled *"People of the Philippines v. Major General Carlos F. Garcia,"* and from implementing its December 16, 2010 Resolution approving Major Gen. Carlos F. Garcia's request for bail, is **LIFTED**.

SO ORDERED.

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

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[223] Id. at 155-158.

[224] *Rodriguez v. Hon. Presiding Judge of the Regional Trial Court of Manila, Branch 17, et al.*, 518 Phil. 455, 462 (2006) [Per J. Quisumbing, En Banc] citing *Zarate v. Maybank Philippines, Inc.*, 498 Phil. 825 (2005) [Per J. Callejo, Sr., Second Division].

[*] Designated additional Member per Raffle dated September 7, 2020.

THIRD DIVISION

[G.R. No. 211851. September 16, 2020]

ROBERTO ESTACIO y SALVOSA, *Petitioner, v.* **MA. VICTORIA ESTACIO y SANTOS,** *Respondent.*

SYLLABUS

1. CRIMINAL LAW; ANTI-VIOLENCE AGAINST WOMEN AND THEIR CHILDREN ACT (RA NO. 9262), PURPOSE AND OBJECTIVE THEREOF.— Republic Act No. 9262 is a social legislation enacted as a measure to address domestic violence. It acknowledges that in situations where abuse happens at home, women are the likely victims. This is largely due to the unequal power relationship between men and women, and the widespread gender bias and prejudice against women which have historically prevented their full advancement, forcing them into subordination to men.

The law specifically protects women from violence committed in the context of an intimate relationship, which can be physical violence, sexual violence, psychological violence, or economic abuse. This also includes those committed against the woman's child.

2. ID.; ID.; REMEDIAL LAW; PROVISIONAL REMEDIES; PROTECTION ORDERS; RULE ON VIOLENCE AGAINST WOMEN AND THEIR CHILDREN (AM 04-10-11-SC); FAMILY MEMBERS IN THE CONTEXT OF PROTECTION ORDERS COVERS DESCENDANTS AS A WHOLE CLASS, EVEN ADULT CHILDREN.— This Court agrees with the Court of Appeals that neither Republic Act No. 9262 nor the Rule distinguishes children as to their age when they are referred to as being covered by protection orders. Notably, Section 8(d) of Republic Act No. 9262 simply provides "designated family or household member[s]" as the possible beneficiaries of protection orders.

. . .

Thus, when the law speaks of family members in the context of protection orders, it also covers descendants as a whole class—

even those who are no longer considered "children" under Section 3(h) of the law.

. . . Courts have the discretion to designate family members who will be included in protection orders, as long as it is in line with the remedy's purpose: to safeguard the victim from further harm, minimize disruptions in her daily life, and let her independently regain control over her life.

3. ID.; ID.; ID.; ID.; ID.; BOYS AND EVEN ADULT MEN CAN ALSO BE VICTIMS OF DOMESTIC ABUSE AND DESERVE PROTECTION.— [I]t is improper to think that women are always victims. This will only reinforce their already disadvantaged position. At the same time, we must also acknowledge that men can also be victims of domestic abuse in a patriarchal society. . . .

This is one of those cases. Boys and even adult men, like one of the children here, who are part of households where domestic abuse occurs also deserve protection. They, too, deserve insulation from any form of violence enabled by a patriarchal system—not only because of the need to preserve the harmony within the household, but also because of their inherent dignity and right to be free from such abuse.

4. ID.; ID.; ID.; ID.; ID.; CHILDREN WHO ARE USED TO HARASS THE VICTIM MAY BE INCLUDED IN THE PROTECTION ORDER OR STAY-AWAY-DIRECTIVE; CASE AT BAR.— In this case, petitioner both directly and indirectly inflicted violence on respondent. When he could not get any response from her, he used their children to contact and harass her, sending them text messages that demeaned their mother. He even copy furnished respondent with these messages to make sure that she knew what he told their children. This adds further insult to the words. At any rate, the messages were targeted, albeit indirectly, at respondent to harass her.

. . .

Thus, whether petitioner committed acts of violence directly against his children is beside the point. That the children were exploited so that he could indirectly harass respondent is sufficient basis for their inclusion in the stay-away directive. To begin with, petitioner himself dragged their children in the

controversy. With the stay-away directive, petitioner can no longer use their children to inflict violence on respondent.

5. ID.; ID.; COERCIVE CONTROL; PSYCHOLOGICAL VIOLENCE, DEFINED.— Although not expressly mentioned, coercive control is recognized as a form of psychological violence under Republic Act No. 9262. Psychological violence is defined under Section 3(a)(C) as:

SECTION 3. Definition of Terms. – As used in this Act,

. . .

C. "*Psychological violence*" refers to acts or omissions causing or likely to cause mental or emotional suffering of the victim such as but not limited to intimidation, harassment, stalking, damage to property, public ridicule or humiliation, repeated verbal abuse and mental infidelity. . . .

As a form of psychological violence, coercive control pertains to a "pattern of behavior meant to dominate a partner through different tactics such as physical and sexual violence, threats, emotional insults, and economic deprivation."

6. ID.; ID.; REMEDIAL LAW; PROVISIONAL REMEDIES; PROTECTION ORDERS; CONSENT TO INCLUSION IN THE PROTECTION ORDER; CONSENT IS NOT NECESSARY FOR SPECIFIC RELIEFS ALREADY GRANTED BY THE LAW.— While Section 8(k) of Republic Act No. 9262 requires the consent of family and household members, this requirement must only be met in instances when a court grants a relief not mentioned in the law. Section 8(k) provides:

SECTION 8. *Protection Orders*. — . . .

(k) Provision of such other forms of relief as the court deems necessary to protect and provide for the safety of the petitioners and any designated family or household member, provided petitioner and any designated family or household member consents to such relief.

. . .

In instances when the law calls for the courts' exercise of discretion, consent from the affected persons is required as a measure to ensure that the reliefs ultimately granted are beneficial

and protective of their interests. This consent requirement, however, is not necessary for specific reliefs already designed and granted by the law under paragraphs (a) to (j) of Section 8, including stay-away directives under paragraph (d).

7. ID.; ID.; ID.; ID.; ID.; RESTORATIVE JUSTICE; OFFENDERS MAY BE GIVEN INTERVENTION PROGRAMS TO ADDRESS THEIR PROBLEMS WITH AGGRESSION AND VIOLENCE.— Protection orders have this dual function. The reliefs enumerated under Republic Act No. 9262 are protective in nature, aiming to prevent continuous harm done to the woman, her children, or other relevant members of the household. . . .

These protective and preventive reliefs are replicated in the Rule on Violence Against Women and Their Children, but with one addition. Section 11(k) expressly provides this included relief. . . .

This addition is in line with the policy of promoting restorative justice. When the Rule speaks of restorative justice, it pertains to the features in the law and the Rule that support the protection of victims and the rehabilitation of offenders. Offenders may be given intervention programs designed to address their problems with aggression and violence.

8. ID.; ID.; ID.; ID.; ID.; LIFTING OR AMENDMENT OF THE PROTECTION ORDER; CASE AT BAR.— Should the offenders wish to lift or amend the protection order, they should file the proper motion with the court of origin. No amendment can be allowed without the consent of the spouse or the persons protected by the protection order. Also, the court must be convinced through testimony from a qualified independent professional therapist that the offenders' proclivity for aggression and violence has been properly addressed.

Moreover, in this case, since the children are of age, they may—on their own and without any direct or indirect pressure by petitioner—move to have the Permanent Protection Order lifted as to them. However, the modification of the Order to allow supervised visits or any other form of contact should also depend on the positive conclusions from a testimony of an independent professional therapist chosen by the court. Nonetheless, any amendment of the Order shall only happen with the consent of respondent wife. This is to ensure that her protection and safety remain the prime considerations.

APPEARANCES OF COUNSEL

Paolo Salvosa for petitioner.
Berberabe Santos Quiñones for respondent.

D E C I S I O N

LEONEN, *J.*:

A stay-away directive in a protection order may cover members of the household, including a couple's common children, if it is shown that the offender commits violence against the victim through the household members.

This Court resolves a Petition for Review on Certiorari[1] assailing the Decision[2] of the Court of Appeals, which affirmed the Regional Trial Court Decision making permanent an earlier issued Temporary Protection Order.

Roberto Estacio (Roberto) and Ma. Victoria Estacio (Victoria) have been married since January 2, 1978.[3] They have three children, namely: Manuel Roberto, Maria Katrina Ann, and Sharlene Mae, who were all adults at the time of the controversy.[4]

On December 7, 2011, Victoria filed before the Regional Trial Court of Parañaque City a Petition seeking a permanent protection order under Republic Act No. 9262, or the Anti-Violence Against Women and Their Children Act of 2004. This came with an urgent prayer for a temporary protection order.[5]

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[1] *Rollo*, pp. 4-18.

[2] Id. at 48-72. The March 19, 2014 Decision in CA-G.R. CV No. 100945 was penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Eduardo B. Peralta, Jr. of the Special Second Division, Court of Appeals, Manila.

[3] Id. at 57.

[4] Id. at 59 and 64.

[5] Id. at 49.

After finding the application sufficient in form and substance, the Regional Trial Court issued an *ex-parte* Temporary Protection Order, which contained the following terms:

1. Prohibiting Respondent from threatening or committing any acts that constitute acts of violence, from directly or indirectly harassing, annoying, contracting or otherwise communicating with petitioner, including the sending of harassing, degrading, demeaning and/or threatening text messages and any other [text] messages to petitioner, as well [as] similar text messages to their relatives, common friends, and acquaintances that serve to degrade, demean, harass and threaten petitioner;

2. To immediately remove his own person from 77828 Beachwood Gem Block, Phase 2, Marcelo Green Village, Barangay Marcelo Green, Parañaque City, where petitioner resides, for the latter's own protection;

3. To stay away from petitioner and her children, as well as other household members including household help, at a reasonable distance as may be specified by the Honorable Court, and to stay away from the place of business and other specified places frequented by petitioner and her children;

4. To cease and desist from using or going near any firearm or other deadly weapon, and to immediately turn over any firearms that he may have to the Court for appropriate disposition, including revocation of license and disqualification of any license (sic) to use or to possess any firearm.[6]

In his Answer, Roberto denied the allegations in the Petition. He also prayed for damages, attorney's fees, and other litigation expenses by way of counterclaim.[7]

In a January 18, 2012 Order, the Regional Trial Court denied the reliefs Roberto had sought. It also modified the Temporary Restraining Order[8] to read:

1. Prohibiting respondent from threatening or committing any acts that constitute acts of violence, from directly or indirectly harassing,

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[6] Id. at 50.

[7] Id. at 50-51.

[8] Id. at 51.

annoying, contacting or otherwise communicating with petitioner, **in any form, by landline telephone, mobile phone, fax machine, e-mail and other means**, including the sending of harassing, degrading, demeaning, and/or threatening text messages, and any other text messages to their relatives, common friends, and acquaintances that serve to degrade, demean, harass, and threaten [petitioner] or in any form;

2. To immediately remove his own person from **77828 Beachwood Gem Block, Phase 2, Marcelo Green Village, Barangay Marcelo Green, Parañaque City**, where petitioner resides, for the latter's own protection;

3. To stay away from petitioner and her children, **namely: Manuel Roberto S. Estacio II, Maria Katrina Ann S. Estacio and Sharlene Mae S. Estacio, through whom respondent would find a way to communicate to, and/or physically reach petitioner, as well as other household members, including househelp, namely: Charita Sermonit Santos and 'Neneng', at a distance of no less than two (2) kilometers radius, to stay away from the residence of dwelling, place of business or employment or such places known to both petitioner and respondent to be frequented by petitioner, and the above-named family members or household members**;

4. To stay away from coming within five hundred (500) meters radius from the entrance and/or exit gates of Marcelo Green Village, Parañaque City; and

5. To cease and desist from using or going near any firearm or other deadly weapon, and to immediately turn over and surrender any firearms that he may have to the Court for appropriate disposition, including revocation of license and disqualification of any license (sic) to use or to possess any firearm.[9] (Emphasis in the original)

This modified Temporary Restraining Order was extended several times in the course of the trial.[10] Finally, in a February 20, 2013 Decision, the Regional Trial Court made the Temporary Protection Order permanent.[11]

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[9] Id. at 51-52.

[10] Id. at 52.

[11] Id. at 48.

Roberto appealed to the Court of Appeals. While he did not oppose the Permanent Protection Order, he questioned some of its terms, such as the inclusion of his adult children. He claimed that the term "children" only covers those below 18 years old, or those incapable of taking care of themselves, as defined under Section 3 (h) of Republic Act No. 9262.[12] He also argued that the directive that he should stay away from Victoria at a distance of a two-kilometer radius was excessive.[13]

In its March 19, 2014 Decision,[14] the Court of Appeals affirmed the Regional Trial Court's Decision. It ruled that Section 8 (d) of Republic Act No. 9262 does not only limit protection orders to women and her children, but includes "any designated family or household member" as well.[15]

Examining Section 4 of this Court's Rule on Violence Against Women and Their Children,[16] which states that family members include among others "husband and wife, parents and children, the ascendants or descendants," the Court of Appeals ruled that the provision does not limit what "children" means, and thus, may include the spouses' adult children.[17] It cited Section 4 of Republic Act No. 9262, which calls for the law's liberal construction to attain its objective of protecting abuse victims.[18]

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[12] Id. at 64. Republic Act No. 9262 (2004), sec. 3 (h) states:

(h) "Children" refers to those below eighteen (18) years of age or older but are incapable of taking care of themselves as defined under Republic Act No. 7610. As used in this Act, it includes the biological children of the victim and other children under her care.

[13] Id.

[14] Id. at 48-72.

[15] Id. at 64-65. Republic Act No. 9262 (2004), sec. 8 (d) states:

(d) Directing the respondent to stay away from petitioner and any designated family or household member at a distance specified by the court, and to stay away from the residence, school, place of employment, or any specified place frequented by the petitioner and any designated family or household member.

[16] A.M. No. 04-10-11-SC (2004).

[17] *Rollo*, p. 65.

[18] Id.

The Court of Appeals also saw from Victoria's testimony how Roberto used their children to harass her, warranting their inclusion in the Permanent Protection Order. She testified that since Roberto could not talk to her personally and she would not reply to his messages, he would instead message their children, but copy furnish them to Victoria.[19] One of his text messages reads: "*[B]akit ninyo kinakampihan [ang] nanay nyo samantalang siya ay isang puta, siya ay magnanakaw*."[20]

The Court of Appeals also found that the children were subjected to psychological violence, as defined under Section 3 (c) of Republic Act No. 9262.[21] The children witnessed how Roberto physically and verbally abused Victoria, prompting them to advise their mother to leave their house for fear that Roberto might kill her. They also received text messages from Roberto, manifesting his intent to commit suicide. To the Court of Appeals, the Permanent Protection Order "preserved what little respect the children have left for their father and the bond between them," given that Roberto had violated the Temporary Protection Order and continued to hound Victoria and her children.[22]

The Court of Appeals also rejected Roberto's argument that the two-kilometer radius was excessive. It ruled that Section 8 (d) of Republic Act No. 9262 leaves this determination to the court's discretion, which must not be disturbed absent grave abuse of discretion.[23]

The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the appeal is **DENIED** and the assailed decision dated February 20, 2013 of the RTC, Parañaque City, Branch 194, in Civil Case No. 11-0527 is hereby **AFFIRMED**.[24]

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[19] Id. at 66-67.

[20] Id. at 66.

[21] Id. at 67.

[22] Id. at 68.

[23] Id. at 69.

[24] Id. at 71.

Hence, Roberto filed this Petition[25] against Victoria.

Petitioner argues that when the alleged acts occurred, their children were already past 18 years old; thus, the acts could not have fallen under the definition of "violence" under Republic Act No. 9262 because its Section 3 (h) defines children as those under 18 years old, or older but are incapable of protecting themselves. While he admits that violence can also be committed against adult children, he insists that their case is not the kind that justifies the law's application.[26]

Petitioner concedes that adult children may be included in a stay-away directive under a protection order. He qualifies this, however, arguing that such directive must only be issued when needed to ensure the petitioning party's protection, and must still be in line with restorative justice.[27]

Expounding on this, petitioner posits that issuing the "extreme measure of a stay away directive" judicially severs a family relationship by removing physical presence among family members.[28] Given the State policy of protecting the family as a basic social institution, petitioner argues that the factual basis for a stay-away directive covering adult children must be determined separately from the issue of whether the wife is entitled to the relief sought. He says that the family relations between husband and wife on one hand, and those between a father and his children on the other, are related but are ultimately independent of each other.[29]

Meanwhile, in invoking restorative justice, petitioner submits that a permanent protection order should not affect the offending party's relations with other family members, especially those not parties to the case.[30] He argues that restorative justice demands

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[25] Id. at 4-18.

[26] Id. at 7.

[27] Id.

[28] Id. at 8.

[29] Id.

[30] Id.

a rigorous determination of the circumstances in each case, and that any doubts should be resolved in favor of preserving what is left of the family relations.[31] He cites *Republic v. Molina*[32] to show that actions resulting in severing family relations require a rigorous judicial determination.[33]

In her Comment,[34] respondent echoes the Court of Appeals in arguing that adult children can be included in a protection order. Citing Section 8 (d) of Republic Act No. 9262 and the Rule on Violence Against Women and Their Children, she maintains that the court can designate family members as beneficiaries of protection orders,[35] including adult children.[36]

Respondent claims that there is undisputed evidence on record showing that petitioner directly and indirectly harassed and inflicted psychological violence on his own children. She claims that this further justifies the children's inclusion in the Permanent Protection Order.[37]

Citing congressional records,[38] respondent posits that the legislative intent behind Republic Act No. 9262 was to also cover children, regardless of age.[39] She claims that to apply protection orders only to children below 18 years old would be to suppress the law's purpose.[40]

Respondent also belies petitioner's claim that the issue of whether the petitioning party is entitled to a protection order

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[31] Id. at 8-9.

[32] 335 Phil. 664 (1997) [Per J. Panganiban, En Banc].

[33] *Rollo*, pp. 9-11.

[34] Id. at 85-117.

[35] Id. at 92-94.

[36] Id. at 94.

[37] Id. at 95.

[38] Id. at 100-101.

[39] Id. at 99.

[40] Id. at 101.

must be determined separately from the issue of who are covered by it. In any case, she says that such determination is factual and is outside this Court's power of review.[41]

Respondent also asserts that petitioner's reliance on the principle of restorative justice is misplaced. She points out that restorative justice entails that the offenders acknowledge their transgression, which petitioner has not done.[42]

Finally, respondent cites *Go-Tan v. Tan*[43] and maintains that the Court of Appeals correctly applied the liberal construction rule in ruling that family members can also include adult children.[44]

In his Reply,[45] petitioner proposes an interpretation that would supposedly harmonize the definition of "children" under Section 3 (h) and the term "other family members" under Section 8 (d) of Republic Act No. 9262.[46] He suggests that adult children can only fall within the ambit of the law in the following instances: *first*, when filing for protection orders on their mother's behalf; *second*, when included in the protection order, provided that they are also household members of their mother; and *third*, when included in the protection order even if they are not household members of their mother, provided that it would safeguard their mother from further harm, minimize disruption in her daily life, and facilitate her opportunity and ability "to independently regain control over her life."[47]

Petitioner also claims that Section 11 of the Rule on Violence Against Women and Their Children requires the consent of any designated family member who may be included in a

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[41] Id. at 103.

[42] Id. at 109.

[43] 588 Phil. 532 (2008) [Per J. Austria-Martinez, Third Division].

[44] *Rollo*, pp. 111-113.

[45] Id. at 156-168.

[46] Id. at 159.

[47] Id. at 161.

protection order. According to him, their children never consented to be included, as they wanted to remain neutral in the case.[48]

The sole issue for this Court's resolution is whether or not the adult children of Roberto Estacio y Salvosa and Ma. Victoria Estacio y Santos may be included in the stay-away directive under the Permanent Protection Order issued pursuant to Republic Act No. 9262.

I

Republic Act No. 9262 is a social legislation enacted as a measure to address domestic violence. It acknowledges that in situations where abuse happens at home, women are the likely victims. This is largely due to the unequal power relationship between men and women, and the widespread gender bias and prejudice against women which have historically prevented their full advancement, forcing them into subordination to men.[49]

The law specifically protects women from violence committed in the context of an intimate relationship, which can be physical violence, sexual violence, psychological violence, or economic abuse. This also includes those committed against the woman's child.[50]

This law's constitutionality was challenged in *Garcia v. Drilon*.[51] There, a woman sought a temporary protection order for herself and her minor children against her husband, who committed physical, emotional, psychological, and economic abuse against her. At one point, the physical abuse caused some bruises, hematoma, and bleeding. The husband also had an extramarital affair and even boasted his sexual relations to their house help. He would also turn his ire on their daughter, whom he beat on the chest and slapped many times, because he thought

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[48] Id. at 161-162.

[49] *Garcia v. Drilon*, 712 Phil. 44, 85 (2013) [Per J. Perlas-Bernabe, En Banc].

[50] Republic Act No. 9262 (2004), sec. 3 (a).

[51] 712 Phil. 44 (2013) [Per J. Perlas-Bernabe, En Banc].

she was the one who discovered his extramarital affair. All these had driven the wife to attempt suicide. When the husband learned of this, he simply fled the house instead of taking his wife to the hospital. He also never bothered to visit her in the hospital during the one week that she was confined.[52]

The trial court in *Garcia* issued a temporary protection order, which was subsequently modified and extended multiple times. Eventually, the husband refused to comment on a motion to renew the temporary protection order, and instead filed a petition for prohibition before the Court of Appeals. There, he assailed the constitutionality of Republic Act No. 9262, arguing that it violated the equal protection clause. When the Court of Appeals dismissed his petition, Garcia elevated the case to this Court.[53]

This Court upheld the law, ruling that it was founded on substantial distinctions, particularly the unequal power relationship between men and women:

> The unequal power relationship between women and men; the fact that women are more likely than men to be victims of violence; and the widespread gender bias and prejudice against women all make for real differences justifying the classification under the law. As Justice McIntyre succinctly states, "the accommodation of differences . . . is the essence of true equality."
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> . . . .
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> According to the Philippine Commission on Women (the National Machinery for Gender Equality and Women's Empowerment), violence against women (VAW) is deemed to be closely linked with the unequal power relationship between women and men otherwise known as "gender-based violence." Societal norms and traditions dictate people to think men are the leaders, pursuers, providers, and take on dominant roles in society while women are nurturers, men's companions and supporters, and take on subordinate roles in society. This perception leads to men gaining more power over women. With power comes the need to control to retain that power. And VAW is a form of

[52] Id. at 67-68.

[53] Id. at 76-77.

men's expression of controlling women to retain power.[54] (Citations omitted)

Hence, Republic Act No. 9262 has been upheld as a valid law meant to address this historical and societal problem.[55]

This unequal power relation is better understood when one considers its deep historical roots:

> The perspective portraying women as victims with a heritage of victimization results in the unintended consequence of permanently perceiving all women as weak. This has not always been accepted by many other strands in the Feminist Movement.
>
> As early as the 70s, the nationalist movement raised questions on the wisdom of a women's movement and its possible divisive effects, as "class problems deserve unified and concentrated attention [while] the women question is vague, abstract, and does not have material base."
>
> In the early 80s, self-identifying feminist groups were formed. The "emancipation theory" posits that female crime has increased and has become more masculine in character as a result of the women's liberation movement.
>
> Feminism also has its variants among Muslims. In 2009, Musawah ("equality" in Arabic) was launched as a global movement for equity and justice in the Muslim family. It brought together activists, scholars, legal practitioners, policy makers, and grassroots women and men from all over the world. Their belief is that there cannot be justice without equality, and its holistic framework integrates Islamic teachings, universal human rights, national constitutional guarantees of equality, and the lived realities of women and men.[56] (Citations omitted)

Nevertheless, it is improper to think that women are always victims. This will only reinforce their already disadvantaged

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[54] Id. at 91-92.

[55] Id. at 112.

[56] J. Leonen, Concurring Opinion in *Garcia v. Drilon*, 712 Phil. 44, 170-171 (2013) [Per J. Perlas-Bernabe, En Banc].

position. At the same time, we must also acknowledge that men can also be victims of domestic abuse in a patriarchal society:

> There is now more space to believe that portraying only women as victims will not always promote gender equality before the law. It sometimes aggravates the gap by conceding that women have always been dominated by men. In doing so, it renders empowered women invisible; or, in some cases, that men as human beings can also become victims.
>
> In this light, it may be said that violence in the context of intimate relationships should not be seen and encrusted as a gender issue; rather, it is a power issue. Thus, when laws are not gender-neutral, male victims of domestic violence may also suffer from double victimization first by their abusers and second by the judicial system. Incidentally, focusing on women as the victims entrenches some level of heteronormativity. It is blind to the possibility that, whatever moral positions are taken by those who are dominant, in reality intimate relationships can also happen between men.[57] (Citations omitted)

This is one of those cases. Boys and even adult men, like one of the children here, who are part of households where domestic abuse occurs also deserve protection. They, too, deserve insulation from any form of violence enabled by a patriarchal system — not only because of the need to preserve the harmony within the household, but also because of their inherent dignity and right to be free from such abuse.

Thus, the law gives victims of violence remedies that can address their situation. One innovative creation of this law is the remedy of protection orders, which are issued to protect the woman and her child from further acts of violence committed by the offender. They safeguard "the victim from further harm, minimizing any disruption in the victim's daily life, and facilitating the opportunity and ability of the victim to independently regain control over her life."[58]

Of the many reliefs that may be granted under a protection order, the main controversy in this case revolves around the one provided in Section 8 (d) of Republic Act No. 9262:

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[57] Id. at 171-172.

[58] Republic Act No. 9262 (2004), sec. 8.

SECTION 8. Protection Orders. — A protection order is an order issued under this Act for the purpose of preventing further acts of violence against a woman or her child specified in Section 5 of this Act and granting other necessary relief. The relief granted under a protection order should serve the purpose of safeguarding the victim from further harm, minimizing any disruption in the victim's daily life, and facilitating the opportunity and ability of the victim to independently regain control over her life. The provisions of the protection order shall be enforced by law enforcement agencies. The protection orders that may be issued under this Act are the barangay protection order (BPO), temporary protection order (TPO) and permanent protection order (PPO). The protection orders that may be issued under this Act shall include any, some or all of the following reliefs:

. . . .

(d) Directing the respondent to stay away from petitioner and any designated family or household member at a distance specified by the court, and to stay away from the residence, school, place of employment, or any specified place frequented by the petitioner and any designated family or household member.

This provision is reflected in the Rule on Violence Against Women and Their Children[59] promulgated by this Court. Section 11, paragraphs (d) and (e) of the Rule state:

SECTION 11. Reliefs available to the offended party. — The protection order shall include any, some or all of the following reliefs:

. . . .

(d) Requiring the respondent to stay away from the offended party and any designated family or household member at a distance specified by the court;

(e) Requiring the respondent to stay away from the residence, school, place of employment or any specified place frequented regularly by the offended party and any designated family or household member.

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[59] A.M. No. 04-10-11-SC (2004).

This Court agrees with the Court of Appeals that neither Republic Act No. 9262 nor the Rule distinguishes children as to their age when they are referred to as being covered by protection orders. Notably, Section 8 (d) of Republic Act No. 9262 simply provides "designated family or household member[s]" as the possible beneficiaries of protection orders.

Meanwhile, Section 4 (c) of the Rule defines who family members are:

> SECTION 4. Definitions. — As used in this Rule:
>
> (c) "Members of the family" shall include husband and wife, parents and children, the ascendants or descendants, brothers and sisters, whether of the full or half blood, whether living together or not.

Thus, when the law speaks of family members in the context of protection orders, it also covers descendants as a whole class — even those who are no longer considered "children" under Section 3 (h) of the law.

Petitioner's insistence on the conflict between Section 3 (h) and Section 8 (d) is more imaginary than real. The text of the law is clear. Courts have the discretion to designate family members who will be included in protection orders, as long as it is in line with the remedy's purpose: to safeguard the victim from further harm, minimize disruptions in her daily life, and let her independently regain control over her life.[60] Petitioner himself admits that adult children may be included in the protection order, as long as it is in line with these objectives.[61]

Republic Act No. 9262 itself mandates a liberal construction of the law to advance its objectives, as applied in *Go-Tan v. Tan*.[62]

In *Go-Tan*, a woman sought a protection order not just against her husband but also against her parents-in-law. She alleged

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[60] Republic Act No. 9262 (2004), sec. 8.

[61] *Rollo*, p. 161.

[62] 588 Phil. 532 (2008) [Per J. Austria-Martinez, Third Division].

that her husband, in conspiracy with her parents-in-law, caused verbal, psychological, and economic abuses against her in violation of Republic Act No. 9262. They allegedly gave her insufficient financial support, harassed her to leave the family home, and employed other kinds of abuses.[63]

Initially, the trial court issued a temporary protection order, but eventually dismissed the case as to the parents-in-law on the ground that, being parents-in-law, they were not covered as respondents under Republic Act No. 9262. The wife questioned the ruling before this Court, arguing that her parents-in-law should be covered by Republic Act No. 9262 as they were allegedly her husband's conspirators in the commission of violence against her.[64]

This Court agreed with the wife and acknowledged that violence may be committed against a woman, directly or indirectly, by an offender through other persons. In keeping with the law's policy to protect the safety of victims of violence, this Court allowed the parents-in-law to remain as respondents in the petition for a protection order.[65] Since Section 4 of the law expressly mandated its liberal construction, this meant that courts are bound to interpret its provisions in a manner that advances the intent behind the law, thus:

> It bears mention that the intent of the statute is the law and that this intent must be effectuated by the courts. In the present case, the express language of R.A. No. 9262 reflects the intent of the legislature for liberal construction as will best ensure the attainment of the object of the law according to its true intent, meaning and spirit — the protection and safety of victims of violence against women and children.[66]

Thus, in *Go-Tan*, where the parents-in-law conspired with their son to inflict violence on the wife, this Court deemed fit

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[63] *Go-Tan v. Tan*, 588 Phil. 532, 534-536 (2008) [Per J. Austria-Martinez, Third Division].

[64] Id. at 536-538.

[65] Id. at 543.

[66] Id. at 542.

to allow them to remain impleaded in the case — breathing life to the spirit of Republic Act No. 9262, which is to protect the victim from further violence.

The same reasoning applies here. In this case, petitioner both directly and indirectly inflicted violence on respondent. When he could not get any response from her, he used their children to contact and harass her, sending them text messages that demeaned their mother. He even copy furnished respondent with these messages to make sure that she knew what he told their children. This adds further insult to the words. At any rate, the messages were targeted, albeit indirectly, at respondent to harass her.

Just as in *Go-Tan*, the trial court here deemed fit to include the children in the Permanent Protection Order, as this would give life to the law's policy of protecting respondent from the violence committed against her.

II

Petitioner's harassment of respondent through their children is a classic case of coercive control.

Although not expressly mentioned, coercive control is recognized as a form of psychological violence under Republic Act No. 9262.[67] Psychological violence is defined under Section 3 (a) (C) as:

> SECTION 3. Definition of Terms. — As used in this Act,
>
> (a) "*Violence against women and their children*" refers to any act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion,

[67] *Tani-De La Fuente v. De La Fuente*, 807 Phil. 31, 49 (2017) [Per J. Leonen, Second Division].

harassment or arbitrary deprivation of liberty. It includes, but is not limited to, the following acts:

. . . .

C. "*Psychological violence*" refers to acts or omissions causing or likely to cause mental or emotional suffering of the victim such as but not limited to intimidation, harassment, stalking, damage to property, public ridicule or humiliation, repeated verbal abuse and mental infidelity. It includes causing or allowing the victim to witness the physical, sexual or psychological abuse of a member of the family to which the victim belongs, or to witness pornography in any form or to witness abusive injury to pets or to unlawful or unwanted deprivation of the right to custody and/or visitation of common children.

As a form of psychological violence, coercive control pertains to a "pattern of behavior meant to dominate a partner through different tactics such as physical and sexual violence, threats, emotional insults, and economic deprivation."[68]

In relationships where coercive control exists, dominant partners do things that help them exert long-term power and control over their partners,[69] such as isolating them from society, manipulating their children, using their male privilege, or employing economic abuse.[70]

While domestic abuse has traditionally been seen only through physical abuse, violence can and does occur in other forms, such as psychological abuse. It is helpful to not only look at isolated acts — usually of physical abuse — but to also focus on the effects of these acts on the coercion and control of one partner over the other.[71] To achieve a fuller understanding of

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[68] Id.

[69] Nancy Ver Steegh, *The Uniform Collaborative Law and Intimate Partner Violence: A Roadmap for Collaborative (and Non-Collaborative) Lawyers*, 38 HOFSTRA LAW REVIEW 699, 714 (2009).

[70] Id.

[71] Tamara K. Keunnen, *Analyzing the Impact of Coercion on Domestic Violence Victims: How Much is Too Much*, 22 BERKELEY JOURNAL OF GENDER, LAW & JUSTICE 2, 10 (2007).

domestic violence, its distorting consequences on the dynamics that exist in an intimate relationship should be important considerations. Its damaging effects on the freedom of victims to live their lives in peace are, after all, what the law ultimately seeks to eliminate.

Here, petitioner's intent to intimidate and dominate respondent is readily seen. Back when they still cohabited, petitioner would verbally and physically abuse respondent in front of their children. His threats to kill her were so real that even their children advised her to leave the conjugal home because they feared for her life. When he no longer had contact with her, petitioner resorted to using their children as pawns. He would use this passive-aggressive behavior to assert his perceived dominance over respondent when he could not get what he wanted. All of these can be characterized as psychological violence committed against respondent, which have disrupted respondent's life.

Thus, whether petitioner committed acts of violence directly against his children is beside the point. That the children were exploited so that he could indirectly harass respondent is sufficient basis for their inclusion in the stay-away directive. To begin with, petitioner himself dragged their children in the controversy. With the stay-away directive, petitioner can no longer use their children to inflict violence on respondent.

Citing the rationale behind the Rule on Violence Against Women and Their Children, this Court held in *Garcia*:

> The scope of reliefs in protection orders is broadened to ensure that the victim or offended party is afforded all the remedies necessary to curtail access by a perpetrator to the victim. This serves to safeguard the victim from greater risk of violence; to accord the victim and any designated family or household member safety in the family residence, and to prevent the perpetrator from committing acts that jeopardize the employment and support of the victim.[72]

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[72] *Garcia v. Drilon*, 712 Phil. 44, 105 (2013) [Per J. Perlas-Bernabe, En Banc].

III

Petitioner also argues the lack of their children's consent to being included in the Permanent Protection Order.

While Section 8 (k) of Republic Act No. 9262 requires the consent of family and household members, this requirement must only be met in instances when a court grants a relief not mentioned in the law. Section 8 (k) provides:

> SECTION 8. *Protection Orders*. — . . .
>
> . . . .
>
> (k) Provision of such other forms of relief as the court deems necessary to protect and provide for the safety of the petitioner and any designated family or household member, provided petitioner and any designated family or household member consents to such relief.

This is replicated in the last paragraph of Section 11 of the Rule on Violence Against Women and Their Children:

> SECTION 11. Reliefs available to the offended party. — The protection order shall include any, some or all of the following reliefs:
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> . . . .
>
> The court may grant such other forms of relief to protect the offended party and any designated family or household member who consents to such relief.

The law recognizes that it cannot provide an exhaustive list of reliefs that can address all kinds of problems in situations of violence. Section 8 (k) is a catch-all provision that gives courts the space to devise reliefs that are truly responsive to the problems of each case. Our courts are allowed the liberty to create solutions that will apply even to peculiar circumstances.

In instances when the law calls for the courts' exercise of discretion, consent from the affected persons is required as a measure to ensure that the reliefs ultimately granted are beneficial and protective of their interests. This consent requirement, however, is not necessary for specific reliefs already designed

and granted by the law under paragraphs (a) to (j) of Section 8, including stay-away directives under paragraph (d).

IV

Petitioner also harps on broad principles such as restorative justice and the family as a basic social institution in arguing against the inclusion of his adult children in the Permanent Protection Order.

Restorative justice is a concept usually applied in criminal punishments. As defined in Philippine law, it is the "principle which requires a process of resolving conflicts with the maximum involvement of the victim, the offender and the community. It seeks to obtain reparation for the victim; reconciliation of the offender, the offended and the community; and reassurance to the offender that he/she can be reintegrated into society. It also enhances public safety by activating the offender, the victim and the community in prevention strategies."[73]

In penology, restorative justice posits that conflict resolution should be aimed at restoring relations within the community. This process involves the active participation of all persons affected, including victims who are given the opportunity to confront their offenders, to let the offenders know the harm caused to them and their community. In turn, remorseful offenders who accept responsibility for their mistakes are given the opportunity to be rehabilitated and ultimately reintegrated into society.[74]

The Rule on Violence Against Women and Children expressly states in Section 2[75] that it shall be liberally construed to promote

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[73] Republic Act No. 9344 (2006), sec. 4 (q). This definition is replicated in A.M. No. 02-1-18-SC (2002), sec. 4 (o).

[74] United Nations Office on Drugs and Crime, *Handbook on Restorative Justice Programmes*, CRIMINAL JUSTICE HANDBOOK SERIES (2006) 9-11, available at <https://www.unodc.org/pdf/criminal_justice/Handbook_on_Restorative_Justice_Programmes.pdf> (last accessed on September 15, 2020).

[75] A.M. No. 04-10-11-SC (2004), sec. 2 states:

the law's objectives pursuant to restorative justice. One of these objectives is to ensure that both the offender and the offended party are given the proper treatment. Thus, the Rule contains reliefs aimed at both the protection of the victims and the restoration of the offender.

Protection orders have this dual function. The reliefs enumerated under Republic Act No. 9262 are protective in nature, aiming to prevent continuous harm done to the woman, her children, or other relevant members of the household:

SECTION 8. *Protection Orders*. — . . .

(a) Prohibition of the respondent from threatening to commit or committing, personally or through another, any of the acts mentioned in Section 5 of this Act;

(b) Prohibition of the respondent from harassing, annoying, telephoning, contacting or otherwise communicating with the petitioner, directly or indirectly;

(c) Removal and exclusion of the respondent from the residence of the petitioner, regardless of ownership of the residence, either temporarily for the purpose of protecting the petitioner, or permanently where no property rights are violated, and, if respondent must remove personal effects from the residence, the court shall direct a law enforcement agent to accompany the respondent to the residence, remain there until respondent has gathered his things and escort respondent from the residence;

(d) Directing the respondent to stay away from petitioner and any designated family or household member at a distance specified by the court, and to stay away from the residence, school, place of employment, or any specified place frequented by the petitioner and any designated family or household member;

(e) Directing lawful possession and use by petitioner of an automobile and other essential personal effects, regardless of ownership, and directing the appropriate law enforcement officer to accompany the petitioner to the residence of the parties to ensure that the petitioner

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SECTION 2. Construction. — This Rule shall be liberally construed to promote its objectives pursuant to the principles of restorative justice.

is safely restored to the possession of the automobile and other essential personal effects, or to supervise the petitioner's or respondent's removal of personal belongings;

(f) Granting a temporary or permanent custody of a child/children to the petitioner;

(g) Directing the respondent to provide support to the woman and/or her child if entitled to legal support. Notwithstanding other laws to the contrary, the court shall order an appropriate percentage of the income or salary of the respondent to be withheld regularly by the respondent's employer for the same to be automatically remitted directly to the woman. Failure to remit and/or withhold or any delay in the remittance of support to the woman and/or her child without justifiable cause shall render the respondent or his employer liable for indirect contempt of court;

(h) Prohibition of the respondent from any use or possession of any firearm or deadly weapon and order him to surrender the same to the court for appropriate disposition by the court, including revocation of license and disqualification to apply for any license to use or possess a firearm. If the offender is a law enforcement agent, the court shall order the offender to surrender his firearm and shall direct the appropriate authority to investigate on the offender and take appropriate action on the matter;

(i) Restitution for actual damages caused by the violence inflicted, including, but not limited to, property damage, medical expenses, childcare expenses and loss of income;

(j) Directing the DSWD or any appropriate agency to provide petitioner temporary shelter and other social services that the petitioner may need; and

(k) Provision of such other forms of relief as the court deems necessary to protect and provide for the safety of the petitioner and any designated family or household member, provided petitioner and any designated family or household member consents to such relief.

These protective and preventive reliefs are replicated in the Rule on Violence Against Women and Their Children,[76] but

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[76] A.M. No. 04-10-11-SC (2004), sec. 11 (a) to (j) and sec. 11 (1). The reliefs enumerated in these paragraphs are similar to those listed in Republic Act No. 9262.

with one addition. Section 11 (k) expressly provides this included relief:

> (k) Requiring the respondent to receive professional counseling from agencies or persons who have demonstrated expertise and experience in anger control, management of alcohol, substance abuse and other forms of intervention to stop violence. The program of intervention for offenders must be approved by the court. The agency or person is required to provide the court with regular reports of the progress and result of professional counseling, for which the respondent may be ordered to pay.

This addition is in line with the policy of promoting restorative justice. When the Rule speaks of restorative justice, it pertains to the features in the law and the Rule that support the protection of victims and the rehabilitation of offenders. Offenders may be given intervention programs designed to address their problems with aggression and violence. This finds basis in Section 41 of Republic Act No. 9262, which states:

> SECTION 41. *Counseling and Treatment of Offenders*. — The DSWD shall provide rehabilitative counseling and treatment to perpetrators towards learning constructive ways of coping with anger and emotional outbursts and reforming their ways. When necessary, the offender shall be ordered by the Court to submit to psychiatric treatment or confinement.

Thus, protection orders do not stop with preventive actions directed against the perpetrator. Courts can require, as we do now, that offenders undergo a workable program of counseling with a certified professional psychological therapist. If required by that therapist, the offenders may also be referred to a psychiatrist, who may prescribe the proper medication while they undergo therapy to stabilize their aggressive and violent tendencies. Should the offenders wish to lift or amend the protection order, they should file the proper motion with the court of origin. No amendment can be allowed without the consent of the spouse or the persons protected by the protection order. Also, the court must be convinced through testimony

from a qualified independent professional therapist that the offenders' proclivity for aggression and violence has been properly addressed.

Moreover, in this case, since the children are of age, they may — on their own and without any direct or indirect pressure by petitioner — move to have the Permanent Protection Order lifted as to them. However, the modification of the Order to allow supervised visits or any other form of contact should also depend on the positive conclusions from a testimony of an independent professional therapist chosen by the court. Nonetheless, any amendment of the Order shall only happen with the consent of respondent wife. This is to ensure that her protection and safety remain the prime considerations.

V

Petitioner's reliance on *Republic v. Molina*[77] is also inapplicable. That case concerns a petition for declaration of absolute nullity of marriage under Article 36 of the Family Code, not a protection order. The guidelines laid down in *Molina* on the severance of marriage and family relations must be read in the context of a marriage nullity proceeding. These guidelines are wholly inapplicable here.

Our marriage laws have envisioned the family in its traditional sense, so much so that marriage is defined as the family's foundation.[78] This tends to reinforce an idea of the family that is far from the realities of many couples and children.[79] Nevertheless, relations between husband and wife are not the be-all and end-all of what a family is supposed to be. Many living arrangements may be considered non-traditional — such as some unmarried couples who cohabit without the benefit of marriage, or even households with solo parents — yet they no

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[77] 335 Phil. 664 (1997) [Per J. Panganiban, En Banc].

[78] FAMILY CODE, art. 1.

[79] *Republic v. Manalo*, 831 Phil. 33, 66 (2018) [Per J. Peralta, En Banc].

less deserve to be called a family. A relationship between a husband and a wife does not define a family.

More important, when the husband employs psychological violence, the law will step in to protect the wife and the children. The remaining members will be regarded as the family to be protected by the law. This is because when violence occurs, the perpetrator must be separated to protect the peace necessary for the other family members. The Constitution's and the law's regard for the protection of the family does not amount to a toleration of violence.

Republic Act No. 9262 is a measure taken by the State to address a societal problem it identified as deserving of social legislation. Violence against women and their children has continued throughout history, and it is a societal illness that needs correction. This is the law's objective. It does not intend to sever familial ties, but to preserve and harmonize the family by protecting its members from violence and threats to their safety and security.

WHEREFORE, the Petition is **DENIED**. The March 19, 2014 Decision of the Court of Appeals in CA-G.R. CV No. 100945 is **AFFIRMED**.

The Decision making the Protection Order permanent is **AMENDED** to include a provision requiring petitioner Roberto Estacio y Salvosa to receive professional counseling from an agency or professional with shown expertise and experience in anger management and other forms of intervention to address his penchant for psychological coercion and other forms of violence.

The Regional Trial Court of Parañaque City, Branch 194 is **ORDERED** to approve an intervention program for petitioner, for which he shall be ordered to pay, as designed by the Department of Social Welfare and Development or a professional psychological therapist. The Regional Trial Court is further ordered to monitor the progress, completion, and results of the counseling by requiring regular reports from such agency or

professional. The Regional Trial Court shall determine the frequency of these reports.

The Permanent Protection Order shall not be lifted or amended except upon motion of petitioner, respondent Ma. Victoria Estacio y Santos, or any of their children with respect to themselves. The lifting or amendment of the Order shall only be with the consent of respondent, and upon satisfying the Regional Trial Court through expert testimony that petitioner is no longer a danger to the persons protected after receiving professional counseling.

Let a copy of this Decision be furnished to the Regional Trial Court of Parañaque City, Branch 194 for implementation.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 214231. September 16, 2020]

MARILYN Y. GIMENEZ, *Petitioner, v.* **PEOPLE OF THE PHILIPPINES AND LORAN INDUSTRIES, INCORPORATED,** *Respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; AS A RULE, ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN; AN EXCEPTION IS WHEN THE TRIAL COURT OVERLOOKED MATERIAL AND RELEVANT MATTERS; CASE AT BAR.— The determination of the guilt of an accused hinges on how a court appreciates evidentiary matters in relation to the requisites of an offense. Determination of guilt is, thus, a fundamentally factual issue. The Supreme Court is not a trier of facts. Petitioner's Rule 45 petition should therefore only raise questions of law and not of facts. However, in exceptional circumstances, such as when the trial court overlooked material and relevant matters, the Court will recalibrate and evaluate factual findings of the trial courts.

In this case, We find the need to re-assess the unanimous factual finding of the MTCC, RTC, and CA for having overlooked the material evidence adduced by petitioner in support of her defense.

2. CRIMINAL LAW; FELONIES, HOW COMMITTED.— Felonies are committed either by means of deceit (*dolo*) or by means of fault (*culpa*). There is deceit when the wrongful act is performed with deliberate intent.

3. ID.; FALSIFICATION OF A PUBLIC DOCUMENT; TO INCUR LIABILITY THEREFOR, THE PERPETRATOR MUST PERFORM THE PROHIBITED ACT WITH DELIBERATE INTENT; CONVICTION THEREFOR WILL NOT BE SUSTAINED WHEN THE FACTS FOUND ARE CONSISTENT WITH GOOD FAITH.— We already ruled in a number of cases that in order to incur criminal liability for falsification of a public document, the perpetrator must perform the prohibited act with deliberate intent. Due to the nature of intent as a state of mind which may be inferred only

through overt acts, there is a need to assess the actions of petitioner ***before, during, and after*** the alleged falsification of the Secretary's Certificate dated August 25, 2003 in order to determine whether she indeed executed the said Secretary's Certificate with malicious criminal intent.

Additionally, a conviction for falsification of a public document by a private person will not be sustained when the facts found are consistent with good faith.

Here, We are convinced that petitioner was not motivated by malicious intent and in fact, she issued the Secretary's Certificate in good faith.

4. ID.; ID.; THE ESSENCE OF FALSIFICATION OF DOCUMENTS IS THE ALTERATION OF TRUTH; CASE AT BAR.— [I]t cannot be said that petitioner was guilty of falsification of the August 25, 2003 Secretary's Certificate. The essence of falsification of documents is the alteration of truth. There was no alteration of truth in this case because the Board of Directors of Loran Industries knew and in fact instructed petitioner, through Paolo, to issue the subject Secretary's Certificate allowing the release of checks with only one signatory. Moreover, the Board of Directors of Loran Industries benefitted from the subject Secretary's Certificate.

APPEARANCES OF COUNSEL

Edmund T. Lao for petitioner.
Office of the Solicitor General for People of the Philippines.
Sapayan Lim Alvares and Ligutan Law Offices for respondent Loran Industries, Inc.

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]

[1] *Rollo*, pp. 15-67.

[2] Penned by Associate Justice Abrabam B. Borreta, with the concurrence of Associate Justices Edgardo L. Delos Santos (now a Member of this Court) and Nina G. Antonio-Valenzuela; id. at 74-10.

dated March 30, 2012 and Resolution[3] dated July 15, 2014 of the Court of Appeals (CA) in CA-G.R. CR No. 01042, which affirmed with modification[4] the conviction of Marilyn Y. Gimenez (petitioner) for falsification of a public document by a private individual under Article 172 (1) in relation to Article 171 (2) of the Revised Penal Code (RPC) and imposed upon her the indeterminate penalty of four (4) months and one (1) day of *arresto mayor* in its maximum period to *prision correccional* in its minimum period, as the minimum term, to three (3) years, six (6) months, and twenty-one (21) days in the medium period of *prision correccional* in its medium and maximum periods, as the maximum term, with an increased fine amounting to ₱5,000.00.[5]

Facts of the Case

Private respondent Loran Industries, Incorporated (Loran Industries) is a private corporation duly registered with the Securities and Exchange Commission (SEC) engaged in manufacturing, selling and exporting furniture products.[6] Loran Industries was incorporated by Antonio Quisumbing (Antonio), Lorna Quisumbing (Lorna), Teresita Bonto, Ramon Quisumbing, Montano Go (Montano), and Norberto Quisumbing, Jr. The present members of the Board of Directors are: Antonio, Lorna, Montano, Martin Antonio Quisumbing (Anton), and Paolo Marco Quisumbing (Paolo). Anton and Paolo, who are the sons of Antonio and Lorna, only hold nominal shares of stocks but are actively involved in the operations of Loran Industries.[7]

Petitioner was an employee of Loran Industries for 25 years. She started as an accounting clerk in 1979 and rose from the

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[3] Penned by Associate Justice Edgardo L. Delos Santos, with the concurrence of Associate Justices Marilyn B. Lagura-Yap and Jhosep Y. Lopez; id. at 71-72.

[4] Id. at 100.

[5] Id.

[6] Id. at 76.

[7] Id. at 211.

ranks to become the head of the company's accounting and finance departments. Petitioner was also designated as corporate secretary until her preventive suspension on October 4, 2005.[8]

On June 19, 2003, the Board of Directors of Loran Industries passed a resolution adopting a two-signatory policy wherein any two of the Directors are authorized and empowered, for and in behalf of the corporation, to sign all checks and dollar withdrawals under Allied Bank, Banilad Branch, Current Account No. 1441002818 and Dollar Account No. 1442000767 and to negotiate, enter into, execute, and deliver any instruments, agreements, and other pertinent documents thereto, effective August 1, 2003.[9]

On August 25, 2003, petitioner executed another Secretary's Certificate[10] stating that on August 15, 2003, the Board approved a resolution allowing only one of the members of the Board to sign and issue checks and dollar withdrawals against the same Allied Bank current and dollar accounts effective the very next day, or on August 26, 2003. The said Secretary's Certificate was notarized by Atty. Juan B. Astete, Jr. on August 25, 2003.[11]

As a result of the execution of the above-mentioned Secretary's Certificate, several checks bearing only one signatory were drawn against the current account of Loran Industries with Allied Bank. The said August 25, 2003 Secretary's Certificate was allegedly discovered by Lorna sometime in October 2004.[12] Consequently, Loran Industries filed a complaint before the Office of the City Prosecutor of Mandaue City. On March 31, 2005, an Information was filed against petitioner for falsification of a public document, accusing her of making it appear that the Board of Directors of Loran Industries participated in, passed, and approved a

[8] Id.

[9] Id. at 247.

[10] Id. at 248.

[11] Id. at 248, 227.

[12] Id. at 77.

resolution designating any one of them as authorized signatory to the checking account of Loran Industries when in truth, they have not.[13]

The prosecution first presented Lorna[14] and Antonio[15] as witnesses. Lorna testified that sometime in October 2004, she saw checks drawn against the account of Loran Industries with Allied Bank bearing only one signature that were honored and paid by the bank. She was surprised because all the while, she knew that under a board resolution, checks issued by Loran Industries should be signed by any two of the authorized signatories. Because of this, she called the manager of Allied Bank and inquired about the matter. The manager informed Lorna that there was a document to support the bank's action and sent her a copy of the August 25, 2003 Secretary's Certificate. Lorna hired an auditor to conduct an audit of the company which began in September 2004. She maintained that there was no meeting or board resolution approved on August 15, 2003 contrary to what was stated in the questioned Secretary's Certificate.[16]

Antonio corroborated the claim of Lorna that there was no meeting or board resolution approved on August 15, 2003. Antonio stressed that the board resolution passed on June 19, 2003 was the real one and they never met again to change the same. He pointed out that the questioned Secretary's Certificate did not bear the signatures of the authorized signatories in contrast with the Secretary's Certificate certifying the two-signatory policy which reflected the signatures of all the authorized signatories.[17]

For the defense, Cleofe Camilo[18] (Camilo) and petitioner were first presented as witnesses. According to Camilo, she was a

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[13] Id. at 210.

[14] Id. at 211-212.

[15] Id. at 212-213.

[16] Id. at 211-212.

[17] Id. at 212-213.

[18] Id. at 213.

co-employee of petitioner who was employed by Loran Industries from 1984 to 2004. Before her resignation, Camilo was the marketing assistant and the one in charge of shipping. As such, Camilo encountered problems in purchasing materials when Loran Industries adopted the two-signatory policy because it resulted in the delay in release of checks since some of the signatories were not always present in the office. The delay in purchasing materials resulted in delay in the shipment or delivery of the orders of the clients of Loran Industries. Hence, she brought her concern to petitioner. Camilo and petitioner went to Paolo to discuss the problem. Paolo told them that he would bring the matter to the Board. She admitted that she does not have knowledge of what happened next. However, after such discussion, she saw checks bearing only one signature being issued.[19]

Petitioner, for her part, testified that aside from being the accounting and finance head, she also acted as Loran Industries' corporate secretary but without any formal appointment nor additional compensation therefor. She attested that as corporate secretary, she just signed resolutions the Board wanted her to make and that actual meetings or elections of the Board of Directors never happened. According to her, Paolo told her that the reason why Loran Industries introduced the two-signatory policy in the issuance of checks is to regulate the cash advances made by the owners of the company.[20]

Petitioner seconded the claim of Camilo that the two-signatory policy resulted in the delay in the shipment and procurement of raw materials because the checks were not ready for encashment without the second signatory. She averred that the company experienced difficulty in processing the checks because most of the time, only Paolo is in the office while the other members of the Board either come in late in the afternoon or were busy with their other commitments. Because of these concerns, petitioner decided to discuss the matter with Paolo

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[19] Id.

[20] Id. at 213-214.

whom she regarded as her supervisor being the son of the owners of the company. Petitioner recalled that she and Camilo approached Paolo about the problems they encountered when the two-signatory policy took effect. Paolo told them that he would bring the matter to the Board. Thereafter, petitioner saw Paolo talking over the phone with the members of the family and discussing with them the problems being faced by the corporation regarding the two-signatory policy. After hanging up the phone, Paolo told her to make a board resolution allowing the issuance of checks with only one signatory.[21]

Even with the Secretary's Certificate allowing the issuance of checks with only one signatory, petitioner admitted that Loran Industries still issued checks bearing two signatures. She clarified that if the signatories were present and available, she would let the two of them sign.[22]

Petitioner presented a list of the checks[23] which bore one signature and which were used to pay the personal obligations of the Quisumbing family. She presented the list to prove that the members of the Board knew that they can issue checks with only one signature because they themselves are the beneficiaries of the said checks. Particularly, she pointed to the following checks, among others, *viz.*:

1. Check No. 8385879 dated August 18, 2004 for ₱221,232.77 signed by Paolo who was also the payee and the one who encashed the check himself;
2. Check No. 7378260 dated March 15, 2004 payable to Myra's Pension for the payment of the space rental of Bamboo Spa, a business owned by Paolo;
3. Check No. 7378571 dated April 5, 2004 for ₱15,267.00 pay to cash to cover the post-dated check issued as payment for the car of Anton;

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[21] Id. at 214-215.

[22] Id. at 215-216.

[23] Id. at 314-315.

4. Check No.7378857 dated April 26, 2004 for ₱8,286.00 pay to cash for the insurance premium of Antonio with Caritas Health Shield;
5. Check No. 7911492 dated May 6, 2004 for ₱6,000.00 for payment of the credit card of Yvonne Quisumbing with Citi Bank Master Card;
6. Check No. 7911491 dated May 6, 2004 for ₱25,000.00 for payment of credit card of Lorna with Citi Bank;
7. Check No. 7911496 dated May 12, 2004 for ₱10,000.00 as payment for the BPI Card Express of Miguel Quisumbing.[24]

On rebuttal, Paolo and Anton were presented by the prosecution as witnesses. According to Anton, the Board holds meetings regularly at home or at the office but not as formal as it could be.[25]

For his part, Paolo denied that he talked by phone to the other members of his family and thereafter instructed petitioner to come up with a board resolution amending the two-signatory policy in order to allow the issuance of checks bearing only one signature. He asserted that if the signatories were outside the office, it was easy for petitioner to send a messenger to their residence and have the checks signed by a second signatory. He explained that the two-signatory policy was adopted as a security measure and to prevent irregularities and fraudulent transactions. Further, it was their understanding that after signing a check, petitioner would secure the signature of a second signatory.[26]

Trinidad Astillero[27] (Astillero) and Veneranda Sarol[28] (Sarol) were presented by the defense as sur-rebuttal witnesses. Astillero

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[24] Id. at 216.

[25] Id.

[26] Id. at 217.

[27] Id. at 218-219.

[28] Id. at 219.

testified that she was a former employee of Loran Industries who resigned sometime in 1997. In 2004, she was contacted by petitioner to borrow money to infuse cash for the operations of the company. She delivered the cash to petitioner in the presence of Anton and Paolo. To cover the payments for the cash that the company borrowed from her, petitioner prepared and gave her two post-dated checks which were signed by Anton only even though Paolo was also present when the check was issued.[29]

Sarol is another former employee of Loran Industries. According to her, in June 2004, she went to Loran Industries to collect the payment for the loan obtained by the company from her friend, Mary Ann Ricardel. She was able to talk to Anton who issued replacement checks because the company could not pay the loan yet. Anton alone signed the checks in his office and gave the same to her.[30]

Ruling of the MTCC

On November 29, 2006,[31] the Municipal Trial Court in Cities (MTCC) of Mandaue City, Branch 2, found petitioner guilty beyond reasonable doubt of falsification of public document and imposed upon her the indeterminate penalty of four (4) months and one (1) day of *arresto mayor* in its maximum period to *prision correccional* in its minimum period, as the minimum term, to three (3) years, six (6) months, and twenty one (21) days in the medium period of *prision correccional* in its medium and maximum periods, as the maximum term and a fine of ₱3,000.00.[32]

The MTCC cited a criminal law author in stating that criminal intent is presumed to exist on the part of the person who executes an act which the law punishes, unless the contrary shall appear.[33]

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[29] Id. at 218-219.

[30] Id. at 219.

[31] Id. at 210-225.

[32] Id. at 224-225.

[33] Id. at 221.

Hence, the burden to prove the absence of intent or criminal malice is on petitioner. Unfortunately, as found by the MTCC, petitioner failed to overcome the presumption of the existence of criminal intent.[34] The MTCC was convinced that given the educational background of petitioner as a college graduate and her work experience, she knew fully well that she had no authority to issue a Secretary's Certificate for a meeting that never transpired or for a resolution that was never approved. She cannot hide under the claim that she was only instructed by Paolo, who denied the same. Additionally, the MTCC is perplexed as to why petitioner did not confirm from the other members of the Board if indeed Paolo secured their approval to allow the issuance of checks bearing only one signature.[35] The MTCC inferred that even if petitioner denies that she profited from the execution of the Secretary's Certificate allowing the issuance of checks bearing only one signature and that no benefit inured to her, it cannot discount the possibility that petitioner helped herself to the cookie jar.[36]

Ruling of the RTC

Insisting on her innocence, petitioner filed an appeal to the Regional Trial Court (RTC) of Mandaue City, Branch 55, which rendered its Decision[37] on September 17, 2007 affirming the ruling of the MTCC *in toto*. In agreeing with the MTCC, the RTC nearly copied verbatim the disquisition of the former. The RTC only added that in corporation law, the corporation acts through its Board of Directors.[38] Therefore, when petitioner executed the Secretary's Certificate without the authority and knowledge of the Board, then it was not an act of the Board or the Corporation.[39] The RTC added that in falsification of a public

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[34] Id. at 224.

[35] Id.

[36] Id. at 223-224.

[37] Id. at 226-232.

[38] Id. at 232.

[39] Id.

document, mere falsification is enough because what is punished is the violation of public faith and destruction of truth as therein solemnly proclaimed. The RTC ruled that wrongful intent to injure a third person is not an element of falsification of public document.[40]

The RTC denied petitioner's motion for reconsideration.[41]

Ruling of the CA

Still aggrieved, petitioner elevated the case to the CA which, on March 30, 2012,[42] affirmed with modification[43] the rulings of both the MTCC and RTC but only increased the fine to ₱5,000.00.[44] The CA concurred with the MTCC and RTC in concluding that petitioner was not able to overcome the presumption of criminal intent in the execution of the Secretary's Certificate.[45] The CA also affirmed that the element of gain or benefit on the part of the offender or prejudice to a third party is not an element of the crime of falsification of public documents.[46]

Petitioner moved for reconsideration of the Decision of the CA, which was denied through a Resolution[47] dated July 15, 2014.

Undeterred, petitioner filed before this Court a Petition for Review on *Certiorari*[48] and argues that her job as corporate secretary is only limited to signing prepared secretary's certificates and board resolutions needed by the bank and

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[40] Id.

[41] Id. at 230.

[42] Supra note 2.

[43] *Rollo*, p. 100.

[44] Id.

[45] Id. at 88-90.

[46] Id. at 90-91.

[47] Supra note 3.

[48] Supra note 1.

submitting reports which are required by the SEC. She did not attend any board meetings nor did she prepare minutes because no actual meetings were held.[49] She maintains that the corporation became the source of funds to pay for the personal expenses of spouses Antonio and Lorna and their children.[50]

Petitioner insists that the MTCC, RTC and CA failed to consider her defense of lack of criminal intent in falsifying the August 25, 2003 Secretary's Certificate.[51] Petitioner points out that before preparing the Secretary's Certificate, she sought the advice of Paolo whom she considers as her immediate superior about the problems hounding the corporation when the two-signatory policy became effective.[52] Paolo cannot deny the fact that petitioner talked to him before the issuance of the subject Secretary's Certificate because this is inconsistent with the fact that he was the sole signatory of some of the checks issued by the company to pay for his own personal obligations.[53]

Loran Industries[54] and the Office of the Solicitor General[55] (OSG) filed their Comments on March 19, 2015 and April 13, 2015, respectively. Loran Industries argued that petitioner practically admitted having executed a false Secretary's Certificate but still failed to overcome the presumption of criminal intent on her part.[56] The OSG likewise debunked the claim of good faith of petitioner.[57] Petitioner filed her Reply[58] on August 26, 2016.

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[49] *Rollo*, p. 23.

[50] Id. at 24-25.

[51] Id. at 50-63.

[52] Id. at 52.

[53] Id. at 53.

[54] Id. at 358-365.

[55] Id. at 368-383.

[56] Id. at 361-364.

[57] Id. at 376-377.

[58] Id. at 395-405.

After submissions of the parties' respective pleadings, We will now decide.

Issue

The issue in this case is whether petitioner was guilty of falsification of a public document.

Ruling of the Court

The petition is meritorious.

Before delving into the substantive aspect of this case, We shall first deal with procedural matters.

The determination of the guilt of an accused hinges on how a court appreciates evidentiary matters in relation to the requisites of an offense. Determination of guilt is, thus, a fundamentally factual issue.[59] The Supreme Court is not a trier of facts. Petitioner's Rule 45 petition should therefore only raise questions of law and not of facts. However, in exceptional circumstances, such as when the trial court overlooked material and relevant matters, the Court will recalibrate and evaluate factual findings of the trial courts.[60]

In this case, We find the need to re-assess the unanimous factual finding of the MTCC, RTC, and CA for having overlooked the material evidence adduced by petitioner in support of her defense.

There was lack of malice or criminal intent on the part of petitioner; her actions were done in good faith.

Felonies are committed either by means of deceit (*dolo*) or by means of fault (*culpa*). There is deceit when the wrongful act is performed with deliberate intent.[61]

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[59] *Macayan, Jr. v. People*, 756 Phil. 202, 214 (2015).

[60] *People v. Esteban*, 735 Phil. 663, 670-671 (2014).

[61] Article 3. Definition. — Acts and omissions punishable by law are felonies (delitos). Felonies are committed not only by means of deceit (dolo)

We already ruled in a number of cases that in order to incur criminal liability for falsification of a public document, the perpetrator must perform the prohibited act with deliberate intent.[62] Due to the nature of intent as a state of mind which may be inferred only through overt acts, there is a need to assess the actions of petitioner ***before, during, and after*** the alleged falsification of the Secretary's Certificate dated August 25, 2003 in order to determine whether she indeed executed the said Secretary's Certificate with malicious criminal intent.

Additionally, a conviction for falsification of a public document by a private person will not be sustained when the facts found are consistent with good faith.[63]

Here, We are convinced that petitioner was not motivated by malicious intent and in fact, she issued the Secretary's Certificate in good faith.

We give credence to the claim of petitioner that she merely acted based on the instruction of Paolo, son of Lorna and Antonio Quisimbing, and her immediate superior, in preparing the Secretary's Certificate allowing the issuance of checks with only one signatory, after being informed of the problems encountered by the company because of the introduction of the two-signatory policy in the issuance of checks.[64]

We do not find fault on petitioner in relying on the oral instruction of Paolo to issue the subject Secretary's Certificate without first inquiring whether Paolo really consulted with the other members of the family. Petitioner, as a mere employee, is expected to obey, respect, and not doubt the instructions of her superior. Besides, since being appointed as corporate

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but also by means of fault (culpa). There is deceit when the act is performed with deliberate intent; and there is fault when the wrongful act results from imprudence, negligence, lack of foresight, or lack of skill.

[62] *United States v. Arceo*, 17 Phil. 592 (1910); *see* also *Siquian v. People*, 253 Phil. 217 (1989).

[63] See *United States v. San Jose*, 7 Phil. 604 (1907).

[64] *Rollo*, pp. 27-28.

secretary, petitioner never attended board meetings because no actual meetings ever took place. **Her job was merely to execute secretary's certificates for corporate actions that the Board members instruct her to do**.[65] Hence, petitioner's issuance of the August 25, 2003 Secretary's Certificate[66] which was only upon the instruction of Paolo is not a manifestation of bad faith and malice on her part and cannot be taken against her.

Additionally, petitioner did not gain materially nor financially from the issuance of the subject Secretary's Certificate. In fact, in executing it, petitioner was motivated by the desire to help the company cope with its liquidity problems and with the difficulty in paying its suppliers.[67] One of the effects of the Secretary's Certificate allowing only one signature was for Loran Industries to stay financially afloat.

The Board of Directors of Loran Industries knew of the existence of the August 25, 2003 Secretary's Certificate and they benefitted from it.

Based on the evidence and testimonies presented during the trial, We are convinced that despite knowledge of the existence of the subject Secretary's Certificate, the Board of Directors of Loran Industries did not recall it and worse, they made use of the same not only for their own benefit but for the benefit of the corporation as well.

It cannot be denied that from August 2003 to August 2004 when the Secretary's Certificate allowing the release of checks even with only one signatory was effective, Loran Industries was able to issue checks with two signatories as well as checks bearing only one signature.

In fact, as testified to by Astillero[68] and Sarol,[69] on different occasions, Loran Industries contracted loans from them in order

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[65] Id. at 254-255.

[66] Id. at 248.

[67] Id. at 28.

[68] Id. at 218.

[69] Id. at 218-219.

to infuse cash to the company when it experienced liquidity problems. As security for the loans, Loran Industries, through Anton as the lone signatory, issued checks to cover for the cash involved. Further, petitioner was able to show a list of checks issued with only one signature wherein the signatory is also the payee thereof. This proves that Anton and Paolo are aware that some checks bear one signature while the others have two signatures.

There can only be one interpretation for what appears to be an inconsistent stance of the members of the Board of Directors of Loran Industries: the two policies — the one signatory policy and two-signatory policy — co-existed and complemented each other. This is the reason why there are checks which bear only one signature while there are others bearing two signatures. Because of this, it cannot be said that petitioner was guilty of falsification of the August 25, 2003 Secretary's Certificate. The essence of falsification of documents is the alteration of truth. There was no alteration of truth in this case because the Board of Directors of Loran Industries knew and in fact instructed petitioner, through Paolo, to issue the subject Secretary's Certificate allowing the release of checks with only one signatory. Moreover, the Board of Directors of Loran Industries benefitted from the subject Secretary's Certificate.

WHEREFORE, the petition is **GRANTED**. The assailed Decision dated March 30, 2012 and the Resolution dated July 15, 2014 of the Court of Appeals in CA-G.R. CR No. 01042 are hereby **REVERSED** and **SET ASIDE**. Petitioner Marilyn Y. Gimenez is hereby **ACQUITTED**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 216599. September 16, 2020]

VERIZON COMMUNICATIONS PHILIPPINES, INC., *Petitioner, v.* **LAURENCE C. MARGIN,** *Respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45 OF THE RULES OF COURT; LIMITED ONLY TO REVIEW OF QUESTIONS OF LAW; EXCEPTION.—** Rule 45 of the Rules of the Court limits us to x x x review only questions of law raised against an assailed Decision. As a general rule, the Court will not review the factual determination of administrative bodies, as well as, the findings of fact by the CA. The rule though is not absolute as the Court may, in labor cases, review the facts where the findings of the CA and of the labor tribunals are contradictory, as in this case. The factual findings of the LA, and those of the NLRC and CA are contrasted, giving us sufficient basis to review the facts.

2. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; FAILURE OF THE EMPLOYER TO DISCHARGE ITS BURDEN OF PROVING THAT AN EMPLOYEE'S DISMISSAL FROM SERVICE IS FOR A JUST OR AUTHORIZED CAUSE SHALL RESULT IN A FINDING THAT THE DISMISSAL IS UNJUSTIFIED.—** In an illegal dismissal case, the employer has the burden of proving that an employee's dismissal from service was for a just or authorized cause. Otherwise, the employer's failure shall result in a finding that the dismissal is unjustified. Here, Verizon dismissed Laurence because of his deliberate violation of company rules x x x.

3. **ID.; ID.; ID.; TO EFFECT A VALID DISMISSAL, THE LAW REQUIRES THAT THERE BE JUST AND VALID CAUSE WHICH IS SUPPORTED BY EVIDENCE, AND THERE MUST BE A REASONABLE PROPORTIONALITY BETWEEN THE OFFENSE AND THE PENALTY.—** A worker's employment is property in a constitutional sense, and

he/she cannot be deprived thereof without due process and unless the deprivation is commensurate to his/her acts and degree of moral depravity. While the Court recognizes the right of an employer to terminate the services of an employee for a just or authorized cause, the dismissal must be made within the parameters of law and pursuant to the tenets of equity and fair play. An employer's power to discipline his employees must not be exercised in an arbitrary manner as to erode the constitutional guarantee of security of tenure. Indeed, the power to dismiss is a formal prerogative of the employer, but this is not without limitations. The employer is bound to exercise caution in terminating the services of his employees and dismissals must not be arbitrary and capricious. Due process must be observed and employers should respect and protect the rights of their employees. To effect a valid dismissal, the law requires not only that there be just and valid cause; it must also be supported by evidence. There must be a reasonable proportionality between the offense and the penalty. Dismissal, without doubt, is the ultimate penalty that can be meted to an employee. Hence, where a penalty less punitive would suffice, whatever missteps may be committed by labor ought not to be visited with a consequence so severe.

4. ID.; ID.; ID.; THE EMPLOYER IS BOUND TO OBSERVE PROCEDURAL DUE PROCESS WHICH CONSISTS OF THE TWIN REQUIREMENTS OF NOTICE AND HEARING TO EFFECT A VALID DISMISSAL ON THE GROUND OF JUST CAUSE.— [T]o effect a valid dismissal on the ground of just cause, the employer is bound to observe procedural due process. Procedural due process consists of the twin requirements of notice and hearing. The employer must furnish the employee with two written notices before the termination of employment can be implemented: (1) the first apprises the employee of the particular acts or omission for which his dismissal is sought; and (2) the second informs the employee of the employer's decision to dismiss him.

5. ID.; ID.; ID.; AN ILLEGALLY TERMINATED EMPLOYEE IS ENTITLED TO REINSTATEMENT AND TO FULL BACKWAGES BUT IF ACTUAL REINSTATEMENT IS NO LONGER POSSIBLE, THE EMPLOYEE BECOMES ENTITLED TO SEPARATION PAY IN LIEU OF REINSTATEMENT.— Considering x x x that Laurence was

illegally terminated, he is entitled to reinstatement without loss of seniority rights and other privileges and to full backwages. However, if actual reinstatement is no longer possible, the employee becomes entitled to separation pay in lieu of reinstatement. Based on jurisprudence, reinstatement is not feasible: (1) in cases where the dismissed employee's position is no longer available; (2) the continued relationship between the employer and the employee is no longer viable due to the strained relations between them; and (c) when the dismissed employee opted not to be reinstated, or the payment of separation benefits would be for the best interest of the parties involved. In these instances, separation pay is the alternative remedy to reinstatement in addition to the award of backwages. The payment of separation pay and reinstatement are exclusive remedies. Stated differently, the payment of separation pay replaces the legal consequences of reinstatement to an employee who was illegally dismissed. Here, we uphold the grant of separation pay in favor of Laurence.

6. ID.; ID.; ID.; BACKWAGES; EVEN WHEN REINSTATEMENT IS ORDERED, THERE ARE INSTANCES WHEN DISMISSED EMPLOYEES MAY NOT BE GRANTED BACKWAGES DESPITE THE FINDING OF ILLEGAL DISMISSAL ON ACCOUNT OF THE FACT THAT THE DISMISSAL OF THE EMPLOYEE WOULD BE TOO HARSH OF A PENALTY AND THAT THE EMPLOYER IS IN GOOD FAITH IN TERMINATING THE EMPLOYMENT.— [I]n labor cases, the Court is tasked with the delicate act of balancing the employee's right to security of tenure against the employer's right to freely exercise its management prerogatives. Even though it is basic in labor law that an illegally dismissed employee is entitled to reinstatement, or separation pay if reinstatement is not viable, and payment of full backwages, in some instances, the Court has carved out exceptions where the reinstatement of an employee was ordered without an award of backwages. This is on account of: (1) the fact that dismissal of the employee would be too harsh of a penalty; and (2) that the employer was in good faith in terminating the employment. x x x [W]e absolve Verizon from the payment of backwages. While we held that Laurence did not violate Verizon's rules on authorized and unauthorized absences since he was able to notify his immediate supervisor of his absence

on February 3, 2012 because of his sickness, he cannot be deemed entirely faultless. Aside from the text message he sent, he did nothing else to comply with the company's rules. He did not inform the company that he would leave his residence nor leave any information on how he may be reached. On the other hand, his supervisor, Joseph, exerted efforts to contact Laurence, albeit to no avail. For these reasons, there is no basis for an award of backwages.

APPEARANCES OF COUNSEL

Fortun Narvasa & Salazar for petitioner.
Galvez & Estabillo Law Offices for respondent.

D E C I S I O N

LOPEZ, *J.*:

Assailed in this Petition for Review (Rule 45) are the following: (1) the Decision[1] dated August 18, 2014; and (2) the Resolution[2] dated January 29, 2015, both rendered by the Court of Appeals[3] (CA), which declared the dismissal of respondent as valid and subsequently denied petitioner's motion for reconsideration.

Antecedents

On March 28, 2012, respondent Laurence C. Margin (Laurence) filed a complaint for illegal dismissal and damages against petitioner Verizon Communications Philippines, Inc. (Verizon).[4] In his Position Paper,[5] Laurence alleged that he was

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[1] *Rollo*, pp. 39-55.

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

[3] CA-G.R. SP No. 132488; penned by Associate Justice Apolinario D. Bruselas, Jr., with the concurrence of Associate Justices Andres B. Reyes, Jr. (retired Member of this Court) and Samuel H. Gaerlan (now a Member of this Court).

[4] *Rollo*, pp. 91-93.

[5] *Id.* at 95-113.

hired by Verizon as network engineer on September 3, 2007.[6] Sometime in January 2012, he noticed a decline in his health and experienced constant nausea, difficulty in breathing, colds and cough with spots of blood. Laurence consulted a doctor who advised him to undergo chest x-ray. The results showed that he was suffering from "*PTB vs. Pneumonia*,"[7] for which he was recommended to be in isolation and bed rest for 60 days. Laurence informed his manager, Joseph Benjamin Quintal, of his medical condition, and did not report for work from February 3, 2012 to recuperate from his illness. He went to Guimaras Island to quarantine himself and avoid the spread of his disease. On March 14, 2012, he received a notice to explain forwarded from his residence in Cavite.[8] Laurence then called Joseph to ask why he was being made to explain. Allegedly, Joseph answered that his employment was already terminated on March 12, 2012. On the same day that Laurence filed his complaint, Verizon sent him a letter of termination.[9]

Laurence claimed to have been illegally dismissed and entitled to his money claims. He alleged that there was no just or authorized cause for his dismissal and Verizon failed to observe the requirements of due process. Laurence did not abandon his work since he was able to notify Verizon of his illness and the need for medical treatment on isolation. Laurence's absence is justified due to his sickness that needs a long period of rest and quarantine to prevent the spread of the disease to his co-workers.[10]

For its part,[11] Verizon narrated that, on February 3, 2012, Laurence sent his supervisor, Joseph, a text message notifying

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[6] *Id*. at 98. In Petitioner Verizon's pleadings, Laurence occupied the position of Affiliate Engineer for Network Operations and was hired on August 7, 2007; id. at 121.

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

[8] *Id*. at 101 and 118.

[9] *Id*. at 101 and 117.

[10] *Id*. at 103-112.

[11] *Id*. at 120-134.

of his absence, but did not indicate the duration of his leave.[12] Joseph tried to call Laurence wanting to remind the latter to submit a medical certificate and to ask how long he would be out of the office, but Laurence did not take his call. On February 6, 2012, Joseph, through a text message, asked Laurence for his medical certificate and test results,[13] but Laurence did not reply. After more than a month of not hearing from Laurence, or on March 8, 2012, Verizon sent its company nurse to the house of Laurence to check on him, as well as, serve a notice[14] requiring him to explain his unauthorized absence and why he should not be considered to have abandoned his work. The notice was received by Laurence's cousin, Melrose Anne Basillas.[15] It was only on March 14, 2012 that Laurence called Joseph regarding the notice and explained that he had no cellphone reception in the place where he was. On the same day, Laurence sent an email in which he admitted his mistake, apologized for his unauthorized absence, and sought reconsideration of his dismissal.[16] In view of Laurence's admission, Verizon terminated his employment on March 28, 2012.[17]

Verizon further averred that Laurence was aware of the company's policies on attendance and absences. Nonetheless, he failed to notify the company of the duration of his leave. The notice he gave to his supervisor is not enough because he did not mention how long he will be absent and did not submit

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[12] *Id.* at 138. The message stated: "sir, di ako makakapasok. [L]umabas xray results Pulmonary TB and pnemonia [*sic*]. [Pa]hinga and medication advised [*sic*] sir k[asi] contagious. [L]aurence."

[13] *Id.* at 139. Joseph sent the following messages to Laurence:

Ok

Tawagan mo ako pagnabasa mo to.

Lawrence, I need a copy of your medical cert[ificate], test results, etc. You can either have someone forward them over to the clinic or send HR a fax or scanned copy via email. Ensure that you copy me as well.

[14] *Id.* at 141.

[15] *Id.* at 143.

[16] *Id.* at 142.

[17] *Id.* at 147.

a medical certificate or medical test results. Therefore, Laurence's 38-day absence, from February 3 to March 8, 2012, warrant the termination of his employment. More so, Laurence admitted his mistake in his explanation dated March 14, 2012. There being valid cause to dismiss Laurence, he is not entitled to his monetary claims.

In its Decision[18] dated February 11, 2013, Labor Arbiter (LA) dismissed the complaint, and reasoned as follows:

> Time and again this Office held that in an illegal dismissal case, the onus probandi rests on the employer to prove that the dismissal of an employee is for a valid cause. Failure to show this necessarily means that the dismissal was unjustified and therefore illegal.
>
> Consistently, while the employee's security of tenure is guaranteed by law, it is also well-organized that employers have the right and prerogative to regulate every aspect of the business affairs in accordance with their discretion and judgment subject to the regulation of the State.
>
> The free will o[f] the management to conduct its own business includes the promulgation of policies, rules and regulations on work-related activities. The policies and regulations so promulgated, unless shown to be grossly oppressive or contrary to law are generally valid and binding on the parties and must be complied with until finally revised or amended, unilaterally or through negotiation, by competent authority. x x x.
>
> Undisputed is the fact that respondent company set-forth a rule against absenteeism. As shown by the evidence, the company ha[s] a rule that unauthorized absences for five (5) consecutive days is considered abandonment which carries a penalty of dismissal. x x x
>
> x x x x
>
> While this tribunal is mindful that complainant notified his Manager Mr. Quintal about his illness on February 3, 2012 and his intention not to report to work that day, this fact does not excused [*sic*] him from at least notifying the company of his extended absences. It bears to point out that complainant is a Network Engineer. As admitted by complainant, he is tasked to perform work with the Network Operation

[18] *Id.* at 180-183; penned by Labor Arbiter Michelle P. Pagtalunan.

Center environment supporting and manage[s] services customer that strongly utilizes DSL and EVDO transport fault analysis and resolution of network anomalies. He was also tasked to diagnose and troubleshoot problems and drive application responsible parties to perform repair activities and drive applicable vendors through escalations and provide ongoing status updates to customer and management x x x. By the nature of his position, the operation of the company evident[ly] relies greatly on his presence in the site.

Going on prolonged unauthorized absences for thirty eight (38) days indubitably hamper the operation of the company.

Considering that complainant went on prolonged absence without official leave for thirty eight (38) consecutive days, without informing his immediate supervisor or the company about it and without even offering any reasonable explanation for his failure to inform the company of his prolonged absences, the company cannot be faulted to apply its rule on absenteeism.

The contention of complainant that he was waiting for the instruction of his Manager on what to do after he went on leave will not exonerate him of his failure to file an application for leave of absence or at least inform the company of his intention to extend his absence from work, more so, that the company rule which include the rule on absenteeism was made know to all its employees during orientation and the same is even uploaded in the company's web site.[19] (Citations omitted.)

Aggrieved, Laurence appealed before the National Labor Relations Commission (NLRC), pointing out that the arbiter's Decision did not clearly and distinctly set forth the facts and law from which their conclusion was made. Verizon failed to present sufficient evidence to prove just or authorized cause for the dismissal nor was Verizon able to show that it observed the requirements of due process. Laurence's prolonged absence was due to health reasons and he did not intend to abandon his work.[20]

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[19] *Id.* at 181-183.

[20] *Id.* at 185-213.

The NLRC, in its Decision[21] dated May 30, 2013, reversed the arbiter's ruling, to wit:

> WHEREFORE, the Complainant's Appeal is GRANTED and the Decision dated 11 February 2013 of the Labor Arbiter is SET ASIDE. Respondent-Verizon Communication Philippines Incorporated, Inc. [*sic*] is hereby ORDERED to pay the Complainant:
>
> 1. Backwages from the time he was dismissed or on 28 March 2012 until the Decision of this case attains finality, based on his last pay before he was dismissed x x x;
>
> x x x x
>
> 2. Separation pay equivalent to one month for every year of service, based on his latest salary, from the start of his employment or on 3 September 2007 until the finality of the Decision in this case. A fraction of at least six (6) months shall be considered as one (1) whole year x x x;
>
> x x x x
>
> 3. Attorney's fees equivalent to 10% of the total award of backwages and separation pay in the amount of P97,893.01.
>
> SO ORDERED.[22]

The NLRC held that Laurence was illegally dismissed because of Verizon's failure to show just cause to terminate his employment. There is no showing that Laurence's absence was unauthorized. The company's rules do not require an employee to tender proof of sickness or illness, before or during the time while he/she is sick. What the rules mandate is for an employee to notify his/her manager four hours before sick leave and to submit his/her medical certificate upon return. Laurence was able to notify his immediate supervisor, Joseph Quintal, through text message about his sickness and his leave on February 3, 2012. The NLRC likewise held that Verizon did not give Laurence an opportunity to be heard before he was dismissed.

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[21] *Id.* at 232-247.

[22] *Id.* at 246-247.

Unable to secure[23] a reconsideration,[24] Verizon filed a petition for *certiorari* before the CA reiterating its allegations in the pleadings filed before the labor tribunals.[25] Consequently, in its Decision[26] dated August 18, 2014, the CA upheld the Decision of the NLRC that Laurence was illegally dismissed. The CA ruled that Laurence was able to give sufficient information of his absence when he sent a text message to his supervisor. The length of his absence is justified considering that it is common knowledge that pulmonary tuberculosis and pneumonia are serious infectious diseases. And, in implementing the dismissal, Verizon denied Laurence his right to be heard. Verizon moved for reconsideration,[27] but was denied.[28] Hence, this petition.

Parties' Arguments

Verizon contends that Laurence was validly dismissed because of his deliberate violation of company rules on unauthorized absences and excessive absenteeism. The CA erroneously interpreted petitioner's company rules and applied the rule on unauthorized absences, and disregarded the provisions on absenteeism and unauthorized absences. Excessive absenteeism is one of the grounds for corrective actions under Verizon's policies. Verizon validly exercised its management prerogative in applying its rules. Finally, it granted Laurence ample opportunity to be heard.

On the other hand, Laurence maintains that he was illegally dismissed. There was no just or authorized cause for his dismissal nor was he accorded due process. He did not go on absence without leave nor abandoned his work since he notified his supervisor about his sickness. His failure to work was caused

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[23] *Id.* at 265-267.

[24] *Id.* at 289-296.

[25] *Id.* at 269-303.

[26] *Id.* at 39-55.

[27] *Id.* at 400-411.

[28] *Id.* at 57-59.

by his medical condition, pulmonary tuberculosis, which even to an ordinary person is known to be serious and requires isolation during treatment. Moreover, Laurence contends that he was not apprised of the charges leveled against him. He was not made to explain his absence before he was outrightly dismissed by Verizon.

The Court's Ruling

We partly grant the petition.

Rule 45 of the Rules of the Court limits us to review only questions of law raised against an assailed Decision.[29] As a general rule, the Court will not review the factual determination of administrative bodies, as well as, the findings of fact by the CA. The rule though is not absolute as the Court may, in labor cases, review the facts where the findings of the CA and of the labor tribunals are contradictory,[30] as in this case. The factual findings of the LA, and those of the NLRC and CA are contrasted, giving us sufficient basis to review the facts. Notably, the arbiter concluded that Verizon validly dismissed Laurence for excessive absenteeism sanctioned under its company policies. Laurence's absence was unauthorized because of his failure to notify his supervisor of the nature of his illness and the intended length of his leave of absence. Conversely, the NLRC and the CA ruled that under Verizon's policies, an employee is not required to submit proof of illness while he is on sick leave. It is sufficient that Laurence was able to notify his supervisor that he was diagnosed with tuberculosis before his absence. Thus, the question of whether Laurence was illegally dismissed is a question of fact, the determination of which entails an evaluation of the evidence on record.

Laurence did not violate Verizon's rules on authorized and unauthorized absences.

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[29] *Cavite Apparel, Incorporated, et al. v. Marquez*, 703 Phil. 46, 53 (2013), citing *DUP Sound Phils. v. Court of Appeals, et al.*, 676 Phil. 472, 478 (2011), citing *Union Industries, Inc. v. Vales*, 517 Phil. 247, 252 (2006).

[30] *Id.*

In an illegal dismissal case, the employer has the burden of proving that an employee's dismissal from service was for a just or authorized cause.[31] Otherwise, the employer's failure shall result in a finding that the dismissal is unjustified.[32] Here, Verizon dismissed Laurence because of his deliberate violation of company rules; the pertinent portion of which is hereunder quoted:

ATTENDANCE AND PUNCTUALITY

You are expected to report to work on time and on a regular basis. Excessive absenteeism and tardiness will be grounds for corrective action, including termination.

Excessive absenteeism and tardiness adversely affect productivity, disrupt normal operating effectiveness, and overburden other employees who must cover for the employee who is absent.

ATTENDANCE AND ABSENCES – An employee is expected to report for work on the days and time required by their respective positions. Occasionally, it may be necessary for an employee to be absent from work as a result of illness, injury and maternity or for personal reasons. In such cases, employees are expected to inform their Manager at least 5 days before their scheduled absence.

If the absence cannot be predicted in advance, employees, must notify their Manager at least four (4) hours before their shift schedule. Likewise, they should inform their Managers as to when they intend to report for work.

Absences are classified into two categories – Authorized and Unauthorized – as follows:

1) ***Authorized Absences*** – Authorized absence is a result of factors beyond an employee's control, such as emergency and sick leaves. Should an employee need to be absent due to an emergency or due to sickness, he/she must provide the Manager with reasonable description of the nature of the emergency or sickness indicating

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[31] *Demex Rattancraft, Inc., et al. v. Leron*, 820 Phil. 693, 705 (2017).

[32] *Protective Maximum Security Agency, Inc. v. Fuentes*, 753 Phil. 482, 513 (2013), citing *Stolt-Nielsen Marine Services, Inc. v. National Labor Relations Commission,* 360 Phil. 881, 888-889 (1998).

inability to work. FOUR (4) hours notification is needed to make necessary adjustment with manpower allocation.

Absences due to emergency and illness may be considered authorized, provided, that proof of such illness or emergency is subsequently provided the employer.

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- For an absence to be considered authorized, the employee should inform his/her immediate Manager/Supervisor of his/her intention and reason for not coming to work. The information should be received at least four hours before his/her work scheduled. If the employee failed to inform his/her immediate superior, this may result to unauthorized absence.

2) ***Unauthorized Absences*** — Unauthorized absence occurs upon failure to report to work as expected. One or more unauthorized absences will result in corrective actions, which may include dismissal. Five (5) or more consecutive days in which an employee fails to work without an approved leave application will be considered abandonment of work, absence without leave (AWOL) or voluntary resignation on the part of the employee.

Absence may be considered unauthorized for the following circumstances:

- Failure to notify the manager/supervisor and/or Attendance Administrator 4 hours before scheduled duty (4 hours due to business needs)
- Failure to submit a medical certificate on the return date, where absence was due to illness.

Corrective Actions for Unauthorized Absences incurred within a year

1st Offense: Verbal Warning and Counseling *– documentation of the verbal warning shall be kept in the employee's record*

2nd Offense: Written Warning

3rd Offense: SUSPENSION *– 1 day suspension without pay*

4th Offense: SUSPENSION *– 3 days suspension without pay*

5th Offense or 5 days consecutive unauthorized absences: DISMISSAL[33]

Under Verizon's rules, the absence of an employee may be authorized or unauthorized. An authorized absence, due to sickness, requires that the employee send his manager notice four hours before his shift, with a reasonable description of his illness, and the submission of the employee's proof of illness on his return date. On the other hand, the employee's absence becomes unauthorized if the employee fails to notify his/her immediate superior, or if the employee fails to submit a medical certificate on his/her return date.

Based on the records, Laurence sent his immediate supervisor, Joseph Quintal, a text message, on February 3, 2012, informing the latter that he will be absent because he was sick with pulmonary tuberculosis, a contagious disease, and was advised to take medication. Joseph did not deny having received this message from Laurence. The CA was thus correct to conclude that the information given by Laurence is sufficient to properly apprise Verizon of his condition. The CA likewise fittingly held that Laurence's failure to submit proof of illness while he was on sick leave and to indicate a return date did not render his absence unauthorized. More so, that Laurence was no longer given the opportunity to submit his medical certificate and other documents to prove his illness.

Verizon's policy on excessive absenteeism, which prescribes dismissal as penalty, is too harsh.

Verizon insists that Laurence was guilty of excessive absenteeism, which warrants the penalty of dismissal since under company rules, five or more consecutive days of absence is tantamount to abandonment of work, absence without leave (AWOL) or voluntary resignation of the employee. The dismissal of Laurence was a valid exercise of the right and prerogative to regulate every aspect of its business of every employer.

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[33] *Rollo,* pp. 148-149.

We disagree.

The Constitution looks with compassion on the working class and its intent in protecting their rights. A worker's employment is property in a constitutional sense, and he/she cannot be deprived thereof without due process and unless the deprivation is commensurate to his/her acts and degree of moral depravity. While the Court recognizes the right of an employer to terminate the services of an employee for a just or authorized cause, the dismissal must be made within the parameters of law and pursuant to the tenets of equity and fair play. An employer's power to discipline his employees must not be exercised in an arbitrary manner as to erode the constitutional guarantee of security of tenure.[34]

Indeed, the power to dismiss is a formal prerogative of the employer, but this is not without limitations. The employer is bound to exercise caution in terminating the services of his employees and dismissals must not be arbitrary and capricious. Due process must be observed and employers should respect and protect the rights of their employees. To effect a valid dismissal, the law requires not only that there be just and valid cause; it must also be supported by evidence.[35] There must be a reasonable proportionality between the offense and the penalty. Dismissal, without doubt, is the ultimate penalty that can be meted to an employee. Hence, where a penalty less punitive would suffice, whatever missteps may be committed by labor ought not to be visited with a consequence so severe.[36] *Apropos*

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[34] *Zagala v. Mikado Phils. Corp.*, 534 Phil. 711, 720 (2006), citing *Brew Master International, Inc. v. NAFLU*, 337 Phil. 728, 737 (1997); *Procter and Gamble Philippines v. Bondesto*, 468 Phil. 932, 943 (2004); *Asuncion v. NLRC*, 414 Phil. 329, 336 (2001); *Del Monte Philippines, Inc. v. NLRC*, 350 Phil. 510, 516 (1998).

[35] *Zagala v. Mikado Phils. Corp., id.* at 722; *Union Motor Corporation v. NLRC*, 487 Phil. 197, 209 (2004).

[36] *Zagala v. Mikado Phils. Corp., supra* at 721, citing *Philips Semiconductors (Phils.), Inc. v. Fadriquela*, 471 Phil. 355, 377; *Procter and Gamble Philippines v. Bondesto, supra; Union Motor Corporation v. NLRC, supra; Michael, Inc. v. NLRC*, 326 Phil. 472, 476 (1996).

is the following pronouncement in *Cavite Apparel, Incorporated, et al. v. Marquez*,[37] citing *Caltex Refinery Employees Association v. NLRC*[38] and *Gutierrez v. Singer Sewing Machine Company*:[39]

> [W]e held that "[e]ven when there exist some rules agreed upon between the employer and employee on the subject of dismissal, x x x the same cannot preclude the State from inquiring on whether [their] rigid application would work too harshly on the employee." This Court will not hesitate to disregard a penalty that is manifestly disproportionate to the infraction committed.[40]

In the *Cavite Apparel* case, the respondent employee went on an absence without leave for three times in a span of a year, for each instance, she was suspended accordingly. On account of sickness, respondent again was not able to report for work, and was suspended for six days. When she went back to work, her employment was terminated. The Court held that, while respondent might have been guilty of violating company rules on leaves of absence and employee discipline, the penalty of dismissal imposed on her was unjustified. Respondent had been in the employ of Cavite Apparel for six years with no derogatory record other than the four absences without official leave. The respondent's illness, which was the reason for absence, rendered her dismissal unreasonable as it is clearly disproportionate to the infraction she committed.

Similarly, since Verizon based their defense on violation of company rules, it is incumbent upon Verizon to prove that Laurence clearly, voluntarily and intentionally committed the infraction. Laurence's absence from work was due to sickness. He gave proper notification of his absence, which reason should have been given kind consideration by Verizon. An employee cannot anticipate when an illness may happen, thus, he may not be able to give prior notice or seek prior approval of his

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[37] 703 Phil. 46 (2013).

[38] 316 Phil. 225 (1995).

[39] 458 Phil. 401 (2003).

[40] *Cavite Apparel, Incorporated, et al. v. Marquez, supra* at 56.

absence, but could only do so after the occurrence of the incident.[41]

Even assuming that there was deliberate violation of the company's rules, the penalty of dismissal is too harsh and not proportionate to the wrongdoing committed. Knowledge of the company's rules, its violation, and dismissal in accordance with said rules do not automatically bind this Court.[42] It is settled that the law serves to equalize the unequal. The labor force is a special class that is constitutionally protected because of the inequality between capital and labor. This constitutional protection presupposes that the labor force is weak. However, the level of protection to labor should vary from case to case; otherwise, the State might appear to be too paternalistic in affording protection to labor.[43]

Laurence was not accorded procedural due process

Lest it be forgotten, to affect a valid dismissal on the ground of just cause, the employer is bound to observe procedural due process. Procedural due process consists of the twin requirements of notice and hearing. The employer must furnish the employee with two written notices before the termination of employment can be implemented: (1) the first apprises the employee of the particular acts or omission for which his dismissal is sought; and (2) the second informs the employee of employer's decision to dismiss him.[44] The Court, in *King of Kings Transport, Inc. v. Mamac*,[45] introduced the following guidelines:

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[41] *PLDT Co. v. Teves*, 649 Phil. 39, 49-50 (2010).

[42] *Cavite Apparel, Incorporated, et al. v. Marquez, supra.*

[43] *Paredes v. Feed the Children Philippines, Inc., et al.*, 769 Phil. 418, 442-443 (2015), citing *Fuji Television Network, Inc. v. Espiritu*, 749 Phil. 388, 429 (2014).

[44] *Distribution & Control Products, Inc./Tiamsic v. Santos*, 813 Phil. 423, 436 (2017), citing *New Puerto Commercial, et al. v. Lopez, et al.*, 639 Phil. 437, 445 (2010).

[45] 553 Phil. 108 (2007).

(1) The first written notice to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. **"Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint.** Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, **the notice should contain a detailed narration of the facts and circumstance that will serve as basis for the charge against the employees. A general description of the charge will not suffice.** Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 [of the Labor Code] is being charged against the employees.

(2) After serving the first notice, the employers should schedule and conduct a hearing or conference wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.

(3) After determining that termination of employment is justified, the employers shall serve the employees a written notice of termination indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment.[46] (Emphasis and underscoring supplied; citations omitted.)

A perusal of the notices issued by Verizon shows that it failed to observe the standards set forth in case law:

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

March 5, 2012 Notice to Explain –

On February 3, 2012, you have notified your manager that you will be on Sick Leave. Since then, you have not provided any medical documents and you have been unreachable via mobile phone. Likewise, you have not responded to your manager's messages.

We are writing you this letter to inform you that your absences have been affecting production and this may fall as violation of our Attendance and Punctuality implementing guidelines if no justification is provided, and to state:

Unauthorized Absences — Unauthorized absence occurs upon the failure to report to work as expected. One or more unauthorized absences will result in corrective actions, which may include dismissal. Five (5) or more consecutive days in which an employee fails to report to work without an approved leave application will be considered abandonment of work, absence without leave (AWOL) or voluntary resignation on the part of the employee.

You are hereby required to explain in writing why you should not be considered to have abandoned your work based on the above-mentioned absences without notification. Submit your explanation personally to the undersigned within forty-eight (48) hours from receipt hereof. You may elect to be heard if you so desire. Your failure to reply to this letter within the time required shall be considered as a waiver of your right to be heard on this matter. Accordingly, the Company shall proceed with the evaluation of the case on the basis of the evidence on hand.

Please be guided accordingly.[47]

March 28, 2012 Notice of Termination —

This letter is to inform you that your employment with the company shall be deemed terminated effective immediately due [to] the following reasons:

1. You failed to report to work from February 3, 2012 to date. These absences were considered unauthorized and grounds for dismissal.

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[47] *Rollo*, p. 118.

2. You did not inform your manager or HR of the reason for your absences. You also failed to reply to all the messages and calls made by your manager.

3. The Company Nurse visited you at your residence on March 8, 2012 at 8PM. There was no one in the house and the nearby store owner directed the nurse to your relative's house. The nurse was able to speak with your cousin Melrose and she informed the company nurse that you left for abroad two (2) weeks ago. The nurse gave the Notice of Letter to Explain dated March 5, 2012 to your cousin, Melrose and advised her to hand it to your mother.

4. You failed to do your responsibility as an employee to provide supporting medical documents for your absences and to let your manager know when you will be back for work.

5. The Notice of Letter to Explain stated that you were given 48 hours to explain personally to your manager or HR the reasons for your unauthorized absences and failure to reply within the prescribed time shall be considered as waiver of your right to be heard. We did not hear from you within the 48 hours given timeframe and as a result the company proceeded with the evaluation of the case and decided that you have committed AWOL and abandoned your work.

You are advised to return all Company properties including security passes, Verizon ID, keys, Medicard IDs, and any other office equipment that may have been issued to you.

Please be guided accordingly.[48]

While Verizon ostensibly afforded Laurence the opportunity to refute the charge of AWOL and abandonment against him, the company deprived him of due process when he was not given ample time to prepare his defense and later on, when his explanation was not given consideration on the ground that it was submitted beyond the 48-hour period. Thus, Laurence's right to procedural due process was violated. The CA aptly observed:

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[48] *Id.* at 117.

In the present case, [Laurence] was given until 13 March 2012 to submit his answer to the [Notice to Explain] because [Verizon] insisted that [he] received the [notice] on 8 March 2012, despite its own allegation that the notice was not personally served to [Laurence] on that date but to his cousin, who lived in a nearby house. Thus, while [Laurence] had actually received the [Notice to Explain] only on 14 March 2012 and had been able to e-mail to [Verizon] his letter of explanation on that same day, his explanation was no longer considered by [Verizon] when it evaluated his case as it was allegedly submitted beyond the prescribed period in the [notice].

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x x x [Laurence] need not manifest his desire to be heard because the opportunity to be heard is an indispensable part of procedural due process. It must be noted that an employee's right to be heard is satisfied not only by a formal face to face confrontation but by any meaningful opportunity to controvert the charges against him and to submit evidence in support thereof. Considering that in the present case, [Laurence's] explanation to the charges against him had not been taken into account when [Verizon] arrived at its decision to terminate him, [Verizon] clearly denied him his right to be heard.[49]

Considering, therefore, that Laurence was illegally terminated, he is entitled to reinstatement without loss of seniority rights and other privileges and to full backwages.[50] However, if actual reinstatement is no longer possible, the employee becomes entitled to separation pay in lieu of reinstatement.[51] Based on jurisprudence, reinstatement is not feasible: (1) in cases where the dismissed employee's position is no longer available; (2) the continued relationship between the employer and the employee is no longer viable due to the strained relations between them; and (c) when the dismissed employee opted not to be reinstated, or the payment of separation benefits would be for

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[49] *Id.* at 52-53.

[50] LABOR CODE, Art. 294.

[51] *Claret School of Quezon City v. Sinday*, G.R. No. 226358, October 9, 2019, citing *Golden Ace Builders, et al. v. Talde*, 634 Phil. 364, 371 (2010).

the best interest of the parties involved.[52] In these instances, separation pay is the alternative remedy to reinstatement in addition to the award of backwages.[53] The payment of separation pay and reinstatement are exclusive remedies. Stated differently, the payment of separation pay replaces the legal consequences of reinstatement to an employee who was illegally dismissed.[54] Here, we uphold the grant of separation pay in favor of Laurence. The NLRC and the CA consistently found that he opted to receive separation pay instead of reinstatement.[55]

Verizon is excused from paying backwages to Laurence considering that the penalty of dismissal is too harsh.

At this point, it is worthy to note that, in labor cases, the Court is tasked with the delicate act of balancing the employee's right to security of tenure against the employer's right to freely exercise its management prerogatives.[56] Even though it is basic in labor law that an illegally dismissed employee is entitled to reinstatement, or separation pay if reinstatement is not viable, and payment of full backwages, in some instances, the Court has carved out exceptions where the reinstatement of an employee was ordered without an award of backwages. This is on account of: (1) the fact that dismissal of the employee would be too harsh of a penalty; and (2) that the employer was in good faith in terminating the employment.[57]

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[52] *Session Delights Ice Cream and Fast Foods v. Hon. CA (6th Div.), et al.*, 625 Phil. 612, 628-629 (2010).

[53] *Bani Rural Bank, Inc., et al. v. De Guzman, et al.*, citing *Bombase v. NLRC*, 315 Phil. 551, 556 (1995).

[54] *Id.*, citing *Nissan North EDSA, Balintawak, Quezon City v. Serrano, Jr.*, 606 Phil. 222, 232 (2009).

[55] *Rollo*, pp. 53 and 244.

[56] *Stream International Global Services Philippines, Inc. v. Pimentel*, G.R. No. 227814, April 18, 2018.

[57] *Id.*, citing *Integrated Microelectronics, Inc. v. Pionilla*, 716 Phil. 818, 823-824 (2013).

In the case of *Integrated Microelectronics, Inc. v. Pionilla*,[58] the respondent was a production worker of petitioner company, who was meted the penalty of dismissal pursuant to company rules for his act of lending his company ID to a relative who was applying for a job with the company. The Court held that respondent was illegally dismissed, but excused the petitioner company from paying his backwages on the ground that the penalty of dismissal was too harsh of a penalty, and that petitioner company was in good faith when it dismissed respondent as his dereliction of its policy was honestly perceived to be a threat to the company's security. The Court cited the earlier cases of *Pepsi-Cola Products Philippines, Inc. v. Molon, et al.*,[59] *Itogon-Suyoc Mines, Inc. v. National Labor Relations Commission*,[60] *Cruz v. Minister of Labor and Employment*,[61] where the respective dismissed employees were not granted backwages despite the finding of illegal dismissal. The Court consistently held that dismissal was too harsh and that the employers were in good faith. To serve the ends of social and compassionate justice, the severity of dismissal as punishment and probity of the employers' acts may preclude or diminish recovery of backwages. Only employees discriminatorily dismissed are entitled to backpay.

In like manner, we absolve Verizon from the payment of backwages. While we held that Laurence did not violate Verizon's rules on authorized and unauthorized absences since he was able to notify his immediate supervisor of his absence on February 3, 2012 because of his sickness, he cannot be deemed entirely faultless. Aside from the text message he sent, he did nothing else to comply with the company's rules. He did not inform the company that he would leave his residence nor leave any information on how he may be reached. On the other hand,

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[58] 716 Phil. 818 (2013).

[59] 704 Phil. 120 (2013).

[60] 202 Phil. 850 (1982).

[61] 205 Phil. 14 (1983).

his supervisor, Joseph, exerted efforts to contact Laurence, albeit to no avail. For these reasons, there is no basis for an award of backwages.

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated August 18, 2014 of the Court of Appeals is **MODIFIED** in that the award of backwages is **DELETED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 226272. September 16, 2020]

PANACAN LUMBER CO., ANTONIO B. GO, MA. TERESA C. GO and DOROTEA B. GO, *Petitioners, v.* **SOLIDBANK CORP., (now METROPOLITAN BANK & TRUST COMPANY),**[1] *Respondent.*

SYLLABUS

1. MERCANTILE LAW; ACT NO. 3135; REAL ESTATE MORTGAGE; EXTRAJUDICIAL FORECLOSURE OF MORTGAGE; NOTICE OF SALE; PERSONAL NOTICE TO THE MORTGAGOR IN EXTRAJUDICIAL FORECLOSURE PROCEEDINGS IS NOT NECESSARY UNLESS AGREED UPON.— Well-settled is the rule that personal notice to the mortgagor in extrajudicial foreclosure proceedings is not necessary. Section 3 of Act No. 3135, as amended by Act No. 4118, requires only the posting of the notice of sale in three public places and the publication of that notice in a newspaper of general circulation. An exception to this rule is when the parties stipulate that personal notice is additionally required to be given to the mortgagor. Failure to abide by the general rule or its exception renders the foreclosure proceedings null and void.

2. ID.; MORTGAGES; "BLANKET MORTGAGE" OR "DRAGNET CLAUSE"; AS A RULE, A MORTGAGE LIABILITY IS LIMITED TO THE AMOUNT MENTIONED IN THE CONTRACT, UNLESS THERE IS INTENT TO SECURE FUTURE AND OTHER INDEBTEDNESS SPECIFICALLY DESCRIBED IN THE MORTGAGE CONTRACT. — The nature and concept of . . . [a "blanket mortgage" or a "dragnet clause"] were already discussed in *Philippine Charity Sweepstakes Office (PCSO) v. New Dagupan Metro Gas Corporation*, thus:

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[1] Jesusa Prado-Maningas, Clerk of Court and Ex-Officio Sheriff, and Mario P. Villanueva, Sheriff-in-Charge, were deleted as party-respondents pursuant to Section 4, Rule 45 of the Rules of Court.

As a general rule, a mortgage liability is usually limited to the amount mentioned in the contract. However, the amounts named as consideration in a contract of mortgage do not limit the amount for which the mortgage may stand as security if from the four corners of the instrument the intent to secure future and other indebtedness can be gathered.

Alternatively, while a real estate mortgage may exceptionally secure future loans or advancements, these future debts must be specifically described in the mortgage contract. An obligation is not secured by a mortgage unless it comes fairly within the terms of the mortgage contract.

The stipulation extending the coverage of a mortgage to advances or loans other than those already obtained or specified in the contract is valid and has been commonly referred to as a "blanket mortgage" or "dragnet" clause. In *Prudential Bank v. Alviar*, this Court elucidated on the nature and purpose of such a clause as follows:

A "blanket mortgage clause," also known as a "dragnet clause" in American jurisprudence, is one which is specifically phrased to subsume all debts of past or future origins. Such clauses are "carefully scrutinized and strictly construed." x x x.

A mortgage that provides for a dragnet clause is in the nature of a continuing guaranty and constitutes an exception to the rule [that] an action to foreclose a mortgage must be limited to the amount mentioned in the mortgage contract. x x x.

3. ID.; TRADE TRANSACTIONS; LETTERS OF CREDIT; NATURE AND USE OF A LETTER OF CREDIT IN TRADE TRANSACTIONS.— In *Bank of America, NT & SA v. Court of Appeals*, We elucidated on the nature and use of a Letter of Credit in trade transactions:

A letter of credit is a financial device developed by merchants as a convenient and relatively safe mode of dealing with sales of goods to satisfy the seemingly irreconcilable interests of a seller, who refuses to part with his goods before he is paid, and a buyer, who wants to have control of the goods before paying. To break the impasse, the buyer may be required to contract a bank to issue a letter of credit in

favor of the seller so that, by virtue of the letter of credit, the issuing bank can authorize the seller to draw drafts and engage to pay them upon their presentment simultaneously with the tender of documents required by the letter of credit. The buyer and the seller agree on what documents are to be presented for payment, but ordinarily they are documents of title evidencing or attesting to the shipment of the goods to the buyer.

Once the credit is established, the seller ships the goods to the buyer and in the process secures the required shipping documents or documents of title. To get paid, the seller executes a draft and presents it together with the required documents to the issuing bank. The issuing bank redeems the draft and pays cash to the seller if it finds that the documents submitted by the seller conform with what the letter of credit requires. The bank then obtains possession of the documents upon paying the seller. The transaction is completed when the buyer reimburses the issuing bank and acquires the documents entitling him to the goods. Under this arrangement, the seller gets paid only if he delivers the documents of title over the goods, while the buyer acquires the said documents and control over the goods only after reimbursing the bank.

What characterizes letters of credit, as distinguished from other accessory contracts, is the engagement of the issuing bank to pay the seller once the draft and the required shipping documents are presented to it. In turn, this arrangement assures the seller of prompt payment, independent of any breach of the main sales contract. By this so-called "independence principle," the bank determines compliance with the letter of credit only by examining the shipping documents presented; it is precluded from determining whether the main contract is actually accomplished or not.

There would at least be three (3) parties: (a) the *buyer*, who procures the letter of credit and obliges himself to reimburse the issuing bank upon receipt of the documents of title; (b) the *bank issuing* the letter of credit, which undertakes to pay the seller upon receipt of the draft and proper documents of titles and to surrender the documents to the buyer upon reimbursement; and, (c) the *seller*, who in compliance with the contract of sale ships the goods to

the buyer and delivers the documents of title and draft to the issuing bank to recover payment.

4. CIVIL LAW; SPECIAL CONTRACTS; LOAN; RATE OF EXCHANGE SHOULD BE THAT PREVAILING AT THE TIME OF PAYMENT.— [I]n view of PLC's partial payment in the amount of US$60,000.00, its remaining loan obligation under the Foreign Letter of Credit (FLC) is reduced to US$108,000.00. The rate of exchange should be that prevailing at the time of payment.

5. ID.; ID.; ID.; COMPENSATORY INTEREST; RATE OF INTEREST FROM THE DATE OF JUDICIAL DEMAND, IN THE ABSENCE OF EXTRA-JUDICIAL DEMAND AND EXPRESS STIPULATION THEREOF.— PLC shall be liable to pay compensatory interest of 12% per *annum* from the date of judicial demand, *i.e.* the filing of its Answer with Compulsory Counterclaim in January 7, 2000 until June 30, 2013 and 6% per *annum* from July 1, 2013 until the finality of this Decision, in the absence of extra-judicial demand and express stipulation as to rate of compensatory interest. In addition, the monetary award shall earn interest at the rate of 6% per *annum* from date of finality of this judgment until fully paid.

6. ID.; ID.; ID.; MONETARY INTEREST; INTEREST LOWER THAN 3% A MONTH IS NOT EXCESSIVE.— Based on existing jurisprudence, an interest of three percent (3%) per month or higher is considered as excessive or unconscionable. Hence, We do not find the monetary interest of 28.6889% per *annum* or 2.39% per month as excessive or unconscionable.

7. ID.; ID.; ID.; COMPENSATORY INTEREST OF 2% A MONTH IN CASE OF DEFAULT UNTIL FULL PAYMENT, AND ATTORNEY'S FEES OF 10% OF THE TOTAL AMOUNT DUE; NOT EXCESSIVE.— [I]n case of default, PLC agreed to pay a penalty or a compensatory interest of two percent (2%) per month based on the total amount due from the time of default until full payment as well as ten percent (10%) as attorney's fees on the total amount due. We likewise find this as not excessive or unconscionable and in conformity with prevailing jurisprudence as well.

8. ID.; ID.; ID.; ALL MONETARY AWARDS TO EARN 6% INTEREST PER ANNUM FROM DATE OF FINALITY OF JUDGMENT UNTIL FULL PAYMENT.— All these

monetary awards shall earn interest at the rate of 6% per *annum* from date of finality of this judgment until fully paid.

APPEARANCES OF COUNSEL

Valdez & Valdez Law Office for petitioners.
Angara Abello Concepcion Regala & Cruz for respondent.

D E C I S I O N

HERNANDO, *J.*:

Challenged in this Petition[2] is the July 31, 2015 Decision[3] and August 12, 2016 Resolution[4] of the Court of Appeals (CA) in CA-G.R. CV No. 99342 which reversed and set aside the February 13, 2012 Decision[5] of the Regional Trial Court (RTC), Branch 42 of Manila in Civil Case No. 99-95722. The CA affirmed the following obligations of petitioner Panacan Lumber Co. (PLC), Antonio B. Go (Antonio), Ma. Teresa C. Go (Teresa) and Dorotea B. Go (Dorotea) in favor of respondent Solidbank Corp. (Solidbank), now Metropolitan Bank & Trust Company (MBTC): (a) PLC's remaining loan obligation under the Foreign Letter of Credit (FLC) in the amount of US$108,000.00 subject to 6% interest rate per *annum* from May 1997 until the date of foreclosure sale in October 1999; and (b) PLC's loan obligation of ₱700,000.00 under renewal promissory note (PN) subject to 6% interest rate per *annum* from November 1997 until the date of foreclosure sale in October 1999.

The appellate court further 1) declared the title over the mortgaged property consolidated in the name of Solidbank as null and void for having been issued in violation of the writ of

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[2] *Rollo*, pp. 9-53.

[3] CA *rollo*, pp. 180-196; penned by Associate Justice Ma. Luisa C. Quijano-Padilla and concurred in by Associate Justices Normandie B. Pizarro and Agnes Reyes-Carpio.

[4] Id. at 257-261.

[5] Records, Vol. 2, pp. 680-689.

preliminary injunction issued by the trial court; 2) granted to mortgagors, petitioners PLC, Antonio, Teresa and Dorotea, a period of one (1) year from the finality of the decision within which to redeem the subject property by paying the redemption price plus one percent (1%) interest per month from the time of foreclosure until the actual redemption; 3) deleted the award of temperate damages of ₱400,000.00 and attorney's fees of ₱100,000.00 for lack of sufficient basis and merit; and 4) affirmed the dismissal of MBTC's counterclaims for lack of merit.

The Antecedents

On March 7, 1997, Solidbank issued a FLC[6] worth US$168,000.00 in favor of PLC to finance the latter's importation of lumber which was allegedly secured by a Domestic Letter of Credit (DLC)[7] dated February 14, 1997 valued at ₱4,240,000.00 issued by Philippine Commercial and Industrial Bank (PCIB). However, when the shipment arrived in Davao City, Solidbank refused to release the shipping documents necessary for the discharge of the goods for failure of PLC to pay the amount of US$168,000.00 under the FLC. In April 1997, PLC made partial payments of US$60,000.00 on its obligation under the FLC.[8]

Meanwhile, on March 27, 1997, PLC obtained a loan from Solidbank in the amount of ₱700,000.00 under PN No. 96000251 which would pay for the taxes, duties and insurance premium on said lumber importation. As a security for the said loan, petitioners Antonio and Teresa executed a real estate mortgage (REM) over the property covered by Transfer Certificate of Title (TCT) No. T-217531. They were allegedly made to sign blank forms purporting to be a deed of REM with a principal amount of ₱2,000,000.00.[9]

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[6] Id., Vol. 1, pp. 111-115.

[7] Id. at 117-119.

[8] *Rollo*, p. 68.

[9] Records, Vol. 1, pp. 120-122.

On October 24, 1997, Solidbank agreed to renew PLC's loan for another ₱700,000.00 after payment of interests and other charges by petitioners. However, petitioners failed to pay the balance of the total obligation which resulted in the extra-judicial foreclosure of mortgage over the property covered by TCT No. T-217531 with a principal obligation of ₱700,000.00. Solidbank later amended its Petition for Extra-Judicial Foreclosure of Mortgage to increase the loan obligation to ₱1,140,245.10. It then filed a Second Amended Petition to include petitioner PLC's obligation under the FLC which resulted in the total loan obligation of ₱9,151,667.89.[10]

On October 4, 1999, a public auction was held where Solidbank was adjudged as the highest bidder for the bid price of ₱2,637,600.00. Consequently, on November 22, 1999, petitioners filed a complaint[11] against Solidbank, the Clerk of Court and Ex-Officio Sheriff of Manila, and Mario P. Villanueva (Villanueva), Sheriff-in-Charge, with prayer for the issuance of a temporary restraining order and writ of preliminary injunction. Petitioners claimed that they suffered damages by way of unrealized profits on account of Solidbank's refusal to release the shipping documents pertaining to the lumber importation and that they were prejudiced by the subsequent foreclosure of mortgage over the property covered by TCT No. T-217531, which wrongfully included the obligation under the FLC.

Solidbank opposed petitioners' application for a temporary restraining order and writ of preliminary injunction. In its Answer with Compulsory Counterclaim,[12] Solidbank argued that it acted within its rights when it did not release the shipping documents pertaining to PLC's lumber importation as the latter failed to submit the documents required to effect payment on its PCIB's DLC despite several extensions given. As to the foreclosure of

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[10] Id. at 31.

[11] Id. at 1-21.

[12] Id. at 84-93.

the REM, Solidbank insisted that it included "any and all existing indebtedness of, and such other Loans and Credit facilities which may hereafter be granted to Panacan Lumber Company." In addition, the bank contended that it has fully and substantially complied with the legal and procedural requirements to foreclose the REM. It denied any liability for any unrealized profits or damages the petitioners may have suffered when it withheld the release of the shipping documents. It further asserted that the interest and other charges are reasonable and based on the prevailing interest rate at the time the loan was granted and that the dollar-to-peso conversion rate was computed at the time of payment pursuant to law and prevailing jurisprudence.

On October 31, 2000, the trial court issued an Order[13] which granted petitioners' prayer for the issuance of a writ of preliminary injunction and enjoined respondent from further executing acts towards consolidating Solidbank's ownership over the property covered by TCT No. T-217531. Thereafter, trial on the merits ensued.

Despite the issuance of a preliminary injunction, Solidbank proceeded to consolidate its ownership over the subject property. Thus, petitioners filed a Motion to Admit Supplemental Complaint[14] to include Solidbank's successor-in-interest, MBTC, the registered owner of the subject property. The trial court granted the said motion in its February 17, 2005 Order.[15]

However, Solidbank failed to present any of its witnesses and file its memorandum within the reglementary period. Thus, petitioners moved that the case be submitted for decision. Nonetheless, the trial court allowed Solidbank to present its witness in its March 20, 2009 Order[16] over the objection of petitioners. Petitioners moved for the reconsideration of the

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[13] Id. at 228-229.

[14] Id., Vol. 2, pp. 6-8.

[15] Id. at 48-49.

[16] Id. at 118-119.

said Order and for the inhibition of Judge Gregorio B. Clemeña (Judge Clemeña). Consequently, Judge Clemeña inhibited from the case but denied petitioners' motion for reconsideration in his May 11, 2009 Order.[17]

Hence, petitioners elevated the case on *certiorari*[18] under Rule 65 before the CA docketed as CA-G.R. SP No. 109777. The appellate court subsequently granted the petition in its March 29, 2010 Decision[19] and set aside the March 20, 2009 and May 11, 2009 Orders issued by Judge Clemeña of the RTC of Manila, Branch 51. The appellate court also enjoined the Presiding Judge of RTC of Manila, Branch 42, to which the case was re-raffled, from further receiving evidence for Solidbank and considered the case submitted for decision. Solidbank's motion for reconsideration was likewise denied by the CA in its August 13, 2010 Resolution.[20] Thus, it brought the matter to this Court via a petition for review on *certiorari* which was however denied in Our September 27, 2010[21] and January 12, 2011[22] Resolutions.

Meanwhile, Solidbank presented its bank manager, Teresita Javellana, as witness and filed its formal offer of evidence. However, the trial court in its April 19, 2011 Order[23] refused to act on the said formal offer upon notice of this Court's ruling on the petition for review on *certiorari*. Solidbank moved for the reconsideration thereof which was however denied by the trial court in its July 4, 2011 Order.[24] Hence, Solidbank simply tendered its excluded evidence.

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[17] Id. at 142.

[18] Id. at 164-178.

[19] Id. at 589-597; penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Normandie B. Pizarro and Ruben C. Ayson.

[20] Id. at 476-477.

[21] Id. at 490.

[22] Id. at 506.

[23] Id. at 575.

[24] Id. at 587.

***Ruling of the Regional Trial Court*:**

On February 13, 2012, the trial court rendered its Decision[25] which ordered Solidbank to pay petitioners the amount of ₱400,000.00 as temperate damages and ₱100,000.00 as attorney's fees plus costs. The trial court likewise nullified the foreclosure proceedings and sale of the subject property and TCT No. T-251604 registered under MBTC. Lastly, the trial court ordered the dismissal of Solidbank's counterclaims.

***Ruling of the Court of Appeals*:**

Upon appeal, the appellate court in its July 31, 2015 Decision,[26] partially granted Solidbank's appeal. It reversed and set aside the RTC's February 13, 2012 Decision, to wit:

> WHEREFORE, premises considered, the instant appeal is PARTIALLY GRANTED.
>
> The Decision dated February 13, 2012, of Branch 42 of the Regional Trial Court of Manila in Civil Case No. 99-95722 is REVERSED and SET ASIDE. Judgement is hereby rendered as follows:
>
> (I) Affirming the remaining balance of loan obligation under the letter of credit in the amount of US$108,000.00 subject to 6% interest per annum from May 1997 until the date of the foreclosure sale in October 1999 and applying the current exchange rate at the time payment is to be made;
>
> (II) Affirming the loan obligation of ₱700,000.00 under renewal promissory note subject to 6% interest per annum from November 1997 until the date of the foreclosure sale, October 1999;
>
> (III) Declaring the consolidation of title over the mortgaged property now in the name of defendant-appellant Metropolitan Bank & Trust Company, as null and void, for being in violation of the writ of preliminary injunction issued by the trial court and granting to the mortgagors, plaintiffs-appellees herein, a period of one (1) year from the finality of this Decision within which to redeem the subject property by paying the redemption price, following the computation in

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[25] Id. at 680-689.

[26] CA *rollo*, pp. 180-196.

paragraphs I and II hereof, plus one percent (1%) interest per month thereon, from the time of foreclosure up to the time of the actual redemption, pursuant to Section 28, Rule 39 of the 1997 Rules of Civil Procedure.

(IV) Deleting the award of temperate damages of ₱400,000.00 for the claim of unrealized profits and attorney's fees of ₱100,000.00 for lack of sufficient basis and for lack of merit.

(V) Affirming the dismissal of defendant-appellant Solidbank Corporation's (now Metropolitan Bank & Trust Company) counterclaims for lack of merit.

No pronouncement as to costs.

SO ORDERED.[27]

Petitioners moved for the reconsideration of the appellate court's assailed Decision but the same was denied by the CA in its August 12, 2016 Resolution.[28] Hence, petitioners filed this Petition for Review on *Certiorari*[29] under Rule 45.

ISSUES

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

1. Whether or not the extra-judicial foreclosure of the [REM] is null and void due to the lack of personal notice to petitioners of the two amended petitions for extra-judicial foreclosure filed by Solidbank.
2. Whether or not the PCIB's [DLC] was issued for the purpose of securing the transaction covered by the [FLC].
3. Whether or not the mortgage contract includes PLC's other loan obligations.
4. Whether or not Solidbank committed a breach of contract when it amended the petition for foreclosure of [REM] to include PLC's other loan obligations.

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[27] Id. at 194-195.

[28] Id. at 257-261.

[29] *Rollo*, pp. 9-53.

5. Whether or not the appellate court erred when it granted Solidbank's counterclaim despite its failure to adduce evidence and when it adjudicated matters not litigated nor raised by the parties in their pleadings.

Petitioners argue that the foreclosure proceedings should be declared null and void due to Solidbank's failure to notify them of the two amended petitions for extra-judicial foreclosure of the REM. They contend that although Section 3 of Act No. 3135,[30] as amended by Act No. 4118,[31] requires only posting of sale in three public places and the publication of that notice in a newspaper of general circulation, however, the parties may stipulate with respect to notices of the foreclosure. Petitioners assert that they agreed that all correspondence relative to the mortgage shall be sent by Solidbank to PLC. Nonetheless, Solidbank failed to notify petitioners of its two amended petitions for extra-judicial foreclosure as well as the foreclosure sale.

Petitioners further argue that the appellate court did not act on the issue of the nullity of the foreclosure on the pretext that it was not raised as a cause of action and/or on appeal. Petitioners insist that lack of notice to them of the two amended petitions was a judicially admitted fact, thus, it was grievous error on the part of the appellate court not to rule on the issue of nullity of foreclosure due to lack of personal notice.

Moreover, petitioners contend that they submitted the PCIB's DLC to Solidbank as a security for the FLC. The testimony of Antonio is undisputed that PLC applied for a FLC to finance its lumber importation and as required by Solidbank, PLC submitted PCIB's DLC as a collateral security. However, Solidbank was remiss in its duty when it did not ensure that it

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[30] An Act to Regulate the Sale of Property under Special Powers Inserted In or Annexed to Real-Estate Mortgages. Approved: March 6, 1924.

[31] An Act to Amend Act Numbered Thirty-One Hundred and Thirty-Five, entitled "An Act to Regulate the Sale of Property under Special Powers Inserted In or Annexed to Real-Estate Mortgages." Approved: December 7, 1933.

can draw from the PCIB's DLC to protect its interest before it issued the FLC to PLC. Thus, Solidbank committed a breach of contract when it refused to release the shipping documents in favor of PLC despite the presence of a collateral security. In addition, Solidbank had no valid reason to withhold the bill of lading as the agreement states that it shall have a lien on the goods, or shipment in case of default in payment.

Petitioners further argue that the REM only covers the loan obligation in the amount of ₱700,000.00 and not the loan obligation under the FLC in the amount of US$168,000.00 and other loan obligations absent any mention in the mortgage contract that the mortgage stands as security therefor. If the parties intended that the FLC be secured by the REM, then the same should have been indicated in the contract. Also, if it was indeed the intention of the parties to include the same, Solidbank would not have any reason not to release the shipping documents pertaining to PLC's lumber importation knowing fully well that the said transaction is secured by the REM and PCIB's DLC.

Finally, petitioners opine that the appellate court erred when it awarded Solidbank's counterclaims by ordering petitioners to pay its loan obligation under the FLC and the ₱700,000.00 loan obligation under the renewal PN. Petitioners claim that these issues have not been litigated nor raised in the pleadings, thus, the same cannot be awarded by the appellate court. No evidence whatsoever was presented by Solidbank on these matters which resulted in the dismissal thereof in the trial court.

On the other hand, Solidbank argues that the lack of personal notice to petitioners of the two amended petitions was not raised during the trial. Thus, the appellate court correctly refused to act on the said issue as issues raised for the first time on appeal are not allowed under settled jurisprudence. Solidbank insists that petitioners did not raise before the trial court the issue of wrongful inclusion of the FLC in the foreclosure of mortgage. Likewise, the issue of lack of personal notice was not properly put in issue during the trial considering that the testimony of Antonio was not offered for such purpose but for the following

purposes: (a) that PLC suffered irreparable damage resulting from the foreclosure proceeding; (b) that PCIB issued a DLC to secure the FLC acquired by PLC from Solidbank; and (c) that Solidbank committed wrongful acts in the mortgage foreclosure.

Solidbank further contends that the appellate court correctly ruled that the PCIB's DLC did not secure Solidbank's FLC issued to PLC because it was issued for a different transaction. Also, Solidbank claims that the REM covered all obligations of PLC to Solidbank by virtue of the blanket dragnet clause stipulated therein. Even assuming that the FLC is secured by PCIB's DLC, an additional security like the REM is not prohibited by law, unless otherwise agreed upon by the parties.

Moreover, Solidbank is justified in refusing the release of the shipping documents considering that PLC failed to pay its loan obligation under the FLC. It is undisputed that the parties entered into a letter of credit wherein the buyer, PLC, obliged itself to reimburse the issuing bank, Solidbank, upon receipt of the documents of title. On the other hand, Solidbank undertook to pay the seller upon receipt of the draft and proper documents of titles and to surrender the documents to PLC upon reimbursement. The seller ships the goods to the buyer and delivers the documents of title and draft to the issuing bank to recover payment. Hence, Solidbank argues that the failure of PLC to reimburse or pay despite its repeated demands justified its refusal to surrender the shipping documents to PLC.

In addition, Solidbank contends that the parties did not agree that the payment or reimbursement may be made by assigning the PCIB's DLC. The contract clearly provides that the reimbursement shall be made upon demand of Solidbank. It cannot be compelled to receive anything other than what was contemplated in the FLC. Nonetheless, even assuming that Solidbank accepted PCIB's DLC as a security, its failure to draw from the said DLC cannot be deemed as a waiver of its right to seek payment. The option to demand payment from PLC under the FLC or to draw from the PCIB's DLC remains with Solidbank. It has no obligation to exhaust its remedies against PCIB's DLC before demanding payment from PLC.

Solidbank maintains that it did not act in bad faith during the foreclosure proceedings when it twice amended the petition for extra-judicial foreclosure resulting in PLC's increased mortgage indebtedness from ₱700,000.00 to ₱9,151,667.89. Nothing in the provisions of Act No. 3135 prohibits the amendment of a petition for extra-judicial foreclosure. Also, petitioners failed to adduce any evidence to prove Solidbank's bad faith.

Lastly, Solidbank argues that the appellate court did not err in adjudicating on petitioners' outstanding obligations as the same were judicially admitted during the trial. Thus, petitioners cannot now claim that it was not litigated by the parties as they themselves put forth their outstanding obligations in their pleadings. Notwithstanding the fact that Solidbank failed to submit evidence on its behalf, it is evident that petitioners have not yet fully discharged their obligations to Solidbank.

The Court's Ruling

We find the petition partly meritorious.

Well-settled is the rule that personal notice to the mortgagor in extrajudicial foreclosure proceedings is not necessary.[32] Section 3 of Act No. 3135, as amended by Act No. 4118, requires only the posting of the notice of sale in three public places and the publication of that notice in a newspaper of general circulation. An exception to this rule is when the parties stipulate that personal notice is additionally required to be given to the mortgagor. Failure to abide by the general rule or its exception renders the foreclosure proceedings null and void.[33]

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[32] *Olizon v. Court of Appeals*, 306 Phil. 162, 170 (1994) citing *Cortes v. Intermediate Appellate Court*, 256 Phil. 979, 984 (1989); *Cruz v. Court of Appeals*, 269 Phil. 175, 178-179 (1990); *Gravina v. Court of Appeals*, 292-A Phil. 280, 283 (1993).

[33] *Paradigm Development Corp. of the Philippines v. Bank of the Philippine Islands*, 810 Phil. 539, 564 (2017), citing *Global Holiday Ownership Corporation v. Metropolitan Bank and Trust Company*, 607 Phil. 850, 864 (2009).

In the present case, petitioners invoke paragraph 14 of the Deed of REM[34] which provides:

> 14. All correspondence relative to this mortgage, including demand letters, summons, subpoenas, or notification of any judicial or extrajudicial action, shall be sent to the Mortgagor at above address or at the address that may hereafter be given in writing by the Mortgagor to the Mortgagee. x x x[35]

The foregoing stipulation is the law between the parties and should be faithfully complied by them. A perusal of the records reveals that petitioners were notified of the foreclosure proceedings by Solidbank through the Application of Extra-Judicial Foreclosure of Mortgage filed by the bank in 1998.[36] However, Solidbank twice amended the said petition for extra-judicial foreclosure which consequently resulted in the increase of PLC's mortgage indebtedness from ₱797,806.18 to ₱9,151,667.89.[37] In both instances, Solidbank did not send petitioners a personal notice of the two amended petitions. Instead, it proceeded with the foreclosure of mortgage as per Notice of Extra-Judicial Sale dated September 7, 1999.[38]

The provision clearly establishes that personal notice is required before Solidbank may proceed with the foreclosure of the subject property. Thus, Solidbank's act of proceeding with the foreclosure despite the absence of personal notice to petitioners violated the said deed of REM which accordingly renders the foreclosure null and void. If indeed the parties did not intend to require personal notice in addition to the statutory requirements of posting and publication, then the said provision should not have been included in the mortgage contract.

The appellate court therefore erred when it ruled on the validity of the foreclosure sale in the amount of ₱9,151,667.89 without

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[34] Records, Vol. 1, pp. 120-121.

[35] Id. at 121.

[36] Id. at 125.

[37] Id. at 31.

[38] Id.

touching on the issue of the lack of personal notice to petitioners on the ground that it was not raised as an issue during the trial. While it is true that issues not raised on trial cannot be raised on appeal, it is not the situation in the present case. The records show that petitioners timely raised in their Complaint[39] and Memorandum[40] filed before the trial court of Solidbank's failure to notify petitioners of its two amended petitions for extra-judicial foreclosure, to wit:

Complaint

> 20. — That, the filing of said amended petition and Second Amended Petition for Foreclosure, was done in evident bad faith and constituted another breach of contract committed by defendant Bank, because:
>
> x x x x
>
> (B) Further, in wanton disregard to the rights of plaintiffs, Defendant Bank did not [notify] nor [furnish] plaintiffs copy of said Amended Petition as well as the Second Amended Petition for Foreclosure.[41]

Plaintiff's Memorandum

> However, plaintiffs discovered that defendant bank without notice, filed on February 25, 1999 an amended verified petition for Extra-Judicial Foreclosure increasing its claim from the original amount to ₱700,000.00 to ₱1,140,245.10.
>
> Subsequently, defendant bank again filed a Verified Second Amended Petition for Extra-Judicial Foreclosure without giving notice thereof to plaintiff spouses. In utter bad faith, it included therein, the dollar account in said foreclosure proceedings thereby increasing its claim to ₱9,151,667.89.
>
> Plaintiffs maintain that the wrongful inclusion by defendant bank of the dollar account in its Second Amended Petition for foreclosure dated June 15, 1999 as well as the latter's failure to give notice thereof constitutes a breach of contract which justifies the annulment of the

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[39] Id. at 1-21.

[40] Id., Vol. 2, pp. 630-644.

[41] Id., Vol. 1, pp. 10-11.

Sheriff's Certificate of Sale dated October 19, 1999 in favor of defendant bank.

x x x x[42]

In fact, petitioners, in their Appellees' Brief[43] filed before the CA, raised the same issue to support and justify the assailed February 13, 2012 Decision of the RTC, to wit:

Thereafter, appellees discovered that appellant bank without notice, filed on February 25, 1999 an amended verified petition for Extra-Judicial Foreclosure, increasing its claim from the original amount of ₱700,000.00 to ₱1,140,245.10.

Subsequently, appellant bank filed a Verified Second Amended Petition for Extra-Judicial-Foreclosure, again, without giving notice thereof to appellee spouses. In utter bad faith it included therein the dollar account thereby increasing its claim to ₱9,151,667.89.

Appellees have proven that the malicious and wrongful inclusion by the appellant bank of the dollar account in its second amended petition which in consequence ballooned appellees' indebtedness to almost ₱10Million justifies the annulment of the foreclosure sale.[44]

As to whether the mortgage contract covers all other existing and future obligations of petitioners, *i.e.*, the FLC, PN No. 96000251 and renewal PN, a review of the Deed of REM is proper, *viz.*:

That, for and in consideration of certain loans, and other credit accommodations obtained from the Mortgagee, and to secure the payment of the same and those that may hereafter be obtained, the principal of all of which is hereby fixed at TWO MILLION ONLY (PhP2,000,000.00) Pesos, Philippine Currency, as well as those that the Mortgagee may extend to the Mortgagor/Debtor, including interest and expenses or any other obligation owing to the Mortgagee, whether direct or indirect, principal or secondary, as appears in the accounts, books and records of the Mortgagee, the Mortgagor does hereby

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[42] Id., Vol. 2 at 664.

[43] CA *rollo*, pp. 103-147.

[44] Id. at 139-141.

transfer and convey by way of mortgage unto the Mortgagee, its successors, or assigns, the parcels of land which are described at the back of this document, and/or appended hereto, together with all the buildings, improvements, or machineries now existing or which may hereafter be erected, constructed thereon or attached thereto, of which the Mortgagor declares that he/it is the absolute owner free from all liens and encumbrances. However, if the Mortgagor/Debtor shall pay to the Mortgagee, its successors or assigns, the obligation/s secured by this mortgage when due, together with interest, and shall keep and perform all and singular the covenants and agreements herein contained for the Mortgagor/Debtor to keep and perform, then this mortgage shall be void; otherwise, it shall remain in full force and effect.[45] (sic) [Emphasis and underscoring ours.]

Patently, the above provision in the Deed of REM is considered a "blanket mortgage" or a "dragnet" clause. The nature and concept of which were already discussed in *Philippine Charity Sweepstakes Office (PCSO) v. New Dagupan Metro Gas Corporation*,[46] thus:

As a general rule, a mortgage liability is usually limited to the amount mentioned in the contract. However, the amounts named as consideration in a contract of mortgage do not limit the amount for which the mortgage may stand as security if from the four corners of the instrument the intent to secure future and other indebtedness can be gathered.

Alternatively, while a real estate mortgage may exceptionally secure future loans or advancements, these future debts must be specifically described in the mortgage contract. An obligation is not secured by a mortgage unless it comes fairly within the terms of the mortgage contract.

The stipulation extending the coverage of a mortgage to advances or loans other than those already obtained or specified in the contract is valid and has been commonly referred to as a "blanket mortgage" or "dragnet" clause. In *Prudential Bank v. Alviar*, this Court elucidated on the nature and purpose of such a clause as follows:

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[45] Records, Vol. 1, p. 120.

[46] 690 Phil. 504 (2012).

A "blanket mortgage clause," also known as a "dragnet clause" in American jurisprudence, is one which is specifically phrased to subsume all debts of past or future origins. Such clauses are "carefully scrutinized and strictly construed." x x x.

A mortgage that provides for a dragnet clause is in the nature of a continuing guaranty and constitutes an exception to the rule [that] an action to foreclose a mortgage must be limited to the amount mentioned in the mortgage contract. x x x.[47] [Emphasis and underscoring ours; citations omitted]

Although a blanket mortgage or a dragnet clause is generally recognized as valid, these other obligations, past or future, secured by the REM must be specifically described within the terms of the mortgage contract. As can be gleaned from the records, the REM with maximum amount of ₱2,000,000.00 was constituted by the parties to secure PLC's loan obligation in the amount of ₱700,000.00 under P.N. No. 96000251. The Deed of REM also includes all extensions or renewals of the loan or credit accommodation granted to PLC as the mortgagor or debtor, *i.e.*, renewal PN, in the amount of ₱700,000.00, to wit:

5. The loans and other credit facilities herein granted or which may hereafter be granted are further evidenced by other documents or promissory notes or such documents which may hereafter be executed, the terms and conditions of which shall be considered as an integral part of this mortgage agreement; that any violation of the terms and conditions of the promissory note or notes or documents executed by virtue of this mortgage or default in the payment thereof, shall be considered as a violation of the terms and conditions of this mortgage. **This mortgage shall likewise stand as security for any extension(s) or renewal(s) of the loan or credit accommodation granted to the DEBTOR or MORTGAGOR.**[48] [Emphasis and underscoring ours.]

Thus, it cannot be denied that the REM covered not only PN No. 96000251 but the renewal PN as well since the REM clearly provides that it shall stand as security for any "extension(s) or

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[47] Id. at 521-522.

[48] Records, Vol. I, p. 120.

renewal(s) of the loan or credit accommodation granted to the DEBTOR or MORTGAGOR." There is no doubt, therefore, as to the inclusion of the renewal PN under the coverage of the Deed of REM.

However, as to the FLC, the Deed of REM is bereft of any reference or provisions that it likewise secured the aforesaid obligation. It bears noting that the FLC was executed by the parties before the execution of PN No. 96000251 and the renewal PN. Although a REM may validly secure past obligations executed by the parties, this is not the case herein. The Deed of REM is clear and explicit that it only covers certain loans and other accommodations obtained from Solidbank without reference to its past obligations such as the FLC. Also, the Deed of REM states that:

> This MORTGAGE made and executed by Antonio Go and Ma. Teresa Go, both of legal age, Filipino citizens and residents of Davao City, Philippines, **in order to secure and guarantee, jointly and severally, the loan or credit accommodation which has been granted or may hereafter be granted** to PANACAN LUMBER, CO., x x x[49] [Emphasis and underscoring ours.]

The terms of the Deed of REM are plain and clear that it only secures the loan or credit accommodation granted by Solidbank to PLC upon the execution of PN No. 96000251 and those which may thereafter be granted, *i.e.*, the renewal PN. No reference has been made in the REM that past obligations of PLC, *i.e.*, the FLC, is also secured by the same Deed of REM. Further, the Deed of REM has a maximum limit of ₱2,000,000.00. Plainly, the obligation under FLC, *i.e.*, US$168,000.00, exceeds this benchmark of ₱2,000,000.00 considering the exchange rate prevailing in 1997.[50] Although the parties are not prohibited to secure the FLC with the Deed

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[49] Id.

[50] *Bangko Sentral ng Pilipinas*, Selected Philippine Economic Indicators, 1993-2002, August 12, 2020. Retrieved from http://www.bsp.gov.ph/statistics/speiy_02/uscross_9302.htm.

of REM, the provisions thereof bear no evidence of their intention for its inclusion. Thus, in the absence of clear and satisfactory evidence of a contrary intention, the Deed of REM does not extend to PLC's past obligations specifically, the FLC.

Despite the foregoing, We affirm the findings of the appellate court that PLC has an outstanding obligation of ₱700,000.00 in favor of Solidbank under the renewal PN No. 96000251 which renewal was granted and executed after PLC paid its obligation of ₱700,000.00 under the original PN No. 96000251. The declaration of nullity of this foreclosure, however, is without prejudice to Solidbank's filing of another action to foreclose the Deed of REM against PLC taking into account the rule on proper notice and the amount of loan secured by the Deed of REM as stated in the renewal PN and applicable interest and penalty charges, as well as other requirements for foreclosure of the REM.

Nonetheless, despite the nullity of the foreclosure sale as to the amount of ₱9,151,667.89, petitioners' obligations to Solidbank under the FLC remain. Solidbank's failure to present any evidence to establish its claims against petitioners cannot prevent this Court to hold petitioners liable to Solidbank as there was enough proof extant in the records on which to base a ruling. This Court has the duty to consider and give due regard to everything on record relevant and material to its resolution of the issues presented. Here, We could not disregard the records that showed petitioners' outstanding obligations due to Solidbank based on petitioners' own admission and evidence formally offered.

Evidently, Solidbank extended to PLC a FLC worth US$168,000.00. Petitioners claim that Solidbank's refusal to release the documents of title of PLC's lumber importation despite securing it with PCIB's DLC caused them substantial losses by way of unrealized profits. In *Bank of America, NT & SA v. Court of Appeals,*[51] We elucidated on the nature and use of a Letter of Credit in trade transactions:

[51] 298-A Phil. 326 (1993).

A letter of credit is a financial device developed by merchants as a convenient and relatively safe mode of dealing with sales of goods to satisfy the seemingly irreconcilable interests of a seller, who refuses to part with his goods before he is paid, and a buyer, who wants to have control of the goods before paying. To break the impasse, the buyer may be required to contract a bank to issue a letter of credit in favor of the seller so that, by virtue of the letter of credit, the issuing bank can authorize the seller to draw drafts and engage to pay them upon their presentment simultaneously with the tender of documents required by the letter of credit. The buyer and the seller agree on what documents are to be presented for payment, but ordinarily they are documents of title evidencing or attesting to the shipment of the goods to the buyer.

Once the credit is established, the seller ships the goods to the buyer and in the process secures the required shipping documents or documents of title. To get paid, the seller executes a draft and presents it together with the required documents to the issuing bank. The issuing bank redeems the draft and pays cash to the seller if it finds that the documents submitted by the seller conform with what the letter of credit requires. The bank then obtains possession of the documents upon paying the seller. The transaction is completed when the buyer reimburses the issuing bank and acquires the documents entitling him to the goods. Under this arrangement, the seller gets paid only if he delivers the documents of title over the goods, while the buyer acquires the said documents and control over the goods only after reimbursing the bank.

What characterizes letters of credit, as distinguished from other accessory contracts, is the engagement of the issuing bank to pay the seller once the draft and the required shipping documents are presented to it. In turn, this arrangement assures the seller of prompt payment, independent of any breach of the main sales contract. By this so-called "independence principle," the bank determines compliance with the letter of credit only by examining the shipping documents presented; it is precluded from determining whether the main contract is actually accomplished or not.

There would at least be three (3) parties: (a) the *buyer*, who procures the letter of credit and obliges himself to reimburse the issuing bank upon receipt of the documents of title; (b) the *bank issuing* the letter of credit, which undertakes to pay the seller upon receipt of the draft and proper documents of titles and to surrender the documents to

the buyer upon reimbursement; and, (c) the *seller*, who in compliance with the contract of sale ships the goods to the buyer and delivers the documents of title and draft to the issuing bank to recover payment.[52]

In this case, petitioner PLC, the buyer, procured the letter of credit from Solidbank and obliged itself to pay the latter US$168,000.00 upon receipt of the documents of title. On the other hand, Solidbank undertakes to pay the seller or the beneficiary of the credit instrument upon receipt of the draft and proper documents of title and to surrender the documents to PLC upon reimbursement. Finally, the seller or the beneficiary of the credit instrument, Ricoland Resources SND BWD (Ricoland), ships the goods to the buyer and delivers the documents of title and draft to the issuing bank to recover payment.

Undoubtedly, the seller, Ricoland, shipped the goods to Davao City, Philippines and delivered the documents of title to Solidbank, which in turn refused to release said documents of title to PLC for its failure to reimburse Solidbank the amount of US$168,000.00. Admittedly, petitioners failed to pay its total obligation to Solidbank under the FLC. Thus, Solidbank cannot be faulted when it denied to release the documents of title pertaining to the lumber importation.

Petitioners' claim that Solidbank is obliged to surrender the documents of title to petitioners despite non-payment of their obligation under the FLC, it being secured by PCIB's DLC, is untenable. Solidbank appropriately refused to rely on the PCIB's DLC when PLC defaulted on its obligation. As stated in their agreement for commercial letter of credit:[53]

18. Events and Consequences of Default

If the undersigned fails at any time to maintain a margin security with you, or upon the non performance of any of the promises to pay hereinabove set forth, or upon the non-payment of any of the other

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[52] Id. at 334-337.

[53] Records, Vol. 1, pp. 111-114.

obligations or liabilities above mentioned; or upon the failure of the undersigned forthwith, with or without notice, to furnish satisfactory additional collateral or to make payments on account as hereinabove agreed; or to perform or comply with any of the other terms or provisions of this Agreement; x x x then and at any time the happening of such event, any or all of the aforesaid obligations and/or liabilities of the undersigned shall, at your option, become due and payable immediately, without demand or notice, and you may proceed against the undersigned judicially or otherwise to enforce payment or demand additional collaterals from the undersigned that shall protect you from any proceedings by the beneficiary, x x x.[54]

The foregoing stipulation clearly gives Solidbank the right to enforce payment on the obligation of PLC under the FLC. Solidbank has the option to demand payment directly from PLC upon the latter's default and is not obliged to first go after the collateral security. In addition, Solidbank is not obliged under the agreement to surrender the documents of title before PLC's payment of its obligation under the FLC. The collateral security does not guarantee the release of documents of title to PLC, but rather the reimbursement of US$168,000.00 as agreed upon by parties. Even so, PCIB's DLC, which was allegedly issued to secure Solidbank's FLC, pertains to a different transaction. This, furthermore justified the withholding by Solidbank of the documents of title before payment of the total loan obligation by the PLC.

In conclusion, petitioners have no right to demand payment of damages from Solidbank on the ground of substantial losses in its lumber importation caused by Solidbank's refusal to release the documents of title. However, in view of PLC's partial payment in the amount of US$60,000.00, its remaining loan obligation under the FLC is reduced to US$108,000.00. The rate of exchange should be that prevailing at the time of payment.[55] However,

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[54] Id. at 113.

[55] *Buenaventura v. Court of Appeals*, 260 Phil. 206 (1990) citing *Zagala v. Jimenez*, 236 Phil. 158 (1987) citing *Phoenix Assurance Company v. Macondray & Co., Inc.*, G.R. No. L-25048, May 13, 1975.

We delete the appellate court's award of compensatory interest at the rate six percent (6%) per *annum* from May 1997 until the date of the foreclosure sale in October 1999 in view of the absence of express stipulation of the parties as to the payment of interest on the FLC. Instead, PLC shall be liable to pay compensatory interest of 12% per *annum* from the date of judicial demand, *i.e.*, the filing of its Answer with Compulsory Counterclaim in January 7, 2000 until June 30, 2013 and 6% per *annum* from July 1, 2013 until the finality of this Decision, in the absence of extra-judicial demand and express stipulation as to rate of compensatory interest.[56] In addition, the monetary award shall earn interest at the rate of 6% per *annum* from date of finality of this judgment until fully paid.[57]

Moreover, We deem it proper to discuss the propriety of interest due on the renewal PN No. 96000251 even if the same was not assigned as an error in this petition in order to arrive at a just and complete resolution of this case. Besides, PLC raised in its complaint the issue of the propriety of interests and other charges, thus, it is crucial to finally settle PLC's total obligation secured by the Deed of REM especially when there is sufficient evidence on which to base a ruling.

Contrary to the findings of the appellate court, the monetary interest rate agreed upon by the parties on the renewal PN No. 96000251 is not 28.6889% per month, but 28.6889% per *annum*. The parties agreed to an interest rate of 28.6889% per *annum* to be repriced every 30 days and payable monthly in advance within 180 days from October 24, 1997 or until April 22, 1998. Based on existing jurisprudence,[58] an interest of three percent (3%) per month or higher is considered as excessive or unconscionable. Hence, We do not find the monetary interest

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[56] *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

[57] *Id.*

[58] See *Spouses Mallari v. Prudential Bank*, 710 Phil. 490 (2013), *Ruiz v. Court of Appeals*, 449 Phil. 419 (2013), *Chua v. Timan*, 584 Phil. 144, 148 (2008).

of 28.6889% per *annum* or 2.39% per month as excessive or unconscionable.

In addition, in case of default, PLC agreed to pay a penalty or a compensatory interest of two percent (2%) per month based on the total amount due from the time of default until full payment as well as ten percent (10%) as attorney's fees on the total amount due. We likewise find this as not excessive or unconscionable and in conformity with prevailing jurisprudence as well.

In sum, PLC is liable to pay monetary interest of 28.6889% per *annum* on ₱700,000.00 under renewal PN No. 96000251 from October 24, 1997 until April 22, 1998. In addition, PLC is liable to pay compensatory interest on the total amount due including monetary interest of 2% interest per month from the time of default, that is, the filing of Answer with Compulsory Counterclaim on January 7, 2000 in the absence of evidence of extrajudicial demand, until finality of this Decision. Also, PLC is liable to pay 10% of the total amount due including monetary and compensatory interests as attorney's fees. All these monetary awards shall earn interest at the rate of 6% per *annum* from date of finality of this judgment until fully paid.[59]

Finally, We affirm the declaration of nullity of the consolidation of title over the mortgaged property in the name of MBTC for being in violation of the writ of preliminary injunction issued by the trial court. Consequently, we delete the appellate court's grant of one (1) year period of redemption in favor of mortgagors Antonio and Ma. Teresa in view of the nullity of the whole foreclosure proceedings.

WHEREFORE, the Petition is **PARTLY GRANTED**. The assailed July 31, 2015 Decision and August 12, 2016 Resolution of the Court of Appeals in CA-G.R. CV No. 99342 are hereby **AFFIRMED** with **MODIFICATIONS:**

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[59] *Nacar v. Gallery Frames, supra* note 56.

a) Petitioner Panacan Lumber Co. is hereby **ORDERED** to pay Solidbank US$108,000.00 under the foreign letter of credit at the rate of exchange prevailing at the time of payment subject to twelve percent (12%) interest per *annum* from January 7, 2000 until June 30, 2013 and six percent (6%) interest per *annum* from July 1, 2013 until finality of judgment. The total monetary award shall be subject to six percent (6%) interest rate per *annum* from the date of finality of this Decision until fully paid;

b) Petitioner Panacan Lumber Co. is hereby **ORDERED** to pay Solidbank: (1) ₱700,000.00 under renewal Promissory Note No. 96000251; (2) monetary interest of 28.6889% per *annum* from October 24, 1997 until April 22, 1998; (3) compensatory interest of two percent (2%) per month on the total amount due, *i.e.*, ₱700,000.00 plus monetary interest, from the time of judicial demand on January 7, 2000 until finality of this Decision; (4) attorney's fees of 10% of the total amount due, *i.e.*, ₱700,000.00 plus monetary and compensatory interests, under renewal Promissory Note No. 96000251; and (5) six percent (6%) legal interest rate per *annum* on the total monetary award, *i.e.*, ₱700,000.00, monetary interest, compensatory interest and attorney's fees, from finality of this Decision until fully paid. In the alternative, Solidbank may secure payment of ₱700,000.00 under renewal Promissory Note No. 96000251 including the applicable interest and penalty charges by instituting an action for foreclosure of the Deed of Real Estate Mortgage;

c) The foreclosure proceedings as to mortgage indebtedness of ₱9,151,667.89 is hereby declared null and void in view of the violation of the notice requirement under the Deed of Real Estate Mortgage, without prejudice to Solidbank's right to institute an action for foreclosure of real estate mortgage taking into consideration the rule on proper notice, the amount of loan secured by the Deed of Real Estate Mortgage as stated in the renewal Promissory Note No. 96000251 as well as the applicable interests and penalty charges there under, and other necessary requirements;

d) Consequently, the consolidated title of the mortgaged property registered in the name of Metropolitan Bank & Trust Company is declared null and void as it was made in violation of the writ of preliminary injunction and in view further of the declaration of nullity of the foreclosure proceedings.

SO ORDERED.

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

Baltazar-Padilla, J., on leave.

FIRST DIVISION

[G.R. No. 226771. September 16, 2020]

NORSK HYDRO (PHILIPPINES), INC., and NORTEAM SEATRANSPORT SERVICES, *Petitioners, v.* **PREMIERE DEVELOPMENT BANK, BANK OF THE PHILIPPINE ISLANDS, CITIBANK, N.A., SKYRIDER BROKERAGE INTERNATIONAL, INC. and MARIVIC - JONG BRIONES,** *Respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENT; PRINCIPLE OF CONCLUSIVENESS OF JUDGMENT, APPLIED.— [T]he Decision dated April 14, 2010, has long attained finality after the Entry of Judgment was issued on May 26, 2015. It is well-settled that once a judgment attains finality, it becomes immutable and unalterable. It may not be changed, altered, or modified in any way even if the modification were for the purpose of correcting an erroneous conclusion of fact or law.

. . .

Any right, fact, or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies, whether or not the claim, demand, purpose, or subject matter of the two actions is the same. Thus, the findings of the RTC as to the nature of the source of respondents' obligation to petitioner cannot now be questioned anew by the latter and so late in the proceedings.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; LOAN OR FORBEARANCE OF MONEY, DEFINED; RESPONDENTS' OBLIGATION IS BASED ON FAULT OR NEGLIGENCE, AND NOT ON LOAN OR FORBEARANCE OF MONEY.— A loan or forbearance of money, goods, or credit describes a contractual obligation whereby a lender or creditor has refrained during a given period

from requiring the borrower or debtor to repay the loan or debt then due and payable. Forbearance of money, goods or credits, therefore, refers to arrangements other than loan agreements, where a person acquiesces to the temporary use of his money, goods, or credits pending the happening of certain events or fulfillment of certain conditions.

Clearly, the instant case does not involve a loan or forbearance of money but due to fault or negligence by herein respondents. To reiterate, respondents' obligation does not involve an acquiescence to the temporary use of a party's money but a performance of a particular service, specifically for respondent Skyrider Brokerage to compute the custom duties and taxes of petitioners, and transmit the payment to the same to the BOC for the release of the imported fertilizers. Respondent Security Bank, on the other hand, was obligated to not encash the crossed manager's checks because it was neither an authorized agent bank of the BOC nor was it authorized to receive the payment of custom duties and taxes on behalf of the same. In turn, respondents BPI and Citibank were obligated not to release the amounts covered by the said checks, which are not payable to the order of respondent Security Bank.

3. ID.; ID.; LEGAL INTEREST; GUIDELINES IN THE COMPUTATION OF LEGAL INTEREST TO AN AWARD OF ACTUAL AND COMPENSATORY DAMAGES; THE RATE OF LEGAL INTEREST TO BE IMPOSED ON RESPONDENTS' OBLIGATION SHALL BE 6% PER ANNUM.— [T]his Court reiterates the guidelines in computing for the legal interest to an award of actual and compensatory damages, as follows:

1. When the obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 6% per annum (formerly 12% per annum) to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

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

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

Given the foregoing, the rate of legal interest to be imposed upon the obligation of respondents shall be 6% per annum, at the time of judicial or extra-judicial demand by petitioners.

4. ID.; ID.; ID.; COMPOUNDED INTEREST; COMPOUNDED INTEREST CANNOT BE IMPOSED IN THE ABSENCE OF A STIPULATION TO THAT EFFECT.— This Court had settled that the payment of monetary interest shall only be due only if: 1) there was an express stipulation for the payment of interest, and; 2) the agreement for such payment was reduced into writing. It is not enough that the payment of interest shall be stipulated and reduced into writing, for the purpose of imposing compounded interest, but should also state the manner in which such interest should be earned. In this case, since the records are bereft of any indication that the parties agreed to the imposition of compounding interest, nor was the RTC's decision forthcoming with details of the same, in default of any stipulation regarding the manner of earning the interest, simple interest shall accrue.

. . .

. . . [T]he presence of stipulated or conventional interest accrued at the time of judicial demand is required in order to impose a compounded interest. Nowhere in the complaint herein was it alleged that the parties had stipulated that respondents' obligation will earn interest. In cases where no interest had been stipulated by the parties, no accrued conventional interest could further earn interest upon judicial demand.

5. ID.; ID.; ID.; COSTS OF SUIT; THE COST OF SUIT AWARDED TO A WINNING LITIGANT CANNOT EARN LEGAL INTEREST.— [T]he costs of suit do not partake the nature of a loan or forbearance of money, or even an obligation, in a strict sense, which is demandable by a party against another, as defined under Article 1156 in relation to Article 1157 of the Civil Code. This is strengthened by the fact that the courts can deny the award of the same in favor of the winning litigant, even after presenting proof of its payment. It is rather treated as an expense that is allowed by law to be reimbursed from a losing party in a suit instituted by a party upon discretion of the courts. Moreover, such reimbursement is strictly limited by the rules and in fact, the prevailing party may recover only the costs provided thereunder, and no other amount may be awarded to the same. Therefore, any costs of suit awarded to a winning litigant cannot earn legal interest [as] provided for under the rules.

6. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENT; IN CASE OF CONFLICT, THE DISPOSITIVE PORTION PREVAILS OVER THE BODY OF THE DECISION; AN EXCEPTION IS WHEN THE NON-INCLUSION OF AN AWARD IN THE DISPOSITIVE PORTION OF THE DECISION WAS DUE TO INADVERTENCE OR CLERICAL ERROR.— As a rule, when there is a conflict between the dispositive portion or *fallo* of a decision and the opinion of the court contained in the text or body of the judgment, the former prevails over the latter. Nevertheless, this Court finds that given the facts and circumstances surrounding the conflict between the dispositive portion and the body of the decision, the instant case serves as an exception to the general rule. A careful reading of the entire decision reveals the intention of the RTC to impose an exemplary damage against respondents

Security Bank, Skyrider Brokerage, and Jong Briones. It is clear that the non-inclusion of Jong Briones in the dispositive portion of the decision was the result of mere inadvertence or clerical error.

APPEARANCES OF COUNSEL

Cruz Marcelo & Tenefrancia for petitioners.
Lariba Perez Mangrobang Miralles Dumrique Avila & Fulgencio for Security Bank.
Benedicto & Associates for BPI.

D E C I S I O N

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

Assailed in this Petition for Review on *Certiorari*[1] under Rule 45 of the 1997 Rule on Civil Procedure are the Orders dated February 19, 2016,[2] and August 5, 2016,[3] both promulgated by the Regional Trial Court (RTC), Branch 148, Makati City in Civil Case No. 03-1203 entitled "*Norsk Hydro (Philippines), Inc. and Norteam Seatransport Services v. Premiere Development Bank, Bank of the Philippine Islands, Citibank, N.A., Skyrider Brokerage International, Inc. and Marivic-Jong Briones.*" The said Orders resolved to issue a writ of execution against respondents and enjoined them to pay the remaining unpaid obligation amounting to One Million Three Hundred Twenty-Eight Thousand Two Hundred Sixty-Three Pesos and Seven Centavos (₱1,328,263.07) with 6% per annum from November 30, 2015 until fully paid, and costs of suit.

The case stemmed from a Complaint for Sum of Money and Damages with an Application for the Issuance of a Writ of Preliminary Attachment filed on October 9, 2003, by petitioners

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[1] *Rollo*, pp. 31-79.

[2] Penned by Presiding Judge Andres Bartolome Soriano; id. at 8-15.

[3] Id. at 16-21.

against herein respondents. Petitioners alleged that respondent Skyrider Brokerage International, Inc. (Skyrider Brokerage) did not remit to the Bureau of Customs (BOC) the 19 crossed manager's check transmitted unto it (Skyrider Brokerage) by petitioner Yara Fertilizers (Philippines), Inc. [formerly known as Norsk Hydro (Philippines), Inc.], for the purpose of payment of the custom duties and taxes for the fertilizers that were imported by the latter.

On April 14, 2010, the RTC rendered a Decision[4] finding respondents Security Bank Corporation (formerly known as Premiere Development Bank), Skyrider Brokerage, Marivic-Jong Briones (Jong Briones), and the Bank of the Philippine Islands (BPI) jointly and severally liable to petitioners for the amount of ₱26,176,006.06 covering the 18 crossed manager's checks purchased from the BPI, plus interest; finding respondents Security Bank Corporation (Security Bank), Skyrider Brokerage, Jong Briones and the Citibank, N.A. (Citibank) jointly and severally liable to petitioners for the amount of ₱1,907,784.00 covering the Citibank Manager's Check No. 338583 dated November 16, 2001, plus interest; finding respondents BPI and Citibank to have the right to claim reimbursement against respondent Security Bank for whatever amounts they would be obligated to pay herein petitioners; dismissing respondent Security Bank's counterclaim against petitioners for lack of merit; finding respondents Security Bank and Skyrider Brokerage jointly and severally liable to petitioners for the amount of ₱400,000.00 as exemplary damages, and; finding respondents Security Bank, Skyrider and Jong Briones jointly and severally liable to petitioners for the amount of ₱400,000.00 as moral damages, ₱700,000.00 as attorney's fees and litigation expenses, and costs of suit.

Upon appeal, the appellate court rendered a Decision[5] dated November 20, 2014, denying respondents' appeal and dismissing

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[4] Penned by Judge Oscar B. Pimentel, id. at 336-360.

[5] Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Jane Aurora C. Lantion and Nina G. Antonio-Valenzuela, concurring; id. at 180-220.

the instant case for lack of merit. The appellate court affirmed the findings of the RTC that respondents acted in gross, wanton, and inexcusable negligence in the unauthorized encashment and conversion of the subject checks, to the prejudice of herein petitioners.

Unsatisfied, respondents filed their Petition for Review on *Certiorari* before this Court on January 27, 2015. On March 16, 2015, this Court issued a Resolution denying the instant petition "for failure to sufficiently show that the appellate court committed any reversible error in the challenged decision as to warrant the exercise by the Court of its discretionary appellate jurisdiction."

Since no motion for reconsideration was filed, the Resolution dated March 16, 2015, became final and executory and a corresponding Entry of Judgment dated May 26, 2015, was issued by this Court thereon.

Thus, on September 18, 2015, petitioners filed a Motion for Execution of the Decision dated April 14, 2010, issued by the RTC and prayed that they be awarded the amount of ₱109,460,770.61.

Petitioners asserted that in the absence of an expressed stipulation as to the rate of interest that should govern the parties, the legal interest to be imposed or the actual damages awarded in their favor should be 12% per annum, compounded annually from the date of extrajudicial demand up to June 30, 2013. The legal interest to be imposed from July 1, 2013, until full payment by the respondents of their obligation should be six percent (6%) per annum, compounded annually, by virtue of Bangko Sentral ng Pilipinas (BSP) Circular No. 799-13, which fixed such legal interest to the same.

In its Comment, respondent Security Bank contended that the interest on the actual damages awarded should only be imposed at 6% per annum from the date of finality of the Decision on May 26, 2015, until the obligation is fully paid, considering that respondents' obligation did not arise from a loan or forbearance of money, but as a result of fraud and negligence.

Furthermore, there is no basis to impose compounding interest on the said damages, and that the Decision dated April 14, 2010, did not impose interest for the other damages awarded to petitioners, *e.g.*, moral and exemplary damages, and attorney's fees.

Ruling of the RTC

On February 19, 2016, the RTC issued an Order,[6] granting the Motion for Execution and ordered that a writ of execution be issued in favor of petitioners, to wit:

> Accordingly and in accordance with the foregoing discussions, defendants[']remaining obligation under the subject Decision as of November 30, 2015 should be computed as follows:
>
> **Computation of legal interest due on the Actual Damages Awarded in the amount of [₱]28,083,790.02 from judicial demand to finality of judgment**
>
> Period Covered: October 09, 2003 (date of judicial demand) — May 26, 2015 (date of finality of the decision)
>
> ₱28,083,790.02 x 6% x 11 years, 7 months and 17 days = ₱19,596,714.72
>
> ₱19,596,714.72 – interest due on the actual damages from judicial demand up to finality of judgment
>
> + ₱28,083,790.02 – actual damages awarded (value of the Manager's checks)
>
> _____
>
> **₱47,680,504.74** – principal amount with interest due as of May 26, 2015.
>
> **Computation of legal interest due on the actual damages from date of finality of judgment until November 30, 2015**
>
> Period Covered: May 26, 2015 to November 30, 2015
>
> ₱47,680,504.74 x 6% x 6 months & 4 days = ₱1,461,766.68
>
> ₱1,461,766.68 – interest due from the finality of judgment until November 30, 2015

[6] Id. at 64-67.

+ ₱47,680,504.74	–	principal amount with interest due as of May 26, 2015
₱49,142,271.42	–	Total amount due with legal interest from October 9, 2003 to November 30, 2015.

Computation of legal interest due on the Moral and Exemplary Damages Awarded in the amount of ₱400,000.00 each from the date of decision until its finality

Period Covered: April 14, 2010 (date of Decision) to May 26, 2015 (finality of the decision[)].

₱400,000[.00] x 6% x 5 years, 1 month and 12 days = ₱122,789[.00]

₱400,000[.00]	–	moral damages awarded
+		
₱122,789[.00]	–	interest due on the moral damages from the date of the decision until its finality.
₱522,789[.00]	–	moral damages due with interest from rendition of the subject decision until finality.

Computation of legal interest on moral damages from the date of finality until November 30, 2015.

Period Covered: May 26, 2015 (finality of decision) to November 30, 2015.

₱522,789[.00] x 6% x 6 months & 7 days = ₱16,027.46

₱522,789[.00]	–	moral damages due with interest from rendition of the subject decision until its finality
+		
₱16,027.46	–	interest due on the moral damages awarded from finality of decision until November 30, 2015
₱538,816.46	–	total moral damages due with interest from April 14, 2010 until November 30, 2015.

The aforesaid amount is also similar to the exemplary damages due as of November 30, 2015 since both moral and exemplary damages [amount] to ₱400,000[.00] each.

Computation of legal interest on Attorney's fees from the date the decision was rendered until its finality

Period Covered: April 14, 2010 (date of the decision was rendered) to May 26, 2015 (date of finality of the decision)

₱700,000[.00] x 6% x 5 years, 1 month & 12 days = ₱214,880.84

₱214,880.84	–	interest due on the attorney's fees awarded from the date of the decision until its finality
+		
₱700,000[.00]	–	Attorney's fees awarded by the Court
₱914,880.84	–	Attorney's fees with interest from the date of the decision until its finality

Computation of legal interest on Attorney's fees from the date of the finality of the decision until November 30, 2015.

₱914,880.84 x 6% x 6 months & 1 day = ₱27,696.79

₱27,696.79	–	interest due on the attorney's fees from the date of finality of the Decision until November 30, 2015.
+		
₱914,880.84	–	Attorney's fees with interest from the date of decision until its Finality
₱942,477.63	–	Total amount of Attorney's fees from April 10, 2010 (date of decision) until November 30, 2015.

Total Monetary Award due to the plaintiffs as of November 30, 2015.

₱49,142,271.42	–	Actual Damages with interest
+ ₱538,816.46	–	Moral Damages with interest
₱538,816.46	–	Exemplary damages with interest
₱942,477.63	–	Attorney's fees

_____

₱51,162,381.97

₱49,834,118.90 – amount paid by the defendant SBC duly acknowledged by the plaintiffs

_____

₱1,328,263.07 – remaining unpaid obligation of the defendants as of November 30, 2015.

Base[d] on the foregoing, the remaining unpaid obligation of the defendants as of November 30, 2015 is ₱1,328,263.07. The said amount is without prejudice to any additional interest that may properly be imposed until full payment or satisfaction of the obligation.

WHEREFORE, premises considered, the Motion for Execution is **GRANTED**.

Accordingly, based on the abovementioned computation and taking into consideration the payment made by the defendant SBC (formerly Premiere Bank), let a writ of execution be issued on the remaining unpaid obligation of the defendant as of November 30, 2015 in the amount of ₱1,328,263.07, with interest of 6% per [*annum*] beginning on said date and until fully paid, plus cost of suit. The Deputy Sheriff of this Court is hereby ordered to implement the writ.

SO ORDERED.

The RTC ruled that since there was no definite finding as to when the final demand made by petitioners were actually received by the respondents. It found proper to impose the legal interest on the actual damages from the time of judicial demand, or from the time of the filing of the instant complaint on October 9, 2003, up to the finality of the Decision on May 26, 2015. Also, the actual damages awarded with legal interest shall likewise earn legal interest at the rate of 6% per annum from the finality of the Decision until full satisfaction thereof.

Furthermore, the legal interest due on the moral and exemplary damages, and attorney's fees is deemed read into the decision. The computation of the legal interest at 6% per annum thereon shall start at the time the Decision dated April 14, 2010, was rendered by the RTC, when it was already quantified or liquidated, and fixed by the court.

However, the RTC found no basis to impose a compounding interest on the damages awarded in favor of petitioners because there exists no contract stipulating the same, nor was it imposed by the RTC in its Decision.

Finally, the RTC noted the payment made by respondents in the amount of ₱49,834,118.90 as partial payment of their obligation under the Decision dated April 14, 2010.

In its Order dated August 5, 2016, the RTC partially granted petitioners' motion for reconsideration, finding that based on the testimonies of the petitioners' witnesses, the last demand letter was sent to respondents on June 25, 2003. All other claims of petitioners were denied by the RTC, given that its decision had already attained finality. Thus, the RTC recomputed the legal interest due on the actual damages, as such:

Accordingly, based on the aforesaid discussions, the legal interest due on the Actual damages should be recomputed as follows:

Computation of legal interest due on the Actual Damages Awarded in the amount of P28,083,790.02 from extra[-]judicial demand to finality of judgment

Period Covered: June 25, 2003 (date of extra[-]judicial demand) — May 26, 2015 (date of finality of the decision).

₱28,083,790.02 x 6% x 11 years, 11 months and 1 day = ₱20,084,590.48

₱20,084,590.48	–	interest due on the actual damages from extra-judicial demand up to finality of Judgment.
+₱28,083,790.02	–	actual damages awarded (value of the Manager's checks)
₱48,168,380.50	–	principal amount with interest due as of May 26, 2015

Computation of legal interest due on the actual damages from date of finality of judgment until November 30, 2015

Period Covered: May 26, 2015 to November 30, 2015.

₱48,168,380.50 x 6% x 6 months & 4 days = ₱1,477,163.64

₱1,477,163.64	–	interest due from the finality of judgment until November 30, 2015
+		
₱48,168,380.50	–	principal amount with interest due as of May 26, 2015.
₱49,645,544.14	–	Total amount due with legal interest from October 9, 2003 to November 30, 2015.

The computation of the legal interests on the moral [damages], exemplary damages and attorney's fees remains the same.

As of November 30, 2015 the following, except for the costs of suit, are the total monetary award due to plaintiffs:

₱49,645,544.14	–	Actual Damages with interest
+ ₱538,816.46	–	Moral Damages with interest
₱ 538,816.46	–	Exemplary damages with interest
₱ 942,477.63	–	Attorney's fees
₱51,665,654.69		
+ ₱49,834,118.90	–	amount paid by defendant SBC duly acknowledged by the plaintiffs.
₱1,831,535.79	**–**	**remaining unpaid obligation of the defendant SBC as of November 30, 2015.**

The aforesaid amount likewise earned a 6% interest per [*annum*] from November 30, 2015 to March 30, 2016 in the amount of ₱36,630.72 computed as follows:

₱1,831,535.79 x 6% x 4 mos. = ₱36,630.72

The records show that on March 22, 2016, the parties filed a Joint Manifestation dated March 21, 2016 stating that plaintiffs received One Million Three Hundred Twenty[-]Eight Thousand and Two Hundred Sixty Three and 07/100 Pesos (₱1,328,263.07) as additional payment based on the execution order issued by this Court. Said

amount should be deducted from the total unpaid obligation of the defendant SBC.

Meanwhile, the costs of suit based on Official Receipt Nos. 18624972 and 1839475 both dated October 09, 2003 representing payments of docketing and filing fees amounts to Sixty One Thousand Seven Hundred Seventy-two and 58/100 (₱61,772.58).

The final computation then of the remaining unpaid obligation of the defendant SBC is as follows:

₱1,831,535.79	–	remaining unpaid obligation of the defendant SBC as of November 30, 2015.
+ [₱]36,630.72	–	interest from December 1, 2015 to March 30, 2016
₱1,868,166.51		
- [₱]1,328,263.07	–	additional payment of SBC on March 22, 2016
₱539,903.44	–	remaining unpaid obligation of defendant SBC as of March 30, 2016 which is subject to a 6% interest per annum from April 1, 2016 until the obligation is fully paid and;
₱61,772.58	**–**	**costs of suit**

WHEREFORE, premises considered, the Motion for Reconsideration is **PARTLY GRANTED**.

Accordingly, based on the abovementioned computation and taking into consideration the payment made by the defendant SBC (formerly Premiere Bank), in the amount ₱1,328,263.07, the remaining unpaid obligation of the defendants to be executed as of March 30, 2016, is ₱539,903.44 with 6% interest per annum from April 1, 2016 until the obligation is fully paid, and costs of suit in the amount of ₱61,772.58.

SO ORDERED.

Hence, this Petition.

The Issues

THE COURT *A QUO* COMMITTED GRAVE AND REVERSIBLE ERROR CONSIDERING THAT THE ACTUAL DAMAGES AWARDED IN THE *DECISION* IN FAVOR OF THE PETITIONERS IN THE TOTAL AMOUNT OF PHP28,083,790.02 CONSTITUTES A FOREBEARANCE OF MONEY, WHICH RESPONDENT SECURITY BANK EVEN ADMITTED. HENCE, THE IMPOSABLE INTEREST IS TWELVE PERCENT (12%) PER ANNUM FROM THE DATE OF EXTRA[-]JUDICIAL DEMAND UP ON 25 JUNE 2003 TO 30 JUNE 2013, AND SIX PERCENT (6%) PER ANNUM FROM 01 JULY 2013 UNTIL FULLY SATISFIED, PURSUANT TO THE HONORABLE COURT'S RULING IN *NACAR VS. GALLERY FRAMES*, G.R. NO. 189871, 703 SCRA 439 (2013[)].

THE COURT *A QUO* COMMITTED GRAVE AND REVERSIBLE ERROR CONSIDERING THAT PURSUANT TO *NFF INDUSTRIAL CORPORATION VS. G&L ASSOCIATED BROKERAGE*, G.R. NO. 178169, 745 SCRA 73 (2015), THE INTEREST EARNED AND ACCRUED SHALL BE COMPOUNDED ANNUALLY.

THE COURT *A QUO* COMMITTED GRAVE AND REVERSIBLE ERROR IN NOT CONSIDERING INTEREST AS REGARDS THE COSTS OF SUIT.[7]

The Court's Ruling

The petition is without merit.

The Decision dated April 14, 2010, had already became final and executory; conclusiveness of judgment applies in this case

At the onset, the Decision dated April 14, 2010, has long attained finality after the Entry of Judgment was issued on May 26, 2015. It is well-settled that once a judgment attains finality,

[7] Id. at 45.

it becomes immutable and unalterable. It may not be changed, altered, or modified in any way even if the modification were for the purpose of correcting an erroneous conclusion of fact or law.[8]

This Court had the occasion to explain the doctrine of finality of judgments, thus:

> The doctrine of finality of judgment is grounded on fundamental considerations of public policy and sound practice, and that, at the risk of occasional errors, the judgments or orders of courts must become final at some definite time fixed by law; otherwise, there would be no end to litigations, thus setting to naught the main role of courts of justice which is to assist in the enforcement of the rule of law and the maintenance of peace and order by setting justiciable controversies with finality.[9]

Despite the finality of the Decision dated April 14, 2010, petitioners insist that respondents' obligation is considered a loan or forbearance, and not due to fraud or negligence. A perusal of the said decision had already settled this issue, to wit:

> It is the Court findings under the evidence presented that **defendant [Skyrider Brokerage] and defendant [Jong Briones] are part of the conspiracy in the commission of the fraud against the plaintiff**. In the first place, plaintiff engaged defendant [Skyrider Brokerage] wherein the General Manager is defendant [Jong Briones] to pay the taxes due to the government because of the importation of fertilizers abroad. Plaintiff has not authorized said defendants to hire a broker or an agent to do the work for them. But then defendants Skyrider [Brokerage] and [Jong Briones], allegedly hired a certain David Banga to do the work for them for a fee of 10% of the amount being given by plaintiff to defendants Skyrider [Brokerage] and [Jong Briones]. David Banga does not appear to be a licensed customs broker, but the one licensed is [Jong Briones], hence David Banga has no personality when to transact business [*sic*] with the Bureau of Customs regarding payment of taxes for others unless he is properly

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[8] *Heirs of Sagum v. Heirs of Lagman*, G.R. No. 241920, November 7, 2018.

[9] *GSIS v. Group Management Corporation*, 666 Phil. 277, 305 (2011).

authorized by the principal herein, which is the plaintiff. But then the plaintiff did not authorize David Banga t act for and in their behalf.

x x x x

With respect to the issue on the liability of Premiere Bank against herein plaintiffs, it was clearly established by the testimonies and evidence presented that Premiere Bank should be held liable for damages suffered by the plaintiff.

First, defendant Premiere Bank admitted that it allowed a certain Mr. Arthur Espino to deposit the subject checks in Account Numbers 01-00-780-1 and 0-5-02687-8 in its Pedro Gil Branch on the mere representation of Arthur Espino, using a photocopy of the alleged Certification of Business Name of plaintiff Norteam that he was allegedly the president thereof. Defendant Premiere being a banking institution, it is duly bound to ensure extraordinary diligence in dealing with clients.

Second, defendant Premiere Bank stamped the subject checks with the notation: 'prior endorsement and/or lack of endorsement guaranteed.'

Third, **there is deliberate and/or negligent act on the part of Manuel Agoncillo, manager of the Pedro Gil Branch of defendant Premiere Bank, in transacting the subject checks to the prejudice of plaintiff Yara Fertilizers and Norteam Transport**.

x x x x

However, although defendants BPI and Citibank N.A. was not proven to have any knowledge or involvement in any anomaly or irregularity on the subject checks as it cleared and paid the amount of the Manager's checks in reliance on the endorsement stamp of the Premiere Bank as the collecting bank, it cannot at all escape responsibility to plaintiff Norsk Hydro and Norteam being the banks who issued the subject Manager's Check. By issuing the subject checks and clearing the same, **it has the duty to reimburse the credited amount on the account of Plaintiffs** subject however to its right to claim reimbursement to defendant Premiere Bank who indorsed and warranted all prior endorsement upon which defendants BPI and Citibank relied into."[10] (Emphasis supplied)

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[10] *Rollo*, p. 351.

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x x x x

With respect to the issue on the liability of Premiere Bank against herein plaintiffs, it was clearly established by the testimonies and evidence presented that Premiere Bank should be held liable for damages suffered by the plaintiff.

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[10] *Rollo*, p. 351.

Any right, fact, or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies, whether or not the claim, demand, purpose, or subject matter of the two actions is the same.[11] Thus, the findings of the RTC as to the nature of the source of respondents' obligation to petitioner cannot now be questioned anew by the latter and so late in the proceedings.

The obligation of respondents to petitioners is based on fraud or negligence, and not on loan or forbearance

Assuming *arguendo* that petitioners can raise into issue that the source of respondents' obligation is from a loan or forbearance, and not from fraud or negligence, this Court rules in the negative.

A loan or forbearance of money, goods, or credit describes a contractual obligation whereby a lender or creditor has refrained during a given period from requiring the borrower or debtor to repay the loan or debt then due and payable.[12] Forbearance of money, goods or credits, therefore, refers to arrangements other than loan agreements, where a person acquiesces to the temporary use of his money, goods, or credits pending the happening of certain events or fulfillment of certain conditions.[13]

Clearly, the instant case does not involve a loan or forbearance of money but due to fault or negligence by herein respondents. To reiterate, respondents' obligation does not involve an acquiescence to the temporary use of a party's money but a

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[11] *Social Security Commission v. Rizal Poultry and Livestock Association*, 665 Phil. 198, 205-206 (2011).

[12] *S.C. Megaworld Construction and Development Corporation v. Engr. Parada*, 717 Phil. 752, 771 (2013).

[13] *Estores v. Spouses Supangan*, 686 Phil. 86, 99 (2012).

performance of a particular service, specifically for respondent Skyrider Brokerage to compute the custom duties and taxes of petitioners, and transmit the payment to the same to the BOC for the release of the imported fertilizers. Respondent Security Bank, on the other hand, was obligated to not encash the crossed manager's checks because it was not an authorized agent bank of the BOC nor was it authorized to receive the payment of custom duties and taxes on behalf of the same. In turn, respondents BPI and Citibank were obligated not to release the amounts covered by the said checks, which are not payable to the order of respondent Security Bank.

Thus, this Court reiterates the guidelines in computing for the legal interest to an award of actual and compensatory damages, as follows:

1. When the obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 6% per annum (formerly 12% per annum) to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

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

quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 6% per *annum* from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.[14]

Given the foregoing, the rate of legal interest to be imposed upon the obligation of respondents shall be 6% per annum at the time of judicial or extra-judicial demand by petitioners.

The interest imposed upon respondents' obligation to petitioners is simple interest, not compounding interest

This Court had settled that the payment of monetary interest shall only be due only if: 1) there was an express stipulation for the payment of interest, and; 2) the agreement for such payment was reduced into writing.[15] It is not enough that the payment of interest shall be stipulated and reduced into writing, for the purpose of imposing compounded interest, but should also state the manner in which such interest should be earned.[16] In this case, since the records are bereft of any indication that the parties agreed to the imposition of compounding interest, nor was the RTC's decision forthcoming with details of the same, in default of any stipulation regarding the manner of earning the interest, simple interest shall accrue.

In the case of *Philippine American Accident Insurance v. Flores*,[17] we held that:

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[14] *Arco Pulp and Paper, Co. v. Lim*, 737 Phil. 133, 158-159 (2014).

[15] *Spouses Albos v. Spouses Embisan*, 748 Phil. 907, 915 (2014).

[16] Id. at 916.

[17] 186 Phil. 563 (1980).

The judgment which was sought to be executed ordered the payment of simple "legal interest" only. It said nothing about the payment of compound interest. Accordingly, when the respondent judge ordered the payment of compound interest, he went beyond the confines of his own judgment which had been affirmed by the [CA] and which had become final. x x x **Therefore, in default of any equivocal wording in the contract, the legal interest stipulated by the parties should be understood to be simple, not compounded**.[18] (Emphasis supplied)

The aforementioned case is clear that the presence of stipulated or conventional interest accrued at the time of judicial demand is required, in order to impose a compounded interest. Nowhere in the complaint herein, was it alleged that the parties had stipulated that respondents' obligation will earn interest. In cases where no interest had been stipulated by the parties, no accrued conventional interest could further earn interest upon judicial demand.[19]

Petitioners' misplaced reliance on our ruling in *NFF Industrial Corporation v. G&L Associated Brokerage*,[20] serve them no purpose. In the said case, respondent G&L Associated Brokerage's liability to petitioner was based on a loan or forbearance of money, as evidenced by the filing of complaint for sum of money against the former. Furthermore, this Court imposed legal interest on respondent's G&L Associated Brokerage's obligation, compounded annually, on appeal and before the decision had attained finality thereafter. Evidently, the factual antecedents of the cited case are not aligned with the instant case herein, despite petitioners' insistence that such distinction made by the RTC is "irrelevant" and "unavailing" thereof.

This Court also takes note that while petitioners consider the factual differences between *NFF Industrial* and the instant case as "minute" and do not affect the issue of whether the legal interest imposed herein, should be simple or compounded, they heavily relied on the same distinction in arguing that

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[18] Id. at 565-566.

[19] *David v. Court of Appeals*, 375 Phil. 177 (1999).

[20] 750 Phil. 69 (2015).

respondents' obligation is considered as loan or forbearance of money, and not based on fraud or negligence. Petitioners cannot have their cake and eat it, too.

The costs of a suit are not considered as monetary award that will earn interest thereon

Finally, petitioners contend that the award of costs of suit in their favor, should also earn legal interest because disregarding the legal interest for costs of suit would be to place the prevailing party at a disadvantage as he will necessarily incur a loss for initiating a legal action to protect his interest because the cost of his money — which is supposed to be approximated by the legal interest — will never be recouped.

This Court finds this argument as tenuous.

Cost, in its ordinary sense, contemplates the amount spent or expenses incurred, in order to purchase or acquire a thing or service, usually in the form of either a price or a fee. In the separate opinion of Justice Bernardo P. Pardo in *GSIS v. Bengson Commercial Buildings, Inc.*,[21] this Court had the occasion to define what costs of suit are, specifically:

> Costs are certain allowances authorized by statute to reimburse the successful party for expenses incurred in prosecuting or defending an action or special proceedings. These costs have their own legal meaning and import, for, as it was said, "costs are in the nature of incidental damages allowed to the successful party to indemnify him[/her] against the expense of asserting his[/her] rights in court, when the necessity of doing so was caused by other's breach of legal duty."[22]

As such, the costs of filing a suit includes, but not limited to, those found under Sections 9,[23] 10,[24] and 11[25] of Rule 142 of the Revised Rules of Court.

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[21] 426 Phil. 111 (2002).

[22] Id.

[23] SEC. 9. Cost in justice of the peace or municipal courts. — In an action or proceeding pending before a justice of the peace or municipal judge, the prevailing party may recover the following costs, and no other:

As can be gleaned from the foregoing, the costs of suit do not partake the nature of a loan or forbearance of money, or

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(a) For the complaint or answer, two pesos;
(b) For the attendance of himself/herself], or his[/her] counsel, or both, on the day of trial, five pesos;
(c) For each additional day's attendance required in the actual trial of the case, one peso;
(d) For each witness produced by him[/her], for each day's necessary attendance at the trial, one peso, and his lawful traveling fees;
(e) For each deposition lawfully taken by him[/her] and produced in evidence, five pesos;
(f) For original documents, deeds, or papers of any kind produced by him[/her], nothing;
(g) For official copies of such documents, deeds, or papers, the lawful fees necessarily paid for obtaining such copies;
(h) The lawful fees paid by him[/her] for service of the summons and other process in the action;
(i) The lawful fees charged against him by the judge of the court in entering and docketing and trying the action or proceedings.

[24] SEC. 10. Cost in Court of First Instance [Regional Trial Court]. — In an action or proceeding pending in a Court of First Instance [Regional Trial Court], the prevailing party may recover the following costs, and no other:

(a) For the complaint or answer, fifteen pesos;
(b) For his[/her] own attendance, and that his[/her] attorney, down to and including final judgment, twenty pesos;
(c) For each witness necessarily produced by him[/her], for each day's necessary attendance of such witness at the trial, two pesos, and his[/her] lawful traveling fees;
(d) For each deposition lawfully taken by him[/her] and produced in evidence, five pesos;
(e) For original documents, deeds, or papers of any kind produced by him[/her], nothing;
(f) For official copies of such documents, deeds, or papers, the lawful fees necessarily paid for obtaining such copies;
(g) The lawful fees charged against him by the judge of the court in entering and docketing and trying the action or proceedings.

[25] SEC. 11. Cost in Court of Appeals and in Supreme Court. — In an action or proceeding pending in the Court of Appeals and in the Supreme Court, the prevailing party may recover the following costs, and no other:

(a) For his[/her] own attendance, and that his[/her] attorney, down to and including final judgment, thirty pesos;

even an obligation, in a strict sense, which is demandable by a party against another, as defined under Article 1156[26] in relation to Article 1157[27] of the Civil Code.This is strengthened by the fact that the courts can deny the award of the same in favor of the winning litigant, even after presenting proof of its payment. It is rather treated as an expense, that is allowed by law to be reimbursed from a losing party in a suit instituted by a party upon discretion of the courts. Moreover, such reimbursement is strictly limited by the rules and in fact, the prevailing party may recover only the costs provided thereunder, and no other amount may be awarded to the same. Therefore, any costs of suit awarded to a winning litigant cannot earn legal interest, provided for under the rules.

The concept of interest had been made clear in the case of *Siga-an v. Villanueva*,[28] wherein this Court had ruled that the kinds of interests that may be imposed in a judgment are monetary interest and compensatory interest, to wit:

(b) For official copies of record on appeal and the printing thereof, and all other copies required by the rules of court, the sum actually paid for the same;
(c) All lawful fees charged against him[/her] by the clerk of the Court of Appeals or of the Supreme Court, in entering and docketing the action and recording the proceedings and judgment therein and for the issuing of all process;
(d) No allowance shall be made to the prevailing party in the Supreme Court or Court of Appeals for the brief transmitted thereto, the prevailing party shall be allowed the same cost for witness fees, depositors, and process and service thereof as he[/she] would have been allowed the same cost for witness fees, depositors, and process and service thereof as he would have been allowed for such items had the testimony been introduced in a Court of First Instance [Regional Trial Court].

[26] ART. 1156. An obligation is a juridical necessity to give, to do or not to do.

[27] ART. 1157. Obligations arise from:
(1) Law;
(2) Contracts;
(3) Quasi-contracts;
(4) Acts or omissions punished by law; and,
(5) Quasi-delicts.

[28] 596 Phil. 760 (2009).

Interest is a compensation fixed by the parties for the use or forbearance of money. This is referred to as monetary interest. Interest may also be imposed by law or by courts as penalty or indemnity for damages. This is called compensatory interest. The right to interest applies only by virtue of a contract or by virtue of damages for delay or failure to pay the principal loan on which interest is demanded.[29]

Verily, the costs of suit do not partake the nature of an award that is granted by the courts, which can earn either monetary interest or compensatory interest.

However, this Court deems it proper to recompute for the correct accrued legal interest on the award of damages granted to herein petitioners, and imposed upon the respective portions of respondents.

Computation of legal interest due on the actual damages awarded to petitioners in the amount of ₱26,176,006.06 from judicial demand until the finality of judgment against respondents Security Bank, Skyrider Brokerage, Jong–Briones, and BPI

Period Covered: June 25, 2003 (date of judicial demand) — May 26, 2015 (date of finality of the decision)

₱26,176,006.06 x 6% x 11 years, 11 months and 1 day (11 + 336/365) = ₱18,721,079.53

₱26,176,006.06	–	amount covered by the eighteen (18) crossed manager's checks purchased from BPI
+		
₱18,721,079.53	–	interest due on the actual damages from judicial demand up to finality of judgment
₱44,897,085.59	**—**	**principal amount with interest due as of May 26, 2015.**

[29] Id.

Computation of legal interest due on the actual damages plus interest awarded to petitioners in the amount of ₱44,897,085.59 from date of finality of judgment until November 30, 2015 against respondents Security Bank, Skyrider Brokerage, Jong–Briones, and BPI

Period Covered: Period Covered: May 27, 2015 to November 30, 2015

₱44,897,085.59 x 6% x 6 months and 3 days (186/365) = ₱1,373,850.82

₱44,897,085.59 – principal amount with interest due as of May 27, 2015

+

₱1,373,850.82 – interest due from finality of judgment until November 30, 2015.

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₱46,270,936.41 – total amount due on the actual damages awarded to petitioners against respondents Security Bank, Skyrider Brokerage, Jong–Briones, and BPI

Computation of legal interest due on the actual damages awarded to petitioners in the amount of ₱1,907,784.00 from judicial demand until the finality of judgment against respondents Security Bank, Skyrider Brokerage, Jong–Briones, and Citibank

Period Covered: June 25, 2003 (date of judicial demand) — May 26, 2015 (date of finality of the decision)

₱1,907,784.00 x 6% x 11 years, 11 months and 1 day (11 + 336/365) = ₱1,364,447.12

₱1,907,784.00 – amount covered by the crossed manager's checks purchased from Citibank

+

₱1,364,447.12 – interest due on the actual damages from judicial demand up to finality of judgment

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₱3,272,231.12 – principal amount with interest due as of May 26, 2015.

Computation of legal interest due on the actual damages plus interest awarded to petitioners in the amount of ₱3,272,231.12 from date of finality of judgment until November 30, 2015 against respondents Security Bank, Skyrider Brokerage, Jong–Briones, and Citibank

Period Covered: Period Covered: May 27, 2015 to November 30, 2015

₱3,272,231.12 x 6% x 6 months and 3 days (186/365) = ₱100,130.27

₱3,272,231.12 – principal amount with interest due as of May 27, 2015

+

₱100,130.27 – interest due from finality of judgment until November 30, 2015.

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₱3,372,361.39 – total amount due on the actual damages awarded to petitioners against respondents Security Bank, Skyrider Brokerage, Jong-Briones, and Citibank

Computation of legal interest on moral and exemplary damages awarded to petitioners in the amount of ₱400,000.00 each from the finality of judgment until November 30, 2015 against respondents Security Bank, Skyrider Brokerage, Jong–Briones

Period Covered: May 26, 2015 to November 30, 2015

₱400,000.00 x 6% x 6 months and 4 days (187/365) = ₱12,240.00

₱400,000.00	–	moral/exemplary damages with interest from the date of finality until November 30, 2015
+		
₱12,240.00	–	interest due on the moral/ exemplary damages from finality of judgment until November 30, 2015.
₱412,240.00	**–**	**total amount due on the moral/ exemplary damages awarded to petitioners against respondents Security Bank, Skyrider Brokerage, and Jong–Briones**

The legal interest due on the moral and exemplary damages awarded to petitioners shall be computed at the time of the finality of the judgment, when the amount of damages has already been determined with finality.[30]

This Court further takes note of the apparent conflict between the dispositive portion of the Decision dated April 14, 2010, and the opinion of the RTC contained in the text or body of the said decision regarding the imposition of exemplary damages against respondent Jong-Briones. In the said text or body of the decision, the RTC held respondents Security Bank, Skyrider Brokerage, and Jong-Briones solidarily liable for exemplary damages to herein petitioners. However, in the *fallo* of the same, it only held Security Bank and Skyrider Brokerage solidarily liable for exemplary damages, and not respondent Jong-Briones.

As a rule, when there is a conflict between the dispositive portion or *fallo* of a decision and the opinion of the court contained in the text or body of the judgment, the former prevails over the latter.[31] Nevertheless, this Court finds that given the

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[30] *Sulpicio Lines, Inc. v. Major Karaan, et al.*, G.R. No. 208590, October 3, 2018.

[31] *PH Credit Corporation v. CA, et al.*, 421 Phil. 821 (2001).

facts and circumstances surrounding the conflict between the dispositive portion and the body of the decision, the instant case serves as an exception to the general rule. A careful reading of the entire decision reveals the intention of the RTC to impose an exemplary damage against respondents Security Bank, Skyrider Brokerage, and Jong–Briones. It is clear that the non-inclusion of Jong–Briones in the dispositive portion of the decision was the result of mere inadvertence or clerical error.

Computation of legal interest due on the attorney's fees awarded to petitioners in the amount of ₱700,000.00 each from the date of decision until the finality of judgment against respondents Security Bank, Skyrider Brokerage, and Jong–Briones

Period Covered: April 14, 2010 (date of Decision) to May 26, 2015 (finality of the decision).

₱700,000.00 x 6% x 5 years, 1 month and 12 days (5 + 42/365) = ₱215,040.00

₱700,000.00 – amount of attorney's fees awarded

+

₱215,040.00 – interest due on the attorney's fees from date the decision was rendered until finality of judgment.

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₱915,040.00 – attorney's fees with interest due as of May 26, 2015

Computation of legal interest on attorney's fees awarded to petitioners in the amount of ₱915,040.00 each from the finality of judgment until November 30, 2015 against respondents Security Bank, Skyrider Brokerage, Jong–Briones

Period Covered: May 27, 2015 to November 30, 2015

₱915,040.00 x 6% x 6 months and 3 days (186/365) = ₱28,000.22

₱915,040.00 – attorney's fees with interest from the date of finality until November 30, 2015

+

₱28,000.22 – interest due on the attorney's fees from finality of judgment until November 30, 2015.

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₱943,040.22 – total amount due on the attorney's fees awarded to petitioners against respondents Security Bank, Skyrider Brokerage, and Jong–Briones

Total Monetary Award due to the plaintiffs as of November 30, 2015.

₱ 46,270,936.41	–	Actual Damages with interest due against Security Bank, Skyrider Brokerage, Jong– Briones, and BPI
+ ₱3,372,361.39	–	Actual Damages with interest due against Security Bank, Skyrider Brokerage, Jong–Briones and Citibank
+ ₱412,240.00	–	Moral Damages with interest due against Security Bank, Skyrider Brokerage, and Jong–Briones
+ ₱412,240.00	–	Exemplary Damages with interest due against Security Bank, Skyrider Brokerage, and Jong–Briones
+ ₱943,040.22	–	Attorney's fees with interest due against Security Bank, Skyrider Brokerage, and Jong–Briones

_____

₱51,410,818.02

– ₱49,834,118.90 – amount paid by the Security Bank on November 30, 2015, as acknowledged by the petitioners

_____

₱1,576,699.12 x 6% x 3 months, and 21 days (112/365) = ₱29,326.60

The accrued legal interest from November 30, 2015 until March 21, 2016, in the amount Twenty-Nine Thousand Three Hundred Twenty-Six Pesos and Sixty Centavos (₱29,326.60) shall be divided among the respondents as follows:

₱26,393.94	–	legal interest due from respondent Security Bank, Skyrider Brokerage, Jong-Briones, and BPI (computed from 90% or ₱46,270,936.41/51,410,818.02)
₱2,052.86	–	legal interest due from respondent Security Bank, Skyrider Brokerage, Jong-Briones, and Citibank (computed from 7% or ₱3,372,361.39/51,410,818.02)
₱879.80	–	legal interest due from respondent Security Bank, Skyrider Brokerage, and Jong-Briones (computed from 3% or ₱1,767,520.22/51,410,818.02)
₱1,576,699.12	–	amount due to petitioners as of November 30, 2015
+ ₱29,326.60	–	interest due to petitioners from November 30, 2015, until March 21, 2016
₱1,606,025.72		
- ₱1,328,263.07	–	amount paid by Security Bank on March 21, 2016, as admitted by the parties in their Joint Manifestation dated March 22, 2016.
₱277,762.65	**–**	**amount representing the remaining obligation of respondents to petitioners**
₱61,772.58	**–**	**costs of suit due from respondents Security Bank, Skyrider Brokerage, and Jong–Briones, proportionately**

WHEREFORE, the instant petition is **DENIED** for lack of merit. The Orders dated February 19, 2016, and August 5, 2016, both promulgated by the Regional Trial Court, Branch 146, Makati City in Civil Case No. 03-1203 is hereby **AFFIRMED**. Respondents Security Bank Corporation (formerly known as Premiere Development Bank), Bank of the Philippine Islands, Citibank, N.A., Skyrider Brokerage International, Inc., and Marivic Jong–Briones are **ORDERED** to pay the amount of Two Hundred Seventy-Seven Thousand Seven Hundred Sixty-Two Pesos and Sixty-Five Centavos (₱277,762.65), in proportion to their respective obligations to petitioners **Yara Fertilizers** [formerly known as **Norsk Hydro (Philippines), Inc.**] and **Norteam Seatransport Services**, with legal interest at the rate of 6% per annum at the date of finality of this judgment until full payment thereof, plus costs of suit.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 227049. September 16, 2020]

COMMISSIONER OF INTERNAL REVENUE, *Petitioner*, *v.* **BANK OF THE PHILIPPINE ISLANDS,** *Respondent.*

SYLLABUS

1. REMEDIAL LAW; COURTS; COURT OF TAX APPEALS; HAS THE AUTHORITY TO TAKE COGNIZANCE OF OTHER MATTERS ARISING FROM THE TAX CODE AND OTHER LAWS ADMINISTERED BY THE BUREAU OF INTERNAL REVENUE WHICH NECESSARILY INCLUDES RULES, REGULATIONS, AND MEASURES ON THE COLLECTION OF TAX.— To recall, the Court did not give evidentiary weight to the letter dated February 5, 1992 due to the CIR's failure to prove Citytrust's receipt thereof. In the present case, not only is there still no proof of receipt. The CIR did not even attach a copy of the letter relied upon to the present petition. Notably, failure to append "material portions of the record as would support the petition" is a ground for dismissal thereof. x x x [T]he aforementioned letter is irrelevant in ascertaining whether or not the tax court properly took cognizance of BPI's Second CTA Petition. As the CTA correctly pointed out, BPI did not come to question any final decision issued in connection with Citytrust's assessments. They went before the CTA primarily to assail the November 2011 Warrant's issuance and implementation. To be sure, the issue for the CTA to resolve was the propriety not of any assessment but of a tax collection measure implemented against BPI. Accordingly, the CTA's disposition was distinctly for the cancellation of the warrant and nothing else. The law expressly vests the CTA the authority to take cognizance of "other matters" arising from the 1977 Tax Code and other laws administered by the BIR which necessarily includes rules, regulations, and measures on the collection of tax. Tax collection is part and parcel of the CIR's power to make assessments and prescribe additional requirements for tax administration and enforcement. Thus, the CTA properly exercised jurisdiction over BPI's Second Petition.

2. TAXATION; THE 1977 TAX CODE; TAX ASSESSMENT; THREE-YEAR STATUTE OF LIMITATION; PARTIES ARE ALLOWED TO EXECUTE AN AGREEMENT WAIVING THE THREE-YEAR STATUTE OF LIMITATION OF TAX ASSESSMENT, BUT TO BE VALID, A WAIVER OF THIS NATURE MUST BE IN THE FORM AS PRESCRIBED BY THE APPLICABLE TAX REGULATIONS.— [T]he 1977 Tax Code, as amended, allowed the parties to execute an agreement waiving the three-year statute of limitation for tax assessment. However, it is already established that, to be valid, waivers of this nature must be in the form as prescribed by the applicable tax regulations. That both parties must signify their assent in extending the assessment period is not merely a formal requisite under tax rules, but one that is essential to the validity of a contract under the Civil Code.

3. ID.; ID.; ASSESSMENT AND COLLECTION OF TAXES; TO TEMPER THE WIDE LATITUDE OF DISCRETION ACCORDED TO TAX AUTHORITIES, THE LAW PROVIDES FOR A STATUTE OF LIMITATIONS ON THE ASSESSMENT AND COLLECTION OF INTERNAL REVENUE TAXES IN ORDER TO SAFEGUARD THE INTEREST OF THE TAXPAYER AGAINST UNREASONABLE INVESTIGATION.— The authorities in the present case sought to collect the subject deficiency EWT, WTD, DFT, and WTC through the November 2011 Warrant. The distraint and/or levy of the taxpayer's property is a summary administrative remedy to enforce the collection of taxes, as provided under the 1997 Tax Code. Verily, the lifeblood doctrine enables the BIR "to avail themselves of the most expeditous way to collect the taxes, including summary processes, with as little interference as possible." However, to temper the wide latitude of discretion accorded to the tax authorities, "[t]he law provides for a statute of limitations on the assessment and collection of internal revenue taxes in order to safeguard the interest of the taxpayer against unreasonable investigation." Under the 1977 Tax Code, as amended, "[a]ny internal revenue tax which has been assessed within the period of limitation x x x may be *collected* by distraint or levy or by a proceeding in court within three years following the assessment of the tax." Stated differently, the three-year prescriptive period for the BIR *to collect taxes via summary administrative processes* shall

be reckoned from "the date the assessment notice had been released, mailed or sent by the BIR to the taxpayer." This reckoning point is not clear from the facts of the present case. However, the parties no longer dispute: (a) that the CIR issued a letter dated May 6, 1991, to which the subject assessment notices were appended; (b) that Citytrust filed its protest (dated May 27, 1991) on May 30, 1991; and that (c) the first instance the CIR proceeded to administratively collect the assessed taxes was through the issuance of the November 2011 Warrant. With only these considerations, the latest possible time the CIR could have released the assessment was the same day Citytrust protested the same or on May 30, 1991. From this time, the CIR had three years to collect the taxes assessed or until May 30, 1994. No matter how the CIR frames the arguments, it is glaring from the 20-year gap between the issuance/release of the assessment (1991) and the enforcement of collection through distraint and/or levy (2011) that prescription had already set in. To be sure, aside from summary administrative remedies, the law also allows the collection of unpaid taxes through the institution of a collection case in court within the same three-year period. However, even the CIR's answer to BPI's Second CTA Petition, which could have been considered as a judicial action for the collection of tax, was filed belatedly (2011). It is clear that the tax authorities had been remiss in the performance of their duties. The Court must bar the CIR from collecting the taxes in the present case because, "[w]hile taxes are the lifeblood of the nation, the Court cannot allow tax authorities indefinite periods to assess and/or collect alleged unpaid taxes. Certainly, it is an injustice to leave any taxpayer in perpetual uncertainty whether he will be made liable for deficiency or delinquent taxes."

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Du-Balabad and Associates for respondent.

D E C I S I O N

INTING, *J.*:

This resolves the Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court filed by the Commissioner of Internal Revenue (CIR) assailing the Court of Tax Appeals *En Banc*'s (CTA EB) Decision[2] dated March 17, 2016 and the Resolution[3] dated September 1, 2016 in CTA EB No. 1204 (CTA Case No. 8376). In the assailed issuances, the CTA EB affirmed the Decision[4] dated April 16, 2014 and the Resolution[5] dated July 23, 2014 of the CTA Third Division (CTA Division) in CTA Case No. 8376 that cancelled the Warrant of Distraint and/or Levy dated October 27, 2011 issued against Bank of the Philippine Islands (BPI).

The Antecedents

Through a letter dated May 6, 1991, the CIR sent Assessment Notices[6] to Citytrust Banking Corporation (Citytrust) in connection with its deficiency internal revenue taxes for the year 1986 in the aggregate amount of ₱20,865,320.29[7] computed as follows:

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[1] *Rollo*, pp. 13-34.

[2] *Id.* at 38-61; penned by Associate Justice Erlinda P. Uy with Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas and Ma. Belen M. Ringpis-Liban, concurring; and Presiding Justice Roman G. Del Rosario, inhibited.

[3] *Id.* at 62-65.

[4] *Id.* at 66-90; penned by Associate Justice Lovell R. Bautista with Associate Justices Esperanza R. Fabon-Victorino and Ma. Belen M. Ringpis-Liban, concurring.

[5] *Id.* at 91-95.

[6] The Assessment Notices had the following reference numbers: FAS-1-86-91-001847, FAS-1-86-91-001848, FAS-1-86-91-001849, FAS-1-86-91-00-1850, FAS-1-86-91-00185, FAS-1-86-91-001854, FAS-8-86-91-001854, *id.* at 80.

[7] *Id.* at 39.

Tax Type	Amount
Income tax (IT)	₱19,202,589.97[8]
Expanded withholding tax (EWT)	1,582,815.03
Withholding tax on deposit substitutes (WTD)	33,065.29
Real estate dealer's fixed tax (DFT)	7,175.00
Penalties for the late remittance of withholding tax on compensation (WTC)	39,675.00
Total	₱20,865,320.29[9]

The assessments came after Citytrust's execution of three Waivers of the Statute of Limitations (Waivers) under the National Internal Revenue Code (NIRC) dated August 11, 1989, July 12, 1990, and November 8, 1990 extending the prescriptive period for the CIR to issue an assessment.[10]

Citytrust protested the assessments on May 30, 1991 and, again, on February 17, 1992.[11] In the interim, through the Bureau of Internal Revenue (BIR) Office of the Accounting Receivable/ Billing Section letter dated February 5, 1992, the CIR demanded the payment of the subject deficiency taxes within 10 days from receipt thereof.[12]

At this juncture, two portions of the total assessment (₱20,865,320.29) became the subject of separate proceedings: *first*, the compromise and collection of the deficiency IT portion

[8] See *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, G.R. No. 224327, June 11, 2018, 866 SCRA 104, 108.

[9] Inclusive of basic taxes, surcharges, interests, and compromise penalties, for taxable years 1986. *Rollo*, pp. 39-40.

[10] *Id.* at 39.

[11] *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, *supra* note 8.

[12] *Rollo*, p. 21. See also *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, *supra* note 8.

that led to another Supreme Court case of the same title, docketed as G.R. No. 224327 — the case was decided on November 16, 2018 (2018 Case); and *second*, the collection of deficiency EWT, WTD, DFT, and WTC portion is the subject of the present petition.

A) Deficiency IT and G.R. No. 224327

1. Compromise

The deficiency IT portion of the assessment became the subject of a compromise settlement, pursuant to Revenue Memorandum Order No. (RMO) 45-93.[13] However, the parties failed to reach an agreement. The CIR, which initially agreed to a settlement amount of ₱8,607,517.00, eventually denied Citytrust's application for compromise settlement. On July 27, 1995, Citytrust requested reconsideration.

On October 4, 1996, Citytrust and BPI entered into a merger agreement, wherein the latter emerged as the surviving corporation.[14]

Subsequently, the CIR issued a Notice of Denial dated May 26, 2011 addressed to BPI and requested for the payment of Citytrust's deficiency IT for 1986 amounting to ₱19,202,589.97. CIR reiterated the request on July 28, 2011 in another letter.

2. Collection

The CIR sought to collect the above-mentioned amount and issued a Warrant of Distraint and/or Levy on September 21, 2011 (September 21, 2011 Warrant) against BPI.

BPI questioned the warrant before the CTA (First CTA Petition). The CTA Special Third Division cancelled and set aside the September 21, 2011 Warrant (CTA Case No. 8350) which the CTA *En Banc* affirmed (CTA EB No. 1173). The CIR appealed the case to the Court (G.R. No. 224327).[15]

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[13] Compromise Settlement of Certain Deficiency Tax Assessment and Abatement of the Penalties Arising from Certain Late Payment of Taxes, [September 29, 1993].

[14] *Rollo*, p. 40.

[15] *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, *supra* note 8.

In the 2018 Case, the CIR argued as follows: *first*, the letter dated February 5, 1992 was a "final decision" on the assessment. Under the law, Citytrust had 30 days from the time of the letter's issuance to appeal it to the CTA. However, BPI only went to the CTA on October 7, 2011. Having been filed out of time, CTA did not acquire jurisdiction over BPI's petition in CTA Case No. 8350. *Second*, BPI's allegations on the waivers' defects were also made belatedly. Thus, they are estopped from invoking the defense of prescription (*i.e.*, CIR's right to assess) on the basis of these flaws.[16]

However, in the Decision dated November 16, 2018, the Court upheld the September 21, 2011 Warrant's cancellation. The Court explained that: *first*, the CIR did not offer proof that Citytrust received the letter dated February 5, 1992. This failure "lead[s] to the conclusion that no assessment was issued."[17] *Second*, estoppel does not lie against BPI. It was the tax authorities who had caused the aforementioned defects. The flawed waivers did not extend the prescriptive periods for assessment.[18] Thus, CIR's right to assess Citytrust/BPI "already prescribed and [BPI] is not liable to pay the deficiency tax assessment."[19]

B) Collection of Deficiency EWT, WTD, DFT, and WTC, and the present petition

Meanwhile, on November 4, 2011, BPI received a separate Warrant of Distraint and/or Levy (November 2011 Warrant),[20] this time in relation to Citytrust's deficiency EWT,

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[16] *Commissioner of Internal Revenue v. Bank of the Philippine Islands, supra* note 8 at 117.

[17] *Id.*

[18] *Id.*

[19] *Id.* at 118.

[20] See Warrant of Distraint and/or Levy dated October 27, 2011, *rollo*, p. 40.

WTD, DFT, and WTC assessments amounting to ₱1,624,930.32.[21]

Similarly, BPI assailed the November 2011 Warrant before the CTA through a petition for review (Second CTA Petition) asking the tax court to *suspend* the collection of the alleged deficiency taxes, *cancel* the November 2011 Warrant, and *enjoin* the CIR from further implementing it. It also prayed for the CTA to declare the assessments as prescribed and to cancel the assessments related thereto.

Ruling of the CTA Division

In the Decision[22] dated April 16, 2014, the CTA Division *cancelled* and *set aside* the subject Warrant of Distraint and/or Levy.[23] It ruled as follows:

First, the CTA can take cognizance of BPI's petition. The questions surrounding the CIR's right to assess and collect deficiency taxes which stemmed from the CIR's issuance of the warrant of distraint and/or levy falls within the CTA's exclusive appellate jurisdiction to review by appeal "other matters arising under the [NIRC] or other laws administered by the [BIR]."[24]

Second, the CIR's issuance of the above-mentioned Assessment Notices on May 6, 1991 was beyond the three-year prescriptive period to assess deficiency EWT, WTD, and WTC against Citytrust, pursuant to the National Internal Revenue Code of 1977 (1977 Tax Code) and relevant tax regulations.[25] On the other hand, the assessment for deficiency DFT was issued

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

[22] *Id.* at 66-90.

[23] *Id.* at 89.

[24] *Id.* at 71-73, citing Section 7 of Republic Act No. (RA) 1125, as amended by RA 9282 and RA 9503, as well as *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.*, 649 Phil. 446, 455-456 (2010).

[25] *Id.* at 75-77. Revenue Regulations No. (RR) 06-85, 42, RR No. 05-85, 43 and RR No. 17-84, 44, as amended by RR No. 03-85.

within the 10-year prescriptive period to assess taxes for which no return was filed.[26]

Third, there was no showing that Citytrust's request for reinvestigation/reconsideration was ever granted by the CIR. Thus, the prescriptive periods to assess *and* collect the alleged deficiency taxes were not suspended.[27]

Fourth, RMO No. 20-90 dated April 4, 1990 prescribed a specific form by which all waivers of the statutes of limitations shall be executed. In turn, Citytrust executed three waivers dated August 11, 1989, July 12, 1990, and November 8, 1990, respectively. However, only the first waiver was valid and extended the period for assessment to August 31, 1990. The later waivers were executed during the effectivity of RMO 20-90. Since the other waivers did not conform with the RMO's formal requirements, they were invalid and did not extend the prescriptive period.[28]

Fifth, the CIR issued the Assessment Notices against Citytrust on May 6, 1991. However, it issued the subject warrant of distraint and/or levy to collect the taxes so assessed only in 2011, which was beyond the three-year prescriptive period to collect assessed taxes.[29]

The CTA Division also denied the CIR's subsequent motion for reconsideration. This prompted the CIR to elevate the case to the CTA EB.

Ruling of the CTA EB

In the assailed Decision, the CTA EB affirmed the CTA Division's ruling.

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

[27] *Id.* at 81-82, citing *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*, 488 Phil. 218, 235 (2004).

[28] *Id.* at 87-88.

[29] *Id.* at 88-89.

In upholding the tax court's jurisdiction over the Second CTA Petition, the court *a quo* added that BPI did not initiate an action before the CTA to assail a final decision rendered by the CIR on the subject assessments. BPI's petition primarily questioned the CIR's right to assess and collect, an issue cognizable by the CTA in the exercise of its appellate jurisdiction over "other matters" arising from tax laws.[30]

The court *a quo* then proceeded to invalidate *all three* waivers discussed above. It found that the waiver dated August 11, 1989 was not an agreement between the CIR and the taxpayer, as contemplated under the 1977 Tax Code,[31] because the CIR did not sign it. It could not have validly extended the prescriptive period for tax assessment.

Further, the CTA EB echoed the CTA Division's ruling that the CIR's letter dated May 6, 1991 and the accompanying assessment notices were issued past the general three-year prescriptive period to assess Citytrust for deficiency EWT, WTC, and WTD. However, it explained that, by exception, the 10-year prescriptive period for assessment shall apply not only to the subject deficiency DFT, but also to deficiency EWT pertaining to selected months,[32] for which BPI likewise failed to present the corresponding returns to establish the fact of filing.[33]

Nevertheless, just as the CTA Division did, the court *a quo* ruled that the CIR could no longer enforce payment for the aforementioned deficiency DFT and EWT, despite having issued the corresponding assessments within the 10-year period. By the time the subject distraint and/or levy was issued in 2011, the CIR's right to collect any of these taxes had already prescribed.

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[30] *Id.* at 47.

[31] *Id.* at 49, citing Section 223 of the 1977 Tax Code.

[32] *Id.* at 55-56. EWT for January, May, June, September, October, and December 1986.

[33] *Id.*

The CIR moved to reconsider the Decision, but the court *a quo* denied it.

Hence, the CIR, represented by the Office of the Solicitor General (OSG), filed the present petition.

Issue

The Court shall resolve three issues:

(1) Did the CTA have jurisdiction over BPI's Second CTA Petition?

(2) Did the CIR timely issue assessments against Citytrust for deficiency EWT, WTD, DFT, and WTC pertaining to the taxable year 1986?

(3) May the CIR still collect the unpaid taxes?

The Court's Ruling

The petition lacks merit.

The CTA properly exercised its jurisdiction over BPI's petition for review.

The OSG relies heavily on the letter dated February 5, 1992 — that it was a "final decision" denying Citytrust's protest.[34] Citytrust's failure to appeal the "final decision" within 30 days from receipt thereof[35] rendered the tax assessment final, executory, and unappealable.[36] Thus, BPI's Second CTA petition in 2011 was filed out of time, over which the court below did not acquire jurisdiction.

Petitioner's reasoning is specious and misplaced.

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[34] *Rollo*, p. 22. The letter also demanded "BPI to pay the subject deficiency taxes within 10 days from its receipt, with a warning that failure to do so would leave no other recourse to the BIR but to enforce collection through the issuance of a warrant of distraint/levy."

[35] *Id.* at 21, citing Section 229 of the 1977 Tax Code. *Rollo*, p. 21.

[36] *Id.* at 22.

First, this was the CIR's same argument in the 2018 Case. To recall, the Court did not give evidentiary weight to the letter dated February 5, 1992 due to the CIR's failure to prove Citytrust's receipt thereof. In the present case, not only is there still no proof of receipt. The CIR did not even attach a copy of the letter relied upon to the present petition. Notably, failure to append "material portions of the record as would support the petition" is a ground for dismissal thereof.[37]

Second, the aforementioned letter is irrelevant in ascertaining whether or not the tax court properly took cognizance of BPI's Second CTA Petition. As the CTA correctly pointed out, BPI did not come to question any final decision issued in connection with Citytrust's assessments. They went before the CTA primarily to assail the November 2011 Warrant's issuance and implementation. To be sure, the issue for the CTA to resolve was the propriety not of any assessment but of a tax collection measure implemented against BPI. Accordingly, the CTA's disposition[38] was distinctly for the cancellation of the warrant and nothing else.

The law expressly vests the CTA the authority to take cognizance of "other matters" arising from the 1977 Tax Code and other laws administered by the BIR[39] which necessarily includes rules, regulations, and measures on the collection of tax. Tax collection is part and parcel of the CIR's power to make assessments and prescribe additional requirements for tax administration and enforcement.[40]

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[37] Section 5, in relation to Section 4 (d) of the Rules of Court.

[38] *Rollo*, p. 89. The dispositive portion of the CTA Division's Decision follows:

"WHEREFORE, the Petition for Review is hereby GRANTED. Accordingly, the Warrant of Distraint and/or Levy dated October 27, 2011 is hereby CANCELLED and SET ASIDE.

SO ORDERED."

[39] Section 7 (a) (1), RA 1125. Also see *Coll. of Internal Rev. v. Reyes and Court of Tax Appeals*, 100 Phil. 822, 829-830 (1957).

[40] See *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corp.*, G.R. Nos. 197945 & 204119-20, July 9, 2018, citing Section 6, 1997 Tax Code.

Thus, the CTA properly exercised jurisdiction over BPI's Second Petition.

The CIR's right to assess has already prescribed.

The OSG insists that the CIR's right to assess the subject taxes did not prescribe because the waivers of the statute of limitations were valid and binding. BPI is estopped from assailing the documents' validity because they did not do so in the administrative level.[41]

On the other hand, both the CTA Division and CTA EB carefully reviewed and examined the records (*i.e.*, tax returns for each tax type, waivers of the statutes of limitations, etc.) to precisely ascertain whether the period to assess each tax type has prescribed. The court *a quo* ultimately invalidated the waivers of the statutes of limitations due to the absence of the CIR's signature and found that only the assessments for EWT[42] and DFT have not prescribed.

The Court shall no longer disturb the afore-cited findings.

Verily, the 1977 Tax Code, as amended,[43] allowed the parties to execute an agreement waiving the three-year statute of limitation for tax assessment.[44] However, it is already established that, to be valid, waivers of this nature must be in the form as prescribed by the applicable tax regulations.[45] That both parties must signify their assent in extending the assessment period is not merely a formal requisite under tax rules, but one that is essential to the validity of a contract under the Civil Code.

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[41] *Rollo*, p. 26.

[42] *Id.* at 55-56. For January, May, June, September, October and December 1986.

[43] Section 318, Presidential Decree No. (PD) 1158, as amended by Batas Pambansa Blg. (BP) 700, [April 5, 1984].

[44] Section 319 (b), PD 1158, as amended by BP 700.

[45] See *Commissioner of Internal Revenue v. The Stanley Works Sales (Phils.), Inc.*, 749 Phil. 280, 290-291 (2014) and *Philippine Journalists, Inc. v. Commissioner of Internal Revenue, supra* note 27.

Furthermore, the Court already ruled that BPI is not estopped from raising questions on the waivers' validity. That the fundamental defect that invalidated the subject waivers were caused by the CIR gives more reason to the taxpayer to seek redress for this inadvertence.

Be that as it may, even if the Court excuses these flaws, the CIR is still barred from collecting the subject taxes from BPI.

The BIR may no longer collect the alleged deficiency taxes.

The authorities in the present case sought to collect the subject deficiency EWT, WTD, DFT, and WTC through the November 2011 Warrant. The distraint and/or levy of the taxpayer's property is a summary administrative remedy to enforce the collection of taxes, as provided under the 1977 Tax Code.[46]

Verily, the lifeblood doctrine enables the BIR "to avail themselves of the most expeditious way to collect the taxes, including summary processes, with as little interference as possible."[47] However, to temper the wide latitude of discretion accorded to the tax authorities, "[t]he law provides for a statute of limitations on the assessment and collection of internal revenue taxes in order to safeguard the interest of the taxpayer against unreasonable investigation."[48]

Under the 1977 Tax Code, as amended, "[a]ny internal revenue tax which has been assessed within the period of limitation above-prescribed may be *collected* by distraint or levy or by a proceeding in court within three years following the assessment

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[46] *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corp., supra* note 40, citing Section 207, 1997 Tax Code. Formerly Sections 304 and 310 of the 1977 Tax Code.

[47] *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corp., supra* note 40, citing *Commissioner of Internal Revenue v. Pineda*, 128 Phil. 146, 150 (1967) and *Philippine Bank of Communications v. Commissioner of Internal Revenue*, 361 Phil. 916, 927 (1999).

[48] *Id.*, citing *Philippine Journalists, Inc. v. Commissioner of Internal Revenue, supra* note 27 at 229-230 (2004).

of the tax." Stated differently, the three-year prescriptive period for the BIR *to collect taxes via summary administrative processes* shall be reckoned from "the date the assessment notice had been released, mailed or sent by the BIR to the taxpayer."[49]

This reckoning point is not clear from the facts of the present case. However, the parties no longer dispute: (a) that the CIR issued a letter dated May 6, 1991, to which the subject assessment notices were appended; (b) that Citytrust filed its protest (dated May 27, 1991) on May 30, 1991; and that (c) the first instance the CIR proceeded to administratively collect the assessed taxes was through the issuance of the November 2011 Warrant.

With only these considerations,[50] the latest possible time the CIR could have released the assessment was the same day Citytrust protested the same or on May 30, 1991. From this time, the CIR had three years to collect the taxes assessed or until May 30, 1994.

No matter how the CIR frames the arguments, it is glaring from the 20-year gap between the issuance/release of the assessment (1991) and the enforcement of collection through distraint and/or levy (2011) that prescription had already set in.

To be sure, aside from summary administrative remedies, the law also allows the collection of unpaid taxes through the

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[49] *Bank of the Philippine Islands v. Commissioner of Internal Revenue*, 738 Phil. 577, 586 (2014), citing *Bank of the Philippine Islands v. Commissioner of Internal Revenue*, 510 Phil. 1, 17 (2005).

[50] The reckoning date was also not apparent in *Bank of the Philippine Islands v. Commissioner of Internal Revenue, supra*. However, the Court ratiocinated as follows: "In the present case, although there was no allegation as to when the assessment notice had been released, mailed or sent to BPI, still, the latest date that the BIR could have released, mailed or sent the assessment notice was on the date BPI received the same on 16 June 1989. Counting the three-year prescriptive period from 16 June 1989, the BIR had until 15 June 1992 to collect the assessed DST. But despite the lapse of 15 June 1992, the evidence established that there was no warrant of distraint or levy served on BPI's properties, or any judicial proceedings initiated by the BIR."

institution of a collection case in court within the same three-year period. However, even the CIR's answer to BPI's Second CTA Petition, which could have been considered as a judicial action for the collection of tax, was filed belatedly (2011).[51]

It is clear that the tax authorities had been remiss in the performance of their duties. The Court must bar the CIR from collecting the taxes in the present case because, "[w]hile taxes are the lifeblood of the nation, the Court cannot allow tax authorities indefinite periods to assess and/or collect alleged unpaid taxes. Certainly, it is an injustice to leave any taxpayer in perpetual uncertainty whether he will be made liable for deficiency or delinquent taxes."[52]

WHEREFORE, the petition is **DENIED**. The Decision dated March 17, 2016 and the Resolution dated September 1, 2016 of the Court of Tax Appeals *En Banc* in CTA EB No. 1204 (CTA Case No. 8376) 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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[51] *Rollo,* p. 69.

[52] *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corp., supra* note 40.

SECOND DIVISION

[G.R. No. 229076. September 16, 2020]

MA. LUZ TEVES ESPERAL, *Petitioner*, *v.* **MA. LUZ TROMPETA-ESPERAL AND LORENZ ANNEL BIAOCO,** *Respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; GENERALLY LIMITED TO REVIEWING ERRORS OF LAW.— [T]he Court reiterates that in a petition for review on *certiorari* under Rule 45 of the Rules of Court, its jurisdiction is generally limited to reviewing errors of law. Section 1, Rule 45 of the Rules of Court states that the petition filed shall raise only questions of law which must be distinctly set forth. x x x Here, petitioner argues that the CA erred in holding that the instant ejectment suit is not proper due to the contrasting claims of ownership by both parties. In other words, petitioner is raising the issue of whether the court can resolve an ejectment suit even if both parties claim ownership of the subject property. Clearly, the issue raised is a question of law.

2. ID.; ID.; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY; THE ONLY ISSUE IN FORCIBLE ENTRY CASES IS THE PHYSICAL OR MATERIAL POSSESSION OF REAL PROPERTY AND NOT THE TITLE.— Well-settled is the rule that the sole issue for resolution in ejectment case relates to the physical or material possession of the property involved, independent of the claim of ownership by any of the parties. Even if the question of ownership is raised in the pleadings, as in the case at bench, the courts may pass upon such issue but only to determine the issue of possession especially if the former is inseparably linked with the latter. In any case, the adjudication of ownership, being merely provisional, does not bar or prejudice an action between the parties involving title to the subject property. x x x [T]he Court emphasized in the case of *Mangaser v. Ugay* that the issue of ownership shall be resolved in deciding the issue of possession only if the question of possession is *intertwined* with the issue of ownership x x x. Another case

wherein both parties raised the issue of ownership as their basis of their respective right to possess the property in question is *Sps. Dela Cruz v. Sps. Capco*, wherein the Court reiterated the rule that where both parties to an ejectment case raise the issue of ownership, the courts may pass upon that issue to determine who between the parties has the better right to possess the property x x x. Based on the aforementioned jurisprudence, the Court finds that the CA erred in holding that an ejectment case is not the proper proceeding where contrasting claims of ownership by both parties exist. At the risk of repetition, the only issue in forcible entry cases is the physical or material possession of real property — prior physical possession and not title.

3. ID.; ID.; ID.; ID.; REQUISITES.— For a forcible entry suit to prosper, the plaintiffs must allege and prove: (a) that they have prior physical possession of the property; (b) that they were deprived of possession either by force, intimidation, threat, strategy or stealth; and (c) that the action was filed within one year from the time the owners or legal possessors learned of their deprivation of the physical possession of the property.

4. ID.; ID.; ID.; EJECTMENT; THE ISSUE OF OWNERSHIP IN EJECTMENT CASES IS TO BE RESOLVED ONLY WHEN IT IS INTIMATELY INTERTWINED WITH THE ISSUE OF POSSESSION TO SUCH EXTENT THAT THE QUESTION OF WHO HAD PRIOR POSSESSION CANNOT BE DETERMINED WITHOUT RULING ON THE QUESTION OF WHO THE OWNER OF THE LAND IS.— Respondents x x x countered that their entitlement to possession over the subject property is based on their ownership rights as evidenced by an Affidavit of Acceptance for the Foreclosure of the Mortgage of Real Property dated March 15, 2005 executed by Pablo. The Court stresses that the issue of ownership in ejectment cases is to be resolved only when it is intimately intertwined with the issue of possession to such an extent that the question of who had prior possession cannot be determined without ruling on the question of who the owner of the land is. Contrary to the conclusions of the RTC, the Court deems it inappropriate for the ejectment court to dwell on the issue of ownership considering that respondents' claim of ownership could not establish prior possession at the time when the subject property was forcibly taken from petitioner.

5. ID.; ID.; ID.; ID.; A PERSON IN POSSESSION CANNOT BE EJECTED BY FORCE, VIOLENCE OR TERROR, NOT EVEN BY THE OWNERS, REGARDLESS OF THE ACTUAL CONDITION OF THE TITLE TO THE PROPERTY.— Regardless of 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. Assuming *arguendo* that herein respondents are the real owners of the subject property, they had no right to take the law into their own hands and summarily or forcibly eject petitioner's tenants from the subject property. Their employment of illegal means to eject petitioner by force in entering the subject property by destroying the locks using bolt cutter, replacing the locks, and prohibiting the tenants to enter therein made them liable for forcible entry since prior possession was established by petitioner.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Du-balabad and Associates for respondents.

D E C I S I O N

INTING, *J.*:

Before the Court is a Petition[1] for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision[2] dated June 10, 2016 and the Resolution[3] dated January 5, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 142161 which reversed and set aside the Decision[4] dated June 30, 2015 of Branch 257, Regional Trial Court (RTC), Parañaque City in Civil Case No. 15-37.

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[1] *Rollo*, pp. 10-23.

[2] *Id.* at 28-37; penned by Associate Justice Manuel M. Barrios with Associate Justices Franchito N. Diamante and Maria Elisa Sempio Diy, concurring.

[3] *Id.* at 46-48.

[4] CA *rollo*, pp. 23-28; penned by Judge Rolando G. How.

The Antecedents

The instant petition stemmed from the forcible entry case filed by Ma. Luz Teves Esperal (petitioner) against Ma. Luz Trompeta-Esperal (Trompeta) and Lorenz Annel Biaoco (Biaoco) (collectively, respondents) which involved a 109-square meter parcel of land located at 2496 F Dynasty Ville I, Bayview Drive, Tambo, Parañaque City covered by Transfer Certificate of Title (TCT) No. 125190[5] (subject property) registered in the name of Pablo Rostata (Pablo) and the petitioner. Both were previously married to each other, but the marriage was declared void because of Pablo's previous marriage to another woman.[6]

Sometime in September 2012, petitioner who was working in the United States, came home to the Philippines for a short vacation. She was surprised that her property, which was vacant when she left for the United States, was now occupied by persons unknown to her. Upon inquiry, the occupants informed her that they were the lessees and paying rentals to Biaoco, nephew of Trompeta. She then told the occupants that she is the owner of the property and that she did not authorize Biaoco to have the property leased to anyone.

When petitioner returned to the property on September 29, 2012, she met Biaoco. The latter confirmed that he managed the property and collected rentals for his aunt, Trompeta. Petitioner told him that she is the owner of the property and not his aunt. Upon hearing this, respondents voluntarily left the premises. Thereafter, petitioner took over the possession of the property and designated her sister, Rosario Ola (Ola) to be the property administrator. She likewise made an arrangement with the lessees to pay the rentals to Ola. Thus, she changed the locks of the gate of the subject property.[7]

For more than two weeks, petitioner's possession of the subject property was peaceful. However, on the third week of October

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[5] *Rollo*, pp. 56-60.

[6] *Id.* at 29.

[7] CA *rollo*, p. 24.

2012, when petitioner was back in the United States, Ola informed her that their tenants were not allowed to enter the subject property; that respondents entered the premises by destroying the locks using a bolt cutter; and that respondents changed the locks, prohibited the tenants from entering the premises, and posted a rent signage.

Ola immediately reported the incident to the *barangay* on October 23, 2012. Petitioner's counsel then sent a demand letter to respondents for them to vacate the subject property.[8] Despite the receipt of the demand letter, respondents refused to leave the subject property prompting petitioner to file the Complaint[9] for Ejectment and Damages against respondents before the Metropolitan Trial Court (MeTC), Parañaque City.

For their part, respondents averred that the complaint is without legal basis and should be dismissed outright as petitioner is not the real party-in-interest because she was not the owner of the subject property. They likewise insisted that although petitioner was described in the property's title as the wife of Pablo, their marriage was later nullified due to the existing marriage of Pablo to another woman. Moreover, they asserted that Pablo already executed in their favor, an Affidavit of Acceptance for the Foreclosure of the Mortgage Property[10] dated March 15, 2005 wherein Pablo declared that respondent Trompeta is the new owner of the subject property. Thus, respondents contended that they have the right to enter the property and use it in accordance with their will.[11]

The Ruling of the MeTC

On October 28, 2014, Branch 77, MeTC, Parañaque City rendered a Decision,[12] the dispositive portion of which reads:

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[8] *Id.*

[9] *Rollo*, pp. 49-55.

[10] CA *rollo*, p. 128.

[11] *Id.* at 24-25.

[12] *Id.* at 30-35; penned by Presiding Judge Donato H. De Castro.

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff Ma. Luz Teves Esperal and against the defendants Ma. Luz Trompeta-Esperal & Lorenz Annel Biaoco and ordering all persons claiming under them to:

1. Vacate the property subject of this case covered by Transfer Certificate of Title No. 125190 and surrender possession thereof to the plaintiff or representative;
2. Order defendants to pay the reasonable amount of Php5,000.00 per month reckoned from the demand dated October 23, 2012 as actual damages for there is no doubt that defendants benefited in occupying the subject property until the defendants vacate the premises and possession thereof is fully restored to the plaintiff;
3. Pay Plaintiff the Attorney's fees in the amount of ₱20,000.00; and
4. Pay the costs of suit.

SO ORDERED.[13]

Undaunted, respondents appealed to the RTC.

The Ruling of the RTC

On June 30, 2015, the RTC dismissed the respondents' appeal. It disposed of the case as follows:

WHEREFORE, the Appeal of the defendants is dismissed on the ground of preponderance of evidence in favour of the plaintiff. Thus, the Decision of the court a quo is affirmed.

IT IS SO ORDERED.[14]

The RTC declared that the issue of ownership, in the case at bench, became significant to determine who among the parties has the right to possess the subject property. It ruled that the court can tackle the issue on ownership of the property for it to resolve the issue of possession. It cautioned, however, that the ruling on the issue of ownership in the ejectment case is not a final resolution of the ownership of the subject property

[13] *Id.* at 35.

[14] *Id.* at 28.

as it is merely tentative and for purposes of resolving the issue on possession only.[15]

Moreover, the RTC found that petitioner is a co-owner of the property since it was acquired during the subsistence of her marriage to Pablo. It pointed out that Pablo cannot sell the property without the petitioner's consent; that when the petitioner's marriage with Pablo was declared void, Pablo can merely sell his inchoate portion of the subject property and not the share of the petitioner; and that the petitioner, as co-owner of the property, can bring an ejectment case against the respondents.[16]

Furthermore, the RTC stressed that the Affidavit of Acceptance for the Foreclosure of the Mortgage Property, allegedly executed by Pablo in favor of Trompeta, is neither a real estate mortgage nor a deed of sale. Thus, the RTC ruled that the affidavit is not proof that Pablo mortgaged the property or transferred ownership over the property to Trompeta.[17]

Respondents then filed a Motion for Reconsideration.[18] The RTC denied it in its Order[19] dated August 19, 2015.

Undeterred, respondents raised the issue to the CA.

The Ruling of the CA

On June 10, 2016, the CA rendered a Decision[20] reversing and setting aside the RTC Decision and disposed of the case as follows:

WHEREFORE, premises considered, the Decision dated 30 June 2015 and Order dated 19 August 2015 of Regional Trial Court, Branch 257, Parañaque City, and concomitantly, the verdict of eviction rendered

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[15] *Id.*

[16] *Id.* at 26-27.

[17] *Id.* at 27.

[18] *Id.* at 176-188.

[19] *Id.* at 29.

[20] *Rollo*, pp. 28-37.

by the Metropolitan Trial Court, Branch 77, Parañaque City are REVERSED and SET ASIDE and declared of no effect. This is without prejudice to the institution by the parties of the proper action before a court of competent jurisdiction to ventilate and resolve with conclusiveness their contrasting claims of ownership over the subject property.

SO ORDERED.[21]

Aggrieved, petitioner comes before the Court raising the sole ground, to wit:

> 20. The Court of Appeals erred in holding that an ejectment case is not proper due to the contrasting claims of ownership by both petitioner Ma. Luz Teves Esperal and respondent Ma. Luz Trompeta-Esperal.[22]

Petitioner argues that basically, the RTC can make a ruling on the issue of ownership if it is necessary to determine the rightful possessor between two claimants. Moreover, she insists that she was in peaceful possession of the subject property before respondents forcibly occupied it; that even if the right to possess was based on the contending claims of ownership, she has the right to possess it by virtue of the fact that her name as a co-owner appears in the TCT; and that the subject property was acquired during the existence of her marriage to Pablo. Finally, the petitioner contends that Trompeta's claim of ownership was based on an alleged loan, but no loan document was ever presented.

In their Comment,[23] respondents counter: (1) that the instant petition should be dismissed outright for being filed out of time, and that the Motion for Extension to File Petition was not served upon respondent; (2) that the CA was correct in ruling that the issue of ownership cannot be determined in the

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

[22] *Id.* at 15.

[23] *Id.* at 192-202.

case at bench; and (3) that there was insufficient basis for the RTC to conclude that the petitioner is a co-owner of the property.

Our Ruling

The Court grants the petition.

At the outset, the Court reiterates that in a petition for review on *certiorari* under Rule 45 of the Rules of Court, its jurisdiction is generally limited to reviewing errors of law. Section 1, Rule 45 of the Rules of Court states that the petition filed shall raise only questions of law which must be distinctly set forth. The Court explained the difference between a question of fact and a question of law in this wise:

> A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.[24]

Here, petitioner argues that the CA erred in holding that the instant ejectment suit is not proper due to the contrasting claims of ownership by both parties. In other words, petitioner is raising the issue of whether the court can resolve an ejectment suit even if both parties claim ownership of the subject property. Clearly, the issue raised is a question of law.

Still, the Court will have to pass upon the factual findings in the case considering the conflicting or contradictory[25] decisions of the CA and RTC; thus, the Court is constrained to make its own factual findings in order to resolve the issue presented before it.

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[24] *Clemente v. Court of Appeals, et al.*, 771 Phil. 113, 121 (2015), citing *Lorzano v. Tabayag, Jr.*, 681 Phil. 39, 48-49 (2012).

[25] *Bank of the Philippine Islands v. Mendoza, et al.*, 807 Phil. 640, 647 (2017), citing *Miro v. Vda. de Erederos*, 721 Phil. 772, 786 (2013).

Well-settled is the rule that the sole issue for resolution in ejectment case relates to the physical or material possession of the property involved, independent of the claim of ownership by any of the parties.[26] Even if the question of ownership is raised in the pleadings, as in the case at bench, the courts may pass upon such issue but only to determine the issue of possession especially if the former is inseparably linked with the latter.[27] In any case, the adjudication of ownership, being merely provisional, does not bar or prejudice an action between the parties involving title to the subject property.[28]

In *Co v. Militar*,[29] the Court ruled:

> In forcible entry and unlawful detainer cases, even if the defendant raises the question of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the lower courts and *the Court of Appeals, nonetheless, have the undoubted competence to provisionally resolve the issue of ownership for the sole purpose of determining the issue of possession*.
>
> Such decision, however, does not bind the title or affect the ownership of the land nor is conclusive of the facts therein found in a case between the same parties upon a different cause of action involving possession.[30] (Italics supplied.)

Moreover, the Court emphasized in the case of *Mangaser v. Ugay*[31] that the issue of ownership shall be resolved in deciding the issue of possession only if the question of possession is *intertwined* with the issue of ownership, thus:

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[26] See *Estrellado v. Presiding Judge, MTCC, 11th Judicial Region, Br. 3, Davao City, et al.*, 820 Phil. 556, 571 (2017); *Dizon v. CA*, 332 Phil. 429, 432 (1996).

[27] *Id.* Citations omitted.

[28] *Id.*

[29] 466 Phil. 217 (2004).

[30] *Id.* at 224. Citations omitted.

[31] 749 Phil. 372 (2014).

Before the Court continues any further, it must be determined first whether the issue of ownership is material and relevant in resolving the issue of possession. *The Rules of Court in fact expressly allow this: Section 16, Rule 70 of the Rules of Court provides that the issue of ownership shall be resolved in deciding the issue of possession if the question of possession is intertwined with the issue of ownership. But this provision is only an exception and is allowed only in this limited instance — to determine the issue of possession and only if the question of possession cannot be resolved without deciding the issue of ownership*.[32] (Italics supplied.)

Another case wherein both parties raised the issue of ownership as their basis of their respective right to possess the property in question is *Sps. Dela Cruz v. Sps. Capco*,[33] wherein the Court reiterated the rule that where both parties to an ejectment case raise the issue of ownership, the courts may pass upon that issue to determine who between the parties has the better right to possess the property, thus:

"The only issue in an ejectment case is the physical possession of real property possession *de facto* and not possession *de jure*." But "[w]here the parties to an ejectment case raise the issue of ownership, the courts may pass upon that issue to determine who between the parties has the better right to possess the property." Here, both parties anchor their right to possess based on ownership, *i.e.*, the spouses Dela Cruz by their own ownership while the spouses Capco by the ownership of Rufino as one of the heirs of the alleged true owner of the property. Thus, the MeTC and the RTC correctly passed upon the issue of ownership in this case to determine the issue of possession. However, it must be emphasized that "[t]he adjudication of the issue of ownership is only provisional, and not a bar to an action between the same parties involving title to the property."[34]

Based on the aforementioned jurisprudence, the Court finds that the CA erred in holding that an ejectment case is not the

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[32] *Id.* at 384, citing *Nenita Quality Foods Corp. v. Galabo, et al.*, 702 Phil. 506, 520 (2013).

[33] 729 Phil. 624 (2014).

[34] *Id.* at 637. Citations omitted.

proper proceeding where contrasting claims of ownership by both parties exist. At the risk of repetition, the only issue in forcible entry cases is the physical or material possession of real property — prior physical possession and not title.[35]

For a forcible entry suit to prosper, the plaintiffs must allege and prove: (a) that they have prior physical possession of the property; (b) that they were deprived of possession either by force, intimidation, threat, strategy or stealth; and (c) that the action was filed within one year from the time the owners or legal possessors learned of their deprivation of the physical possession of the property.[36]

Records reveal that petitioner was able to satisfactorily prove by preponderance of evidence the existence of all the elements of forcible entry. While it may be true that respondents occupied the property before 2012, it was without the knowledge of petitioner and respondents voluntarily left the premises after the latter learned of petitioner's ownership. More importantly, petitioner was already in prior peaceful occupation of the subject property when respondents forcibly entered it by using a bolt cutter, evicted the tenants therein, changed the padlocks, and placed a rent signage in front of the property. These were the acts of respondents that prompted petitioner to file a forcible entry case.

Respondents, on the other hand, countered that their entitlement to possession over the subject property is based on their ownership rights as evidenced by an Affidavit of Acceptance for the Foreclosure of the Mortgage of Real Property dated March 15, 2005 executed by Pablo. The Court stresses that the issue of ownership in ejectment cases is to be resolved

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[35] *German Management and Services, Inc. v. Court of Appeals*, G.R. No. 76217, September 14, 1989, 177 SCRA 495, 9; *Ganadin v. Ramos*, 99 SCRA 613, September 11, 1980; *Baptista v. Carillo*, 72 SCRA 214, July 30, 1976 as cited in *Heirs of Laurora v. Sterling Technopark III*, 449 Phil. 181-188 (2003).

[36] *Mangaser v. Ugay, supra* note 31 at 381, citing *De La Cruz v. Court of Appeals*, 539 Phil. 158, 170 (2006).

only where it is intimately intertwined with the issue of possession to such an extent that the question of who had prior possession cannot be determined without ruling on the question of who the owner of the land is.[37] Contrary to the conclusions of the RTC, the Court deems it inappropriate for the ejectment court to dwell on the issue of ownership considering that respondents' claim of ownership could not establish prior possession at the time when the subject property was forcibly taken from petitioner.

Regardless of 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.[38] Assuming *arguendo* that herein respondents are the real owners of the subject property, they had no right to take the law into their own hands and summarily or forcibly eject petitioner's tenants from the subject property. Their employment of illegal means to eject petitioner by force in entering the subject property by destroying the locks using bolt cutter, replacing the locks, and prohibiting the tenants to enter therein made them liable for forcible entry since prior possession was established by petitioner.

All told, the Court agrees with the MeTC's conclusion as affirmed by the RTC that petitioner is better entitled to the material possession of the subject property and that she cannot be forcibly evicted therefrom without proper recourse to the courts.

WHEREFORE, the petition is **GRANTED**. The Decision dated June 10, 2016 and the Resolution dated January 5, 2017 of the Court of Appeals in CA-G.R. SP No. 142161 are **REVERSED** and **SET ASIDE**. The Decision dated October

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[37] *Heirs of Laurora v. Sterling Technopark III*, 449 Phil. 181 (2003).

[38] *Muñoz v. Court of Appeals*, 214 SCRA 216, September 23, 1992; *Joven v. Court of Appeals*, 212 SCRA 700, August 20, 1992; *German Management and Services, Inc. v. Court of Appeals*, 177 SCRA 495, September 14, 1989; *Supia and Batioco v. Quintero and Ayala*, 59 Phil. 312 (1933) as cited in *Heirs of Laurora v. Sterling Technopark III*, 449 Phil. 181 (2003).

28, 2014 of Branch 77, Metropolitan Trial Court, Parañaque City in Civil Case No. 2013-21 is hereby **REINSTATED**.

SO ORDERED.

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

Baltazar-Padilla, J., on leave.

SECOND DIVISION

[G.R. No. 230280. September 16, 2020]

SPOUSES ROLANDO and SUSIE GOLEZ, *Petitioners, v.* **HEIRS OF DOMINGO BERTULDO, namely: GENOVEVA BERTULDO, ERENITA BERTULDO-BERNALES, FLORENCIO BERTULDO, DOMINADOR BERTULDO, RODEL BERTULDO, and ROGER BERTULDO,** *Respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; NOT A SUBSTITUTE FOR AN APPEAL WHERE THE REMEDY IS LOST THROUGH THE PARTY'S FAULT OR NEGLIGENCE; EXCEPTION.— It is well-settled that a petition for *certiorari* under Rule 65 of the Rules of Court is a special civil action that may be resorted to only in the absence of appeal or any plain, speedy and adequate remedy in the ordinary course of law. *Certiorari* is not a substitute for an appeal where the remedy was lost through the party's fault or negligence. This rule is subject to exceptions, such as when the respondent court or tribunal acted in a capricious, whimsical, arbitrary or despotic manner in the exercise of its jurisdiction as to be equivalent to lack of jurisdiction. x x x The case before the Court falls under the exceptions. In this case, the DENR gravely abused its discretion when it completely disregarded that in the CA Decision in CA-G.R. CV No. 67914, affirmed by the Court in G.R. No. 178990, the Court recognized respondents as the owners of Lot No. 1025.

2. ID.; ACTIONS; JUDGMENTS; VOID JUDGMENTS; A JUDGMENT RENDERED WITHOUT JURISDICTION IS A VOID JUDGMENT, AND WANT OF JURISDICTION MAY PERTAIN TO LACK OF JURISDICTION OVER THE SUBJECT MATTER, OR OVER THE PERSON OF ONE OF THE PARTIES, OR MAY ARISE FROM THE TRIBUNAL'S ACT CONSTITUTING GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF

JURISDICTION.— The DENR gravely abused its discretion in disregarding the factual findings of the CA in recognizing respondents' ownership of Lot No. 1025. The DENR's Decision dated April 28, 2011 and Resolution dated December 2, 2011 are void judgments that have no legal effect at all. The DENR Order dated July 10, 2012 declaring its Resolution dated December 2, 2011 final and executory is also void. The Court has ruled that a void judgment is no judgment at all in all legal contemplation. The Court explained that a judgment rendered without jurisdiction is a void judgment. The Court held that want of jurisdiction may pertain to lack of jurisdiction over the subject matter, or over the person of one of the parties, or may arise from the tribunal's act constituting grave abuse of discretion amounting to lack or excess of jurisdiction. The DENR clearly acted in a capricious and whimsical manner in the exercise of its jurisdiction in ruling that the ownership of Lot No. 1025 was not passed upon by the RTC and the CA and in giving preferential rights to petitioners despite the final and executory Decision in CA-G.R. CV No. 67914 declaring respondents as the owners of Lot No. 1025. In ruling in favor of petitioners by giving them preferential rights over Lot No. 1025, the DENR also ignored that the Court in G.R. No. 178990 affirmed the CA Decision in CA-G.R. CV No. 67914.

APPEARANCES OF COUNSEL

Christine Joy B. Banday for petitioners.
Bisnar Law Office for respondents.

D E C I S I O N

INTING, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] filed by Spouses Rolando and Susie (Susie) Golez (collectively, petitioners) against the heirs of Domingo Bertuldo (Domingo), namely: Genoveva Bertuldo, Erenita Bertuldo-Bernales (Erenita),

[1] *Rollo*, pp. 28-46.

Florencio Bertuldo, Dominador Bertuldo, Rodel Bertuldo, and Roger Bertuldo (collectively, respondents).

Petitioners assail the Decision[2] dated July 20, 2016 and the Resolution[3] dated January 20, 2017 of the Court of Appeals (CA), Cebu City, Nineteenth Division in CA-G.R. SP No. 07162. The CA declared void the Decision[4] dated April 28, 2011 and the Resolution[5] dated December 2, 2011 of the Department of Environment and Natural Resources (DENR) in DENR Case No. 8887 and dismissed the application for the issuance of free patent filed by petitioners with the Provincial Environment and Natural Resources Office (PENRO) for violating the rules on forum shopping.

The Antecedents

The facts of the case, gathered from the Decision of the Court in G.R. No. 201289[6] and from the assailed CA Decision dated July 20, 2016 in CA-G.R. SP No. 07162, are as follows:

In 1976, Benito Bertuldo (Benito) sold Lot No. 1024 to Asuncion Segovia (Asuncion), acting for her daughter petitioner Susie. The Deed of Absolute Sale dated December 10, 1976 indicated the metes and bounds of Lot No. 1024. However, petitioners constructed their house on a portion of its neighboring land, Lot No. 1025. Both Lot Nos. 1024 and 1025 are unregistered parcels of land.[7]

Domingo, father of respondents and Benito's first cousin, claimed ownership over Lot No. 1025 and protested against

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[2] *Id.* at 8-15; penned by Associate Justice Edward B. Contreras with Associate Justices Edgardo L. Delos Santos (now a member of the Court) and Geraldine C. Fiel-Macaraig, concurring.

[3] *Id.* at 59-60.

[4] *Id.* at 77-95; signed by Atty. Anselmo C. Abungan, OIC-Assistant Secretary for Legal Services by Authority of the Department of Environment and Natural Resources (DENR) Secretary.

[5] *Id.* at 98-107.

[6] *Sps. Golez v. Heirs of Domingo Bertuldo*, 785 Phil. 801 (2016).

[7] *Id.* at 804.

the construction of petitioners' house. Petitioners, however, assured Domingo that the construction was being done on Lot No. 1024. After Domingo's death, respondents conducted a relocation survey on Lot No. 1025. The relocation survey showed that petitioners' house was constructed on Lot No. 1025. Respondents confronted petitioners with the result of the relocation survey. In turn, petitioners alleged that Benito and Asuncion executed an Amended Deed of Absolute Sale correcting the property sold from Lot No. 1024 to Lot No. 1025.[8]

On August 9, 1993, petitioners filed a Complaint for Quieting of Title over Lot No. 1025 against respondents. The case was raffled to Branch 14, Regional Trial Court (RTC), Roxas City and docketed as Civil Case No. V-6341. In the Decision[9] dated March 31, 2000, the RTC dismissed the complaint for lack of merit. The RTC ruled that petitioners purchased Lot No. 1024 and not Lot No. 1025. The RTC's Decision was affirmed by the CA Cebu City in CA-G.R. CV No. 67914[10] and by the Court in G.R. No. 178990, entitled *Sps. Golez v. Heirs of Domingo Bertuldo*. Petitioners filed a motion for reconsideration in G.R. No. 178990, but the Court denied it with finality in its Resolution[11] dated January 23, 2008.

Respondents, represented by Erenita, filed an application for free patent over Lot No. 1025 with the PENRO,[12] Roxas City. Petitioners, without mentioning the adverse decision against them in G.R. No. 178990, opposed the application with their counter-application. However, respondents realized that Lot

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[8] *Id.* at 805.

[9] *Rollo*, pp. 62-75; penned by Judge Salvador S. Gubaton.

[10] *Id.* at 189-196. See the Decision dated November 28, 2006 of the Court of Appeals in CA-G.R. CV-No. 67914 penned by Associate Justice Agustin S. Dizon with Associate Justices Pampio A. Abarintos and Priscilla Baltazar-Padilla (now a member of the Court), concurring.

[11] *Id.* at 200.

[12] Community Environment and Natural Resources Offices in the Decision of the Court in G.R. No. 201289, *Sps. Golez v. Heirs of Bertuldo, supra* note 6 at 806.

No. 1025 is a private land and beyond the jurisdiction of the DENR. As such, respondents moved for the dismissal of their application and petitioners' counter-application. The PENRO favorably acted on the motion and issued an Order of Rejection dated October 28, 2008.[13] Petitioners filed a Motion for Reconsideration. PENRO denied the motion for lack of merit in its Order dated November 5, 2009. Hence, petitioners filed a Notice of Appeal to elevate the case to the DENR. The case was docketed as DENR Case No. 8887.

Meanwhile, on February 17, 2009, respondents filed a Complaint for Unlawful Detainer against petitioners. The Municipal Circuit Trial Court of Pilar-President Roxas, Capiz ruled in respondents' favor and ordered petitioners to vacate Lot No. 1025 and peacefully deliver its possession to respondents. Petitioners' appeal before the RTC was denied. Petitioners' appeal before the CA, docketed as CA-G.R. CEB-SP No. 05741, was also denied. Petitioners filed a Petition for Review on *Certiorari* before the Court. In the Decision[14] dated May 30, 2016 in G.R. No. 201289, the Court granted the petition and dismissed the case for unlawful detainer on the ground that the action for forcible entry had already prescribed. The Court ruled that since the dispossession had lasted for more than one year, respondents' remedy was to recover possession of Lot No. 1025 by filing an *accion publiciana* against petitioners.[15]

On May 5, 2010, respondents filed an application for land registration of Lot No. 1025 before Branch 19, RTC, Roxas City docketed as Land Registration Case No. (LRC)-01-10. Respondents attached to the application a certification from the DENR that Lot No. 1025 is within alienable and disposable zone.[16]

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[13] *Rollo*, p. 50.

[14] *Sps. Golez v. Heirs of Bertuldo, supra* note 6.

[15] *Id.* at 816-817.

[16] *Rollo*, p. 51.

The Ruling of the DENR in DENR Case No. 8887

In the Decision[17] dated April 28, 2011, the DENR resolved DENR Case No. 8887 by partially granting petitioners' appeal.[18]

The DENR ruled that the issue of petitioners' ownership over Lot No. 1025 had already been heard, passed upon, and resolved by the RTC in the Decision dated March 31, 2000 in Civil Case No. V-6341; that while petitioners occupied Lot No. 1025, they are not the owners thereof; and that the RTC, however did not rule on respondents' ownership over Lot No. 1025.[19]

As such, the DENR evaluated respondents' evidence before it and further ruled as follows: the earliest documentary possession of respondents was the Deed of Absolute Sale dated May 20, 1963; however, respondents' possession was interrupted in 1977 when petitioners constructed their house on Lot No. 1025; respondents' dispossession had the effect of suspending the running of the period for acquisitive prescription; hence, respondents failed to show that they were in open, continuous, exclusive, adverse, and notorious possession, occupation, and cultivation of Lot No. 1025 for at least 30 years.[20]

The DENR furthermore ruled that with respect to the 400-square meter (sq. m.) portion of Lot No. 1025 actually occupied and possessed by petitioners, they should be given preferential right to acquire it through the proper public land application. It added that with respect to the remaining 1,084 sq. m. of Lot No. 1025, respondents should be given preferential right to acquire it through the proper public land application.

The dispositive portion of the DENR's Decision reads:

WHEREFORE, premises carefully considered, the instant appeal is hereby PARTIALLY GRANTED.

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

[18] *Id.* at 94.

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

[20] *Id.* at 89-91.

The Regional Executive Director, DENR-Region VI, Iloilo City is hereby ORDERED to conduct a VERIFICATION and SEGREGATION SURVEY for the purpose of separating the 400-square meter northern most portion of Lot 1025, Pilar Cadastre, actually occupied by appellants, from the remaining 1,084-square meter portion of said land possessed by appellees, the expenses thereof shall be born by the appellants.

Both parties are thereafter directed to file their respective public land applications over the respective areas actually occupied by them. After which, the Regional Executive Director is hereby directed to give due course to the parties' respective public land applications after due compliance with all the requirements of law and applicable regulations.

The Order of the Regional Executive Director dated 5 November 2009, and the Order of Rejection dated 28 October 2008 of PENRO-Capiz, are hereby MODIFIED accordingly.

SO ORDERED.[21]

Both petitioners and respondents filed their respective motions for reconsideration before the DENR. In the Resolution[22] dated December 2, 2011, the DENR denied respondents' motion for reconsideration, but granted petitioners' motion for reconsideration.

The DENR held that respondents' ownership over Lot No. 1025 was not passed upon by the RTC and the CA. It reiterated that respondents failed to comply with the requirements of acquisitive prescription due to the interruption caused by petitioners' adverse possession of Lot No. 1025; that respondents failed to show proof of payment of realty tax; and that for all intents and purposes, Lot No. 1025 is a public land. The DENR cited the report of the investigating team that petitioners occupy the whole land and not only 400 sq. m. of Lot No. 1025. Hence, it gave preferential right to petitioners over the entire Lot No. 1025.

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

[22] *Id.* at 98-107.

The dispositive portion of the Resolution reads:

> WHEREFORE, premises carefully considered, Appellees' Motion for Reconsideration dated 1 June 2011 is hereby DENIED for lack of merit.
>
> Appellants' Motion for Reconsideration dated 25 May 2011 is hereby GRANTED. The Decision dated 28 April 2011 is hereby MODIFIED. The order for segregation survey therein is hereby RECALLED and appellants' preferential right to Lot 1025 is hereby DECLARED as pertaining to the entire lot.
>
> Appellants are DIRECTED to file their public land application over Lot 1025. After which, the Regional Executive Director is hereby DIRECTED to give it due course after faithful compliance with all the requirements of law and applicable regulations.
>
> SO ORDERED.[23]

On December 29, 2011, respondents filed a Notice of Appeal before the DENR, stating that they are appealing the December 2, 2011 DENR Resolution to the Office of the President of the Philippines (Office of the President).[24] On January 16, 2012, petitioners filed before the DENR their Comment to the Notice of Appeal stating that the Notice of Appeal did not state the material dates showing that it was filed on time or within the reglementary period for filing an appeal, and that they were not given a copy of the Appeal.[25] Petitioners thus moved for the issuance of an Order of Finality of the DENR Resolution dated December 2, 2011.

On April 2, 2012, petitioners furnished the DENR a copy of their letter to the Office of the President verifying whether respondents filed an appeal, and reiterating that they were not furnished a copy of the Appeal.[26] On May 20, 2012, Director

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[23] *Id.* at 107.

[24] See Order dated July 10, 2012 of the Office of the Secretary, DENR, *id.* at 109-110.

[25] *Id.* at 110.

[26] *Id.*

Marianito M. Dimaandal (Director Dimaandal), Director IV of the Malacañang Records Office, Office of the President, issued a Certification stating that "as of this date, No Appeal relative to DENR Case No. 8887 dated December 2, 2011 entitled 'Sps. Roland and Suzie Golez, Appellants,-versus-Heirs of Domingo Bertuldo, et al., Appellees,' has been received by this Office."[27] Thus, petitioner Suzie again moved for the issuance of an Order of Finality and Execution of the DENR December 2, 2011 Resolution. In an Order[28] dated July 10, 2012, the DENR granted the motion and declared the Resolution dated December 2, 2011 final and executory for failure of respondents to perfect their appeal before the Office of the President. The DENR remanded the records of the case to the Regional Office for its implementation of the Resolution dated December 2, 2011.[29]

Respondents filed a Petition[30] for *Certiorari* before the CA assailing the DENR's Order July 10, 2012 granting petitioner Suzie's motion for the issuance of an Order of Finality and Execution, thereby denying the appeal they made to the Office of the President of the DENR's Decision dated April 28, 2011 and Resolution dated December 2, 2011.

The Decision of the CA

In the assailed Decision dated July 20, 2016, the CA treated the Petition for *Certiorari* as assailing the DENR's Decision dated April 28, 2011 Decision and Resolution dated December 2, 2011.

The CA ruled that the DENR committed grave abuse of discretion in disregarding the CA Decision dated November 28, 2006 in CA-G.R. CV No. 67914 which recognized respondents' ownership of Lot No. 1025 when it stated that "before [the Sps. Golez and Petitioners] acquired *ownership*

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[27] *Id.*

[28] *Id.* at 109-112.

[29] *Id.* at 112.

[30] *Id.* at 113-131.

of Lots 1024 and 1025, respectively, the said properties were *owned* by first cousins, Benito for Lot 1024 and Domingo for Lot 1025, who have not fenced their individual property."[31] The CA ruled that this was supported by this Court when it affirmed the CA Decision in G.R. No. 178990. The CA ruled that since respondents were adjudged the owners of Lot No. 1025, petitioners are not entitled to ownership nor to any rights, preferential or otherwise, over Lot No. 1025.

The CA also found petitioners guilty of forum shopping for filing an action for quieting of title and later an application for free patent over Lot No. 1025. It ruled that the two remedies are mutually exclusive. The CA further ruled that an action of quieting of title constitutes *res judicata* upon a subsequent application for free patent over the same land.

The dispositive portion of the CA's Decision reads:

> WHEREFORE, the Petition for *Certiorari* is GRANTED. The Decision dated April 28, 2011 and Resolution dated December 2, 2011, both rendered by the DENR in DENR Case No. 8887, are hereby declared VOID. The Sps. Golez's application for the issuance of free patent with the PENRO is DISMISSED for being in violation of the rules on forum shopping.
>
> SO ORDERED.[32]

Petitioners filed a motion for reconsideration. In the Resolution[33] dated January 20, 2017, the CA denied the motion.

Hence, the petition before the Court.

In their Comment,[34] respondents alleged that they filed an appeal with the Office of the President, but they have not heard of any resolution of their appeal. Respondents alleged that when the DENR issued its Order of Finality and Execution, they were

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[31] *Id.* at 12.

[32] *Id.* at 15.

[33] *Id.* at 59-60.

[34] *Id.* at 169-187.

left with no other recourse than to file the petition for *certiorari* before the CA.

Respondents further alleged that the DENR's Decision dated April 28, 2011 and the Resolution dated December 2, 2011 contradict each other. The Decision dated April 28, 2011 held that petitioners are in actual possession of only 400 sq. m. of Lot No. 1025, whereas the Resolution dated December 2, 2011 ruled that petitioners are in possession of the entire land. Respondents furthermore alleged that the DENR deviated from the findings in the quieting of title case which was the subject in G.R. No. 178990; and that the CA, in that case, expressly stated that Benito owned Lot No. 1024 and Domingo owned Lot No. 1025. Respondents also maintained that petitioners are guilty of forum shopping.

In the Petitioners' Reply (to Respondents' Comment),[35] petitioners argued that while respondents filed a notice of appeal before the Office of the President, they failed to present proof that they paid the corresponding appeal fee or filed the memorandum of appeal. Petitioners alleged that as a result, respondents' appeal was not perfected; thus, *certiorari* cannot be a substitute for a lost appeal.

The Issues

1. WHETHER OR NOT THE FILING OF THE PETITION FOR *CERTIORARI* BY THE RESPONDENTS BEFORE THE [CA] WAS PROPER.
2. WHETHER OR NOT THE [DENR] HAS ACTED WITH GRAVE ABUSE OF DISCRETION WHEN IT DECLARED THE PREFERENTIAL RIGHT OF THE PETITIONERS OVER THE SUBJECT LOT.
3. WHETHER OR NOT THE DISMISSAL OF A CASE FOR QUIETING OF TITLE FOR "LACK OF MERIT" CONSTITUTES A BAR IN THE FILING OF AN APPLICATION FOR ISSUANCE OF FREE PATENT WITH THE [PENRO].[36]

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[35] *Id.* at 209-211.

[36] *Id.* at 35. Emphasis supplied.

The Ruling of the Court

The petition has no merit.

Administrative Order No. 22, Series of 2011[37] (AO 22-2011) governs appeals to the Office of the President. The provisions of AO 22-2011 that are pertinent to this case are as follows:

SECTION 1. Period to appeal. Unless otherwise provided by special law, an appeal to the Office of the President shall be taken within fifteen (15) days from notice of the aggrieved party of the decision/resolution/order appealed from, or of the denial, in part or in whole, of a motion for reconsideration duly filed in accordance with the governing law of the department or agency concerned.

SECTION 2. Appeal, how taken. The appeal shall be taken by filing a Notice of Appeal with the Office of the President, with proof of service of a copy thereof to the department or agency concerned and the affected parties, and payment of the appeal fee.

SECTION 3. Appeal fee. The appellant shall pay to the Office of the President the appeal fee of Php1,500.00 within the same period for filing a Notice of Appeal under Section 1 hereof. For appeals of deportation orders of the Bureau of Immigration, the appeal fee is Php10,000.00. Pauper litigants, duly certified as such in accordance with the Rules of Court, shall be exempted from the payment of appeal fee. Exemption from payment of the lawful appeal fees may be granted by the Office of the President upon a verified motion setting forth valid grounds therefor. If the motion is denied, the appellant shall pay the appeal fee within fifteen (15) days from notice of the denial.

SECTION 4. Transmittal of record. Within ten (10) days from receipt of a copy of the Notice of Appeal, the department or agency concerned shall transmit to the Office of the President the complete records of the case with each page consecutively numbered and initialled by the custodian of the records, together with a summary of proceedings thereon from the filing of the complaint or petition before the office of origin up to transmittal to the Office of the President in chronological order indicating the action taken, incidents resolved,

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[37] Prescribing Rules and Regulations Governing Appeals to the Office of the President of the Philippines, dated October 11, 2011.

and listing of all pleadings, motions, manifestations, annexes, exhibits and other papers or documents filed by the contending parties, the corresponding orders, resolutions and decisions, as required in Memorandum Circular (MC) No. 123 (s. 1991).

SECTION 5. Perfection of appeal. The appeal shall be deemed perfected upon the filing of the Notice of Appeal, payment of the appeal fee, and the filing of the appeal memorandum.

SECTION 6. Period to file appeal memorandum. The appeal memorandum shall be filed within thirty (30) days from the date the Notice of Appeal is filed, with proof of service of a copy thereof to the department or agency concerned and the affected parties.

SECTION 7. Appeal memorandum. The appeal memorandum shall be filed in three (3) copies and shall (a) contain the caption and docket number of the case as presented in the office of origin and the addresses of the parties; (b) indicate the specific material dates showing that it is filed within the period prescribed in Section 1 hereof; (c) contain a concise statement of the facts and issues and the grounds relied upon for the appeal; and (d) be accompanied by a clearly legible duplicate original or a certified true copy of the decision/resolution/order being appealed.

SECTION 8. Non-compliance with requirements. The failure of the appellant to comply with any of the requirements regarding the payment of the appeal fee, proof of service of the appeal memorandum, and the contents of and the documents which should accompany the appeal memorandum shall be sufficient ground for the dismissal of the appeal.

x x x x.

In the case before the Court, respondents, instead of filing a notice of appeal to the Office of the President, filed a notice of appeal to the DENR and informed the DENR that they are appealing the Decision dated April 28, 2011 and the Resolution dated December 2, 2011 to the Office of the President. However, the appeal before the Office of the President was not perfected. In a Certification dated May 20, 2012, Director Dimaandal certified that as of that date, there was no appeal relative to DENR Case No. 8887. The non-perfection of the appeal to the Office of the President led to the issuance by the DENR of its

Order[38] dated July 10, 2012 declaring the Resolution dated December 2, 2011 final and executory.

It is clear from AO 22-2011 that a notice of appeal is not sufficient to perfect an appeal. In addition to filing a notice of appeal, appellant must also pay the prescribed appeal fee and file an appeal memorandum. Respondents failed to do both.

Nevertheless, the Court finds that the DENR Decision dated April 28, 2011 and the Resolution dated December 2, 2011 as well as its Order dated July 10, 2012 are void.

It is well-settled that a petition for *certiorari* under Rule 65 of the Rules of Court is a special civil action that may be resorted to only in the absence of appeal or any plain, speedy and adequate remedy in the ordinary course of law.[39] *Certiorari* is not a substitute for an appeal where the remedy was lost through the party's fault or negligence.[40] This rule is subject to exceptions, such as when the respondent court or tribunal acted in a capricious, whimsical, arbitrary or despotic manner in the exercise of its jurisdiction as to be equivalent to lack of jurisdiction.[41] The Court further explained:

> The term "grave abuse of discretion" has a specific meaning. An act of a court or tribunal can only be considered as with grave abuse of discretion when such act is done in a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." The abuse of discretion must be so patent and gross as to amount to an "evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility." Furthermore, the use of a petition for certiorari is restricted only to "truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void."

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[38] *Rollo*, pp. 109-112.

[39] *Malayang Manggagawa ng Stayfast Phils., Inc. v. NLRC*, 716 Phil. 500, 512 (2013).

[40] *Sps. Dycoco v. Court of Appeals, et al.*, 715 Phil. 550, 562 (2013).

[41] *Id.* at 563, citing *Abedes v. Court of Appeals*, 562 Phil. 262, 276 (2007).

From the foregoing definition, it is clear that the special civil action of certiorari under Rule 65 can only strike an act down for having been done with grave abuse of discretion if the petitioner could manifestly show that such act was patent and gross. x x x.[42]

The case before the Court falls under the exceptions. In this case, the DENR gravely abused its discretion when it completely disregarded that in the CA Decision in CA-G.R. CV No. 67914, affirmed by the Court in G.R. No. 178990, the Court recognized respondents as the owners of Lot No. 1025.

The issues in CA-G.R. CV No. 67914, as stated in the CA Decision, are as follows:

(a) As between the parties, who are the rightful owners and legal possessors of Lot No. 1025; and (b) who are entitled to recover damages.[43]

The CA resolved the issues, thus:

x x x. Benito Bertuldo had known that what was sold by him to Asuncion Segovia was Lot 1024, Pilar Cadastre and the same is also known to the latter that what she was buying from the former was Lot 1024 Pilar Cadastre. If there was a mistake in the sale, the matter could have been noticed when Asuncion Segovia caused the cancellation of the tax declaration in the name of Benito Bertuldo or when she executed a Deed of Absolute Sale on May 30, 1980 in favor of the plaintiff's-appellants,[44] but the same was not done. Why did it take plaintiffs-appellants sixteen (16) years to realize that a mistake was done in the execution of the deed of absolute sale for the property which they acquired. **Besides, Benito Bertuldo could not possibly execute a deed of absolute sale over Lot 1025, Pilar Cadastre. The said property was not owned by him, as such, he could not sell what he does not own and if ever one was executed, no right was transferred, as the seller has no right over the property sold**.

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[42] *Id.*

[43] *Rollo*, p. 191.

[44] *Id.* at 189. The plaintiffs-appellants in the case were the Spouses Rolando and Suzie Golez, petitioners in this case.

Plaintiffs-appellants could not have acquired the property known as Lot 1025, Pilar Cadastre by acquisitive prescription, as defendants-appellees[45] are in possession of the same, except for the area w[h]ere a portion of the house of plaintiffs-appellants was constructed. **It must be noted that before plaintiffs-appellants and the defendants-appellees acquired ownership of Lots 1024 and 1025 respectively, the said properties were owned by first cousins, Benito Bertuldo for Lot 1024 and Domingo Bertuldo for Lot 1025, who have not fenced their individual property**. Besides, during the construction of the house of plaintiffs-appellants, their mother, Asuncion Segovia, who was acting for plaintiffs-appellants assured Domingo Bertuldo that the house is being constructed in Lot 1024 and that the approved plan of the house stated therein that the house will be constructed on Lot 1024 was shown to him.[46]

The DENR gravely abused its discretion in disregarding the factual findings of the CA in recognizing respondents' ownership of Lot No. 1025. The DENR's Decision dated April 28, 2011 and Resolution dated December 2, 2011 are void judgments that have no legal effect at all. The DENR Order dated July 10, 2012 declaring its Resolution dated December 2, 2011 final and executory is also void.

The Court has ruled that a void judgment is no judgment at all in all legal contemplation.[47] The Court explained that a judgment rendered without jurisdiction is a void judgment.[48] The Court held that want of jurisdiction may pertain to lack of jurisdiction over the subject matter, or over the person of one of the parties, or may arise from the tribunal's act constituting grave abuse of discretion amounting to lack or excess of jurisdiction.[49]

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[45] *Id.* The defendants-appellees in the case were the Heirs of Domingo Bertuldo, respondents in this case.

[46] *Id.* at 193-194. Emphasis supplied.

[47] *Imperial, et al. v. Judge Armes, et al.*, 804 Phil. 439, 445 (2017).

[48] *Id.* at 459.

[49] *Id.*

The DENR clearly acted in a capricious and whimsical manner in the exercise of its jurisdiction in ruling that the ownership of Lot No. 1025 was not passed upon by the RTC and the CA and in giving preferential rights to petitioners despite the final and executory Decision in CA-G.R. CV No. 67914 declaring respondents as the owners of Lot No. 1025. In ruling in favor of petitioners by giving them preferential rights over Lot No. 1025, the DENR also ignored that the Court in G.R. No. 178990 affirmed the CA Decision in CA-G.R. CV No. 67914.

WHEREFORE, the Court **DENIES** the petition and **AFFIRMS** the Decision dated July 20, 2016 and the Resolution dated January 20, 2017 of the Court of Appeals, Cebu City in CA-G.R. SP No. 07162.

SO ORDERED.

Perlas-Bernabe, S.A.J. (*Chairperson*), *Gesmundo,*[*] and *Hernando, JJ.*, concur.

Baltazar-Padilla, J., on leave.

[*] Designated as additional member per Raffle dated August 19, 2020.

SECOND DIVISION

[G.R. No. 230718. September 16, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **CRISANTO HAYA y DELOS SANTOS,** *Accused-Appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); CHAIN OF CUSTODY PROCEDURE; WHEN THERE IS A DEPARTURE FROM THE PROCEDURE, THE FAILURE OF THE PROSECUTION TO RECOGNIZE AND EXPLAIN THE SERIOUS PROCEDURAL LAPSES MILITATE AGAINST A FINDING OF GUILT BEYOND REASONABLE DOUBT AGAINST THE ACCUSED AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE *CORPUS DELICTI* HAVE BEEN COMPROMISED.— Accused-appellant was charged with the offenses of Illegal Sale and Possession of Dangerous Drugs committed in 2010 or prior to the amendment of RA 9165. Hence, the applicable law is the original provision of Section 21 and its Implementing Rules and Regulations. Accordingly, in the conduct of buy-bust operations, (1) the seized items must be marked, inventoried, and photographed immediately after seizure or confiscation; and (2) the marking, physical inventory, and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media and (d) a representative from the DOJ, all of whom shall be required to sign the copies of the inventory and be given a copy thereof. x x x In the case at bar, noticeably, the seized items were not marked immediately at the place of arrest. Although the physical inventory and taking of photographs may be conducted at the nearest police station, or office of the apprehending team in case of warrantless seizures, nothing prevents the police officers from immediately conducting these steps at the place where the items were seized. Considering that the seized items were to be used against accused-appellant, it was imperative for the police officers to mark them at once

without delay. This is material since the penalty to be imposed for illegal possession of drugs depends upon the quantity or weight thereof. Additionally, the rest of the inventory process was undertaken without the presence of a representative from the DOJ and an elected public official as mandatorily required under Section 21, Article II of RA 9165. As indicated in the Inventory of Drug Seized/Items, only a representative from the media, one Maeng Santos, a field reporter, witnessed the marking of the purportedly retrieved drug specimens. x x x While there are instances wherein departure from the procedures is allowed, it is incumbent upon the prosecution to (1) recognize any lapse on the part of the police officers and (2) be able to justify the same. Specifically, it must be alleged and proved that the presence of these insulating witnesses to the physical inventory and photograph of the seized illegal drugs was not obtained because: x x x (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any persons acting for and in his/her behalf; (3) the elected officials themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape. What is more, earnest effort to secure the attendance of the witnesses must be properly proven x x x. Here, the prosecution failed to recognize and explain the serious procedural lapses in the marking, physical inventory, and photography of the seized items. It failed to explain why the police officers did not secure the presence of an elected public official and a representative from the DOJ. The testimonies of the prosecution witnesses likewise failed to establish that there was an earnest effort to coordinate with and secure the presence of the witnesses at the onset of the operation. x x x Under the circumstances, the breaches committed by the police officers, left unacknowledged and unexplained

by the State, militate against a finding of guilt beyond reasonable doubt against accused-appellant as the integrity and evidentiary value of the *corpus delicti*, the 10 plastic sachets of marijuana, have been compromised.

2. ID.; ID.; ID.; REQUIRED WITNESSES; THE PRESENCE OF THE WITNESSES DURING THE SEIZURE AND MARKING OF THE DRUG IS NECESSARY TO PROTECT AGAINST THE POSSIBILITY OF PLANTING, CONTAMINATION, OR LOSS OF THE SEIZED DRUG.— In a number of cases, the Court held that the presence of witnesses from the DOJ, media, and any elected public officer is *necessary* to protect against the possibility of planting, contamination, or loss of the seized drug. Without the insulating presence of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drug, the evils of switching, "planting" or contamination of the evidence that had tainted previous buy-bust operations would not be averted, negating the integrity and credibility of the seizure and confiscation of the subject drug specimen that was evidence of the *corpus delicti*, and thus adversely affecting the trustworthiness of the incrimination of the accused.

3. ID.; ID.; ID.; THE PROSECUTORS MUST HAVE THE INITIATIVE TO ACKNOWLEDGE AND JUSTIFY ANY PERCEIVED DEVIATION FROM THE PROCEDURE DURING THE PROCEEDINGS BEFORE THE TRIAL COURT BECAUSE THEY HAVE THE POSITIVE DUTY TO PROVE COMPLIANCE WITH THE PROCEDURE SET FORTH IN THE LAW.— [P]rosecutors are strongly reminded that they have the positive duty to prove compliance with the procedure set forth in the law. They must have the initiative to not only acknowledge, but moreso justify any perceived deviations from the procedure during the proceedings before the trial court. Since compliance with this procedure is determinative of the integrity and evidentiary value of the *corpus delicti* and ultimately, the fate of the liberty of the accused, the fact that any issue regarding the same was not raised, or even threshed out in the court/s below, would not preclude the appellate court, including the Court, from fully examining the records of the case if only to ascertain whether the procedure had been completely complied with, and if not, whether justifiable reasons

exist to excuse any deviation. If no such reasons exist, then it is the appellate court's bounden duty to acquit the accused, and perforce, overturn a conviction.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

R E S O L U T I O N

INTING, *J.*:

In a Resolution[1] dated August 1, 2018, the Court affirmed the Decision[2] dated August 17, 2016 of the Court of Appeals (CA) in CA-G.R. CR.-H.C. No. 06277 which upheld the conviction of Crisanto Haya *y* Delos Santos (accused-appellant) for violation of Sections 5 and 11, Article II of Republic Act No. (RA) 9165 or the Comprehensive Dangerous Drugs Act of 2002.

Accused-appellant moved for reconsideration[3] of the Resolution arguing that the prosecution failed to sufficiently prove his guilt. He pointed that only a field reporter was present as a witness during the inventory and there were no representative from the Department of Justice (DOJ) and elected public official. There was also no indication that the police officers even attempted to comply with the requirements of the law.[4]

As will be discussed, there is a need to reconsider and set aside the Resolution dated August 1, 2018 and enter a new one acquitting accused-appellant.

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[1] *Rollo*, pp. 36-37.

[2] *Id.* at 2-13. Penned by Associate Justice Melchor Q.C. Sadang, with Associate Justices Celia C. Librea-Leagogo and Amy C. Lazaro-Javier (now a Member of the Court), concurring.

[3] *Id.* at 38-42.

[4] *Rollo*, pp. 38 and 39.

Accused-appellant was charged with the offenses of Illegal Sale and Possession of Dangerous Drugs committed in 2010 or prior to the amendment of RA 9165. Hence, the applicable law is the original provision of Section 21 and its Implementing Rules and Regulations. Accordingly, in the conduct of buy-bust operations, (1) the seized items must be marked, inventoried, and photographed immediately after seizure or confiscation; and (2) the marking, physical inventory, and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media and (d) a representative from the DOJ, all of whom shall be required to sign the copies of the inventory and be given a copy thereof.[5]

In a number of cases, the Court held that the presence of witnesses from the DOJ, media, and any elected public officer is *necessary* to protect against the possibility of planting, contamination, or loss of the seized drug. Without the insulating presence of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drug, the evils of switching, "planting" or contamination of the evidence that had tainted previous buy-bust operations would not be averted, negating the integrity and credibility of the seizure and confiscation of the subject drug specimen that was evidence of the *corpus delicti*, and thus adversely affecting the trustworthiness of the incrimination of the accused.[6]

In the case at bar, noticeably, the seized items were not marked immediately at the place of arrest. Although the physical inventory and taking of photographs may be conducted at the nearest police station, or office of the apprehending team in case of warrantless seizures, nothing prevents the police officers from immediately conducting these steps at the place where the items were seized. Considering that the seized items were to be used against accused-appellant, it was imperative for the

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[5] *People v. Enoval*, G.R. No. 245973 (Notice), February 5, 2020.

[6] *Id.*, citing *People v. Tomawis*, G.R. No. 228890, April 18, 2018, 862 SCRA 131 and *People v. Mendoza*, 736 Phil. 749, 761 (2014).

police officers to mark them at once without delay. This is material since the penalty to be imposed for illegal possession of drugs depends upon the quantity or weight thereof.

Additionally, the rest of the inventory process was undertaken without the presence of a representative from the DOJ and an elected public official as mandatorily required under Section 21, Article II of RA 9165. As indicated in the Inventory of Drug Seized/Items,[7] only a representative from the media, one Maeng Santos, a field reporter, witnessed the marking of the purportedly retrieved drug specimens. In *People v. Sipin*,[8] the Court discussed:

> The prosecution bears the burden of proving a valid cause for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended. *It has the positive duty to demonstrate observance thereto in such a way that during the trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of law. Its failure to follow the mandated procedure must be adequately explained, and must be proven as a fact in accordance with the rules on evidence*. It should take note that 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 items. Strict adherence to Section 21 is required where the quantity of illegal drugs seized is miniscule, since it is highly susceptible to planting, tampering or alteration of evidence. (Italics supplied.)

While there are instances wherein departure from the procedures is allowed, it is incumbent upon the prosecution to (1) recognize any lapse on the part of the police officers and (2) be able to justify the same.[9] Specifically, it must be alleged and proved that the presence of these insulating witnesses to the physical inventory and photograph of the seized illegal drugs was not obtained because:

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[7] Records, p. 122.

[8] G.R. No. 224290, April 23, 2018.

[9] *People v. Enoval*, *supra* note 5, citing *People v. Alagarme*, 754 Phil. 449, 461 (2015).

x x x (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any persons acting for and in his/her behalf; (3) the elected officials themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.[10]

What is more, earnest effort to secure the attendance of the witnesses must be properly proven; thus:

It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or a showing of any genuine and sufficient effort to secure the required witnesses under Section 21 of RA 9165 must be adduced. In *People v. Umipang*, the Court held that the prosecution must show that earnest efforts were employed in contacting the representatives enumerated under the law for "a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse." Verily, *mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance*. These considerations arise from the fact that police officers are ordinarily given sufficient time — beginning from the moment they have received the information about the activities of the accused until the time of his arrest — to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. As such, *police officers are compelled not only to state reasons for their non-compliance, but must in fact,*

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[10] *People v. Sipin*, *supra* note 8.

also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.[11] (Italics supplied; underscoring omitted.)

Here, the prosecution failed to recognize and explain the serious procedural lapses in the marking, physical inventory, and photography of the seized items. It failed to explain why the police officers did not secure the presence of an elected public official and a representative from the DOJ. The testimonies of the prosecution witnesses likewise failed to establish that there was an earnest effort to coordinate with and secure the presence of the witnesses at the onset of the operation.

In this light, prosecutors are strongly reminded that they have the positive duty to prove compliance with the procedure set forth in the law. They must have the initiative to not only acknowledge, but moreso justify any perceived deviations from the procedure during the proceedings before the trial court. Since compliance with this procedure is determinative of the integrity and evidentiary value of the *corpus delicti* and ultimately, the fate of the liberty of the accused, the fact that any issue regarding the same was not raised, or even threshed out in the court/s below, would not preclude the appellate court, including the Court, from fully examining the records of the case if only to ascertain whether the procedure had been completely complied with, and if not, whether justifiable reasons exist to excuse any deviation. If no such reasons exist, then it is the appellate court's bounden duty to acquit the accused, and perforce, overturn a conviction.[12]

Under the circumstances, the breaches committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against accused-appellant as the integrity and evidentiary value of

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[11] *People v. Ramos*, 826 Phil. 881, 996 (2018).

[12] *People v. Ramos*, *supra* note 11.

the *corpus delicti*, the 10 plastic sachets of marijuana, have been compromised.[13]

WHEREFORE, the Court resolves to: (a) **SET ASIDE** the Court's Resolution dated August 1, 2018; and (b) **GRANTS** the appeal of accused-appellant Crisanto Haya *y* Delos Santos. The Decision dated August 17, 2016 of the Court of Appeals in CA-G.R. CR.-H.C. No. 06277 is hereby **REVERSED** and **SET ASIDE**. Accused-appellant Crisanto Haya *y* Delos Santos is **ACQUITTED** of the offenses charged on the ground of reasonable doubt.

The Director of the Bureau of Corrections, Muntinlupa City is **ORDERED** to: (a) cause the immediate release of accused-appellant Crisanto Haya *y* Delos Santos unless he is being held in custody for any other lawful reason; and (b) inform the Court of the action taken within five (5) days from receipt of this Resolution.

Let entry of judgment be issued immediately.

SO ORDERED.

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

Baltazar-Padilla, J., on leave.

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[13] *People v. Enoval*, *supra* note 5, citing *People v. Sumili*, 753 Phil. 342, 352 (2015).

FIRST DIVISION

[G.R. Nos. 230869-70. September 16, 2020]

ASUNCION M. MAGDAET, *Petitioner*, *v.* **SANDIGANBAYAN and PEOPLE OF THE PHILIPPINES,** *Respondents*.

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION; BILL OF RIGHTS; RIGHT TO SPEEDY DISPOSITION OF CASES; RATIONALE; WHAT CONSTITUTES DELAY DEPENDS ON THE TOTALITY OF FACTS AND CIRCUMSTANCES IN EACH CASE. — "*Justice delayed is justice denied*" is a time-honored and oft-repeated legal maxim which requires the expeditious resolution of disputes, more so in criminal cases where an accused is constitutionally guaranteed the right to a speedy disposition of cases. Albeit commonly invoked in criminal proceedings, the said constitutional right also extends to proceedings either judicial or quasi-judicial so much so that a party to a case may demand expeditious action from all officials who are tasked with the administration of justice, including the Ombudsman - which in itself is Constitutionally committed and mandated to act promptly on complaints filed therewith. However, even with all these provisions enabling the Ombudsman, there is still no period nor a criterion specified to determine what duration of disposition could be considered "prompt." Consequently, the Court stepped in and listed factors to consider in treating petitions asserting the right to speedy disposition of cases keeping in mind that delay is not determined through mere mathematical computation but through the examination of the totality of facts and circumstances peculiar in each case.

2. ID.; ID.; ID.; ID.; ID.; THE PERIOD OF MORE THAN TEN (10) YEARS TO RESOLVE A CASE IS CLEARLY AN INORDINATE DELAY, BLATANTLY INTOLERABLE, AND GROSSLY PREJUDICIAL TO THE CONSTITUTIONAL RIGHT TO SPEEDY DISPOSITION OF CASES.— [T]he criminal complaint against Magdaet was filed on **April 24, 2002.** On **September 20, 2002,** Magdaet

submitted her Counter-Affidavit. Then, on **May 12, 2003,** the Ombudsman, through GIO Corral, issued a Resolution finding probable cause against Magdaet. This Resolution was accompanied by two draft Informations which ASP Paldeng reviewed and signed on **March 2, 2007.** On **March 2, 2012,** Ombudsman Morales approved the 2003 Resolution and the two Informations against Magdaet were filed on **May 22, 2013.** Strikingly, it took eight years, nine months, and 19 days to conclude the preliminary investigation and for the Ombudsman to approve the resolution of GIO Corral, and another one year, two months, and 20 days just to file the Information before the Sandiganbayan. Evidently, the said time span is beyond the reasonable period of 90 days to determine probable cause. Left unsatisfactorily explained, too, is the noticeable gap between May 12, 2003 (the date when GIO Corral found probable cause to indict Magdaet) and March 2, 2007 (the day when ASP Paldeng supposedly reviewed the Information that accompanied the Resolution). Verily, as stated in *Cagang,* the burden of proving the justification of the delay rests upon the prosecution, or in this case, respondent. For its part, respondent contended that the delay in the filing of the Information was due to a political episode that resulted in the disruption of the hierarchy within the Ombudsman. The Court does not tolerate such a flimsy excuse to not resolve the case at the earliest opportunity. In *People v. Sandiganbayan (Fifth Division),* the Court held that "the prolonged investigation of the case from 1998 to 2009 by three Ombudsmen with divergent views as to what charges should be filed and the persons to be indicted cannot be sufficient justification for the unreasonable length of time it took to resolve the controversy." Contrary to the ruling of the Sandiganbayan, respondent did not offer any plausible explanation for the excessive delay in resolving Magdaet's case. The period of 2002 to 2013 to resolve a case is clearly an inordinate delay, blatantly intolerable, and grossly prejudicial to the constitutional right of speedy disposition of cases. Thus, Magdaet was clearly prejudiced because of the excessive delay in the disposition of her case by the Ombudsman, and thus warranting the dismissal of the criminal case against her. Such unjustified delay in the disposition of cases renders the rights of the people guaranteed by the Constitution and by various legislations inutile.

APPEARANCES OF COUNSEL

Lazaro S. Galindez, Jr. for petitioner.
The Solicitor General for respondents.

D E C I S I O N

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

Before the Court is a Petition[1] for *Certiorari* filed under Rule 65 of the Rules of Court seeking the annulment of Sandiganbayan Resolutions dated April 1, 2016[2] and December 14, 2016[3] in Criminal (Crim.) Case Nos. SB-13-CRM-0603 to 04 with prayer for the issuance of a *status quo* order or a temporary restraining order.

The Facts

The present case stemmed from a Complaint Affidavit[4] dated April 5, 2002 filed by Deputy Director Fermin S. Nasol of the Special Investigation Service of the National Bureau of Investigation (NBI) before the Office of the Ombudsman (Ombudsman) against public officials and employees of the One-Stop Shop Inter-Agency Tax Credit and Drawback Center of the Department of Finance (DOF-Center) and certain private individuals who were corporate officers and stockholders of Nikko Textile Mills, Inc. (NTMI).

In a Resolution[5] dated May 12, 2003 (2003 Resolution), Graft Investigation Officer I Myrna A. Corral (GIO Corral) of the

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[1] *Rollo*, pp. 19-39.

[2] Penned by Associate Justice Teresita V. Diaz-Baldos, with Associate Justices Napoleon E. Inoturan and Michael Frederick L. Musngi, concurring; id. at 48-52.

[3] Penned by Associate Justice Michael Frederick L. Musngi, with Associate Justices Samuel R. Martires (now Ombudsman) and Geraldine Faith A. Econg (sitting as a Special Member per Administrative Order No. 242-2016 dated August 9, 2016); id. at 45-47.

[4] Id. at 136-143.

[5] Id. at 102-135.

Office of the Ombudsman Evaluation and Preliminary Investigation Bureau recommended the filing of criminal charges against DOF Undersecretary Antonio P. Belicena (Belicena), Deputy Executive Director Uldarico P. Andutan, Jr. (Andutan), Evaluator Purita S. Napeñas, herein petitioner Supervising Tax Specialist Asuncion M. Magdaet (Magdaet), in conspiracy with Charles Uy (Uy), Ma Uy Yu (Yu),[6] Yu Chin Tong (Tong), and Emerito Guballa (Guballa) for: *i*) violation of Section 3 (e) in relation to Section 3 (j) of Republic Act (R.A.) No. 3019;[7] and *ii*) *estafa* through falsification under the Revised Penal Code. In connection with her 2003 Resolution, GIO Corral drafted two Informations which read:

Crim. Case No. SB-13-CRM-0603
(Violation of Section 3 (e) of R.A. No. 3019)

That on November 15, 1996 and/or sometime prior or subsequent thereto, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, accused [Belicena], [Andutan], [Napeñas] and [Magdaet], all public officers being then the Undersecretary of Department of Finance, Deputy Executive Director, Evaluator and supervising Tax Specialist II, respectively, of the [DOF-Center], while in the performance of their official functions, committing the offense in relation to the office, conspiring with each other, together with accused [Uy], [Tong], [Yu] and [Guballa], all private individuals, all connected with [NTMI] through manifest partiality and evident bad faith did then and there willfully, unlawfully and criminally cause undue injury to the government and give unwarranted benefits, advantage or preference to [NTMI] by causing the processing, evaluation, recommending the approval and approving through the issuance of Tax Credit Certificate No. 006355 in the amount of [₱]2,411,773.00 the tax credit claimed/applied by [NTMI] which was granted as tax credit on raw materials under Article 39(k) of Executive Order No. 226, as amended for the 83,144.88 kilograms of 70D Nylon Filament Yarn which it falsely represented through falsified documents submitted in support of the tax credit application, such as among others, Import Entry and Internal Revenue Declaration No. 02103839,

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[6] Also referred to as "May Uy Yu" and "Mary Uy Yu" in some parts of the *rollo*.

[7] ANTI-GRAFT AND CORRUPT PRACTICES ACT.

Bill of Lading No. BSMAD 6-0080 and Bureau of Customs' Official Receipt No. 59994543 to have been imported from Sunkyong Industries, Korea for which taxes and other fees were paid and which purported Nylon Knitted Fabrics end product in the total quantity of 80,731.00 kilograms were falsely represented through false documents submitted in support of the tax credit application such as among others, Bill of Lading No. NB44SB7528 and Bill of Lading No. NB46SB7651 to have been exported to Bright Sun Asia International, Singapore, despite the fact which the accused knew fully well that [NTMI] did not import and export as represented to be entitled to the tax credit claimed/applied and once in possession of Tax Credit Certificate No. 006355, [NTMI] through its accused officers and stockholders, utilized the full amount thereof in payment of its taxes duties and fees to the damage, undue injury and prejudice of the Government.

CONTRARY TO LAW.[8]

Crim. Case No. SB-13-CRM-0604
(*Estafa* through Falsification of Public Documents)

That on November 15, 1996 and/or sometime prior or subsequent thereto, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, accused [Belicena], [Andutan], [Napeñas] and [Magdaet], all public officers being then the Undersecretary of Department of Finance, Deputy Executive Director, Evaluator and supervising Tax Specialist II, respectively, of the [DOF-Center], while in the performance of their official functions, committing the offense in relation to office, conspiring with each other, together with accused [Uy], [Tong], [Yu] and [Guballa], all private individuals, all connected with [NTMI] with intent to defraud through deceit, false pretense and abuse of confidence did then and there willfully, unlawfully and feloniously cause the processing, evaluation, recommending the approval and approving through the issuance of Tax Credit Certificate No. 006355 in the amount of [₱]2,411,773.00, the tax credit claimed/applied by [NTMI] which was granted as tax credit on raw materials under Article 39(k) of Executive Order No. 266, as amended for the fictitious/non-existent importation of 83,144.88 kilograms 70D Nylon Filament Yarn from Sunkyong Industries by [NTMI], which purported Nylon Knitted Fabrics end product in the total quantity of 80,731.00 kilograms were exported to Bright Sun

[8] *Rollo,* pp. 80-81.

Asia International, Singapore, falsely made to exist by the accused by falsifying, fabricating and simulating several documents, which were used/submitted in support of the tax credit application, such as, among others, Import Entry and Internal Revenue Declaration No. 02103839, Bill of Lading No. BSMAD 6-0080, Bureau of Customs' Official Receipt No. 59994543, by making it appear that [NTMI] imported 83,144.88 kilograms 70D Nylon Filament Yarn from Sunkyung Industries, Korea on May 6, 1996, paid the corresponding taxes/fees therefor; Bill of Lading No. NB44SB7528 and Bill of Lading No. NB46SB7651 by making it appear that [NTMI] shipped/exported, through vessel Neptune Beryl a total of 80,731 kilograms of Nylon Knitted Fabrics on August 20, 1996 and September 9, 1996 respectively to Bright Sun Asia International, Singapore when in truth and in fact, as the accused knew fully well, no such import, payment of taxes/fees and shipment/export were ever made by [NTMI], and once in possession of Tax Credit Certificate No. 006355, [NTMI] through its accused officers and stockholders, utilized the full amount thereof in payment of its taxes duties and fees to the damage and prejudice of the Government.

CONTRARY TO LAW.[9]

As it happened, the two Information were reviewed by the Office of the Special Prosecutor (OSP) and both were signed by Assistant Special Prosecutor III Irenio M. Paldeng (ASP Paldeng) on March 2, 2007.[10]

On March 2, 2012, then Ombudsman Conchita Carpio Morales (Ombudsman Morales) approved the 2003 Resolution along with the two Information.[11] Ultimately, on May 22, 2013, the two Informations were filed before the SB.[12]

Thereafter, Magdaet filed a Consolidated Motion to Quash Information[13] grounded solely on Section 3 (d) of Rule 117[14] of

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[9] Id. at 84-85.

[10] Id. at 90.

[11] Id. at 134.

[12] Id. at 90.

[13] Id. at 53-57.

[14] RULE 117 — *Motion to Quash*

the Revised Rules of Criminal Procedure and argued that her right to speedy disposition of cases and to due process were violated by the Ombudsman's inordinate delay of more than 10 years in determining whether or not to file charges against her in court.

In its Opposition (To Magdaet's Motion to Quash Information),[15] the OSP showed a timeline of the case and disclosed that it was incumbent upon former Ombudsman Merceditas N. Gutierrez (Ombudsman Gutierrez) to act on the 2003 Resolution including the two Informations reviewed by the OSP. It begged the Sandiganbayan to consider the political episode that was the troubled leadership of Ombudsman Gutierrez. According to the OSP, said political episode was of general knowledge and constituted political history that heavily affected the affairs of the Ombudsman as an institution and the normal hierarchical process therein. In addition, the OSP faulted Magdaet for not asserting her right to the speedy disposition of her case at the soonest opportunity.

The Sandiganbayan Ruling

The Sandiganbayan, in the herein assailed Resolution dated April 1, 2016, ruled:

WHEREFORE, in view of all the foregoing, the Court hereby ***DENIES*** the Consolidated Motion to Quash Informations filed by accused Asuncion Magdaet for utter lack of merit.

SO ORDERED.[16]

In denying the Consolidated Motion to Quash Information, the Sandiganbayan, citing *Alvizo v. Sandiganbayan*,[17] held that

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x x x x

SECTION 3. *Grounds*. — The accused may move to quash the complaint or information on any of the following grounds:

x x x x

(d) That the officer who filed the information had no authority to do so[.]

[15] *Rollo*, pp. 87-97.

[16] Id. at 51.

[17] 292-A Phil. 144 (1993).

structural reorganization in prosecutorial agencies was a valid reason for delay. Further, the Sandiganbayan ruled that the delay cannot be entirely attributed to the Ombudsman but to Magdaet as well for failing to timely demand her right to the prompt resolution of her case.

Magdaet's Consolidated Motion for Reconsideration[18] was likewise denied in the Sandiganbayan Resolution dated December 14, 2016.

Hence, this Petition ascribing grave abuse of discretion on the part of the Sandiganbayan.

Magdaet insists that there was an unexplained and undue delay on the conduct and termination of the preliminary investigation by the Ombudsman which lasted for more than 10 years counted from the time of filing of the complaint up to the filing of the Information in the Sandiganbayan. She asserts that such inordinate delay is violative of her constitutional right to speedy disposition of cases.

In its Comment,[19] respondent People of the Philippines, represented by the Ombudsman through the OSP, prayed for the dismissal of the petition arguing that the Sandiganbayan did not abuse its discretion when it issued the assailed Resolutions as they were rendered "in accordance with existing laws and jurisprudence." Moreover, it maintained that Magdaet's constitutional rights to speedy disposition of cases and to due process were not violated seeing as the Ombudsman acted promptly on the complaint against Magdaet. Lastly, respondent pointed out that while her other co-accused had been actively participating in the trial proceedings before the Sandiganbayan, it was only in November 2014 that Magdaet decided to show up to file a Motion for Reduction of Bail, and when the said motion was granted, she then failed to appear for arraignment and instead filed a Consolidated Motion to Quash Information.

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[18] Id. at 58-62.

[19] Id. at pp. 313-336.

The Court's Ruling

Plainly stated, the issue is: was there a violation of Magdaet's constitutional right to a speedy disposition of her case?

To this, the Court answers in the affirmative.

"*Justice delayed is justice denied*" is a time-honored and oft-repeated legal maxim which requires the expeditious resolution of disputes, more so in criminal cases where an accused is constitutionally guaranteed[20] the right to a speedy disposition of cases.[21] Albeit commonly invoked in criminal proceedings, the said constitutional right also extends to proceedings either judicial or *quasi*-judicial so much so that a party to a case may demand expeditious action from all officials who are tasked with the administration of justice, including the Ombudsman[22] — which in itself is Constitutionally committed[23] and mandated[24] to

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[20] Article III, Section 16 provides:

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

[21] *Magno v. People*, G.R. No. 230657, March 14, 2018.

[22] *Magante v. Sandiganbayan (Third Division)*, G.R. Nos. 230950-51, July 23, 2018.

[23] Article Xl, Section 12 provides:

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

[24] Sec. 13 of R.A. No. 6770, otherwise known as "THE OMBUDSMAN ACT OF 1989" states:

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

act promptly on complaints filed therewith. However, even with all these provisions enabling the Ombudsman, there is still no period nor a criterion specified to determine what duration of disposition could be considered "prompt."[25]

Consequently, the Court stepped in and listed factors to consider in treating petitions asserting the right to speedy disposition of cases keeping in mind that delay is not determined through mere mathematical computation but through the examination of the totality of facts and circumstances peculiar in each case.[26]

On August 19, 2019, the Court, in *People v. Sandiganbayan (First Division)*[27] citing *Cagang v. Sandiganbayan, Fifth Division*,[28] made a definitive ruling on the concept of inordinate delay, *viz.*:

(1) The right to speedy disposition of cases is different from the right to speedy trial.

The former may only be invoked in criminal prosecutions against courts of law while the latter may be invoked before any tribunal as long as the respondent may already be prejudiced by the proceeding.

(2) For purposes of determining inordinate delay, a case is deemed to have commenced from the filing of the formal complaint and the subsequent conduct of the preliminary investigation.

Cagang, thus, abandoned *People v. Sandiganbayan*. The Ombudsman should set reasonable periods for preliminary investigation and delays beyond this period will be taken against the prosecution.

(3) Courts must determine which party carries the burden of proof.

If it has been alleged that there was delay within the time periods (*i.e.*, according to the time periods that will be issued by the

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[25] Supra note 22.

[26] *Tumbocon v. Sandiganbayan Sixth Division*, G.R. Nos. 235412-15, November 5, 2018.

[27] G.R. No. 229656, August 19, 2019.

[28] G.R. Nos. 206438, 206458 & 210141-42, July 31, 2018.

Ombudsman), the burden is on the defense to show that there has been violation of their rights to speedy disposition of case or to speedy trial. The defense must prove: (a) that the case took much longer than was reasonably necessary to resolve and (b) that efforts were exerted to protect their constitutional rights.

If the delay occurs beyond the given time period and the right is invoked, the prosecution has the burden of justifying the delay. The prosecution must prove: (a) that it followed the prescribed procedure in the conduct of preliminary investigation and case prosecution; (b) the delay was inevitable due to the complexity of the issues and volume of evidence; and (c) accused was not prejudiced by the delay.

(4) Determination of the length of delay is never mechanical.

Courts must consider the entire context of the case, the amount of evidence and the complexity of issues involved. An examination of the delay is no longer necessary to justify the dismissal of the case if the prosecution of the case was solely motivated by malice.

(5) The right to speedy disposition of cases (or the right to speedy trial) must be timely raised.

The respondent or the accused must file the appropriate motion upon the lapse of the statutory or procedural periods, otherwise, they are deemed to have waived their right.

Applying the foregoing tenets to the case at bench, the Court finds that the Sandiganbayan committed grave abuse of discretion amounting to lack or excess of jurisdiction in denying Magdaet's Consolidated Motion to Quash Information.

Here, the criminal complaint against Magdaet was filed on **April 24, 2002**.[29] On **September 20, 2002**, Magdaet submitted her Counter-Affidavit.[30] Then, on **May 12, 2003**, the Ombudsman, through GIO Corral, issued a Resolution finding probable cause against Magdaet. This Resolution was accompanied by two draft Informations which ASP Paldeng reviewed and signed on **March 2, 2007**. On **March 2, 2012**,

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[29] *Rollo,* p. 88.

[30] Id. at 174-185.

Ombudsman Morales approved the 2003 Resolution and the two Informations against Magdaet were filed on **May 22, 2013**.

Strikingly, it took eight years, nine months, and 19 days to conclude the preliminary investigation and for the Ombudsman to approve the resolution of GIO Corral, and another one year, two months, and 20 days just to file the Information before the Sandiganbayan. Evidently, the said time span is beyond the reasonable period of 90 days to determine probable cause.[31] Left unsatisfactorily explained, too, is the noticeable gap between May 12, 2003 (the date when GIO Corral found probable cause to indict Magdaet) and March 2, 2007 (the day when ASP Paldeng supposedly reviewed the Information that accompanied the Resolution).

Verily, as stated in *Cagang*, the burden of proving the justification of the delay rests upon the prosecution, or in this case, respondent. For its part, respondent contended that the delay in the filing of the Information was due to a political episode that resulted in the disruption of the hierarchy within the Ombudsman.

The Court does not tolerate such a flimsy excuse to not resolve the case at the earliest opportunity. In *People v. Sandiganbayan (Fifth Division)*,[32] the Court held that "the prolonged investigation of the case from 1998 to 2009 by three Ombudsmen with divergent views as to what charges should be filed and the persons to be indicted cannot be sufficient justification for the unreasonable length of time it took to resolve the controversy."

Contrary to the ruling of the Sandiganbayan, respondent did not offer any plausible explanation for the excessive delay in resolving Magdaet's case. The period of 2002 to 2013 to resolve a case is clearly an inordinate delay, blatantly intolerable, and grossly prejudicial to the constitutional right of speedy disposition of cases. Thus, Magdaet was clearly prejudiced because of the excessive delay in the disposition of her case by the Ombudsman,

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[31] *People v. Sandiganbayan*, 723 Phil. 444 (2013).

[32] 791 Phil. 37 (2016).

and thus warranting the dismissal of the criminal case against her.[33] Such unjustified delay in the disposition of cases renders the rights of the people guaranteed by the Constitution and by various legislations inutile.[34]

WHEREFORE, the present Petition is **GRANTED**. The Resolutions dated April 1, 2016 and December 14, 2016 of the Sandiganbayan in SB-13-CRM-0603 to 04 are hereby **REVERSED** and **SET ASIDE**. The criminal case filed against Asuncion M. Magdaet is hereby **DISMISSED** for violation of her Constitutional right to speedy disposition of cases.

SO ORDERED.

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

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[33] Supra note 26.

[34] Supra note 32.

[*] Designated as additional member in lieu of Chief Justice Diosdado M. Peralta per Raffle dated September 14, 2020.

SECOND DIVISION

[G.R. No. 231826. September 16, 2020]

ADOLFO C. PALMA and RAFAEL PALMA, *Petitioners, v.* **PETRON CORPORATION,** *Respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; ONCE A JUDGMENT HAS ATTAINED FINALITY, IT CAN NEVER BE ALTERED, AMENDED, OR MODIFIED, EVEN IF THE ALTERATION, AMENDMENT OR MODIFICATION IS TO CORRECT AN ERRONEOUS JUDGMENT; EXCEPTIONS.— [A] judgment, once it has attained finality, can never be altered, amended, or modified, even if the alteration, amendment or modification is to correct an erroneous judgment. In fact, jurisprudence elucidates that not even the Supreme Court can correct, alter, or modify a judgment once it becomes final. The rule admits of several exceptions, such as the following: (1) the correction of clerical errors; (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable. Still none of the exceptions is applicable in the present case.

2. ID.; ID.; ANNULMENT OF JUDGMENTS; BEFORE A PARTY CAN RESORT TO AN ACTION FOR ANNULMENT, IT IS A *CONDITION SINE QUA NON* THAT ONE MUST HAVE FAILED TO MOVE FOR A NEW TRIAL, OR APPEAL FROM, OR FILE A PETITION FOR RELIEF AGAINST THE QUESTIONED ISSUANCES OR TAKE OTHER APPROPRIATE REMEDIES THEREON, THROUGH NO FAULT ATTRIBUTABLE TO HIM.— [T]he remedy of annulment of judgment is not available to petitioners. Well-settled is the rule that before a party can avail itself of the reliefs provided for by Rule 47, it is a condition *sine qua non* that one must have failed to move for a new trial, or appeal from, or file a petition for relief against the questioned issuances or take other appropriate remedies thereon, through

no fault attributable to him. If he failed to avail himself of those cited remedies without sufficient justification, he cannot resort to an action for annulment provided in Rule 47; otherwise, he would benefit from his own inaction or negligence. In other words, the party must convince the CA that the ordinary and other appropriate remedies are no longer available for causes not attributable to him.

3. ID.; ID.; ID.; GROUNDS; ANNULMENT OF JUDGMENT IS AN EQUITABLE PRINCIPLE BECAUSE IT ENABLES A PARTY-LITIGANT TO BE DISCHARGED FROM THE BURDEN OF BEING BOUND TO A JUDGMENT THAT IS AN ABSOLUTE NULLITY TO BEGIN WITH.— The grounds for annulment of judgment under Rule 47 are as follows: SEC. 2. *Grounds for annulment*. — The annulment may be based only on the grounds of extrinsic fraud and lack of jurisdiction. Extrinsic fraud shall not be a valid ground if it was availed of, or could have been availed of, in a motion for new trial or petition for relief. Annulment of judgment is an equitable principle not because it allows a party-litigant another opportunity to reopen a judgment that has long lapsed into finality but because it enables him to be discharged from the burden of being bound to a judgment that is an absolute nullity to begin with.

4. ID.; ID.; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; AS LONG AS THE ALLEGATIONS DEMONSTRATE A CAUSE OF ACTION FOR UNLAWFUL DETAINER, THE COURT ACQUIRES JURISDICTION OVER THE SUBJECT MATTER.— In the case, petitioners insist that the MTC was without jurisdiction since the ejectment complaint failed to comply with the one year filing period for unlawful detainer cases. Thus, the present petition for annulment of judgment. The basic rule is that jurisdiction of the court over a case is determined by the allegations in the complaint. A complaint for an action for unlawful detainer is sufficient if the following allegations are present: a) initially, possession of property by the defendant was by contract with or by tolerance of the plaintiff; b) eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession; c) thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and d) within

one year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment. In the instant case, Petron's allegations in the complaint clearly make a case for an unlawful detainer essential to confer jurisdiction on the MTC over the subject matter. Petron alleges that the possession of petitioners were by mere tolerance of PNOC and its predecessor; that eventually, such possession became illegal when Petron notified the petitioners that they would use the subject portion of the lot; that despite the notice, petitioners refused to vacate and remained in the property depriving Petron of the enjoyment and use of the subject premises; and that Petron instituted the complaint for unlawful detainer on February 17, 2009, or within one year from their last demand as shown in its demand letter dated August 8, 2008. It is settled that as long as the allegations demonstrate a cause of action for unlawful detainer, the court acquires jurisdiction over the subject matter. Hence, the petition for annulment of judgment on the ground of lack of jurisdiction must fail.

5. LEGAL ETHICS; ATTORNEYS; ATTORNEY-CLIENT RELATIONSHIP; A CLIENT IS BOUND BY THE MISTAKES OF HIS COUNSEL, EVEN IN THE REALM OF PROCEDURAL TECHNIQUE, EXCEPT WHEN THE RECKLESS OR GROSS NEGLIGENCE OF THE COUNSEL DEPRIVES THE CLIENT OF DUE PROCESS OF LAW.— The Court x x x cannot accept petitioners' claim that they are not bound by the mistakes of their previous counsel in their appeal to the RTC. As a rule, a client is bound by the mistakes of his counsel, even in the realm of procedural technique. The exception to the rule is "when the reckless or gross negligence of the counsel deprives the client of due process of law." As correctly found by the CA, petitioners cannot put all the blame on their counsel as they themselves have actively participated in the proceedings x x x. Consequently, petitioners have only themselves to blame.

6. REMEDIAL LAW; CIVIL PROCEDURE; ANNULMENT OF JUDGMENTS; EXTRINSIC FRAUD; A LAWYER'S MISTAKE OR GROSS NEGLIGENCE DOES NOT AMOUNT TO EXTRINSIC FRAUD THAT WOULD GRANT A PETITION FOR ANNULMENT OF JUDGMENT, FOR THE FRAUD MUST EMANATE FROM

THE ACT OF THE ADVERSE PARTY AND MUST BE OF SUCH NATURE AS TO DEPRIVE THE PARTY OF ITS DAY IN COURT.— [I]t is settled that a lawyer's neglect in keeping track of the case does not constitute extrinsic fraud. The case of *Baclaran Marketing Corp. v. Nieva* teaches us that fraud is not extrinsic if the alleged fraudulent act was committed by the party's own counsel. The fraud must emanate from the act of the adverse party and must be of such nature as to deprive the party of its day in court. Thus, in many cases, the Court has held that a lawyer's mistake or gross negligence does not amount to extrinsic fraud that would grant a petition for annulment of judgment.

7. ID.; ID.; ID.; CANNOT SERVE AS A SUBSTITUTE FOR THE LOST REMEDY OF AN APPEAL.— [P]etitioners can no longer resort to the remedy of annulment of judgment. Jurisprudence teaches us that a petition for annulment of judgment cannot serve as a substitute for the lost remedy of an appeal. Although access to the court is guaranteed, there must be a limit thereto. For, if endless litigations were to be encouraged, then unscrupulous litigants will multiply in number to the detriment of the administration of justice.

APPEARANCES OF COUNSEL

Legal Advocates for Workers' Interest (LAWIN) for petitioners.
Rommel L. Bawalan for respondent.

D E C I S I O N

INTING, *J.*:

This resolves the Petition for Review on *Certiorari*[1] assailing the Decision[2] dated January 16, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 143888 that denied the Petition for Annulment of Judgment with Application for a Temporary

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[1] *Rollo*, pp. 8-30.

[2] *Id.* at 63-81; penned by Associate Justice Danton Q. Bueser with Associate Justices Apolinario D. Bruselas, Jr. and Renato C. Francisco, concurring.

Restraining Order and/or Writ of Preliminary Injunction;[3] and the Resolution[4] dated April 20, 2017 denying Adolfo C. Palma, Rafael Palma (collectively, petitioners) along with Rogelio Baltazar, and Jaime Velasco's Motion for Reconsideration.[5]

The Antecedents

On November 26, 1993, Petron Corporation (Petron) and the Philippine National Oil Company (PNOC) entered into a 25-year Lease Agreement for Refinery Properties[6] over various landholdings of PNOC in Brgy. Alangan, Limay, Bataan with a total land area of 2,397,929 square meters (leased premises) for the use of Petron Bataan Refinery (PBR). Forming part of the leased premises is Cadastral Lot No. 257 under Transfer Certificate of Title (TCT) No. T-167116 of the Registry of Deeds of Bataan covering an area of 92,392 square meters situated along Roman Superhighway.[7] Since the early 1980s, petitioners had been occupying a portion of Lot No. 257-A by mere tolerance and acquiescence of PNOC and its predecessor.[8] When Petron entered into a lease agreement with PNOC in 1993, it continued to allow and tolerate petitioners' use and possession of the premises for humanitarian consideration since there was still no immediate need and use of the area.[9]

Sometime in 2007, Petron informed petitioners as well as the other families staying in the premises that the area would be used as the construction site of Petron Skills Training Center. Petron advised petitioners that they should start looking for a place to relocate before the construction starts in the last quarter of 2008.[10]

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[3] *Id.* at 149-178.

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

[5] *Id.* at 45-58.

[6] *Id.* at 107-110.

[7] *Id.* at 65.

[8] *Id.*

[9] *Id.*

[10] *Id.*

On August 8, 2008, Petron sent petitioners a Final Notice to Vacate.[11] Despite receipt of the notice, petitioners refused to vacate the subject premises.[12] Hence, Petron filed a Complaint[13] for Unlawful Detainer against petitioners before the Municipal Trial Court (MTC) of Limay, Bataan.

On July 1, 2009, the MTC rendered a Decision[14] in Civil Case No. 421 in favor of Petron, and ordered petitioners and/or all persons claiming rights under them to vacate the subject lot and restore possession thereof to Petron. The MTC, likewise, ordered defendants to jointly pay Petron the sum of ₱20,000.00 as attorney's fees and to pay the cost of suit.[15]

Aggrieved, petitioners appealed to the Regional Trial Court (RTC). The case was docketed as Civil Case No. 817-ML.

In an Order[16] dated February 10, 2010, Judge Bartolome V. Flores of the RTC dismissed the petitioners' appeal on the ground of Section 7 (b)[17] of Rule 40 of the Rules of Court for failure of petitioners to comply with the Order of the RTC dated August 4, 2009 to file their appellants' memorandum despite the given

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[11] *Id.* at 113-116.

[12] *Id.* at 100.

[13] *Id.* at 97-103.

[14] *Id.* at 119-129; penned by Presiding Judge Leticia L. Nicolas.

[15] *Id.* at 129.

[16] *Id.* at 130.

[17] Section 7 (b), Rule 40 of the Rules of Court provides:

SEC. 7. Procedure in the Regional Trial Court. —

x x x x

(b) within fifteen (15) days from such notice, it shall be the duty of the appellant to submit a memorandum which shall briefly discuss the errors imputed to the lower court, a copy of which shall be furnished by him to the adverse party. Within fifteen (15) days from receipt of the appellant's memorandum, the appellee may file his memorandum. Failure of the appellant to file a memorandum shall be a ground for dismissal of the appeal. (Underscoring supplied.)

period of time. Undaunted, petitioners filed a petition for relief with attached petitioners' memorandum of appeal. However, the RTC denied it on April 4, 2011.[18] Petitioners moved for reconsideration, but the RTC denied it.

Dissatisfied, petitioners filed a petition for *certiorari* with the CA which was docketed as CA-G.R. SP No. 121274.

On October 23, 2012, the CA dismissed the petition for lack of merit.[19] It held that petitioners availed themselves of the wrong remedy when it filed a petition for relief from judgment instead of filing a timely motion for reconsideration or appeal considering that the RTC Order dated February 10, 2010 in Civil Case No. 817-ML dismissing their appeal is a final order issued in the exercise of its appellate jurisdiction.[20] It also found no grave abuse of discretion on the part of the RTC in denying petitioners' petition for relief.[21]

On July 1, 2013, the CA denied petitioners' Motion for Reconsideration.[22] Still not satisfied with the outcome of the case, petitioners elevated the case to the Court.

The petition for review docketed as G.R. No. 208052 entitled Adolfo C. Palma, et al. v. Petron Corporation before the Court.

On September 11, 2013, the Court issued a Resolution[23] in G.R. No. 208052 entitled *Adolfo C. Palma, et al. v. Petron*

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[18] *Rollo*, p. 135.

[19] See Decision dated October 23, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 121274 as penned by Associate Justice Magdangal M. De Leon with Associate Justices Stephen C. Cruz and Myra V. Garcia-Fernandez, concurring; *id.* at 132-142.

[20] *Id.* at 138.

[21] *Id.* at 141.

[22] See CA Resolution dated July 1, 2013 in CA-G.R. SP No. 121274, *id.* at 144-145.

[23] *Id.* at 146.

Corporation, denying petitioners' petition for review on *certiorari* for failure of petitioners to sufficiently show that the CA committed any reversible error in the challenged Decision dated October 23, 2012, and Resolution dated July 1, 2013 in CA-G.R. SP No. 121274 as to warrant the exercise of the Court's discretionary appellate jurisdiction.

Petitioners filed a motion for reconsideration, but the Court denied it with finality on February 5, 2014.[24] On May 15, 2014, the Resolution dated September 11, 2013 became final and executory.[25]

The antecedents in the present petition.

Notwithstanding the finality of the Court's Resolution in G.R. No. 208052, petitioners filed a Petition for Annulment of Judgment with Application for a Temporary Restraining Order and/or Writ of Preliminary Injunction[26] dated January 22, 2016 with the CA praying for the annulment of the RTC Order dated February 10, 2010 in Civil Case No. 817-ML, and seeking to restrain the Writ of Execution dated July 16, 2014 and the Writ of Demolition dated August 13, 2015 issued by the MTC.[27]

Petitioners alleged that the RTC Order was issued without jurisdiction or in excess thereof as there should have been a trial on the merits.[28] Further, petitioners asserted that the MTC had no jurisdiction over the case as both parties admitted that the occupation or possession of the subject property was beyond the jurisdictional requisite of the one year period.[29] Petitioners insisted that the MTC Decision was void for being rendered

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[24] *Id.* at 147.

[25] *Id.* at 148.

[26] *Id.* at 149-178.

[27] *Id.* at 175.

[28] *Id.* at 155.

[29] *Id.* at 164.

without jurisdiction. Hence, it could never logically become final and executory.[30]

On January 16, 2017, the CA rendered a Decision[31] denying the petition. The dispositive portion of the Decision reads:

> WHEREFORE, premises considered, the petition is hereby DENIED. The Order dated 10 February 2010 issued by the Regional Trial Court, Branch 4, Mariveles, Bataan, and the consequent Writ of Execution dated 16 July 2014 and Writ of Demolition dated 13 August 2015 issued by the Municipal Trial Court of Limay, Bataan are hereby AFFIRMED in TOTO.
>
> IT IS SO ORDERED.[32]

Undaunted, petitioners moved for reconsideration.[33] In its assailed Resolution[34] dated April 20, 2017, the CA denied petitioners' Motion for Reconsideration.

The CA ruled that in order for one to avail himself of the remedy of a petition for annulment of judgment, one must comply with Section 1 of Rule 47 of the Rules of Court which provides, to wit:

> SECTION 1. *Coverage*. — This Rule shall govern the annulment by the Court of Appeals of judgments or final orders and resolutions in civil actions of Regional Trial Courts for which the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available *through no fault of the petitioner*. (Italics supplied.)

It held that petitioners could not put the blame of committing mistakes solely on their counsel, since by their own admission, petitioners were the ones who filed the memorandum in the

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[30] *Id.* at 172.

[31] *Id.* at 63-81.

[32] *Id.* at 80.

[33] *Id.* at 45-58.

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

wrong office. Thus, petitioners availment of a petition for annulment of judgment must fail.[35]

In any case, the CA held that the issues being raised by petitioners had already been passed upon in their previous petition for *certiorari* which the CA had already decided on October 23, 2012. Notably, petitioners committed forum shopping.[36]

Hence, the petition.[37]

The Issue

The bone of contention is whether or not the CA erred in denying petitioners' petition for annulment of judgment.

The Court's Ruling

The petition lacks merit.

The MTC Decision in Civil Case No. 421 over the subject property was rendered on July 1, 2009. Herein petitioners appealed the Decision to the RTC docketed as Civil Case No. 817-ML. In an Order dated February 10, 2010, the RTC dismissed the appeal. Subsequently, it denied petitioners' motion for reconsideration on April 4, 2011. Petitioners then filed a petition for *certiorari* with the CA (CA-G.R. SP No. 121274), but the CA dismissed it for lack of merit. The CA also denied petitioners' motion for reconsideration on July 1, 2013. Thus, petitioners filed a petition for review with the Court (G.R. No. 208052). On September 11, 2013, the Court denied the petition; it also denied petitioners' motion for reconsideration. On May 15, 2014, the Resolution became final and executory.

Nothing is more settled in law than the rule that a judgment, once it has attained finality, can never be altered, amended, or modified, even if the alteration, amendment or modification is to correct an erroneous judgment.[38] In fact, jurisprudence

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

[36] *Id.* at 78-79.

[37] *Id.* at 8-30.

[38] *Rep. of the Phils. v. Heirs of Cirilo Gotengco*, 824 Phil. 568, 578

elucidates that not even the Supreme Court can correct, alter, or modify a judgment once it becomes final.[39] The rule admits of several exceptions, such as the following: (1) the correction of clerical errors; (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.[40] Still none of the exceptions is applicable in the present case.

On this score alone, the petition should be denied.

The CA was correct in holding that the remedy of annulment of judgment is not available to petitioners. Well-settled is the rule that before a party can avail itself of the reliefs provided for by Rule 47, it is a condition *sine qua non* that one must have failed to move for a new trial, or appeal from, or file a petition for relief against the questioned issuances or take other appropriate remedies thereon, through no fault attributable to him. If he failed to avail himself of those cited remedies without sufficient justification, he cannot resort to an action for annulment provided in Rule 47; otherwise, he would benefit from his own inaction or negligence.[41] In other words, the party must convince the CA that the ordinary and other appropriate remedies are no longer available for causes not attributable to him.

In the instant case, it is clear under the circumstances set forth in the RTC Order[42] dated February 10, 2010 in Civil Case No. 817-ML, and by petitioners' own admission, that petitioners failed to file the corresponding appellant's memorandum before the RTC despite the fact that they were given ample opportunity to bring up whatever issues they have with respect to the decision

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(2018), citing *FGU Insurance Corp. v. RTC of Makati City, Br. 66, et al.*, 659 Phil. 117, 123 (2011).

[39] *FGU Insurance Corp. v. RTC of Makati City, Br. 66, et al.*, *supra*.

[40] *Rep. of the Phils. v. Heirs of Cirilo Gotengco, supra* note 38.

[41] *Lazaro v. Rural Bank of Francisco Balagtas, Inc.*, 456 Phil. 414, 422 (2003), citing *Rep. of the Phils. v. Sandiganbayan*, 404 Phil. 868, 886 (2001).

[42] *Rollo*, p. 130.

of the MTC. For sure, petitioners were negligent in pursuing their appeal pending before the RTC.

Despite the fact that the RTC Order dated February 10, 2010 in Civil Case No. 817-ML was already brought *via* a petition for *certiorari* to the CA, and later *via* a petition for review on *certiorari* to the Court, petitioners still filed a petition for annulment of judgment before the CA.

The grounds for annulment of judgment under Rule 47 are as follows:

> SEC. 2. *Grounds for annulment*. — The annulment may be based only on the grounds of extrinsic fraud and lack of jurisdiction.
>
> Extrinsic fraud shall not be a valid ground if it was availed of, or could have been availed of, in a motion for new trial or petition for relief.

Annulment of judgment is an equitable principle not because it allows a party-litigant another opportunity to reopen a judgment that has long lapsed into finality but because it enables him to be discharged from the burden of being bound to a judgment that is an absolute nullity to begin with.[43]

In the case, petitioners insist that the MTC was without jurisdiction since the ejectment complaint failed to comply with the one year filing period for unlawful detainer cases. Thus, the present petition for annulment of judgment.[44]

The basic rule is that jurisdiction of the court over a case is determined by the allegations in the complaint.[45] A complaint for an action for unlawful detainer is sufficient if the following allegations are present: a) initially, possession of property by the defendant was by contract with or by tolerance of the plaintiff;

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[43] *Yuk Ling Ong v. Co*, 755 Phil. 158, 165 (2015), citing *Barco v. CA*, 465 Phil. 39, 64 (2004).

[44] *Rollo*, pp. 18-19.

[45] *French v. CA, et al.*, 813 Phil. 773, 779 (2017), citing *Delos Reyes v. Sps. Odones, et al.*, 661 Phil. 676, 682 (2011).

b) eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession; c) thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and d) within one year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment.

In the instant case, Petron's allegations in the complaint clearly make a case for an unlawful detainer essential to confer jurisdiction on the MTC over the subject matter. Petron alleges that the possession of petitioners were by mere tolerance of PNOC and its predecessor; that eventually, such possession became illegal when Petron notified the petitioners that they would use the subject portion of the lot; that despite the notice, petitioners refused to vacate and remained in the property depriving Petron of the enjoyment and use of the subject premises; and that Petron instituted the complaint for unlawful detainer on February 17, 2009, or within one year from their last demand as shown in its demand letter dated August 8, 2008.

It is settled that as long as the allegations demonstrate a cause of action for unlawful detainer, the court acquires jurisdiction over the subject matter.[46] Hence, the petition for annulment of judgment on the ground of lack of jurisdiction must fail.

The Court, likewise, cannot accept petitioners' claim that they are not bound by the mistakes of their previous counsel in their appeal to the RTC. As a rule, a client is bound by the mistakes of his counsel, even in the realm of procedural technique.[47] The exception to the rule is "when the reckless or gross negligence of the counsel deprives the client of due process of law."[48]

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[46] *Canlas, et al. v. Tubil*, 616 Phil. 915, 926 (2009).

[47] *Producers Bank of the Phils. v. Court of Appeals*, 430 Phil. 812, 823 (2002).

[48] *Id., citing Legarda v. Court of Appeals, et al.*, 272-A Phil. 394, 404 (1991).

As correctly found by the CA, petitioners cannot put all the blame on their counsel as they themselves have actively participated in the proceedings, *viz.*:[49]

"Petitioners' claim that they filed the memorandum on time through Flordeliza Palma (Flordeliza), wife of petitioner Rafael Palma, in the wrong office (Office of the Provincial Prosecutor) cannot qualify as a mistake of excusable negligence."

Consequently, petitioners have only themselves to blame.

In addition, it is settled that a lawyer's neglect in keeping track of the case does not constitute extrinsic fraud.[50] The case of *Baclaran Marketing Corp. v. Nieva*[51] teaches us that fraud is not extrinsic if the alleged fraudulent act was committed by the party's own counsel. The fraud must emanate from the act of the adverse party and must be of such nature as to deprive the party of its day in court. Thus, in many cases, the Court has held that a lawyer's mistake or gross negligence does not amount to extrinsic fraud that would grant a petition for annulment of judgment.[52]

Given the foregoing, petitioners can no longer resort to the remedy of annulment of judgment. Jurisprudence teaches us that a petition for annulment of judgment cannot serve as a substitute for the lost remedy of an appeal.[53] Although access to the court is guaranteed, there must be a limit thereto. For, if endless litigations were to be encouraged, then unscrupulous litigants will multiply in number to the detriment of the administration of justice.[54]

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[49] *Rollo,* p. 77.

[50] *Baclaran Mktg. Corp. v. Nieva, et al.*, 809 Phil. 92, 103 (2017), citing *Pinausukan Seafood House, Roxas Blvd., Inc. v. Far East Bank & Trust Co., et al.*, 725 Phil. 19, 40 (2014).

[51] *Id.*

[52] *Id.*, citing *Lasala v. National Food Authority*, 767 Phil. 285, 302 (2015).

[53] *Antonino v. The Register of Deeds of Makati City, et al.*, 688 Phil. 527, 537 (2012).

[54] *Pacquing v. The Court of Appeals, et al.*, 200 Phil. 516, 521 (1982).

WHEREFORE, the petition is **DENIED** for lack of merit. The Decision dated January 16, 2017 and the Resolution dated April 20, 2017 of the Court of Appeals in CA-G.R. SP No. 143888 are hereby **AFFIRMED**.

SO ORDERED.

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

Baltazar-Padilla, J., on leave.

FIRST DIVISION

[G.R. No. 232825. September 16, 2020]

ULYSSES RUDI V. BANICO, *Petitioner*, *v.* **LYDIA BERNADETTE M. STAGER a.k.a BERNADETTE D. MIGUEL (substituted by her compulsory heirs, namely: Bobby Unilongo I, Prospero Unilongo I, Prospero Unilongo II, Maricon U. Bayog, Glenn Unilongo and Luzviminda Unilongo),** *Respondents*.

SYLLABUS

1. CIVIL LAW; CONTRACTS; REFORMATION OF INSTRUMENTS; REQUISITES THAT MUST CONCUR FOR AN ACTION TO PROSPER, PRESENT IN THIS CASE; THERE WAS A MEETING OF THE MINDS BETWEEN THE PARTIES TO THE CONTRACT BUT THE SAME DID NOT EXPRESS THEIR TRUE INTENTION DUE TO THE MISTAKE IN THE TECHNICAL DESCRIPTION OF THE LOT.— [A]n action for reformation of instrument may prosper only upon the concurrence of the following requisites: (1) there must have been a meeting of the minds of the parties to the contract; (2) the instrument does not express the true intention of the parties; and (3) the failure of the instrument to express the true intention of the parties is due to mistake, fraud, inequitable conduct or accident. The *onus probandi* is upon the party who insists that the contract should be reformed. Here, all these requisites are present. *First,* there was a meeting of minds between the contracting parties. x x x *Second,* the written instrument did not express the true intention of the parties. It bears emphasis that Ulysses bought an area suitable for building a beach resort. Upon payment of the purchase price, Ulysses occupied the flat terrain, surveyed it and began constructing the resort. Verily, Ulysses would not possess the flat terrain if it was not the lot sold to him. Besides, the flat terrain is a proper location for building the resort and not the elevated rocky northern part. x x x *Third,* there is a mistake in identifying the exact location of the lot which caused the failure of the instrument to disclose

the parties' real agreement. x x x Ulysses was able to substantiate his stance that the Deed of Absolute Sale dated February 8, 1992, did not express the true intention of the parties as to the description of the lot. There is preponderant evidence that the real object of the contract refers to the flat terrain and not the elevated and rocky northern part of Lot No. 199, as revealed in the proven and admitted facts as well as the contemporaneous and subsequent acts of the parties. Corollarily, there is no reason to consider against Ulysses the mistake of his counsel. As the RTC aptly observed, the parties are not experts in comprehending technical description of the land. The fact that it was Ulysses' counsel who prepared the deed of sale will not prevent the reformation of the instrument.

2. ID.; ID.; ID.; THE PRESCRIPTIVE PERIOD TO FILE AN ACTION FOR REFORMATION OF AN INSTRUMENT IS INTERRUPTED ON ACCOUNT OF WRITTEN ACKNOWLEDGMENT OF THE OBLIGATION TO EXECUTE AN AMENDED DEED OF SALE.— The prescription of actions is interrupted when they are filed before the court, when there is a written extrajudicial demand by the creditors, and when there is any written acknowledgment of the debt by the debtor. The effect of interruption is to renew the obligation and to make the full period of prescription run again. Whatever time of limitation might have already elapsed from the accrual of the cause of action is negated and rendered inefficacious. Interruption should not be equated with suspension where the past period is included in the computation being added to the period after prescription is resumed. As discussed earlier, Ulysses brought the dispute before the *barangay* where Lydia honored the transaction over the 800-square meter lot and presented a notarized Deed of Absolute Sale dated December 6, 2001, containing the accurate description of the lot. This is tantamount to an explicit acknowledgement of the obligation to execute an amended deed of sale. Applying the above precepts, the ten-year prescriptive period commenced to run anew from December 6, 2001. Thus, the complaint filed on July 9, 2002, is well within the prescriptive period.

3. ID.; ID.; ID.; PETITIONER IS STILL LIABLE FOR THE UNPAID BALANCE UNDER THE CONTRACT TO SELL, WHICH AMOUNT SHALL EARN INTEREST; HAVING PAID CONSIDERABLE AMOUNT AND ABSENT

SUBSTANTIAL BREACH OF THE CONTRACT, PETITIONER MUST BE PERMITTED TO COMPLETE THE PAYMENT.— We find no reason to disturb the CA and RTC's findings that Ulysses still has a balance to Lydia in the contract to sell over the 400-square meter lot. This is a question of fact and is beyond the ambit of this Court's jurisdiction in a petition for review on *certiorari.* As to the correct amount, we quote with approval the CA's computation that Ulysses' unpaid balance is ₱5,860.00[.] x x x Applying *Nacar v. Gallery Frames, et al.*, the amount of ₱5,860.00 shall earn interest at the rate of 6% *per annum* from the date of the RTC's Decision on February 18, 2015 until full payment. Similarly, the CA is correct in requiring the Heirs of Lydia to execute the corresponding deed of absolute sale over the 400-sq m lot upon satisfaction of the unpaid balance. As the CA aptly ruled, Ulysses had paid considerable amount to Lydia under the contract to sell. Absent substantial breach of the contract, the rescission is not allowed and Ulysses must be permitted to complete the payment.

APPEARANCES OF COUSEL

L.M. Gangoso Law Office for petitioner.
Arthur C. Coroza for respondents.

D E C I S I O N

LOPEZ, *J.*:

The lawyer's mistake in drafting the written instrument will not prevent its reformation if the contemporaneous and subsequent acts of the parties show that their true intention was not disclosed in the document. This resolves the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Court of Appeal's (CA) Decision[1] dated February 22, 2017 in CA-G.R. CV No. 104805.

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[1] *Rollo*, pp. 8-20; penned by Associate Justice Fiorito S. Macalino (+), with the concurrence of Associate Justices Mariflor P. Punzalan Castillo and Zenaida T. Galapate-Laguilles.

ANTECEDENTS

Lydia Bernadette M. Stager (Lydia) owns a 6,100-square meter (sq m) real property identified as Lot No. 199 and situated in *Barangay* Manoc-Manoc, Boracay Island. The land adjoins the sea on its eastern part and is generally flat at the center but has an elevated rocky northern part. In 1991, Lydia offered to sell the entire lot to Ulysses Rudi Banico (Ulysses) but he only agreed to buy an area suitable for building a beach resort. Accordingly, Ulysses' lawyer drafted a Deed of Absolute Sale[2] over the 800-sq m portion of the land for ₱350,000.00. On February 8, 1992, Lydia and Ulysses signed the contract. The property sold is described in the deed as follows:

> A portion of land from Lot 199, x x x, on its Northern part, containing a surveyed and plotted area of EIGHT HUNDRED (800) SQUARE METERS, more or less, x x x adjoining the Sibuyan Sea; Bounded on the Northeast by seashore of Sibuyan Sea with a beachfront of 40 meters length, on the Southeast by the remaining portion of Lot 199, the Northwest by Lot 200 of the Heirs of Sabiniano Castro, and the Southwest by the remaining portion of Lot 199 x x x.[3]

Upon payment of the purchase price, Ulysses took possession of the flat terrain and hired a surveyor. However, Ulysses discovered that the land described in the deed of sale refers to the elevated and rocky portion and not the flat area which he bought and occupied. Ulysses confronted Lydia who promised to make necessary corrections. At that time, Lydia convinced Ulysses to buy an additional 400-square meter portion of Lot No. 199 that is adjacent to the flat terrain for ₱160,000.00 on installment basis. Ulysses agreed on the condition that Lydia will amend the deed of sale reflecting the correct location, area and consideration. On October 19, 1992, the parties entered into a contract to sell over the 400-square meter lot. Ulysses gave initial payment and Lydia issued the corresponding receipt.[4] Meantime, Ulysses began constructing the resort and paid the

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[2] *Id.* at 88-89.

[3] *Id.* at 88.

[4] *Id.* at 90.

remaining amount. In 1997, Ulysses asked Lydia to prepare the amended deed of sale but she refused because he still has an unpaid balance of ₱12,000.00. Yet, Ulysses maintained that he already paid Lydia more than ₱160,000.00.[5]

In 2001, Ulysses brought the matter to the *barangay*. Thereat, Lydia honored the transaction over the 800-square meter lot and presented a notarized Deed of Absolute Sale dated December 6, 2001, containing the accurate description, thus:

> That I, Bernadette D. Miguel, x x x, for and in consideration of the sum of EIGHTY THOUSAND PESOS (₱80,000.00), x x x from RUDY ULYSSES BANICO, x x x do hereby SELL, TRANSFER and CONVEY by way of Absolute Sale unto the said RUDY ULYSSES, his heirs and assigns a portion, consisting of 800 square meters only of a certain parcel of land x x x described as follows:
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> "A parcel of land (Lot No. 199) with an area of 6100 square meters, more or less, x x x."
>
> x x x x
>
> **That the portion herein sold constitute part of the bigger parcel of land above-described and is bounded as follows: on North by Lot 199-B; on the East by Proposed Brgy. Road; on the South by Lot 199A-2; and on the West by Lot 199-C.**[6] (Emphasis supplied.)

However, Ulysses did not sign the deed because it failed to state the true consideration.[7] On July 9, 2002, Ulysses filed against Lydia an action for specific performance and damages before the Regional Trial Court (RTC) docketed as Civil Case No. 02-104001.[8] Ulysses asked that Lydia be ordered to execute an amended contract reflecting all the stipulations between the parties. In her answer,[9] Lydia claimed that the contract over the 800-square meter lot is distinct from the additional 400-

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[5] *Id.* at 10-11; 33-34; and 273-276.

[6] *Id.* at 91.

[7] *Id.* at 12; 35 and 277.

[8] *Id.* at 80-87.

[9] *Id.* at 93-97.

square meter lot. The first transaction was based on the consummated Deed of Absolute Sale dated February 8, 1992. She even executed a Deed of Absolute Sale dated December 6, 2001, but Ulysses rejected it. In contrast, the second transaction transpired on October 19, 1992, but Ulysses failed to settle the balance of the purchase price.

In 2012, Lydia died and was substituted by her heirs. On February 18, 2015, the RTC in its Decision ordered the reformation of the Deed of Absolute Sale[10] dated February 8, 1992 to reflect the exact location of the 800-sq m lot that Ulysses purchased from Lydia. The RTC also examined the receipts and found that Ulysses still had a balance of ₱6,600.00 in the contract to sell over the 400-sq m lot. Lastly, the RTC denied the parties' respective claims for damages for lack of factual and legal bases, *viz.*:

> There is [*sic*] no qualms anymore on the part of Stager as to the lot that plaintiff originally occupied and built his house on. She did not vigorously contest the same, nor did she ask for the removal of the said structure despite her initial observation and allegation that the lot he occupied was actually not the one that was agreed upon or described in the Deed of Absolute Sale that they have originally executed. All that Stager did after learning about the erroneous occupation was to suggest to plaintiff that he buy another 400 square meters of her property so that she could move to that area which he originally purchased because she would be caught or placed in between the two properties. She also told him that such purchase would allow him to have 1200 square meters of the property which would be adjacent to each other. **Thus, by the actions of both parties, it would seem that the lot first occupied by plaintiff is the one that they have actually intended to be the subject of the sale. The problem, though, is that the Deed of Sale did not reflect or state the correct portion of Stager's property. Reformation is thus warranted to reflect the true intention of parties in the subject deed**. x x x.
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> x x x x
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> To reiterate, there is no more issue anymore as to the first lot (800 square meters) that plaintiff bought from Stager. She herself

[10] *Id.* at 273-284.

has already clarified and admitted to the same. **What is left for the parties to do is to amend or reform the deed of sale in order to reflect and state therein to correct the erroneous entries or description pertaining to the subject lot**. The mistake is obviously mutual, with both parties expectedly not being well-versed in comprehending the technical description of the property. In *Dihiansan v. Court of Appeals*, it has been explained that the mistake in designating the lot in the document does not vitiate the consent of the parties, or affect the validity and binding effect of the contract. The reason is that when one sells or buys real property x x x one sells or buys the property as he sees it, in its actual setting and by its physical metes and bounds, and not by the mere lot number assigned to it in the certificate of title.

When a mutual mistake of the parties causes the failure of the instrument to disclose their real agreement, said instrument may be reformed. Thus, the Deed of Sale covering the first real estate transaction between the parties should be amended or reformed. It should be noted that Stager even executed a second Deed of Sale that is duly notarized covering the first lot which actually already reflected the correct description thereof.

With regard to the second lot (400 square meters), the issue that needs to be resolved is whether or not full payment has already been made by plaintiff therefor. It is worth to note that from the outset, Stager has already made it clear that she has no more issues with regard to the 800 square meter lot that she sold to plaintiff and that what she is actually just complaining about is the 400 square-meter lot that the latter has fenced despite the fact that he has yet to complete payment therefor.

x x x x

While the court gives value and credence to the receipts proffered by plaintiff, not all of them will be credited to the obligation in question for lack of proof that the purpose thereof was for the payment for the 400 square-meter lot. Thus, Exhibit "C-3" cannot be taken into consideration for it does not state the purpose of the payment or amount reflected therein. On the other hand, Exhibits "C-9" and "C-19" states [*sic*] a different purpose. Exhibits "C-7" and "C-12" were signed by different persons and stated no purpose therefor, while Exhibits "C-10" and "C-24" bears [*sic*] no signature at all. The rest of the receipts are all signed by Stager and sufficiently refers [*sic*] to the payment of the 400 square-meter lot. **Thus, as per the Court's own**

computation, the total amount that plaintiff was able to pay Stager is ₱153,400.00 leaving a balance of ₱6,600.00.

x x x x

WHEREFORE, premises considered, judgment is hereby rendered ordering:

1. The Heirs of Lydia Bernadette M. Stager x x x to amend/reform the Deed of Absolute Sale dated February 8, 1992 so as to reflect the exact location of the 800 square-meter lot that plaintiff has purchased from Lydia Bernadette M. Stager;

2. Plaintiff to pay the Heirs of Lydia Bernadette M. Stager x x x the sum of ₱6,600.00 representing the unpaid balance of the purchase price of the subject 400 square-meter lot;

3. The Heirs of Lydia Bernadette M. Stager x x x to execute in favor of plaintiff another Deed of Absolute Sale covering the 400 square-meter lot, or to include the 400 square-meter lot in the Deed of Absolute Sale meant for the 800 square-meter lot.

SO ORDERED.[11] (Emphases supplied; citations omitted.)

Dissatisfied, both parties elevated the case to the CA docketed as CA-G.R. CV No. 104805. The Heirs of Lydia argued that the RTC erred in granting the reformation of the Deed of Absolute Sale dated February 8, 1992 and ordering them to execute another contract of sale in favor of Ulysses.[12] On the other hand, Ulysses insisted that he fully paid the purchase price of ₱160,000.00 in the contract to sell and that he is entitled to damages.[13]

On February 22, 2017, the CA denied the reformation because Ulysses' cause of action had prescribed. The complaint was filed on July 9, 2002 or more than 10 years from the execution of the deed on February 8, 1992 or beyond the prescriptive period for bringing actions based upon a written contract. Further,

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[11] *Id.* at 281-284.

[12] *Id.* at 312-323.

[13] *Id.* at 285-311.

the CA noted that it was Ulysses' lawyer who drafted the contract and any error must be construed against the party who caused the ambiguity. As to the transaction over the 400-sq m lot, the CA reduced Ulysses' unpaid balance from ₱6,600.00 to ₱5,860.00. It affirmed the RTC's finding that several receipts do not prove payment of the ₱160,000.00 purchase price. Nevertheless, the RTC erred in its computation given that the receipts Ulysses submitted have the sum of ₱167,840.00 while the rejected receipts are worth ₱13,700.00. The difference between these amounts is ₱154,140.00 leaving a balance of ₱5,860.00 out of the ₱160,000.00 purchase price. Thus, it ordered the Heirs of Lydia to execute the corresponding deed of sale in favor of Ulysses upon satisfaction of the unpaid amount. Finally, it denied Ulysses' claim for damages,[14] to wit:

> **WHEREFORE**, premises considered, the Decision dated February 18, 2015 of the Regional Trial Court x x x in Civil Case No. 02-104001 is hereby **MODIFIED**. Accordingly, judgment is hereby rendered:
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> (1) **DENYING the REFORMATION** of the Deed of Absolute Sale dated February 8, 1992 x x x, on the ground of prescription;
>
> (2) **ORDERING** Plaintiff-Appellant Ulysses Rudi V. Banico to **PAY** the heirs of Defendant Lydia Bernadette M. Stager x x x, **the balance of Php5,860.00**, with **6% interest per annum** from the finality of this Decision until full payment thereof;
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> (3) Upon full payment of the balance in the aforementioned amount, **DIRECTING** the heirs of Defendant Lydia Bernadette M. Stager x x x, to **EXECUTE the necessary deed of sale** of the 400 square-meter lot in favor of Plaintiff-Appellant Ulysses Rudi V. Banico; and
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> (4) **DISMISSING** Plaintiff-Appellant Ulysses Rudi V. Banico's claims for damages.
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> **SO ORDERED**.[15] (Emphasis in the original.)

Undaunted, both parties sought reconsideration. The Heirs of Lydia prayed that the contract to sell as to the 400-sq m lot

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[14] *Id.* at 8-20.

[15] *Id.* at 19-20.

be declared ineffective given the long period of time that Ulysses failed to pay the purchase price.[16] Conversely, Ulysses maintained that he paid more than ₱160,000.00 pursuant to the contract to sell. With regard to the filing of an action for reformation, Ulysses argued that the prescriptive period is tolled when Lydia acknowledged her obligation and executed a Deed of Absolute Sale dated December 6, 2001 containing the accurate description of the 800-sq m lot.[17]

On July 11, 2017, the CA denied the Heirs of Lydia's motion explaining that rescission is not allowed absent substantial breach of the contract. Further, Ulysses had paid considerable amount to Lydia and must be permitted to complete the payment. Similarly, the CA denied Ulysses' motion without discussing the issue of prescription. Instead, the CA delved on the requisites of an action for reformation of contract and held that the Deed of Absolute Sale dated February 8, 1992 reflected the true intention of the parties. The CA reiterated that Ulysses' lawyer drafted the original contract and is liable for any ambiguity. Finally, Lydia prepared the Deed of Absolute Sale dated December 6, 2001, only to accommodate Ulysses,[18] thus:

> x x x For an action for reformation of instrument to prosper, the following requisites must concur: (1) there must have been a meeting of the minds of the parties to the contract; (2) **the instrument does not express the true intention of the parties**; and (3) the failure of the instrument to express the true intention of the parties is due to mistake, fraud, inequitable conduct or accident. **The second requisite is not present in this case. As borne out by the records of this case, what Stager sold to Banico was at the side of her property, and not at the center as Banico claims**.
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> Banico had only himself to blame. Admittedly, it was only after the consummation of the sale of the first lot that he decided to visit the same. It was also Banico's lawyer who prepared the said Deed of Absolute Sale. Stager verbally agreed to amend the Deed of Absolute Sale after its execution only as an accommodation to Banico, but

[16] *Id.* at 343-347.

[17] *Id.* at 324-342.

[18] *Id.* at 22-25.

not because the said deed failed to express their true intent. Worse, Banico refused to afix his signature to the amended and already notarized deed of sale of the first lot dated December 6, 2001 prepared by Stager herself. **The second requisite for reformation being absent, it is futile to discuss further whether the prescriptive period therefor had been tolled**.

As for Banico's allegation of full payment of the purchase price of the second lot, it is worth reiterating that he, as the debtor, has the burden of showing with legal certainty that the obligation has been discharged by payment. Banico may not validly claim that Stager admitted to have received additional payments because aside from her institution of an earlier action for collection, her consistent denial thereof during trial belies such allegation. **The receipts produced by Banico do not likewise suggest full payment**.

x x x x

WHEREFORE, premises considered, Plaintiff-Appellant's Motion for Reconsideration and Defendants-Appellants' Partial Motion for Reconsideration are hereby DENIED.

SO ORDERED.[19] (Emphases supplied.)

Aggrieved, Ulysses filed this petition on the ground that the CA erred in ruling that the party who caused the ambiguity cannot ask to reform the contract. Ulysses also argued that the CA erred in appreciating the receipts and in finding that he has still unpaid balance to Lydia.[20]

RULING

A contract is a meeting of the minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service.[21] If the contract is reduced into writing, it is considered as containing all the terms agreed upon and is presumed to set out the true covenant of the parties.[22]

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[19] *Id.* at 23-24.

[20] *Id.* at 30-60.

[21] CIVIL CODE, Art. 1305.

[22] *BA Finance Corp. v. Intermediate Appellate Court*, 291 Phil. 265, 280 (1993).

However, equity orders the reformation of a written instrument when the real intention of the contracting parties are not expressed by reason of mistake, fraud, inequitable conduct or accident. *Apropos* is Article 1359 of the New Civil Code, to wit:

> Art. 1359. When, there having been a meeting of the minds of the parties to a contract, their true intention is not expressed in the instrument purporting to embody the agreement, by reason of mistake, fraud, inequitable conduct or accident, one of the parties may ask for the reformation of the instrument to the end that such true intention may be expressed.

The rationale is that it would be unjust to allow the enforcement of an instrument which does not reflect or disclose the parties' real meeting of the minds.[23] In an action for reformation, the court does not attempt to make another contract for the parties[24] but the instrument is made or construed to express or conform to their real intention.[25] Hence, we determine whether the Deed of Absolute Sale dated February 8, 1992 between Lydia and Ulysses failed to reflect the true intention of the parties allowing reformation of the instrument.

There was a meeting of the minds between the parties to the contract but the deed did not express their true intention due to mistake in the technical description of the lot.

The complaint and the prayer for reliefs show that this is clearly a case for reformation of instrument. Ulysses alleged that the Deed of Absolute Sale dated February 8, 1992 does not express the correct description of the lot he bought and asked Lydia to execute an amended deed of sale containing all the stipulations of the parties. Specifically, an action for

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[23] *Sps. Rosario v. Alvar*, 817 Phil. 994, 1006 (2017).

[24] *Makati Tuscany Condominium Corp. v. Multi-Realty Dev't. Corp.*, 830 Phil. 1, 13 (2018).

[25] *Toyota Motor Philippines Corporation v. Court of Appeals*, 290 Phil. 662, 677 (1992).

reformation of instrument may prosper only upon the concurrence of the following requisites: (1) there must have been a meeting of the minds of the parties to the contract; (2) the instrument does not express the true intention of the parties; and (3) the failure of the instrument to express the true intention of the parties is due to mistake, fraud, inequitable conduct or accident.[26] The *onus probandi* is upon the party who insists that the contract should be reformed.[27] Here, all these requisites are present.

First, there was a meeting of minds between the contracting parties. In executing the Deed of Absolute Sale dated February 8, 1992, Lydia conveyed the 800-sq m portion of Lot No. 199 to Ulysses who accepted it in consideration of ₱350,000.00. Inarguably, there is a perfected contract of sale at the moment the parties agreed upon the thing that is the object of the contract and upon the price.

Second, the written instrument did not express the true intention of the parties. It bears emphasis that Ulysses bought an area suitable for building a beach resort. Upon payment of the purchase price, Ulysses occupied the flat terrain, surveyed it and began constructing the resort. Verily, Ulysses would not possess the flat terrain if it was not the lot sold to him. Besides, the flat terrain is a proper location for building the resort and not the elevated rocky northern part. At any rate, Lydia should have objected when Ulysses occupied the flat terrain if it were true that she was still the owner of such area. Quite the contrary, Lydia promised to rectify the erroneous description of the lot in the deed of sale. She did not protest the construction of the resort and instead, offered Ulysses an additional 400-sq m portion of Lot No. 199 that is adjacent to the flat terrain. Moreover, Lydia acknowledged the transaction over the 800-sq m lot before the *barangay* and presented a notarized Deed of Absolute Sale dated December 6, 2001, containing the accurate description of the flat terrain. At this juncture, we stress that Lydia never rebutted these acts and even admitted them in her answer.

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[26] *National Irrigation Administration v. Gamit*, 289 Phil. 914, 931 (1992).

[27] *Mata v. Court of Appeals*, 284 Phil. 36, 43 (1992).

Third, there is a mistake in identifying the exact location of the lot which caused the failure of the instrument to disclose the parties' real agreement. In *Atilano, et al. v. Atilano, et al.*,[28] this Court noted that a person sells or buys real property as he sees it, in its actual setting and by its physical metes and bounds, and not by the mere lot number assigned to it in the certificate of title. In that case, the parties' real intention was to convey "Lot No. 535-A" considering that it is where the vendee constructed a house and his heirs continued to reside. The reference to "Lot No. 535-E" in the deed of sale was a simple mistake in the drafting of the document, which did not vitiate the consent of the parties or affect the validity of the contract between them. In *Sarming v. Dy*,[29] we reformed a document entitled Settlement of Estate and Sale by changing the designation of the land given that the totality of evidence clearly indicates that what was intended to be sold was "Lot 4163" and not "Lot 5734." In *Quiros v. Arjona*,[30] this Court held that the inability to identify the exact location of the inherited property did not negate the principal object of the contract. This is an error occasioned by the failure of the parties to describe the subject property, which is correctible by reformation and does not indicate the absence of the principal object as to render the contract void. In that case, the object is determinable as to its kind and can be determined without need of a new contract.

In *Huibonhoa v. Court of Appeals*,[31] however, the oversight of a lawyer in drafting the instrument is not a reason for reformation. In that case, the petitioner failed to prove what mistake allegedly suppressed the real agreement of the parties and merely relied on the oversight of her counsel in preparing the document. We ruled that the error may not be attributed to all the contracting parties and any obscurity should be construed against the petitioner. The present case is starkly different. Unlike

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[28] 138 Phil. 240 (1969).

[29] 432 Phil. 685 (2002).

[30] 468 Phil. 1000 (2004).

[31] 378 Phil. 386 (1999).

in *Huibonhoa,* Ulysses was able to substantiate his stance that the Deed of Absolute Sale dated February 8, 1992, did not express the true intention of the parties as to the description of the lot. There is preponderant evidence that the real object of the contract refers to the flat terrain and not the elevated and rocky northern part of Lot No. 199, as revealed in the proven and admitted facts as well as the contemporaneous and subsequent acts of the parties. Corollarily, there is no reason to consider against Ulysses the mistake of his counsel. As the RTC aptly observed, the parties are not experts in comprehending technical description of the land. The fact that it was Ulysses' counsel who prepared the deed of sale will not prevent the reformation of the instrument.

Taken together, the Deed of Absolute Sale dated February 8, 1992 failed to reflect the true intention of the parties. As such, Ulysses may validly ask for reformation of the instrument. The rigor of the legalistic rule that a written instrument should be the final and inflexible criterion and measure of the rights and obligations of the contracting parties is thus tempered, to forestall the effect of mistake, fraud, inequitable conduct or accident.[32] We now resolve whether prescription bars Ulysses' action for reformation of instrument.

The period to file an action for reformation of instrument is interrupted on account of written acknowledgement of the obligation.

A suit for reformation of an instrument may be barred by lapse of time. The prescriptive period for actions based upon a written contract and for reformation of an instrument is ten years.[33] In holding that Ulysses' cause of action is time-barred, the CA explained that the complaint was filed on July 9, 2002,

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[32] *National Irrigation Administration v. Gamit, supra* note 26, citing the Report of the Code Commission, p. 36.

[33] CIVIL CODE, Art. 1144. See also *Rosello-Bentir v. Leanda*, 386 Phil. 802 (2000), citing *Ramos v. Court of Appeals*, 259 Phil. 1122 (1989); *Spouses Jayme and Solidarios v. Alampay*, 62 SCRA 131; and *Conde v. Cuenca*, 99 Phil. 1056 (1956).

or more than ten years from the execution of the deed on February 8, 1992, or beyond the prescriptive period for bringing actions based upon a written contract. We do not agree.

The prescription of actions is interrupted when they are filed before the court, when there is a written extrajudicial demand by the creditors, and when there is any written acknowledgment of the debt by the debtor.[34] The effect of interruption is to renew the obligation and to make the full period of prescription run again. Whatever time of limitation might have already elapsed from the accrual of the cause of action is negated and rendered inefficacious.[35] Interruption should not be equated with suspension where the past period is included in the computation being added to the period after prescription is resumed.[36]

As discussed earlier, Ulysses brought the dispute before the *barangay* where Lydia honored the transaction over the 800-square meter lot and presented a notarized Deed of Absolute Sale dated December 6, 2001, containing the accurate description of the lot. This is tantamount to an explicit acknowledgement of the obligation to execute an amended deed of sale. Applying the above precepts, the ten-year prescriptive period commenced to run anew from December 6, 2001. Thus, the complaint filed on July 9, 2002, is well within the prescriptive period.

Ulysses is liable for the unpaid balance under the contract to sell the 400-square meter portion of Lot No. 199. However, Ulysses and Lydia are not entitled to damages.

We find no reason to disturb the CA and RTC's findings that Ulysses still has a balance to Lydia in the contract to sell

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[34] CIVIL CODE, Art. 1155.

[35] *Ledesma v. Court of Appeals*, 295 Phil. 1070, 1074 (1993), citing *Philippine National Railways v. National Labor Relations Commission*, 258 Phil. 552 (1989).

[36] *Provident Savings Bank v. Court of Appeals*, 294 Phil. 143, 152 (1993), citing *Osmena v. Rama*, 14 Phil. 99, 102 (1909) and 4 Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines, 1991 ed., p. 50.

over the 400-square meter lot. This is a question of fact and is beyond the ambit of this Court's jurisdiction in a petition for review on *certiorari*. As to the correct amount, we quote with approval the CA's computation that Ulysses' unpaid balance is ₱5,860.00, to wit:

> Banico's receipts, marked as Exhibits "C" to "C-30[,"] show payments of a total of PhP167,840.00 — an amount more than the consideration of PhP160,000.00 for the sale of the second lot. The RTC, however, rejected Exhibits "C-3[,"] "C-7[,"] "C-9[,"] "C-10[,"] "C-12[,"] "C-19" and "C-24" for various reasons.
>
> We agree with the RTC that Exhibits "C-10" for the amount of PhP3,500.00 and "C-24" for the amount of PhP1,200.00 were not signed by Stager and do not sufficiently prove payment to her. We likewise share the RTC's view that Exhibit "C-9" for the amount of PhP1,000.00 is totally unrelated to this case since the same was issued as payment for pawned earrings. Exhibit "C-19" evidencing the receipt of PhP500.00 from Banico "for credit" to Stager was also correctly disregarded, especially since the latter denied having executed the same. Exhibit "C-12" for the amount of PhP500.00 was also signed only by Stager's son, Bobby Unilongo, without stating any purpose.
>
> Although Exhibits "C-3" evidencing Stager's receipt of the amount of PhP2,000.00 as "downpayment[,"] and "C-7" showing the receipt by Stager's nephew of PhP5,000.00 "charged to Stager[,"] were not denied by Stager in her testimony, they do not establish payment specifically for the sale of the second lot.
>
> As a general rule, one who pleads payment has the burden of proving it. The debtor has the burden of showing with legal certainty that the obligation has been discharged by payment. **Banico failed to prove payment in the case of the aforementioned exhibits, totaling PhP13,700.00**.
>
> The RTC, however, committed an error in computing Banico's balance. **The receipts marked as Exhibits "C" to "C-30" show payment of a total of PhP167,840.00**. We subtract from this amount the amounts of the rejected receipts worth PhP13,700.00, yielding a total payment of [PhP154,140.00]. **Thus, Banico should be ordered to pay Stager's heirs the balance of only PhP5,860.00, and not**

PhP6,600.00 as ordered by the RTC.[37] (Emphases supplied; citation omitted.)

Applying *Nacar v. Gallery Frames, et al.*,[38] the amount of ₱5,860.00 shall earn interest at the rate of 6% *per annum* from the date of the RTC's Decision on February 18, 2015 until full payment. Similarly, the CA is correct in requiring the Heirs of Lydia to execute the corresponding deed of absolute sale over the 400-sq m lot upon satisfaction of the unpaid balance. As the CA aptly ruled, Ulysses had paid considerable amount to Lydia under the contract to sell. Absent substantial breach of the contract, the rescission is not allowed and Ulysses must be permitted to complete the payment.

Lastly, both the CA and RTC properly denied the parties' claims for damages. To reiterate, the mistake in the Deed of Absolute Sale dated February 8, 1992 involving the 800-sq m lot is not malicious and deliberate. The parties are not even aware of the error until the land was surveyed. Likewise, there is no substantial breach of the contract to sell over the 400-sq m lot that warrants the award of damages.

FOR THESE REASONS, the petition is **GRANTED**. The Court of Appeals' Decision dated February 22, 2017 in CA-G.R. CV No. 104805 is **REVERSED** and **SET ASIDE**. The Regional Trial Court's Decision dated February 18, 2015 in Civil Case No. 02-104001 is **REINSTATED** and **AFFIRMED** with **MODIFICATION** in that Ulysses Rudi Banico is ordered to pay the Heirs of Lydia Bernadette Stager the amount of ₱5,860.00 representing the unpaid balance under the contract to sell. The amount shall earn interest at the rate of 6% *per annum* from the date of the Regional Trial Court's Decision on February 18, 2015 until full payment.

SO ORDERED.

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

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[37] *Rollo,* pp. 17-18.

[38] 716 Phil. 267 (2013).

FIRST DIVISION

[G.R. No. 234725. September 16, 2020]

BICOL ISAROG TRANSPORT SYSTEM, INC., *Petitioner, v.* **ROY R. RELUCIO,** *Respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; JUST CAUSES THEREFOR, ENUMERATED; THE BURDEN TO PROVE THAT THE DISMISSAL OF AN EMPLOYEE WAS FOR A JUST OR AUTHORIZED CAUSE LIES WITH THE EMPLOYER.—** Under Article 297 of the Labor Code, 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; (b) gross and habitual neglect by the employee of his duties; (c) fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative (d) commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and (e) other causes analogous to the foregoing. The burden of proving that the termination of an employee was for a just or authorized cause lies with the employer. If the employer fails to meet this burden, the conclusion would be that the dismissal was unjustified and therefore, illegal. To discharge this burden, the employer must present substantial evidence, which is that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion, and not based on mere surmises or conjectures.

2. **ID.; ID.; ID.; ID.; REQUISITES THAT MUST CONCUR FOR INSUBORDINATION TO BE A VALID CAUSE FOR DISMISSAL, PRESENT IN THIS CASE.—** In particular, insubordination, as a just cause for the dismissal of an employee, necessitates the concurrence of the following requisites: (1) the employee's assailed conduct must have been willful, that is, characterized by a wrongful and perverse attitude; (2) the

order violated must have been reasonable, lawful, made known to the employee, and must pertain to the duties which he had been engaged to discharge. Here, Relucio was given specific instructions, by the OIC for Operations in Masbate, not to push through with his trip to Manila on March 28, 2013 since he only had five passengers. The OIC reminded Relucio that it is a policy to transfer passengers to another bus with more passengers to save an operational costs. However, he insisted on pursuing his trip. x x x The order not to continue with the trip is reasonable, lawful, made known to Relucio and pertained to his duty as a bus driver of Bicol Isarog. Relucio did not deny nor offered any explanation for his disobedience. Thus, there is just cause to terminate his employment.

3. ID.; ID.; ID.; DUE PROCESS REQUIREMENTS THAT EMPLOYER MUST SUBSTANTIALLY COMPLY TO EFFECT A VALID DISMISSAL OF AN EMPLOYEE ON THE GROUND OF JUST CAUSE.— [T]o effect a valid dismissal on the ground of a just cause, the employer must substantially comply with the following standards of due process. (a) a first written notice - containing the specific cause or grounds for termination under Article 297 of the Labor Code, and company policies, if any; detailed narration of the facts and circumstances that will serve as basis for the charge; and a directive to submit a written explanation within a reasonable period; (b) after serving the first notice, the employer should afford the employee ample opportunity to be heard and to defend himself; and (c) after determining that termination of employment is justified, the employer shall serve the employee a written notice of termination indicating that all circumstance involving the charge against the employee have been considered; and the grounds have been established to justify the severance of his employment.

4. ID.; ID.; ID.; ID.; WHERE THE TERMINATION OF EMPLOYMENT WAS EFFECTED WITHOUT COMPLIANCE WITH PROCEDURAL DUE PROCESS, DISMISSED EMPLOYEE IS ENTITLED TO NOMINAL DAMAGES.— The employer bears the burden of proving compliance with the above two-notice requirement. Bicol Isarog's attempts to furnish the notices to Relucio is not sufficient. In effect, Relucio was not afforded ample opportunity to intelligently respond to the accusations hurled against him as

he was not given a reasonable period to prepare his defense. Also, based on the records, Bicol Isarog never scheduled a hearing or conference where Relucio could have responded to the charge and presented his evidence. Indubitably, Bicol Isarog failed to comply with the proper procedural requirements, despite having a just cause to dismiss Relucio. Thus, Relucio is entitled to nominal damages in the amount of ₱30,000.00 in accordance with prevailing jurisprudence.

APPEARANCES OF COUNSEL

Surtida and Hernandez for petitioner.
Ricardo M. Perez for respondent.

D E C I S I O N

LOPEZ, *J.*:

Before this Court is a petition for review on *certiorari* assailing the: (1) Decision dated March 30, 2017;[1] and (2) Resolution[2] dated October 11, 2017 of the Court of Appeals (CA), which reversed the findings of the labor tribunals and declared that respondent Roy R. Relucio (Relucio) was illegally dismissed by petitioner Bicol Isarog Transport System, Inc. (Bicol Isarog).

The facts as summarized by the CA are as follows:

x x x Roy Radasa Relucio filed a complaint with the Labor Arbiter against private respondents Bicol Isarog Transport System, Inc., Jose Marco Hernandez Del Pilar, and Geraldo D. Abaño, for illegal dismissal, illegal suspension, underpayment of salaries/wages, holiday pay, service incentive leave pay and 13th month pay, non-payment of overtime pay and night shift differential, illegal deduction (donation and cash bond), and moral and exemplary damages. x x x.

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[1] *Rollo*, pp. 54-73; penned by Court of Appeals Associate Justice Elihu A. Ybañez, with the concurrence of Associate Justices Magdangal M. De Leon and Carmelita Salandanan Manahan.

[2] *Id.* at 74-75; penned by Court of Appeals Associate Justice Elihu A. Ybañez, with the concurrence of Associate Justices Magdangal M. De Leon and Carmelita Salandanan Manahan.

x x x x

In his position paper, [Relucio] averred that, on 11 April 2011, he was employed by [Bicol Isarog] as a bus driver x x x.

On 30 March 2013, he alleged that he was illegally dismissed by [Bicol Isarog's] officers by suspending him first, then telling him thereafter not to report for work anymore without any valid reason and due process.

He further averred that, throughout his employment, he was never given the benefits of ECOLA, PAG-IBIG and PhilHealth, and his salary was also underpaid.

On the other hand, [Bicol Isarog] alleged that, sometime on April 2011, petitioner applied for employment as a bus driver with [Bicol Isarog]. Petitioner's services [were] engaged on a probationary basis.

Even as probationary employee, [Bicol Isarog] alleged that [Relucio] received compensation over and above the minimum wage required by law as he was receiving Two Hundred Forty Seven Pesos (₱247.00) [*per*] day of work; trip allowance depending on the destination; and *Lutao* allowance of One Hundred Pesos (₱100.00) on his rest days.

On 26 March 2012, petitioner became a regular employee of Bicol Isarog. At the start of his employment, [Bicol Isarog] explained to [Relucio] the provisions of the Code of Discipline of the company, and [Relucio] expressed his willingness to comply with the terms and conditions thereof. However, after [Relucio] became a regular employee, [Bicol Isarog] averred that he repeatedly and willfully violated the company's Code of Discipline, specifically his failure to submit the Trip Collection Report (TCR) and turnover the collection for charter buses on June 5, 8, 10, 12, 16, 17, 18 and 21, 2012.

As a result, [Bicol Isarog] issued Memorandum Circular No. BITSI-PM-2012-102-A requiring [Relucio] to submit a written explanation as regards his infraction. After reviewing his explanation and other pieces of evidence, the company issued Circular No. BITSI-2012-102-B, finding [Relucio] liable for the offense charged. [Bicol-Isarog] then imposed the penalty of suspension for a period of thirty (30) days starting from 22 June to 22 July 2012.

Then, on 28 March 2013, [Bicol Isarog] received a report that [Relucio] insisted on making a trip from Masbate to Manila with only five (5) passengers on board despite the express order of the

Office-in-Charge (OIC) for Operations in Masbate for him not to proceed with the trip and to transfer, instead, the said passengers to another bus of the company. However, [Relucio] disobeyed the express instruction of said OIC and insisted on making the trip.

The Operation Manager of [Bicol Isarog], Kirby Del Castillo, then sent a text message directing [Relucio] to report to him when he [arrived] in Manila. Upon arriving at the J. Ruiz terminal in Manila in the morning of 29 March 2013, [Relucio] walked out of the company premises without reporting to the said operations manager. Hence, another text message was sent to him requiring him to report to the HR Department on 01 April 2013. However, he again failed to report to the HR Department on the said date.

Thus, [Bicol Isarog] issued Memorandum Circular No. BITSI-PM-2013-145 ("first memorandum") which stated that: (1) a report was received that [Relucio] allegedly violated company policy and disobeyed the express orders of his superior on 28 March 2013; (2) [Relucio] is being required to present himself to the J. Ruiz Office or to submit a written explanation why he should not be suspended or dismissed from work due to the incident of insubordination which occurred on 28 March 2013; and (3) his failure to comply therewith shall be taken as a waiver of his right to be heard and that respondent company shall then be entitled to decide the report against him based on available evidence.

On the same day, the Human Resource (HR) Manager, Roberto Cabilao, went to the address given by [Relucio] in his biodata, NBI and barangay clearance x x x, to personally serve the first memorandum. However, upon arriving at the said address, Robert Cabilao was told that there was no Roy Radasa Relucio living in that address, and the person he talked to refused to acknowledge receipt of the memorandum, prompting Cabilao to leave the premises with the memorandum unserved.

On 05 April 2013, [Relucio] still failed to report for work or submit a written explanation. Thus, [Bicol Isarog] issued Memorandum Circular No. BITSI-PM-2013-158 ("second memorandum") requiring [Relucio] to report for work and to submit a written explanation why he should not be disciplined, suspended or dismissed from service for not reporting for work since 31 March 2013 without official leave.

Roberto Cabilao again went to [Relucio's address], to personally serve the written memorandum but was told, for the second time, that [Relucio] was not living in that address.

> Subsequently, [Bicol Isarog] issued Memorandum Circular No. BITSI-PM-20130-159 ("notice of termination"), informing [Relucio] that it is terminating his employment for his failure to report for work for five (5) consecutive days without a valid reason and official leave. However, since [Bicol Isarog] had no information as to the whereabouts of [Relucio], it was only on 18 April 2013, during the conference before the DOLE-NCR Field Office, that [Bicol Isarog] served him a copy of said notice of termination.[3]

In its Decision[4] dated February 6, 2015, the labor arbiter dismissed Relucio's complaint for lack of merit. There was just cause to terminate the employment of Relucio, *i.e.*, insubordination and failure to report for work, and there was substantial compliance on the part of Bicol Isarog to observe the requirements of procedural due process in severing Relucio's employment. Finally, the arbiter ruled that Relucio is not entitled to his money claims.

On appeal, the National Labor Relations Commission (NLRC) affirmed the arbiter's Decision.[5] Failing to secure a reconsideration,[6] Relucio filed a petition for *certiorari* with the CA.[7] The petition was granted in the CA Decision[8] dated

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[3] *Id.* at 55-58.

[4] *Id.* at 59. The dispositive portion of the Labor Arbiter's Decision, as cited in the CA Decision, reads:

> WHEREFORE, premises considered, judgment is hereby rendered dismissing the above captioned complaint for lack of merit.
>
> All other claims are dismissed.
>
> SO ORDERED.

[5] *Id.* at 60. The Resolution of the NLRC dated March 31, 2015, cited in the CA Decision, disposed of Relucio's appeal as follows:

> WHEREFORE, premised on the foregoing considerations, the instant appeal is hereby DISMISSED for lack of merit.
>
> Decision appealed from STANDS.
>
> SO ORDERED.

[6] *Id.* at 60. As cited in the CA Decision, Relucio moved for reconsideration of the NLRC's March 31, 2015, which was denied in a Resolution dated May 25, 2015.

[7] *Id.* at 11.

[8] *Id.* at 54-73. The dispositive portion of the CA Decision dated March 30, 2017 reads:

March 30, 2017. The CA ruled that Relucio was illegally dismissed since Bicol Isarog failed to discharge its burden to prove just cause for his dismissal. Relucio's failure to obey the order of the Officer-In-Charge (OIC) was not characterized by a wrongful and perverse penalty of dismissal. Moreover, the CA held that Bicol Isarog violated Relucio's right to procedural due process because the memoranda issued by Bicol Isarog never reached Relucio. In fact, the notice of termination was only handed to Relucio during the proceedings before the Department of Labor and Employment (DOLE)-National Capital Region (NCR) Field Office. The CA ordered Relucio's reinstatement and the payment of backwages, holiday pay, service incentive leave pay and 13th month pay.[9] Bicol Isarog moved for reconsideration, but was denied.[10]

Hence, this petition alleging that the CA erred in ruling that Relucio was illegally dismissed. Bicol Isarog maintains that failure to report for duty is a grave offense punishable by dismissal under the company's code for conduct. And, in effecting the dismissal, Bicol Isarog complied with the twin-notice rule

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FOR THESE REASONS, the instant petition is GRANTED, and the Resolution dated 31 March 2015 and Resolution dated 25 [May 2015 are] SET ASIDE. Respondent company is ordered to reinstate petitioner to his former position or its equivalent without loss of seniority rights and to pay him full backwages from the time of his dismissal up to the finality of this Decision. Respondent company is also ordered to pay petitioner his holiday pay, service incentive leave pay, 13th month pay and attorney's fees. The case is, therefore, REMANDED to the Labor Arbiter for the proper computation of the said money claims.

SO ORDERED. *Id.* at 71-72.

[9] *Id.*

[10] *Rollo*, pp. 74-75. Bicol Isarog's Motion for Reconsideration was resolved in the CA's Resolution dated October 11, 2017, as follows:

After carefully reviewing the arguments raised in the motion, We find the same to be mere reiteration of matters previously considered and found to be without merit in the Decision subject of this recourse. We thus see no compelling reason to modify, reverse, or set aside Our previous Decision.

WHEREFORE, the instant Motion for Reconsideration is hereby DENIED.

SO ORDERED. *Id.* at 75.

when it issued two memoranda requiring Relucio to explain his alleged infractions, and another memorandum terminating his employment. Bicol Isarog likewise questions the monetary awards made by the CA for lack of factual and legal basis.[11]

For its part, Relucio counters that he did not defy the instructions for him to report for work. Upon arriving in Manila on March 29, 2013, he went to the office of Bicol Isarog but was not able to find any representative to talk to. The next day, Relucio returned but was told to go home because he was already dismissed. Thus, on April 1, 2013, he sought assistance from the NLRC. Relucio also claims that he did not violate any instructions given to him since he was not the on-duty driver for the Masbate-Manila route on March 28, 2013.[12]

In its Reply,[13] Bicol Isarog reiterates its allegations in the petition that "*x x x the wealth of evidence on record more than adequately establish that Relucio was dismissed for just cause, and in compliance with the requirements of due process.*"[14]

We find the petition partly meritorious.

At the outset, the Court is not unmindful that in a petition under Rule 45 of the Rules of Court, only questions of law, not of fact, may be raised. However, where the findings of the labor tribunals contradict that of the CA, this Court may look into the records of the case and re-examine the questioned findings.[15]

Dismissal from employment has two facets: first, the legality of the act of dismissal, which constitutes substantive due process;

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

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

[13] *Id.* at 89-115.

[14] *Id.* at 90.

[15] *Coca Cola Bottlers Phils., Inc., et al. v. IBM Local I, et al.*, 800 Phil. 645, 661 (2016); *Maersk-Filipinas Crewing, Inc., et al. v. Avestruz*, 754 Phil. 307, 317-318 (2015).

and, second, the legality of the manner of dismissal, which constitutes procedural due process.[16]

Under Article 297 of the Labor Code,[17] 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;

(b) gross and habitual neglect by the employee of his duties;

(c) fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(e) other causes analogous to the foregoing.

The burden of proving that the termination of an employee was for a just or authorized cause lies with the employer. If the employer fails to meet this burden, the conclusion would be that the dismissal was unjustified and therefore, illegal.[18] To discharge this burden, the employer must present substantial evidence, which is that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion,[19] and not based on mere surmises or conjectures.[20]

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[16] *Maula v. Ximex Delivery Express, Inc.*, 804 Phil. 365, 378 (2017), citing *NDC Tagum Foundation, Inc. v. Sumakote*, 787 Phil. 67, 73 (2016) and *Agullano v. Christian Publishing, et al.*, 588 Phil. 43, 49 (2008).

[17] Previously, Article 282 of the LABOR CODE.

[18] *Maersk-Filipinas Crewing, Inc., et al. v. Avestruz, supra* note 15 at 318, citing *ALPS Transportation v. Rodriguez*, 711 Phil. 122, 131 (2013), citing *Nissan Motors Phils., Inc. v. Angelo*, 673 Phil. 150, 162 (2011).

[19] *Id.* at 318, citing *Skippers United Pacific, Inc. v. NLRC*, 527 Phil. 248, 257 (2006).

[20] *Id.*, citing *ALPS Transportation v. Rodriguez, supra* note 18.

In particular, insubordination, as a just cause for the dismissal of an employee, necessitates the concurrence of the following requisites: (1) the employee's assailed conduct must have been willful, that is, characterized by a wrongful and perverse attitude; (2) the order violated must have been reasonable, lawful, made known to the employee, and must pertain to the duties which he had been engaged to discharge.[21]

Here, Relucio was given specific instructions, by the OIC for Operations in Masbate, not to push through with his trip to Manila on March 28, 2013 since he only had five passengers. The OIC reminded Relucio that it is a policy to transfer passengers to another bus with more passengers to save operational costs. However, he insisted on pursuing his trip. Thereafter, Relucio was ordered to report to the Operations Manager of Bicol Isarog upon arriving in Manila. But, when Relucio reached Manila on March 29, 2013, he failed to abide by the summons. Through a text message, Relucio was directed to go to the Human Resource (HR) Department on April 1, 2013. Again, he did not heed the directive, prompting Bicol Isarog to issue Memorandum Circular No. BITSI-PM-2013-145, which served as a notice of Relucio's infraction and order to submit his explanation.[22] The order not

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[21] *Supra* note 15 at 319, citing *Grandteq Industrial Steel Products, Inc. v. Estrella*, 661 Phil. 735 (2011).

[22] *Rollo*, pp. 15-16. The Memorandum states:

Ang tanggapan pong ito ay tumanggap ng ulat tungkol sa diumanong nagawang paglabag sa alituntunin ng kompanya. Ayon sa ulat, noong Marso 28, 2013 ay pinapilitan mo di umanong [*sic*] na bumyahe mulasa [*sic*] Masbate patungong Manila sakabila [*sic*] ng lima (5) lang ang iyong sakay na pasahero at sinabihan ka ng OIC for operations sa Masbate nai-transfer [*sic*] nalang ang iyong pasahero sa isa nating bus na may sakay na 20 napasahero [*sic*] at sa susunod na araw ka nalang bumyahe. Sa kabila ng kanyang utos na huwag ka muna bumyahe dahil say[a]ng ang krudo na gagamitin at gagastos lang ang kompanya ng walang pakinabang, sinuway mo parin ang kanyang utos at tumuloy ka pa rin na bumyahe (Insubordination).

Base sa paunang pagsisiyasat, lumalabas na maaaring nilabag mo ang alituntunin ng kompanya ukol sa "Insubordination or willful disobedience of or refusal to follow supervisor[']s lawful orders or reasonable request, instructions or to perform assigned work" naisang [*sic*] "serious misconduct" at kapag napatunayang totoo ay may karampatang parusa ng thirty (30)

to continue with the trip is reasonable, lawful, made known to Relucio and pertained to his duty as a bus driver of Bicol Isarog. Relucio did not deny nor offer any explanation for his disobedience. Thus, there is just cause to terminate his employment.

There is no doubt, an employer enjoys a wide latitude of discretion in the promulgation of policies, rules and regulations on work-related activities of the employees so long as they are exercised in good faith for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of the employees under special laws or under valid agreements. Company policies and regulations are generally valid and binding on the parties and must be complied with until finally revised or amended, unilaterally or preferably through negotiation, by competent authority.[23] Bicol Isarog's Code of Conduct categorized insubordination and failure to report for duty as a grave offense, which merits the penalty of dismissal.[24]

However, to effect a valid dismissal on the ground of a just cause, the employer must substantially comply with the following

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days suspension or dismissal sa unang opensa at dismissal sa ikalawang opensa.

Dahil sa pangyayaring ito, ikaw po Mr. Relucio at inuutusan ng tanggapang ito na agad mag-report sa opisina at magbigay ng nakasulat na paliwanag sa loob ng limang (5) araw simula sa araw namatanggap [*sic*] mo ang memorandum na ito upang ipaliwanag kung bakit hindi karapat-dapat mapatawan ng naaangkop na disciplina.

Ang pagtanggi/pagsuway ninyo sakautusang [*sic*] ito upang magbigay ng inyong nakasulat napaliwanag [*sic*] or sumailalim sa paunang pagsisiyasat ay mangangahulugang pagbitiw ninyo sa karapatan ninyong magpaliwanag at pinauubaya ninyo sa pangasiwaan na ibase nalamang [*sic*] ang igagawad na desisyon sasumbong/ulat [*sic*] laban sa inyo at anumang ebidensyang makuha namin.

[23] *Genuino Ice Company, Inc. v. Magpantay*, 526 Phil. 170, 186 (2006), citing *Coca-Cola Bottlers, Phils., Inc. v. Kapisanan ng Malayang Manggagawa sa Coca-Cola-FFW*, 492 Phil. 570 (2005).

[24] *Rollo*, pp. 26-27.

standards of due process:[25] (a) a first written notice — containing the specific cause or grounds for termination under Article 297 of the Labor Code, and company policies, if any; detailed narration of the facts and circumstances that will serve as basis for the charge; and a directive to submit a written explanation within a reasonable period;[26] (b) after serving the first notice, the employer should afford the employee ample opportunity to be heard[27] and to defend himself; and (c) after determining that termination of employment is justified, the employer shall serve the employee a written notice of termination indicating that all circumstance involving the charge against the employee have been considered; and the grounds have been established to justify the severance of his employment. These standards were refined in *Unilever Philippines, Inc. v. Rivera*,[28] to wit:

> [T]he following should be considered in terminating the services of employees:
>
> (1) The first written notice to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a

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[25] Section 5.1, DOLE Department Order No. 147-15, series of 2015, which amended the Implementing Rules and Regulations of Book VI of the Labor Code of the Philippines, as amended.

[26] *Id.* "Reasonable period" should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employee an opportunity to study the accusation, consult or be represented by a lawyer or union officer, gather data and evidence, and decide on the defenses against the complaint.

[27] *Id.* citing *Perez, et al. v. Phil. Telegraph and Telephone Co., et al.*, 602 Phil. 522 (2009), and Section 12, DOLE Department Order 18-A. "Ample opportunity to be heard" means any meaningful opportunity (verbal or written) given to the employee to answer the charges against him/her and submit evidence in support of his/her defense, whether in a hearing, conference or some other fair, just and reasonable way. A formal hearing or conference become mandatory only when requested by the employee in writing or substantial evidentiary disputes exist or a company rule or practice requires it, or when similar circumstances justify it.

[28] 710 Phil. 124 (2013).

reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.

(2) After serving the first notice, the employers should schedule and conduct a hearing or conference wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.

(3) After determining that termination of employment is justified, the employers shall serve the employees a written notice of termination indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment.[29]

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[29] *Id.* at 136-137, citing *King of Kings Transport, Inc. v. Mamac*, 553 Phil. 108, 115-116 (2007); as cited in *Puncia v. Toyota Shaw/Pasig, Inc.*, 788 Phil. 464, 480-481 (2016).

Here, the memoranda issued by Bicol Isarog never reached Relucio. Although the first notice to explain was served at the last known address of Relucio, consistent with the requirements of the implementing rules and regulations of the Labor Code,[30] Bicol Isarog's HR Manager, Roberto Cabilao, discovered that Relucio was no longer residing at the given address. Yet, to feign compliance with the rules, Cabilao returned to the same address to deliver the second memorandum/notice to explain. Notably, the notice of termination was only given by Bicol Isarog to Relucio during the Single Entry Approach conference before the DOLE-NCR. Clearly, there was no substantial compliance with the dictates of procedural due process in the dismissal of Relucio. The CA aptly observed:

> In this case, We find that the requirements of procedural due process was not complied with. Records show that the only effort to comply with procedural due process in dismissing petitioner were the two memoranda which were never served to and received by petitioner. In fact, the notice of termination was only made known to petitioner during the proceedings before the DOLE-NCR Field Office. Neither was there any showing that petitioner was given the chance to explain his side or to respond to the charges against him and present evidence in his defense.[31]

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[30] Department Order No. 147-15, series of 2015 — Amending the Implementing Rules and Regulations of Book VI of the Labor Code of the Philippines, as Amended. The relevant provision of the rules states:

RULE I-A
APPLICATION OF JUST AND AUTHORIZED CAUSES OF TERMINATION

Section 5. *Due Process of Termination of Employment.* x x x

5.1. *Termination of Employment Based on Just Causes.* As defined in Article 297 of the Labor Code, as amended, the requirement of two written notices served on the employee shall observe the following:

x x x x

The foregoing notices shall be served personally to the employee or to the employee's last known address.

[31] *Rollo*, p. 68.

The employer bears the burden of proving compliance with the above two-notice requirement.[32] Bicol Isarog's attempts to furnish the notices to Relucio are not sufficient. In effect, Relucio was not afforded ample opportunity to intelligently respond to the accusations hurled against him as he was not given a reasonable period to prepare his defense. Also, based on the records, Bicol Isarog never scheduled a hearing or conference where Relucio could have responded to the charge and presented his evidence. Indubitably, Bicol Isarog failed to comply with the proper procedural requirements, despite having a just cause to dismiss Relucio. Thus, Relucio is entitled to nominal damages in the amount of ₱30,000.00 in accordance with prevailing jurisprudence.[33]

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated March 30, 2017 and Resolution dated October 11, 2017 of the Court of Appeals are **SET ASIDE**. Petitioner Bicol Isarog Transport System, Inc. is **ORDERED** to indemnify respondent Roy R. Relucio the amount of thirty thousand pesos (₱30,000.00) as nominal damages for failure to comply with the due process requirements in terminating the employment of the respondent.

SO ORDERED.

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

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[32] *Santos v. Integrated Pharmaceutica, Inc., et al.*, 789 Phil. 477, 495 (2016), citing *University of the Immaculate Conception v. Office of the Secretary of Labor and Employment, et al.*, 769 Phil. 630, 660 (2015).

[33] *Puncia v. Toyota Shaw/Pasig, supra* note 29 at 482, citing *Sang-an v. Equator Knights Detective and Security Agency, Inc.*, 703 Phil. 492, 503 (2013), citing *Agabon v. NLRC*, 485 Phil. 248 (2004).

THIRD DIVISION

[G.R. No. 235610. September 16, 2020]

RODAN A. BANGAYAN, *Petitioner*, *v.* **PEOPLE OF THE PHILIPPINES,** *Respondent*.

SYLLABUS

1. CRIMINAL LAW; ANTI-CHILD ABUSE ACT (RA NO. 7610); SEXUAL ABUSE; THE LAW CONSIDERS THE CONDITION AND CAPACITY OF THE CHILD TO GIVE CONSENT.— "[S]exual abuse" includes the employment, use, persuasion, inducement, enticement or coercion of a child to engage in, or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children.. . .

In explicitly stating that children deemed to be exploited in prostitution and other sexual abuse under Section 5 of R.A. 7610, refer to those who engage in sexual intercourse with a child "for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group," it is apparent that the intendment of the law is to consider the condition and capacity of the child to give consent.

2. ID.; ID.; STATUTORY RAPE; WHEN THE VICTIM IS UNDER 12, THE PERPETRATOR SHALL BE PROSECUTED UNDER THE REVISED PENAL CODE. — Section 5(b) of R.A. 7610 qualifies that when the victim of the sexual abuse is under 12 years of age, the perpetrator shall be prosecuted under the Revised Penal Code. This means that, regardless of the presence of any of the circumstances enumerated and consent of victim under 12 years of age, the perpetrator shall be prosecuted under the Revised Penal Code.

3. ID.; ID.; ID.; STATUTORY CONSTRUCTION; RECONCILIATION OF GAPS IN THE LAW; ENGAGING IN SEXUAL ACT NOT FALLING UNDER ANY OF THE CIRCUMSTANCES IN SECTION 5(b) OF RA NO. 7610 WITH A CHILD, WHO IS BETWEEN 12 AND 17 YEARS OF AGE AND WHO GIVES CONSENT TO THE SAME, IS NOT A QUALIFYING CIRCUMSTANCE UNDER R.A. NO. 7610.— [T]he law is noticeably silent with respect to situations where a child is between 12 years old and below 18

years of age and engages in sexual intercourse not "for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group." Had it been the intention of the law to absolutely consider as sexual abuse and punish individuals who engage in sexual intercourse with "children" or those under 18 years of age, the qualifying circumstances enumerated would not have been included in Section 5 of R.A. 7610.

Taking into consideration the statutory construction rules that penal laws should be strictly construed against the state and liberally in favor of the accused, and that every law should be construed in such a way that it will harmonize with existing laws on the same subject matter, We reconcile the apparent gap in the law by concluding that the qualifying circumstance cited in Section 5(b) of R.A. 7610, which "punishes sexual intercourse or lascivious conduct not only with a child exploited in prostitution but also with a child subjected to other sexual abuse," leave room for a child between 12 and 17 years of age to give consent to the sexual act. An individual who engages in sexual intercourse with a child, at least 12 and under 18 years of age, and not falling under any of these circumstances, cannot be held liable under the provisions of R.A. 7610. The interpretation that consent is material in cases where victim is between 12 years old and below 18 years of age is favorable to Bangayan. It fills the gap in the law and is consistent with what We have explained in the case of *People v. Tulagan*, to wit:

> . . ."**We clarify that consent of the child is material and may even be a defense in criminal cases involving violation of Section 5, Article III of R.A. No. 7610 when the offended party is 12 years old or below 18, or aboye 18 under special circumstances**. . . . However, **if the same victim gave her consent to the sexual intercourse, and no money, profit, consideration, coercion or influence is involved, then there is no crime committed". . . .**

4. ID.; ID.; ID.; CONSENT; CIVIL LAW CONCEPT OF CONSENT AND SEXUAL CONSENT IN CRIMINAL LAW, DISTINGUISHED; CAPACITY TO ACT UNDER CIVIL LAW CANNOT BE EQUATED TO CAPACITY TO GIVE SEXUAL CONSENT.— [T]he Court deems it prudent to rectify

the difference between the concept of consent under contract law and sexual consent in criminal law which determines the guilt of an individual engaging in a sexual relationship with one who is between 12 years old or below 18 years of age. These are concepts that are distinct from each other and have differing legal implications.

The law limits, to varying degrees, the capacity of an individual to give consent. While in general, under the civil law concept of consent, in relation to capacity to act, all individuals under 18 years of age have no capacity to act, the same concept cannot be applied to consent within the context of sexual predation. Under civil law, the concept of "capacity to act" or "the power to do acts with legal effects" limits the capacity to give a valid consent which generally refers to "the meeting of the offer and the acceptance upon the thing and the case which are to constitute the contract." To apply consent as a concept in civil law to criminal cases is to digress from the essence of sexual consent as contemplated by the Revised Penal Code and R.A. 7610. Capacity to act under civil law cannot be equated to capacity to give sexual consent for individuals between 12 years old and below 18 years of age. Sexual consent does not involve any obligation within the context of civil law and instead refers to a private act or sexual activity that may be covered by the Revised Penal Code and R.A. 7610.

5. ID.; ID.; ID.; ID.; SWEETHEART THEORY; WHERE THE AGE OF THE VICTIM IS CLOSE TO 12 YEARS OLD, THE EVIDENCE MUST BE STRICTLY SCRUTINIZED TO DETERMINE THE PRESENCE OF SEXUAL CONSENT.— Our earlier pronouncement regarding consent in *Malto* failed to reflect teenage psychology and predisposition. We recognize that the sweeping conclusions of the Court in *Malto* failed to consider a juvenile's maturity and to reflect teenagers' attitude towards sex in this day and age. There is a need to distinguish the difference between a child under 12 years of age and one who is between 12 years old and below 18 years of age due to the incongruent mental capacities and emotional maturity of each age group. It is settled that a victim under 12 years old or is demented "does not and cannot have a will of her own on account of her tender years or dementia; thus, a child or a demented person's consent is immaterial because of her presumed incapacity to discern good from evil." As such,

regardless of the willingness of a victim under 12 years old to engage in any sexual activity, the Revised Penal Code punishes statutory rape and statutory acts of lasciviousness. On the other hand, considering teenage psychology and predisposition in this day and age, We cannot completely rule out the capacity of a child between 12 years old and below 18 years of age to give sexual consent.

Consequently, although We declared in *Malto* that the Sweetheart Theory is unacceptable in violations of R.A. 7610 since "a child exploited in prostitution or subjected to other sexual abuse cannot validly give consent to sexual intercourse with another person," We deem it judicious to review the Decision of the court *a quo* and reiterate Our recent pronouncements in *Tulagan* and *Monroy* and clarify the ambiguity created in the *Malto* case in resolving the case at bar.

Where the age of the child is close to the threshold age of 12 years old, as in the case of AAA who was only 12 years and one month old at the time of the incident, evidence must be strictly scrutinized to determine the presence of sexual consent. The emotional maturity and predisposition of a juvenile, whose age is close to the threshold age of 12, may significantly differ from a child aged between 15-18 who may be expected to be more mature and to act with consciousness of the consequences of sexual intercourse.

6. ID.; ID.; ID.; ID.; ID.; CONSENT IS APPARENT WHERE THE SEXUAL CONGRESS BETWEEN THE ACCUSED AND THE MINOR WAS NOT JUST LIMITED TO ONE INCIDENT, BUT CONTINUED THEREAFTER AND HAD EVEN PRODUCED TWO CHILDREN.— [T]here are special circumstances that reveal the presence [of] consent of AAA. The sexual congress between Bangayan and AAA was not limited to just one incident. They were in a relationship even after the incident alleged in the Information and had even produced two (2) children. To Our mind, these are not acts of a child who is unable to discern good from evil and did not give consent to the sexual act.

. . .

We must take into account Bangayan's defense that, at the time of the incident, he and AAA were lovers. The conduct of Bangayan and AAA, which is the subject of the Information

against him, is not the sexual abuse punished by the law. While placed in an unusual predicament, We recognize that Bangayan and AAA are in a relationship that had produced not just one (1) offspring but two (2). While AAA was a child, as defined under R.A. 7610, being under 18 years of age at the time she and Bangayan engaged in sexual intercourse, there was no coercion, intimidation or influence of an adult, as contemplated by the law. AAA consented to the sexual act as reflected in her conduct at the time of the commission of the act and her subsequent conduct shown in the records.

. . .

. . . It is worthy to note that even when Bangayan was presented in the witness stand, AAA was present in court, presumably to show support for him. AAA conceived a second child with Bangayan despite the charge against him. Both children were conceived before he was incarcerated. She did not testify against Bangayan even if she was present during the hearings. These acts of AAA, and the Affidavit of Desistance she executed, when taken as a whole, bolsters the claim of Bangayan that they were in a relationship when the act complained of was committed and even lived together without the benefit of marriage after the case against him was filed. Her acts are consistent with the claim of Bangayan that their relationship existed at the time of commission of the act complained, during trial, and even continued after he was convicted by the lower court. To Our mind, these factors are clear manifestations that she was not subjected to any form of abuse, and prove that she consented to the act complained of.

7. REMEDIAL LAW; EVIDENCE; DOCUMENTARY EVIDENCE; A DOCUMENT NOT PROPERLY IDENTIFIED AND NOT FORMALLY OFFERED HAS NO PROBATIVE VALUE; CASE AT BAR.— The Social Case Study Report reflecting the evaluation of Social Welfare Officer III Theresa A. Mauricio (Mauricio) on AAA's social, emotional, and intellectual development cannot be admitted nor be given any credence by the Court. . . .

. . .

A careful study of the records reveals that the RTC received the Social Case Study Report dated September 25, 2014 on

October 8, 2014. Although the testimony of the social worker was included in the Pre-Trial Order, the document was never properly identified, authenticated by the social worker who prepared the report, and included in the formal offer of evidence. The social worker never testified in open court and the defense was never given an opportunity to test her credibility and verify the correctness and accuracy of her findings. To Our mind, giving credence to evidence which was not formally offered during trial would deprive the other party of due process. Thus, evidence not formally offered has no probative value and must be excluded by the court.

8. CRIMINAL LAW; ANTI-CHILD ABUSE ACT (RA NO. 7610); SEXUAL ABUSE; WHERE THE MINOR GAVE CONSENT TO THE SEXUAL INTERCOURSE AND NO MONEY, PROFIT, CONSIDERATION, COERCION OR INFLUENCE IS INVOLVED, THERE IS NO CRIME COMMITTED.— Applying the ruling in *Tulagan* there is no crime committed because AAA freely gave her consent to the sexual intercourse, and no money, profit, consideration, coercion or influence is involved. Due to the prosecution's failure to establish and prove beyond reasonable doubt the requisites for the charge of violation of Section 5(b) of R.A. 7610, Bangayan must be acquitted.

9. ID.; ID.; ID.; THE PRINCIPLE OF UPHOLDING THE BEST INTERESTS OF THE CHILDREN APPLIED TO THE CASE AT BAR.— In this exceptional situation, We are not prepared to punish two individuals and deprive their children from having a normal family life simply because of the minority of AAA at the time she began dating Bangayan. The benefits of living in a nuclear family to AAA and their two (2) children outweigh any perceived dangers of the on-going romantic relationship Bangayan has with AAA who is 15 years younger than him. This arrangement is more favorable to the welfare of both parties as they are planning to get married. We verified from the records that Bangayan was single at the time he gave his personal circumstances when he testified in court. This is more consistent with the principle of upholding the best interests of children as it gives Bangayan an opportunity to perform his essential parental obligations and be present for their two (2) children.

ZALAMEDA, *J., separate concurring opinion*:

1. CRIMINAL LAW; ANTI-CHILD ABUSE ACT (RA NO. 7610); WHAT NEEDS TO BE PROVED FOR SUCCESSFUL PROSECUTION OF A VIOLATION OF SECTION 5 (b) OF RA NO. 7610.— [F]or the successful prosecution of a violation of Section 5(b) of Republic Act No. (RA) 7610, it must be proven that the **child engaged in sexual intercourse or lascivious conduct due to money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group.**

2. ID.; ID.; ID.; "OTHER SEXUAL ABUSE," "COERCION," "INFLUENCE," "INTIMIDATION," DEFINED.— [T]he term "other sexual abuse" includes the employment, use, persuasion, inducement, enticement, or coercion of a child to engage in, or assist another person to engage in sexual intercourse or lascivious conduct. It also includes the molestation or prostitution of children, or committing incestuous acts against children.

Meanwhile, the term "coercion and influence" broadly covers "force and intimidation." "Coercion" is defined as "compulsion, force or duress," while "[undue] influence" means "persuasion carried to the point of overpowering the will" or "improper use of power or trust in any way that deprives a person of free will and substitutes another's objective." On the other hand, "intimidation" is defined as "unlawful coercion; extortion; duress; putting in fear."

3. ID.; ID.; ID.; COURTS SHALL ENDEAVOR TO PROMOTE THE BEST INTEREST OF CHILDREN; "CHILDREN," DEFINED.— As enunciated in RA 7610, it is the policy of the State to provide special protection to children against all forms of abuse, neglect, cruelty, exploitation, discrimination, and other conditions prejudicial to their development. The best interest of the child shall be the paramount consideration of the court, which shall exert effort to promote the welfare of children and enhance their opportunities for a useful and happy life.

The same law defines "children" as persons below 18 years of age, or those over 18 but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental

disability or condition. The law looks upon this group as a special class of persons, in varying extents, by recognizing that they are unable to fully take care of or protect themselves from abuse, neglect, cruelty, exploitation or discrimination.

4. ID.; ID.; ID.; CHILD'S CONSENT; THE YOUNGER THE CHILD, THE MORE LIKELY HE OR SHE IS TO GIVE INEFFECTUAL CONSENT.— In our jurisdiction, it is conclusively presumed that all children under 12 years old do not have a will of their own due to their tender age, and therefore cannot give intelligent consent to the sexual act. For that reason, the law does not recognize voluntariness on the part of a victim in lascivious conduct or rape cases as a valid defense . . . .

. . .

Critical to this discussion, however, is to underscore that intelligence and understanding to give effective consent is not developed overnight. The wisdom of a child who just turned 12 years old, as opposed to a child who is a few days shy of that age, cannot be considered as vastly different, or fully developed enough to effectively discern good from evil. In the same vein, it cannot be denied that there is a difference in the level of maturity between a 12-year-old from that of a 17-year-old child.

Thus, taking this reality into account, the concept of consent of a child under RA No. 7610 should be viewed as a **spectrum** where, the closer a child's age is to 12 years, the more vulnerable and susceptible he or she is to abuse, neglect, cruelty, exploitation, or discrimination. In other words, the younger the child, the more **likely** he or she is to give ineffectual consent, whether direct or implied.

5. ID.; ID.; ID.; ID.; FACTORS TO CONSIDER IN DETERMINING THE EFFICACY OF A CHILD'S CONSENT TO INDULGE IN A SEXUAL ACT.— [T]he numerical age of the child should not be the absolute and deciding ground to determine the efficacy of consent. Rather, it should be assessed in conjunction with other factors, such as the **age of accused, familial influence, sexual knowledge of the child, power of the accused over the child, trust accorded by the child to accused, and all other dynamics that influence the formation of a rational decision pertaining to sexual matters. Coercion, intimidation, or influence must be ascertained**

in light of the victim's perception and judgment at the time of the commission of the crime, and not by any hard and fast rule. These are the elements that should guide the courts in determining whether there was consent to indulge in a sexual act and whether that consent was given due to coercion, intimidation, or influence of the accused.

6. ID.; ID.; ID.; ID.; ID.; REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; THE PROSECUTION HAS THE BURDEN OF PROOF TO SHOW THE PRESENCE OF FACTORS AFFECTING A CHILD'S CONSENT TO THE SEXUAL ACT.— I would like to emphasize that the prosecution bears the burden to establish the guilt of the accused beyond reasonable doubt. Accordingly, in order to prove indulgence in sexual intercourse or lascivious conduct due to money, profit, or any other consideration, or due to the coercion or influence of any adult, syndicate, or group, **it is the prosecution's duty to likewise show the presence of factors, similar to the ones discussed above, affect that consent.**

7. ID.; ID.; ID.; ID.; ID.; IN THE ABSENCE OF EVIDENCE ON OTHER FACTORS THAT MAY HAVE AFFECTED THE VICTIM'S CONSENT SUCH THAT IT CAN BE CONSIDERED AS INEFFECTUAL OR DRIVEN BY COERCION OR INFLUENCE, THE ACCUSED MUST BE ACQUITTED.— I cannot conclude with certainty that AAA engaged in sexual intercourse with accused-appellant **due to the latter's coercion or influence**. Records are bereft of evidence to support the prosecution's theory mainly because AAA did not testify against accused-appellant. BBB's testimony alone was insufficient to establish the elements of the crime charged because his testimony merely proved the fact of sexual intercourse and not the element of coercion or influence.

…

Evaluating the facts of this case with the relevant factors that **may** have influenced AAA's perception and judgment at the time of the commission of the crime, I believe the Court should similarly acquit herein accused-appellant on account of reasonable doubt. Compared to *Monroy*, where the 14-year-old victim professed her love to therein accused through a letter, the supposed "consent" of herein victim, who just barely turned 12 years old when the incident occurred, is less recognizable.

Accordingly, rather than absolving accused-appellant because AAA absolutely and undoubtedly "consented" to having sexual intercourse with him, I believe that the Court should, instead, acquit accused-appellant on the ground of reasonable doubt engendered by to the prosecution's failure to present evidence on other factors that may have affected AAA's consent such that it can be considered ineffectual or driven by coercion or influence.

LEONEN, *J., dissenting opinion*:

1. CRIMINAL LAW; ANTI-CHILD ABUSE ACT (RA NO. 7610); TWO OFFENSES PUNISHABLE UNDER SECTION 5 THEREOF.— Republic Act No. 7610, otherwise known as *The Special Protection of Children Against Abuse, Exploitation and Discrimination Act*, sought "to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination and other conditions, prejudicial [to] their development[.]"

One of the salient provisions of the law is the criminal liability on "Child Prostitution and Other Sexual Abuse" under Section 5. . . .

A plain textual reading [of Section 5] shows that the provision penalizes two (2) offenses: (1) child prostitution; and (2) other sexual abuse.

Children subjected to prostitution are those "who for money, profit, or any other consideration. . . indulge in sexual intercourse or lascivious conduct[.] "Further, children subjected to other forms of sexual abuse are those who "due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct[.]

2. ID.; ID.; STATUTORY RAPE; CONSENT IS IMMATERIAL IN SEXUAL INTERCOURSE WITH A CHILD BELOW 12 YEARS OLD OR OTHERWISE DEMENTED.— For sexual intercourse with children below 12 years old or otherwise demented, the crime committed is rape under Article 266-A (1) of the Revised Penal Code. The law refers to the modification introduced by Republic Act No. 8353, . . .

As *Tulagan* explained, consent is immaterial in sexual intercourse with children under 12 years of age, because they are presumed to be incapable of giving consent[.]

3. ID.; ID.; ID.; AS THE REVISED PENAL CODE (RPC) APPLIES ONLY TO CHILDREN UNDER 12 YEARS OLD, RA NO. 7610 PROVIDES CRIMINAL LIABILITY FOR ACTS OF PROSTITUTION OR OTHER FORMS OF SEXUAL ABUSE DONE WITH A CHILD BETWEEN 12 AND 18 YEARS OLD.— It bears emphasis that the protection under the Revised Penal Code only applies to children below 12 years old, while the age of majority is at 18 years old. This situation presents a lacuna, which Republic Act No. 7610 resolved by providing criminal liability for acts of prostitution or other forms of sexual abuse done with a child between 12 and 18 years old.

Nevertheless, Republic Act No. 7610 takes into consideration that the age of sexual consent remains at 12 years old. This is "one [1] of the lowest globally and the lowest in the Asia-Pacific Region. [While] the average age of consent is 16 years old." This is despite the fact that under our laws, minors do not have the capacity to enter contracts or marriage. However, a strict reading of the Revised Penal Code keeps the age of sexual consent at 12 years old.

Thus, in sexual intercourse with children between 12 and 18 years of age, as *Tulagan* concludes, Section 5(b) of Republic Act No. 7610 leaves room for a child to give consent. But this must be read with the policy espoused by the law, which states that "[t]he best interests of children shall be the paramount consideration[.]" This obliges the courts to determine how consent to sexual conduct was given by the child, despite reaching an age where they could have reasonable discernment.

4. ID.; ID.; FACTORS THAT COURTS MUST CONSIDER IN DETERMINING WHETHER THE CHILD FREELY CONSENTED TO THE SEXUAL ACT.— The text of the law mandates that children exploited in prostitution or subject to other forms of sexual abuse (children in EPSOSA) must have consented: (1) due to money, profit, or any other consideration; or (2) due to the coercion or influence of an adult.

In cases of children subjected to sexual abuse, the courts must determine whether coercion or influence was present, which compelled the child to indulge in sexual conduct. The resolution of this issue cannot be formulaic, but it must be based on the unique factual parameters of each case. Considering the range of age which covers children in EPSOSA, the courts must carefully ascertain if the child freely gave sexual consent to the sexual act.

. . .

Factors such as age difference, the victim and perpetrators' relationship, and the child's psychological disposition must be considered by this Court, having in mind the child's best interest.

5. ID.; ID.; ID.; THE 15-YEAR AGE GAP BETWEEN THE ACCUSED AND THE VICTIM AND THE LATTER'S PSYCHOLOGICAL CONDITION INDICATE THAT THERE IS COERCION AND INTIMIDATION IN THE SEXUAL INTERCOURSE; CASE AT BAR.— [T]he 15-year age gap between petitioner and the victim indicates that there is coercion and intimidation in the sexual intercourse. It is difficult to accept how the victim, who just turned 12 years old at that time, could have entered into a relationship with an adult 15 years her senior.

Moreover, the victim's psychological disposition showed that she is vulnerable to petitioner's cajolery. As the Social Welfare Office report showed, the victim suffered multiple emotional crises as a child and that her decision to live with the accused is a result of her longing for a parental figure. This Court should also consider that the victim experienced sexual abuse when she was younger. Further, she was raped twice when she was just nine (9) and 11 years old.

As the case study noted, the psychological trauma impeded the victim's growth and development. Given her psychological state, the *ponencia* should have been more cautious in concluding that there was sexual consent. This Court should not tolerate and further cement the abuse and psychological trauma on victims. Considering the wide age difference between petitioner and the victim, and the victim's psychological condition, there is coercion and intimidation. Accused evidently used the victim's minority and vulnerability to compel her to have sexual intercourse with him.

6. ID.; ID.; REMEDIAL LAW; EVIDENCE; SWEETHEART THEORY; AFFIDAVIT OF DESISTANCE; SWEETHEART THEORY IS MADE QUESTIONABLE BY THE VICTIM'S FILING OF A CRIMINAL CASE AND FAILURE TO TESTIFY TO OR CONFIRM AN ALLEGED AFFIDAVIT OF DESISTANCE.— Moreover, petitioner's theory that they were sweethearts at that time is made questionable by the victim's filing of the criminal case against him. Petitioner's self-serving excuse that the victim's filing

was only a result of a misunderstanding should not be given credence, considering the distressing process the victim had to go through just to be able to file the case. It is incomprehensible why the victim would choose to concoct a false story, to undergo physical examination, and to convince her brother to testify at court if she only wanted to get back at the accused.

While the victim allegedly filed an affidavit of desistance, this affidavit was not testified to by the victim in court. Moreover, it was not executed with the assistance of an older relative.

7. ID.; ID.; ID.; ID.; NEITHER SUBSEQUENT COHABITATION NOR MARRIAGE ACTS AS PARDON TO THE SEXUAL ABUSE.— [T]he *ponencia* maintains that the victim's cohabitation with petitioner, and the fact that they had another child, signifies her consent.

I disagree.

Subsequent cohabitation cannot act as pardon to the sexual abuse committed against the victim.

In *People v. Bongbonga*, the accused was charged with the rape of AAA. As a defense, accused claimed that their sexual intercourse was consensual and that they were now living together as partners. In affirming the accused's guilt, this Court rejected his sweetheart defense and ruled that subsequent cohabitation does not pardon the prior sexual abuses done by the accused. . . .

Moreover, the ruling of the *ponencia* is consistent with the idea that rape or sexual abuse may be pardoned. This Court has settled that rape is no longer pardoned through marriage. . . .

8. ID.; ID.; RAPE IS ALREADY RECLASSIFIED AS A CRIME AGAINST PERSON.— [*People v.*]*Jumawan* considered the enactment of Republic Act No. 8353, which reclassified rape as a crime against persons, and no longer a crime against chastity. This reclassification is not only nominal but a crucial shift in understanding the gravity and nature of rape.

Rape, including other forms of sexual abuse, should no longer be viewed as a crime against chastity, which focuses on the dishonor to the victim's father or family. Rape and sexual abuse is a strike against the person of the victim. It is a violation of one's autonomy, a "violation of free will, or the freely made choice to engage in sexual intimacy."

9. ID.; ID.; CONCEPT OF CONSENT TO SEXUAL ACT, ELABORATED.— [C]onsent to sex does not only cover the physical act. Sex does not only involve the body, but it necessarily involves the mind as well. It embraces the moral and psychological dispositions of the persons engaged in the act, along with the socio-cultural expectation and baggage that comes with the act. For instance, there are observed differences in sexual expectations and behaviors among different genders, and more so, among individuals. The wide range of sexual desire and behavior are not only shaped by biology, but by culture and prevailing norms as well. Full and genuine consent to sex, therefore, is "preceded by a number of conditions which must exist in order for act of consent to be performed."

Part and parcel of a valid consent is the ability to have the intellectual resources and capacity to make a choice that reflects his or her judgments and values. For someone to give sexual consent, he or she must have reached a certain level of maturity.

This observation becomes more apparent in determining the validity of sexual consent given by adults compared to children. Sexual consent is not a switch, but a spectrum. As a child grows into adolescence, and later to adulthood, the measure of sexual consent shifts from capacity to voluntariness. Under the law, sexual consent from a child is immaterial, because he or she is deemed incapable of giving an intelligent consent. However, this presumption is relaxed as the child matures. In our jurisdiction, the gradual scale begins when the child reaches the age of 12 years old. From this age, the law may admit voluntariness on the part of the child.

Nevertheless, voluntariness or informed sexual consent of a child must be determined cautiously. Cases involving younger victims must be resolved through more stringent criteria. Several factors, such as the age of the child, his or her psychological state, intellectual capability, relationship with the accused, their age difference, and other signs of coercion or manipulation must be taken into account in order to protect the child.

10. ID.; ID.; ID.; A 12-YEAR-OLD GIRL FOUND TO BE PSYCHOLOGICALLY VULNERABLE AND EMOTIONALLY ABUSED CANNOT GIVE MATURE AND INFORMED CONSENT TO SEXUAL INTERCOURSE WITH AN ADULT 15 YEARS HER SENIOR.— I am not convinced that a 12-year-old girl, who is merely in the sixth grade, can give a mature and informed

consent to sexual intercourse with an adult 15 years her senior. Children of her age, generally, are still under the supervision of their parents or guardian, needing guidance and direction as they are only about to enter adolescence.

Considering her tender age, the victim could not have fully comprehended the significance and implications of sexual intimacy with another person. It was neither shown that she was mature enough to understand and express her sexuality nor to enter a relationship with an adult, more so to bear their child at such a young age.

Further, the victim's psychological disposition made her more vulnerable to petitioner's exploitation. This Court should have been warned by the findings of the lower courts, as well as the Social Welfare Office, confirming that the victim is psychologically vulnerable and emotionally abused. Her hampered development and longing for a father figure was taken advantage of by petitioner, manipulating her into relational dependence on him.

Given the circumstances of this case, I am not persuaded that sexual consent was given by the victim, who was only 12 years old at that time. While our laws regrettably contemplate cases of consensual sex with a child, the case before us clearly does not fall within this concession.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

CARANDANG, *J.*:

This is a Petition for Review on *Certiorari*[1] assailing the Decision[2] dated June 28, 2017 of the Court of Appeals finding

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[1] *Rollo*, pp. 11-24.

[2] Penned by Associate Justice Mario V. Lopez (now a Member of this Court), with the concurrence of Associate Justices Remedios A. Salazar-Fernando and Eduardo B. Peralta, Jr.; id. at 27-34.

Rodan Bangayan *y* Alcaide (Bangayan) guilty beyond reasonable doubt of violation of Section 5 (b), Article III of Republic Act No. (R.A.) 7610, the dispositive portion of which reads:

FOR THE STATED REASONS, the appeal is **DENIED**. The assailed Decision of the Regional Trial Court is **AFFIRMED with MODIFICATION** that the award of damages is increased to Php75,000.00 each as civil indemnity, moral damages and exemplary damages.

SO ORDERED.[3]

Antecedents

The Information[4] against Bangayan alleges:

That sometime in the month of January, [*sic*] 2012 at Brgy. San Ramos, Municipality of Nagtipunan, Province of Quirino, Philippines, and within the jurisdiction of this Honorable Court, the above-named Accused, with intent to abuse, harass and degrade AAA,[5] a twelve (12) year old minor at that time, and gratify the sexual desire of said accused, the latter did then and there, willfully, unlawfully and feloniously, had sexual intercourse with said AAA, in her dwelling against her will and consent.[6]

During trial, the prosecution presented three (3) witnesses, namely: (1) PO2 Rosalita Manilao (PO2 Manilao); (2) BBB;[7] and (3) Dr. Luis Villar (Dr. Villar). The following documents were likewise submitted in evidence: (1) Malaya at Kusang Loob na Salaysay of AAA;[8] (2) Malaya at Kusang Loob na

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[3] Id. at 33.

[4] Records, pp. 2-3.

[5] As decreed in *People v. Cabalquinto*, 533 Phil. 709 (2006), complainant's real name is withheld to effectuate the provisions of R.A. 7610 and its implementing rules, R.A. 9262 (Anti Violence Against Women and Their Children Act of 2004) and its implementing rules, and A.M. No. 04-10-11-SC (Rule on Violence Against Women and their Children).

[6] Records, pp. 2-3.

[7] Supra note 5.

[8] Records, pp. 7-8.

Salaysay ni BBB;[9] (3) Medical Certificate issued by Dr. Villar;[10] and (4) Certificate of Live Birth of AAA.[11]

According to the prosecution's witnesses, on January 5, 2012, AAA's brother, BBB, upon arriving home from the farm, saw Bangayan laying on top of AAA. Bangayan and AAA were both naked from the waist down.[12] BBB shouted at Bangayan and told him that he would report what he did to AAA but the latter allegedly threatened to kill him if he tries to tell anyone.[13] AAA was born on December 14, 1999 and was more than 12 years old at the time of the incident.[14]

On April 24, 2012, AAA, accompanied by her aunt, CCC,[15] reported the incident to the police.[16] On the same date, Dr. Villar examined AAA. The pertinent portion of the Medico-Legal Report[17] revealed the following:

> Physical Examination Findings:
>
> 1. Formed and developed areolar complexes.
> 2. Developed labia majora.
> 3. No recent hymenal injury but the edges are smooth and the opening approximates the size of the index finger of the examiner.[18]

When Dr. Villar testified, he confirmed that AAA admitted to him that she had sexual intercourse with Bangayan on several

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[9] Id. at 9-10.

[10] Id. at 11.

[11] Id. at 12.

[12] TSN dated May 21, 2015, p. 14.

[13] Id. at 15.

[14] Records, p. 12.

[15] Supra note 5.

[16] Records, p. 6.

[17] Id. at 11.

[18] Id.

occasions even prior to January 5, 2012.[19] He explained that the "opening" noted during his examination, as stated in item no. 3 of the physical findings, is not a normal occurrence. For a young patient like AAA, it should have been closed. He further testified that AAA was already pregnant when she was examined because her fundus is 15 centimeters in height and the presence of 151 beats per minute at the last lower quadrant of her abdomen was observed.[20] These indicate that, at the time of the examination, she was two (2) to three (3) months pregnant, which could be compatible with the claim that she had sexual intercourse with Bangayan in January 2012, the date stated in the information, or even before said date.[21]

On October 2, 2012, AAA gave birth to a baby boy.[22]

Notably, during arraignment on September 4, 2014, the counsel of Bangayan manifested that AAA, who was then 14 years old, executed an Affidavit of Desistance[23] stating that she has decided not to continue the case against Bangayan because they "are living [together] as husband and wife and was blessed with a healthy baby boy."[24] Thus, the Regional Trial Court (RTC) ordered that the Office of the Municipal Social Welfare Development Officer conduct a case study on AAA.[25]

On May 4, 2015, their second child was born.[26]

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[19] TSN dated June 16, 2015, p. 5.

[20] Id. at 4.

[21] Id. at 5.

[22] Id. at 41.

[23] Id. at 24.

[24] Id.

[25] Id. at 5-6; records, p. 28.

[26] TSN dated November 18, 2015, p. 9.

Ruling of the Regional Trial Court

After trial, the RTC of Maddela, Quirino, Branch 38 rendered its Decision[27] dated April 11, 2016, the dispositive portion of which reads:

> **WHEREFORE**, premises considered, judgment is hereby rendered finding RODAN BANGAYAN y ALCAIDE GUILTY beyond reasonable doubt of violation of Section 5 (b), Article III of Republic Act 7610 and sentences him to an imprisonment of **14 years and 8 months of reclusion temporal as minimum to 20 years of reclusion temporal as maximum**. However, his preventive imprisonment shall be fully credited to him in the service of sentence pursuant to Article 29 of the Revised Penal Code, as amended.
>
> Accused is ordered to pay [AAA] the amount of 1] **PHP50,000.00 as civil indemnity** with interest of 6% per annum from finality of the decision until fully paid.
>
> With the category of the accused as a national prisoner, the Clerk of Court is directed to prepare the corresponding mittimus or commitment order for his immediate transfer to the Bureau of Corrections and Penology, Muntinlupa City, pursuant to SC Circular No. 492-A dated April 20, 1992.
>
> **SO ORDERED**.[28] (Emphasis in the original)

In convicting Bangayan, the RTC found that the prosecution was able to establish the elements of Section 5 (b), Article III of R.A. 7610. Bangayan had sexual intercourse with AAA who was born on December 14, 1999 and was 12 years, one (1) month, and 14 days old at the time of the incident.[29] For the RTC, the moral ascendancy or influence of Bangayan over AAA is beyond question due to their age gap of 15 years, and the fact that he is her brother-in-law, he being the brother of the husband of her older sister.[30] The RTC ruled that it will not

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[27] Penned by Executive Judge Menrado V. Corpuz; records, pp. 103-110.

[28] Id. at 110.

[29] Id. at 107.

[30] Id. at 108.

matter if AAA consented to her defloration because as a rule, the submissiveness or consent of the child under the influence of an adult is not a defense in sexual abuse.[31] The RTC also considered the Affidavit of Desistance AAA executed as hearsay evidence because she did not testify regarding its execution. The RTC added that an Affidavit of Desistance is like an Affidavit of Recantation which the court does not look with favor.[32]

On appeal,[33] Bangayan impugned the findings of the RTC and argued that the trial court gravely erred in finding that the defense failed to prove by clear and convincing evidence that he is not criminally liable for the act complained of.[34] Bangayan argued that he had proven, by clear and convincing evidence, that he is in a relationship with AAA and that the act complained of was consensual.[35] Bangayan maintained that their persisting relationship should be taken into account and be considered an absolutory cause.[36] He averred that this is similar to Article 266-C of R.A. 8353, or the Anti-Rape Law of 1997, on the effect of pardon where the subsequent valid marriage of the offended party to the offender shall extinguish the criminal action or the penalty imposed. While there is no valid marriage to speak of yet, they were clearly living together as husband and wife as evidenced by the birth of their second child. Bangayan asserted that it would be in the best interest of their growing family to acquit him and allow him to help with rearing their children.[37]

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[31] Id.

[32] Id. at 109.

[33] *Rollo*, pp. 40-50.

[34] Id. at 46-49.

[35] Id. at 47-48.

[36] Id. at 48.

[37] Id. at 49.

Ruling of the Court of Appeals

In a Decision[38] dated June 28, 2017, the Court of Appeals denied Bangayan's appeal and affirmed with modification his conviction. The award of civil indemnity, moral damages, and exemplary damages were each increased to ₱75,000.00.[39]

In affirming Bangayan's conviction, the Court of Appeals held that the elements of sexual abuse under Section 5, Article III of R.A. 7610 were established as follows: (1) BBB positively identified Bangayan as the person who had sexual intercourse with his minor sister and AAA was confirmed to be 2-3 months pregnant at the time of her medical examination; (2) AAA was subjected to sexual abuse under the coercion and influence of Bangayan because he was already 27 years old or 15 years her senior, thus making her vulnerable to the cajolery and deception of adults; and (3) It was proven that, at the time of the incident, she was only 12 years and one (1) month old — a minor not capable of fully understanding or knowing the nature or import of her actions.[40]

The Court of Appeals emphasized that consent of the child is immaterial in cases involving violation of Section 5, Article III of R.A. 7610. It was held that the Sweetheart Theory is a defense in acts of lasciviousness and rape that are felonies against or without the consent of the victim. It operates on the theory that the sexual act was consensual. However, for purposes of sexual intercourse and lascivious conduct in child abuse cases under R.A. 7610, the Court of Appeals ruled that the Sweetheart Theory defense is unacceptable.

Petitioner's Motion for Reconsideration[41] was denied in a Resolution[42] dated October 24, 2017. Hence, this petition for review.

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[38] Supra note 2.

[39] *Rollo*, p. 33.

[40] Id. at 30-33.

[41] Id. at 85-88.

[42] Penned by Associate Justice Mario V. Lopez (now a Member of this

Bangayan filed the instant Petition for Review[43] on January 5, 2018, assailing the Decision of the Court of Appeals dated June 28, 2017 and its subsequent Resolution dated October 24, 2017. He insists that he was able to prove by clear and convincing evidence that he should not be held criminally liable for the act complained of because they were in a relationship at the time of its commission.[44] For Bangayan, the fact that they were allowed to be together after the alleged sexual abuse and that AAA conceived their second child right after the complaint was filed in court negate the claim that AAA was unwilling.[45] Bangayan posits that his continuing relationship with AAA should be considered an absolutory cause.[46] Invoking the best interest of their family, Bangayan prays that he be acquitted and be allowed to help raise their family.

Meanwhile, the People of the Philippines, through the Office of the Solicitor General, manifested that it is no longer filing a Comment and is merely adopting its Brief for the Plaintiff-Appellee previously filed with the Court of Appeals.[47]

Issue

The issue to be resolved in this case is whether Bangayan may use as a defense the consent of AAA and his on-going relationship with her which had already produced two children to exonerate himself from the charge of violation of Section 5 (b), Article III of R.A. 7610.

Court), with the concurrence of Associate Justices Remedios A. Salazar-Fernando and Eduardo B. Peralta, Jr.; id. at 36-37.

[43] Id. at 11-24.

[44] Id. at 19.

[45] Id. at 20.

[46] Id.

[47] Id. at 108.

Ruling of the Court

The petition is meritorious. The records of this case show that the prosecution failed to establish all the elements of sexual abuse contemplated under Section 5 (b), Article III of R.A. 7610[48] which provides:

> Section 5. Child Prostitution and Other Sexual Abuse. — Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.
>
> The penalty of reclusion temporal in its medium period to reclusion perpetua shall be imposed upon the following:
>
> (a) Those who engage in or promote, facilitate or induce child prostitution which include, but are not limited to, the following:
>
> (1) Acting as a procurer of a child prostitute;
> (2) Inducing a person to be a client of a child prostitute by means of written or oral advertisements or other similar means;
> (3) Taking advantage of influence or relationship to procure a child as prostitute;
> (4) Threatening or using violence towards a child to engage him as a prostitute; or
> (5) Giving monetary consideration, goods or other pecuniary benefit to a child with intent to engage such child in prostitution.
>
> (b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse: Provided, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, that the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period;[49]

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[48] R.A. 7610, Sec. 5.

[49] Id.

The following requisites must concur: (1) the accused commits the act of sexual intercourse or lascivious conduct: (2) the act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) the child, whether male or female is below eighteen (18) years of age.[50] This paragraph "punishes sexual intercourse or lascivious conduct not only with a child exploited in prostitution but also with a child subjected to other sexual abuse. It covers not only a situation where a child is abused for profit but also one in which a child, through coercion, intimidation or influence, engages in sexual intercourse or lascivious conduct.[51]

Pursuant to the Implementing Rules and Regulations of R.A. 7610, "sexual abuse" includes the employment, use, persuasion, inducement, enticement or coercion of a child to engage in, or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children.[52] The present case does not fall under any of the circumstances enumerated. Therefore, not all the elements of the crime were present to justify Bangayan's conviction.

In explicitly stating that children deemed to be exploited in prostitution and other sexual abuse under Section 5 of R.A. 7610, refer to those who engage in sexual intercourse with a child "for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group,"[53] it is apparent that the intendment of the law is to consider the condition and capacity of the child to give consent.

Section 5 (b) of R.A. 7610 qualifies that when the victim of the sexual abuse is under 12 years of age, the perpetrator shall be prosecuted under the Revised Penal Code.[54] This means that, regardless of the presence of any of the circumstances enumerated

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[50] Id.

[51] *People v. Gaduyon*, 720 Phil. 750 (2013).

[52] Section 2 (g), 10-1993 Rules and Regulations on the Reporting and Investigation of Child Abuse Cases (R.A. 7610).

[53] R.A. 7610, Sec. 5.

[54] R.A. 7610, Sec. 5.

and consent of victim under 12 years of age, the perpetrator shall be prosecuted under the Revised Penal Code. On the other hand, the law is noticeably silent with respect to situations where a child is between 12 years old and below 18 years of age and engages in sexual intercourse not "for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group." Had it been the intention of the law to absolutely consider as sexual abuse and punish individuals who engage in sexual intercourse with "children" or those under 18 years of age, the qualifying circumstances enumerated would not have been included in Section 5 of R.A. 7610.

Taking into consideration the statutory construction rules that penal laws should be strictly construed against the state and liberally in favor of the accused, and that every law should be construed in such a way that it will harmonize with existing laws on the same subject matter, We reconcile the apparent gap in the law by concluding that the qualifying circumstance cited in Section 5 (b) of R.A. 7610, which "punishes sexual intercourse or lascivious conduct not only with a child exploited in prostitution but also with a child subjected to other sexual abuse," leave room for a child between 12 and 17 years of age to give consent to the sexual act. An individual who engages in sexual intercourse with a child, at least 12 and under 18 years of age, and not falling under any of these circumstances, cannot be held liable under the provisions of R.A. 7610. The interpretation that consent is material in cases where victim is between 12 years old and below 18 years of age is favorable to Bangayan. It fills the gap in the law and is consistent with what We have explained in the case of *People v. Tulagan*,[55] to wit:

> However, considering the definition under Section 3 (a) of R.A. No. 7610 of the term "children" which refers to persons below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability

[55] G.R. No. 227363, March 12, 2019.

or condition, **We find that the opinion in *Malto*, that a child is presumed by law to be incapable of giving rational consent, unduly extends the concept of statutory rape or acts of lasciviousness to those victims who are within the range of 12 to 17 years old, and even those 18 years old and above under special circumstances who are still considered as "children" under Section 3(a) of R.A. No. 7610. <u>While *Malto* is correct that consent is immaterial in cases under R.A. No. 7610 where the offended party is below 12 years of age, We clarify that consent of the child is material and may even be a defense in criminal cases involving violation of Section 5, Article III of R.A. No. 7610 when the offended party is 12 years old or below 18, or above 18 under special circumstances.</u>** Such consent may be implied from the failure to prove that the said victim engaged in sexual intercourse **either** "due to money, profit or any other consideration or due to the coercion or influence of any adult, syndicate or group."

x x x x

If the victim who is 12 years old or less than 18 and is deemed to be a child "exploited in prostitution and other sexual abuse" because she agreed to indulge in sexual intercourse "for money, profit or any other consideration or due to coercion or influence of any adult, syndicate or group," then the crime could not be rape under the RPC, because this no longer falls under the concept of statutory rape, and there was consent. That is why the offender will now be penalized under Section 5(b), R.A. No. 7610, and not under Article 335 of the RPC [now Article 266-A]. But if the said victim does not give her consent to sexual intercourse in the sense that the sexual intercourse was committed through force, threat or intimidation, the crime is rape under paragraph 1, Article 266-A of the RPC. However, **<u>if the same victim gave her consent to the sexual intercourse, and no money, profit, consideration, coercion or influence is involved, then there is no crime committed</u>**, except in those cases where "force, threat or intimidation" as an element of rape is substituted by "moral ascendancy or moral authority," like in the cases of incestuous rape, and unless it is punished under the RPC as qualified seduction under Article 337 or simple seduction under Article 338.[56] (Emphasis and underscoring supplied; citations omitted)

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[56] Id.

We are not unmindful that in *Tulagan*, the accused inserted his finger into a nine-year-old girl's vagina and had sexual intercourse with her. Nevertheless, the vital discussion made by the Court with respect to the capacity of a victim aged between 12 years old and below 18 years of age to give rational consent to engage in sexual activity (sexual consent) cannot simply be disregarded. Though it may be considered *obiter dictum*, the principle laid down in the majority opinion, speaking through the *ponencia* of then Associate Justice Diosdado Peralta, now Chief Justice, remains relevant and crucial to the resolution of the present case because it clearly outlined the essential elements of the offense. The discussion of the Court in *Tulagan* should serve as a guide in resolving situations identified by the Court to be potential sources of conflicting interpretations. The fact that *Tulagan* did not involve a victim between 12 years old and below 18 years old should not dissuade the Court from applying a principle that aims to clarify and harmonize conflicting provisions due to an apparent gap in the law.

Recently, in *Monroy v. People*,[57] We adopted the ruling in *Tulagan*, to wit:

> x x x [I]t bears to point out that **"consent of the child is material and may even be a defense in criminal cases" involving the aforesaid violation when the offended party is 12 years old or below 18 years old**, as in AAA's case. The concept of consent under Section 5 (b), Article III of RA 7610 peculiarly relates to the second element of the crime — that is, the act of sexual intercourse is performed with a child exploited in prostitution or subjected to other sexual abuse. A child is considered "exploited in prostitution or subjected to other sexual abuse" when the child is predisposed to indulge in sexual intercourse or lascivious conduct because of money, profit or any other consideration or due to the coercion of any adult, syndicate, or group.
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> x x x x[58] (Emphasis supplied; citations omitted)

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[57] G.R. No. 235799, July 29, 2019.

[58] *Monroy v. People*, G.R. No. 235799, July 29, 2019.

Therefore, it is now clear that consent is a material factor in determining the guilt of Bangayan.

In *Monroy*,[59] then 28-year-old accused was charged with violation of Section 5 (b) Article III of R.A. 7610 for inserting his penis into the vagina of a 14-year-old. The Court acquitted the accused on reasonable doubt, finding that the sexual intercourse that transpired between the accused and the 14-year-old was consensual and that the case against the accused is based merely on trumped-up allegations meant as retaliation. In *Monroy*, the accused was 14 years older or twice the age of the alleged victim yet the Court found that she was not subjected to other sexual abuse due to the coercion of an adult as they were in a relationship. Similarly, in the present case, Bangayan was more or less 15 years older than AAA. While difference in age may be an indication of coercion and intimidation and negates the presence of sexual consent, this should not be blindly applied to all instances of alleged sexual abuse cases. Therefore, the Court must not be restricted in identifying the presence of coercion and intimidation by a simple mathematical computation of the age difference.

The sweeping and confusing conclusions in the case of *Malto v. People*[60] and the application of contract law in determining the relevance of consent in cases under R.A. 7610 is not proper. We had the opportunity to shed light on this matter in *People v. Tulagan*[61] where We observed that:

> We take exception, however, to the sweeping conclusions in *Malto* (1) that "a child is presumed by law to be incapable of giving rational consent to any lascivious conduct or sexual intercourse" and (2) that "consent of the child is immaterial in criminal cases involving violation of Section 5, Article III of RA 7610" because they would virtually eradicate the concepts of statutory rape and statutory acts of

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[59] G.R. No. 235799, July 29, 2019.

[60] 560 Phil. 119 (2007).

[61] G.R. No. 227363, March 12, 2019.

lasciviousness, and trample upon the express provisions of the said law.[62]

Accordingly, the Court deems it prudent to rectify the difference between the concept of consent under contract law and sexual consent in criminal law which determines the guilt of an individual engaging in a sexual relationship with one who is between 12 years old or below 18 years of age. These are concepts that are distinct from each other and have differing legal implications.

The law limits, to varying degrees, the capacity of an individual to give consent. While in general, under the civil law concept of consent, in relation to capacity to act, all individuals under 18 years of age have no capacity to act, the same concept cannot be applied to consent within the context of sexual predation. Under civil law, the concept of "capacity to act" or "the power to do acts with legal effects"[63] limits the capacity to give a valid consent which generally refers to "the meeting of the offer and the acceptance upon the thing and the case which are to constitute the contract."[64] To apply consent as a concept in civil law to criminal cases is to digress from the essence of sexual consent as contemplated by the Revised Penal Code and R.A. 7610. Capacity to act under civil law cannot be equated to capacity to give sexual consent for individuals between 12 years old and below 18 years of age. Sexual consent does not involve any obligation within the context of civil law and instead refers to a private act or sexual activity that may be covered by the Revised Penal Code and R.A. 7610.

More importantly, Our earlier pronouncement regarding consent in *Malto* failed to reflect teenage psychology and predisposition. We recognize that the sweeping conclusions of the Court in *Malto* failed to consider a juvenile's maturity and to reflect teenagers' attitude towards sex in this day and age.

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[62] Id.

[63] CIVIL CODE OF THE PHILIPPINES, Art. 37.

[64] CIVIL CODE OF THE PHILIPPINES, Art. 1319.

There is a need to distinguish the difference between a child under 12 years of age and one who is between 12 years old and below 18 years of age due to the incongruent mental capacities and emotional maturity of each age group. It is settled that a victim under 12 years old or is demented "does not and cannot have a will of her own on account of her tender years or dementia; thus, a child or a demented person's consent is immaterial because of her presumed incapacity to discern good from evil."[65] As such, regardless of the willingness of a victim under 12 years old to engage in any sexual activity, the Revised Penal Code punishes statutory rape and statutory acts of lasciviousness. On the other hand, considering teenage psychology and predisposition in this day and age, We cannot completely rule out the capacity of a child between 12 years old and below 18 years of age to give sexual consent.

Consequently, although We declared in *Malto* that the Sweetheart Theory is unacceptable in violations of R.A. 7610 since "a child exploited in prostitution or subjected to other sexual abuse cannot validly give consent to sexual intercourse with another person,"[66] We deem it judicious to review the Decision of the court *a quo* and reiterate Our recent pronouncements in *Tulagan* and *Monroy* and clarify the ambiguity created in the *Malto case* in resolving the case at bar.

Where the age of the child is close to the threshold age of 12 years old, as in the case of AAA who was only 12 years and one month old at the time of the incident, evidence must be strictly scrutinized to determine the presence of sexual consent. The emotional maturity and predisposition of a juvenile, whose age is close to the threshold age of 12, may significantly differ from a child aged between 15-18 who may be expected to be more mature and to act with consciousness of the consequences of sexual intercourse.

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[65] *People v. Tulagan*, supra note 55.

[66] Id.

In this case, there are special circumstances that reveal the presence of consent of AAA. The sexual congress between Bangayan and AAA was not limited to just one incident. They were in a relationship even after the incident alleged in the Information and had even produced two (2) children. To Our mind, these are not acts of a child who is unable to discern good from evil and did not give consent to the sexual act.

We also note that the conclusion of the RTC that:

> x x x [T]he moral ascendancy or influence of the accused over the victim is beyond question because of their 15 year age gap, not to mention that the former is also her brother-in-law, he being the brother of the husband of her older sister.[67]

is erroneous. Contrary to the ruling of the RTC, it cannot be said that Bangayan exercised moral ascendancy over AAA simply because of their 15-year age gap and the fact that he is her "brother-in-law." Following the concept of brother-in-law in its ordinary sense, Bangayan is not AAA's brother-in-law because a brother-in-law refers only to a wife's brother or a sister's husband. It does not include a brother of the husband of AAA's older sister.

We must take into account Bangayan's defense that, at the time of the incident, he and AAA were lovers. The conduct of Bangayan and AAA, which is the subject of the Information against him, is not the sexual abuse punished by the law. While placed in an unusual predicament, We recognize that Bangayan and AAA are in a relationship that had produced not just one (1) offspring but two (2). While AAA was a child, as defined under R.A. 7610, being under 18 years of age at the time she and Bangayan engaged in sexual intercourse, there was no coercion, intimidation or influence of an adult, as contemplated by the law. AAA consented to the sexual act as reflected in her conduct at the time of the commission of the act and her subsequent conduct shown in the records.

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[67] Records, p. 108.

AAA did not testify during the trial. Had she testified, the trial court would have been able to confirm the veracity of the allegations in the sworn statement[68] she executed and the statements she allegedly made to Dr. Villar during her medical examination on April 24, 2012. We cannot simply accept the statement of Dr. Villar that AAA admitted to him that she had sexual intercourse with Bangayan even before 2012.[69] This statement is hearsay as he has no personal knowledge of it. Moreover, this is not even alleged in the Information[70] filed against him.

Furthermore, Section 34 of Rule 132 of the Rules provides:

> Section 34. *Offer of evidence*. — The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

In *Gumabon v. Philippine National Bank*,[71] the Court explained that formal offer "means that the offeror shall inform the court of the purpose of introducing its exhibits into evidence." In the absence of a formal offer, courts cannot take notice of the evidence even if this has been previously marked and identified.[72]

The Social Case Study Report[73] reflecting the evaluation of Social Welfare Officer III Theresa A. Mauricio (Mauricio) on AAA's social, emotional, and intellectual development cannot be admitted nor be given any credence by the Court. Mauricio made the following recommendations in her report:

> Based on the above information, the client suffered multiple emotional crisis that hampered her growth and development. She has the time, knowledge, potentials and abilities that could enhance

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[68] Id. at 7-8.

[69] TSN dated June 16, 2015, p. 5.

[70] Id. at 2-3.

[71] G.R. No. 202514, July 25, 2016.

[72] Id.

[73] Records, pp. 30-40.

her total development. However, as early as 7 years old, she had crisis due to role confusion.

Being abused, she was unable to develop her unique values or personality. She was not allowed the opportunities to acquire friends, develop skills and knowledge through formal education.

Living together with the perpetuator [*sic*] could support her longing for a parental figure. He served as support for her existence but considering his weaknesses such as from abusing her, the lack for sense of responsibility and assertiveness as lack of resources should affect the future of the minor and son. He could not provide the basic needs such as food, shelter and education with his disposition in life.

The minor had the CHANCE to grab the opportunities of the PRESENT and the FUTURE once she is AWAY with her perpetuator [*sic*]. Support from relatives is highly recommended for direction.

The honored court is then requested for favorable action that will promote the general welfare of the minor-[AAA] and her family.[74]

A careful study of the records reveals that the RTC received the Social Case Study Report dated September 25, 2014 on October 8, 2014. Although the testimony of the social worker was included in the Pre-Trial Order,[75] the document was never properly identified, authenticated by the social worker who prepared the report, and included in the formal offer of evidence.[76] The social worker never testified in open court and the defense was never given an opportunity to test her credibility and verify the correctness and accuracy of her findings. To Our mind, giving credence to evidence which was not formally offered during trial would deprive the other party of due process. Thus, evidence not formally offered has no probative value and must be excluded by the court.

Even assuming that the Social Case Study Report was properly presented and formally offered, it cannot be made the basis for

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[74] Id. at 40.

[75] Id. at 49.

[76] TSN dated August 3, 2015, pp. 1-6.

establishing the absence of AAA's sexual consent. The report did not accurately reflect the living condition and the state of her relationship with Bangayan. It did not negate the presence of AAA's sexual consent at the time the alleged offense was committed. Noticeably, she was already pregnant with their second child when she was interviewed for the Social Case Study Report and later gave birth while he was incarcerated.[77] The contemporaneous and subsequent acts of AAA, which are more consistent with the claim of Bangayan that AAA consented to the sexual encounter, outweigh the contents of the Social Case Study Report which are not yet verified. It is worthy to note that even when Bangayan was presented in the witness stand, AAA was present in court,[78] presumably to show support for him. AAA conceived a second child with Bangayan despite the charge against him. Both children were conceived before he was incarcerated.[79] She did not testify against Bangayan even if she was present during the hearings. These acts of AAA, and the Affidavit of Desistance she executed, when taken as a whole, bolsters the claim of Bangayan that they were in a relationship when the act complained of was committed and even lived together without the benefit of marriage after the case against him was filed. Her acts are consistent with the claim of Bangayan that their relationship existed at the time of commission of the act complained, during trial, and even continued after he was convicted by the lower court. To Our mind, these factors are clear manifestations that she was not subjected to any form of abuse, and prove that she consented to the act complained of. Applying the ruling in *Tulagan* there is no crime committed because AAA freely gave her consent to the sexual intercourse, and no money, profit, consideration, coercion or influence is involved. Due to the prosecution's failure to establish and prove beyond reasonable doubt the requisites for the charge of violation of Section 5 (b) of R.A. 7610, Bangayan must be acquitted.

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[77] TSN dated November 18, 2015, p. 9.

[78] Id. at 8.

[79] Id. at 9.

Section 2 of R.A. 7610 states that:

> x x x [T]he "best interests of children shall be the paramount consideration in all actions concerning them, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, and legislative bodies, consistent with the principle of First Call for Children as enunciated in the United Nations Convention of the Rights of the Child.

In this exceptional situation, We are not prepared to punish two individuals and deprive their children from having a normal family life simply because of the minority of AAA at the time she began dating Bangayan. The benefits of living in a nuclear family to AAA and their two (2) children outweigh any perceived dangers of the on-going romantic relationship Bangayan has with AAA who is 15 years younger than him. This arrangement is more favorable to the welfare of both parties as they are planning to get married.[80] We verified from the records that Bangayan was single at the time he gave his personal circumstances when he testified in court.[81] This is more consistent with the principle of upholding the best interests of children as it gives Bangayan an opportunity to perform his essential parental obligations and be present for their two (2) children.

WHEREFORE, the appeal is **GRANTED**. The Decision dated April 11, 2016 of the Regional Trial Court of Maddela, Quirino, Branch 38, in Criminal Case No. 38-510 as well as the Decision dated June 28, 2017 of the Court of Appeals in CA-G.R. CR No. 38723 are hereby **REVERSED** and **SET ASIDE**. Petitioner Rodan A. Bangayan is **ACQUITTED**. He is **ORDERED** to be **IMMEDIATELY RELEASED** unless he is being held for some other valid or lawful cause. The Director of the Bureau of Corrections is **DIRECTED** to inform this Court of the action taken hereon within five (5) days from receipt hereof.

SO ORDERED.

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[80] TSN dated November 18, 2015, p. 9.

[81] Id. at 2-4.

Gesmundo and *Gaerlan, JJ.,* concur.

Zalameda, J., see separate concurring opinion.

Leonen, J., dissents, see separate opinion.

SEPARATE CONCURRING OPINION

ZALAMEDA, *J.*:

In the recent case of *People v. Tulagan*,[1] the Court clarified the significance of consent in sexual abuse cases when the offended party is a child 12 years old and above, but below 18 years old, or when the child is 18 years or older under special circumstances, to wit:

> We take exception, however, to the sweeping conclusions in *Malto* (1) that "a child is presumed by law to be incapable of giving rational consent to any lascivious conduct or sexual intercourse" and (2) that "consent of the child is immaterial in criminal cases involving violation of Section 5, Article III of RA 7610" because they would virtually eradicate the concepts of statutory rape and statutory acts of lasciviousness, and trample upon the express provision of the said law.
>
> Recall that in statutory rape, the only subject of inquiry is whether the woman is below 12 years old or is demented and whether carnal knowledge took place; whereas force, intimidation and physical evidence of injury are not relevant considerations. With respect to acts of lasciviousness, R.A. No. 8353 modified Article 336 of the RPC by retaining the circumstance that the offended party is under 12 years old in order for acts of lasciviousness to be considered as statutory and by adding the circumstance that the offended party is demented, thereby rendering the evidence of force or intimidation immaterial. **This is because the law presumes that the victim who is under 12 years old or is demented does not and cannot have a will of her own on account of her tender years or dementia; thus, a child's or a demented person's consent is immaterial because of her presumed incapacity to discern good from evil.**

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[1] G.R. No. 227363, 12 March 2019.

However, considering the definition under Section 3 (a) of R.A. No. 7610 of the term "children" which refers to persons below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, We find that the opinion in *Malto*, that a child is presumed by law to be incapable of giving rational consent, unduly extends the concept of statutory rape or acts of lasciviousness to those victims who are within the range of 12 to 17 years old, and even those 18 years old and above under special circumstances who are still considered as "children" under Section 3 (a) of R.A. No. 7610. **While *Malto* is correct that consent is immaterial in cases under R.A. No. 7610 where the offended party is below 12 years of age, We clarify that consent of the child is material and may even be a defense in criminal cases involving violation of Section 5, Article III of R.A. No. 7610 when the offended party is 12 years old or below 18, or above 18 under special circumstances. Such consent may be implied from the failure to prove that the said victim engaged in sexual intercourse either "due to money, profit or any other consideration or due to the coercion or influence of any adult, syndicate or group."**

x x x x

If the victim who is 12 years old or less than 18 and is deemed to be a child "exploited in prostitution and other sexual abuse" because she agreed to indulge in sexual intercourse "for money, profit or any other consideration or due to coercion or influence of any adult, syndicate or group," then the crime could not be rape under the RPC, because this no longer falls under the concept of statutory rape, and there was consent. That is why the offender will now be penalized under Section 5 (b), R.A. No. 7610, and not under Article 335 of the RPC [now Article 266-A]. But if the said victim does not give her consent to sexual intercourse in the sense that the sexual intercourse was committed through force, threat or intimidation, the crime is rape under paragraph 1, Article 266-A of the RPC. **However, if the same victim gave her consent to the sexual intercourse, and no money, profit, consideration, coercion or influence is involved, then there is no crime committed, except in those cases where "force, threat or intimidation" as an element of rape is substituted by "moral ascendancy or moral authority,"** like in the cases of incestuous rape, and unless it is punished under the RPC as qualified

seduction under Article 337 or simple seduction under Article 338.[2] (Emphasis and underscoring supplied)

This notion was reiterated by the Court in *Monroy v. People*,[3] *viz.*:

> x x x The concept of consent under Section 5 (b), Article III of RA 7610 peculiarly relates to the second element of the crime — that is, the act of sexual intercourse is performed with a child exploited in prostitution or subjected to other sexual abuse. **A child is considered "exploited in prostitution or subjected to other sexual abuse" when the child is pre-disposed to indulge in sexual intercourse or lascivious conduct because of money, profit or any other consideration or due to the coercion of any adult, syndicate, or group,** which was not shown in this case; hence, petitioner's conviction for the said crime cannot be sustained.[4] (Emphasis supplied)

Hence, for the successful prosecution of a violation of Section 5 (b) of Republic Act No. (RA) 7610, it must be proven that the **child engaged in sexual intercourse or lascivious conduct due to money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group**.

To note, the term "other sexual abuse" includes the employment, use, persuasion, inducement, enticement, or coercion of a child to engage in, or assist another person to engage in sexual intercourse or lascivious conduct. It also includes the molestation or prostitution of children, or committing incestuous acts against children.[5]

Meanwhile, the term "coercion and influence" broadly covers "force and intimidation." "Coercion" is defined as "compulsion, force or duress," while "[undue] influence" means "persuasion carried to the point of overpowering the will" or "improper

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[2] Id.

[3] G.R. No. 235799, 29 July 2019.

[4] Id.

[5] *Ramilo v. People*, G.R. No. 234841, 03 June 2019.

use of power or trust in any way that deprives a person of free will and substitutes another's objective." On the other hand, "intimidation" is defined as "unlawful coercion; extortion; duress; putting in fear."[6]

As enunciated in RA 7610, it is the policy of the State to provide special protection to children against all forms of abuse, neglect, cruelty, exploitation, discrimination, and other conditions prejudicial to their development. The best interest of the child shall be the paramount consideration of the court, which shall exert effort to promote the welfare of children and enhance their opportunities for a useful and happy life.[7]

The same law defines "children" as persons below 18 years of age, or those over 18 but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition.[8] The law looks upon this group as a special class of persons, in varying extents, by recognizing that they are unable to fully take care of or protect themselves from abuse, neglect, cruelty, exploitation or discrimination.

In our jurisdiction, it is conclusively presumed that all children under 12 years old do not have a will of their own due to their tender age, and therefore cannot give intelligent consent to the sexual act. For that reason, the law does not recognize voluntariness on the part of a victim in lascivious conduct or rape cases as a valid defense.[9] More importantly, it is essential that we examine the reason for adopting the age of 12 as the age of consent.

Before the enactment of RA 8353 or *The Anti-Rape Law of 1997*, the Senate proposed to increase the age of consent from

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[6] *Quimvel v. People*, 808 Phil. 889-1000 (2017); G.R. No. 214497, 18 April 2017, 823 SCRA 192, 230.

[7] Section 2, RA 7610.

[8] Section 3, RA 7610.

[9] *People v. Andres*, 324 Phil. 124-131 (1996); G.R. No. 114936, 20 February 1996, 253 SCRA 751, 757.

12 to 14 years with the intention of providing greater protection to children. In fact, the final version of Senate Bill No. 950 provides for the age of 14 as the threshold. However, during the Bicameral Conference Committee Meetings, the House panel strongly opposed such a change. They pointed out that the age 13 or 14 is usually regarded as the age of discovery, and these children may have been engaging in carnal knowledge only as innocent acts of discovery. Considering that the imposable penalty is death, the House panel felt that the increase in the age for statutory rape may prove to be unduly harsh. In the end, 12 years old remained as the age of consent.[10]

Critical to this discussion, however, is to underscore that intelligence and understanding to give effective consent is not developed overnight. The wisdom of a child who just turned 12 years old, as opposed to a child who is a few days shy of that age, cannot be considered as vastly different, or fully developed enough to effectively discern good from evil. In the same vein, it cannot be denied that there is a difference in the level of maturity between a 12-year-old from that of a 17-year-old child.

Thus, taking this reality into account, the concept of consent of a child under RA No. 7610 should be viewed as a **spectrum** where, the closer a child's age is to 12 years, the more vulnerable and susceptible he or she is to abuse, neglect, cruelty, exploitation, or discrimination. In other words, the younger the child, the more **likely** he or she is to give ineffectual consent, whether direct or implied.

Still, the numerical age of the child should not be the absolute and deciding ground to determine the efficacy of consent. Rather, it should be assessed in conjunction with other factors, such as the **age of accused, familial influence, sexual knowledge of the child, power of the accused over the child, trust accorded by the child to accused, and all other dynamics that influence**

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[10] Lique, Venus V. *The Anti-Rape Law and the Changing Times: Nature, Issues and Incidents*. 43 ATENEO L.J. 141 (1999). See https://drive.google.com/file/d/13FwizXkNFs7Im_bfqpBijpTJWQ2zgqqf/view.

the formation of a rational decision pertaining to sexual matters. Coercion, intimidation, or influence must be ascertained in light of the victim's perception and judgment at the time of the commission of the crime, and not by any hard and fast rule. These are the elements that should guide the courts in determining whether there was consent to indulge in a sexual act and whether that consent was given due to coercion, intimidation, or influence of the accused.

Hence, while I agree with the *ponente*'s discussion on the development in our jurisprudence regarding the consent of a child to sexual activity, the discourse should be broadened to include other relevant factors that influence or inform that consent.

At this point, I would like to emphasize that the prosecution bears the burden to establish the guilt of the accused beyond reasonable doubt.[11] Accordingly, in order to prove indulgence in sexual intercourse or lascivious conduct due to money, profit, or any other consideration, or due to the coercion or influence of any adult, syndicate, or group, **it is the prosecution's duty to likewise show the presence of factors, similar to the ones discussed above, affect that consent**.

In the case at bar, I cannot conclude with certainty that AAA engaged in sexual intercourse with accused-appellant **due to the latter's coercion or influence**. Records are bereft of evidence to support the prosecution's theory mainly because AAA did not testify against accused-appellant. BBB's testimony alone was insufficient to establish the elements of the crime charged because his testimony merely proved the fact of sexual intercourse and not the element of coercion or influence.

In our criminal justice system, the overriding consideration is not whether the courts doubt the innocence of the accused but whether there is reasonable doubt as to his guilt. Where there is reasonable doubt as to the guilt of the accused, he must

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[11] *Patula v. People*, 685 Phil. 376-411 (2012); G.R. No. 164457, 11 April 2012, 669 SCRA 135, 150.

be acquitted even though there is still a level of doubt as to his innocence. This is demanded by the Constitution itself, which accepts nothing less than proof beyond reasonable doubt to overthrow the presumption of innocence.[12]

Indeed, even in *Monroy v. People*,[13] the recent case cited by the *ponente*, the Court specifically stated in the dispositive portion that the acquittal of therein accused was on the ground of reasonable doubt. The following pronouncement was also made to clarify the opinion of the Court:

> It bears stressing that **the Court's finding does not mean absolute certainty that petitioner did not coerce AAA to engage in the sexual act.** It is simply that the evidence presented by the prosecution fall short of the quantum of proof required to support a conviction. Jurisprudence has consistently held that "[a] conviction in a criminal case must be supported by proof beyond reasonable doubt, which means a moral certainty that the accused is guilty; the burden of proof rests upon the prosecution." If the prosecution fails to do so, "the presumption of innocence of the accused must be sustained and his exoneration be granted as a matter of right. For the prosecution's evidence must stand or fall on its own merit and cannot be allowed to draw strength from the weakness of the evidence for the defense," as in this case. (Emphasis supplied)

Evaluating the facts of this case with the relevant factors that **may** have influenced AAA's perception and judgment at the time of the commission of the crime, I believe the Court should similarly acquit herein accused-appellant on account of reasonable doubt. Compared to *Monroy*, where the 14-year-old victim professed her love to therein accused through a letter, the supposed "consent" of herein victim, who just barely turned 12 years old when the incident occurred, is less recognizable. Accordingly, rather than absolving accused-appellant because AAA absolutely and undoubtedly "consented" to having sexual intercourse with him, I believe that the Court should, instead,

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[12] *People v. Baulite*, 419 Phil. 191-199 (2001); G.R. No. 137599, 08 October 2001, 366 SCRA 732, 737.

[13] *Supra* at note 3.

acquit accused-appellant on the ground of reasonable doubt engendered by to the prosecution's failure to present evidence on other factors that may have affected AAA's consent such that it can be considered ineffectual or driven by coercion or influence.

ACCORDINGLY, I vote to ACQUIT accused-appellant **on the ground of reasonable doubt**.

DISSENTING OPINION

LEONEN, *J.*:

With the greatest respect, I cannot accept that our laws can be interpreted so that a 12-year-old-girl barely in the sixth grade, can give her mature consent to sexual intercourse.

Sexual intercourse is a complex act which is not only physical or sensual. Beyond that, it comes with the complexity of intimacy, relationship, and reproductive consequences. I fail to see how a grade six student can understand all of these.

I urge the *ponente* to re-evaluate the precedent We create to further disempower our young daughters and granddaughters against patriarchy.

This case is an opportunity to clarify the application of Republic Act No. 7610 *vis-à-vis* Article 336 of the Revised Penal Code, with respect to victims within the ages of 12 to 18 years old. The *obiter dictum* laid down in *People v. Tulagan* must be qualified and refined.

I

Rodan Bangayan (Bangayan) was charged with rape under Article 266-A of the Revised Penal Code, in relation to Republic Act No. 7610. The accusatory portion of the Information reads:

> That sometime in the month of January 2012 at [redacted] Province of Quirino, Philippines, within the jurisdiction of this Honorable Court, the above-named Accused, with intent to abuse, [harass] and degrade [AAA], a twelve (12) years old minor at that time, and gratify the sexual desire of

said accused, the latter did then and there, willfully, unlawfully[,] and feloniously, had sexual intercourse with said [AAA], in her dwelling against her will and consent.[1]

Upon arraignment, Bangayan pleaded not guilty. His counsel manifested that AAA, then 14 years old, was no longer interested in pursuing the case because she and Bangayan were already living together as husband and wife.[2] The counsel submitted AAA's Affidavit of Desistance.[3]

However, due to AAA's minority and the lack of assistance of an elder-relative in the execution of the affidavit, the trial court directed the Municipal Social Welfare and Development Office of Nagtipunan, Quirino (Social Welfare Office) to conduct a case study on AAA.[4]

The Social Welfare Office found that AAA was abused as a child, and as a result, her longing for a parental figure impelled her to live with Bangayan. The Social Welfare Office then argued against the cohabitation of Bangayan and AAA, considering that Bangayan was abusing AAA and was incapable of providing for her basic needs such as food, shelter, and education. A portion of the findings states:

RECOMMENDATION

Based on the above information, the client suffered multiple emotional [crises] that hampered her growth and development. She has the time, knowledge, potentials, and abilities that could enhance her total development. However, as early as 7 years old, she had crisis due to role confusion.

Being abused, she was unable to develop her unique values or personality. She was not allowed the opportunities to acquire friends, develop skills and knowledge through formal education.

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[1] *Rollo*, p. 54. Regional Trial Court Decision.

[2] Id.

[3] Id.

[4] Id.

Living together with the perpetrator could support her longing for a parental figure. He served as support for her existence but considering his weaknesses such as abusing her, the lack of sense of responsibility and assertiveness as lack of resources could affect the future of the minor and son. He could not provide the basic needs such as food, shelter, and education with his disposition in life.

The minor had the CHANCE to grab the opportunities of the PRESENT and the FUTURE once she is AWAY from her perpetrator. Support from relatives is highly recommended for direction.

The honored court is then requested for favorable action that will promote the general welfare of the minor-[AAA] and her family.[5]

Pre-trial and trial then ensued.[6]

The prosecution presented the following witnesses: (1) Dr. Luis Villar (Dr. Villar); (2) Police Inspector Rosalita Manilao (P/Insp. Manilao); and (3) BBB.[7]

Dr. Villar, the Municipal Health Officer of Nagtipunan, Quirino, testified as the physician who conducted the physical examination on AAA. He narrated that during his interview with AAA, he noticed that she was avoiding eye contact, "because she was ashamed of what happened to her." AAA allegedly confided to Dr. Villar and told him that Bangayan would kill her if she refused to have sex with him. AAA further disclosed that she had sexual intercourse with Bangayan twice in the past: (1) in the second grade when she was only nine (9) years old; and (2) in the fourth grade when she was just 11 years old.[8]

Dr. Villar noted that there was no recent hymenal injury and that "the edges are smooth." However, AAA's opening approximates the size of an index finger, which is not normal for a young patient. The tests also showed that AAA was already

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[5] Id. at 55.

[6] Id.

[7] Id. at 56-57.

[8] Id. at 56.

2-3 months pregnant, compatible with her claim that she was raped before January 2012.[9]

P/Insp. Manilao testified that AAA and her aunt came to their station to file a complaint against Bangayan. Upon their arrival, she noticed that AAA appeared to be traumatized. She then took AAA's sworn statement and clarified that AAA answered the questions on her own.[10]

BBB is AAA's brother. He narrated that Bangayan was living with them because the latter was helping him cultivate their cornfield. On January 5, 2012, upon arriving home from the farm, he found Bangayan on top of AAA, both of them naked from the waist down. AAA was crying and Bangayan, though unarmed, threatened to kill BBB if he reports the incident.[11]

On the other hand, Bangayan is the sole witness for the defense. He denied having raped AAA, claiming that it was consensual sex because they are in a relationship. At the time he testified in court, he claims that they were already living together as husband and wife with two (2) children, despite not being married yet. Furthermore, he claimed that AAA only filed the case due to a misunderstanding that they had.[12]

The trial court found Bangayan guilty of violation of Section 5 (b), Article III of Republic Act No. 7610.[13] It held that the element of sexual abuse with a child is present, considering that AAA was only 12 years old at the time of the incident. Likewise, the element of coercion or influence is present because Bangayan, who was 27 years old at that time, had sexual intercourse with a minor. The trial court concluded that the age gap between the two (2) indicated Bangayan's moral ascendancy and influence over AAA. Bangayan's father-figure

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[9] Id.

[10] Id. at 56-57.

[11] Id. at 57.

[12] Id. at 57.

[13] Id. at 54-61. The Decision was penned by Executive Judge Menrado V. Corpuz of Branch 38, Regional Trial Court, Maddela Quirino.

image is reflected in the case study conducted by the Social Welfare Office.[14]

The trial court ruled that AAA's consent is immaterial because the submission or consent of a child due to the influence of an adult is not a defense in sexual abuse.[15]

On the issue of AAA's affidavit of desistance, the trial court considered the document as a hearsay evidence because AAA did not testify regarding its execution. Further, affidavits of desistance are frowned upon by courts.[16]

Upon appeal, the Court of Appeals affirmed the conviction of Bangayan. The appellate court ruled that the sweetheart defense cannot be given credence under Republic Act No. 7610 because "[a] child exploited in prostitution or subjected to other sexual abuse cannot validly give consent to sexual intercourse[.]"[17]

The Court of Appeals maintained that the elements of sexual abuse are present in this case:

First, Bangayan was identified as the person who had sexual intercourse with AAA, who is a minor.[18]

Second, AAA was subjected to sexual abuse due to the coercion and influence of Bangayan. Sexual abuse contemplates situations wherein "a child indulges in sexual intercourse or . . . influence of any adult." Considering that AAA was only 12 years old while Bangayan was already 27 years old at that time, the 15-year age gap between them made AAA vulnerable to the influence and deception of adults.[19]

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[14] Id. at 59.

[15] Id.

[16] Id. at 60.

[17] Id. at 29-30.

[18] Id. at 30-31.

[19] Id. at 32.

Lastly, AAA was a minor at the time of the incident.[20]

Bangayan then moved for the reconsideration of the decision, but to no avail.[21]

Petitioner now comes before this Court, asserting that: (1) he proved by clear and convincing evidence that he should not be held criminally liable, because he was in a relationship with the victim at the time of the incident; (2) the victim gave her sexual consent, indicated by the fact that they are now living together with two (2) children; and (3) this continuing relationship is an absolutory cause.[22]

In acquitting petitioner, the *ponencia* held that:

1. "[T]he prosecution failed to establish all the elements of sexual abuse contemplated under Section 5 (b) of Article III of Republic Act No. 7610[.]"[23]
2. Section 5 of Republic Act No. 7610, which requires that sexual intercourse with a child "for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate[,] or group," leaves room for a child between 12 and 18 years old to give his or her sexual consent.[24]
3. Citing *People v. Tulagan*, the *ponencia* concludes that, since the victim: (1) consented to the sexual intercourse; and (2) there was no coercion, intimidation or influence of an adult, Bangayan is not guilty of sexual abuse under Republic Act No. 7610.[25]

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[20] Id. at 32.

[21] Id. at 36-37. Court of Appeals Resolution. The Resolution was penned by Associate Justice Mario V. Lopez, and concurred in by Associate Justices Remedios A. Salazar-Fernando and Eduardo B. Peralta, Jr. of the Former Second Division, Court of Appeals, Manila.

[22] Id. at 46-49.

[23] Ponencia, p. 6.

[24] Id. at 7-8.

[25] Id. at 8-12.

4. The victim's consent to the sexual act is indicated by her conduct during and after the commission of the act.[26]

The *ponencia* primarily draws its conclusion based on the ruling of this Court in *People v. Tulagan*.[27] In *Tulagan*, it was established that Tulagan raped and inserted his finger into a nine-year-old girl's vagina. As a result, the trial court and the appellate court convicted Tulagan. Upon appeal, this Court affirmed that he is guilty of sexual assault and rape under Article 266-A, par. 2 of the Revised Penal Code, in relation to Section 5 (b) of Republic Act No. 7610.[28]

In upholding Tulagan's conviction, this Court discussed the effect of the enactment of Republic Act No. 7610 to Revised Penal Code provisions on rape and lascivious conduct. When Republic Act No. 7610 took effect, special forms of acts of lasciviousness were no longer punished under Article 336 of the Revised Penal Code, but it is now a distinct crime of sexual assault under Article 266-A, paragraph 2 of the Revised Penal Code.[29]

Unfortunately, much of the discussion in *Tulagan*, with respect to children between 12 and 18 years old, was only conjectural. Without factual parameters, this Court proceeded to create permutations and possible scenarios on rape cases that were not yet filed. This led to lengthy discussions and guesswork on rape victims within this age range. Now, with the actual facts before us, the application of the law must be refined and clarified.

II

Republic Act No. 7610, otherwise known as *The Special Protection of Children Against Abuse, Exploitation and*

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[26] Id. at 12.

[27] G.R. No. 227363, March 12, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65020> [Per J. Peralta, En Banc].

[28] Id.

[29] Id.

Discrimination Act, sought "to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination and other conditions, prejudicial their development[.]"[30]

One of the salient provisions of the law is the criminal liability on "Child Prostitution and Other Sexual Abuse" under Section 5. It states:

ARTICLE III

Child Prostitution and Other Sexual Abuse

SECTION 5. *Child Prostitution and Other Sexual Abuse*. — Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

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[30] Rep. Act No. 7610 (1992), sec. 2 provides:

SECTION 2. *Declaration of State Policy and Principles*. — It is hereby declared to be the policy of the State to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination and other conditions, prejudicial their development; provide sanctions for their commission and carry out a program for prevention and deterrence of and crisis intervention in situations of child abuse, exploitation and discrimination. The State shall intervene on behalf of the child when the parent, guardian, teacher or person having care or custody of the child fails or is unable to protect the child against abuse, exploitation and discrimination or when such acts against the child are committed by the said parent, guardian, teacher or person having care and custody of the same.

It shall be the policy of the State to protect and rehabilitate children gravely threatened or endangered by circumstances which affect or will affect their survival and normal development and over which they have no control.

The best interests of children shall be the paramount consideration in all actions concerning them, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, and legislative bodies, consistent with the principle of First Call for Children as enunciated in the United Nations Convention of the Rights of the Child. Every effort shall be exerted to promote the welfare of children and enhance their opportunities for a useful and happy life.

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

(a) Those who engage in or promote, facilitate or induce child prostitution which include, but are not limited to, the following:

(1) Acting as a procurer of a child prostitute;

(2) Inducing a person to be a client of a child prostitute by means of written or oral advertisements or other similar means;

(3) Taking advantage of influence or relationship to procure a child as prostitute;

(4) Threatening or using violence towards a child to engage him as a prostitute; or

(5) Giving monetary consideration, goods or other pecuniary benefit to a child with intent to engage such child in prostitution.

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse; *Provided*, That when the victims is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: *Provided*, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period; and

(c) Those who derive profit or advantage therefrom, whether as manager or owner of the establishment where the prostitution takes place, or of the sauna, disco, bar, resort, place of entertainment or establishment serving as a cover or which engages in prostitution in addition to the activity for which the license has been issued to said establishment.[31] (Emphasis in the original)

A plain textual reading shows that the provision penalizes two (2) offenses: (1) child prostitution; and (2) other sexual abuse.

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[31] Rev. Pen. Code, art. 335 has been repealed by Republic Act No. 8353 or the Anti-Rape Law of 1997. New provisions on rape are found in REV. PEN. CODE, arts. 266-A to 266-D under Crimes Against Persons.

Children subjected to prostitution are those "who for money, profit, or any other consideration . . . indulge in sexual intercourse or lascivious conduct[.]" Further, children subjected to other forms of sexual abuse are those who "due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct[.]"[32]

For sexual intercourse with children below 12 years old or otherwise demented, the crime committed is rape under Article 266-A (1) of the Revised Penal Code. The law refers to the modification introduced by Republic Act No. 8353, thus:

> Article 266-A. *Rape: When and How Committed.* — Rape is committed —
>
> 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
>
> a) Through force, threat, or intimidation;
>
> b) When the offended party is deprived of reason or otherwise unconscious;
>
> c) By means of fraudulent machination or grave abuse of authority; and
>
> **d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.** (Emphasis supplied)

As *Tulagan* explained, consent is immaterial in sexual intercourse with children under 12 years of age, because they are presumed to be incapable of giving consent, thus:

> Recall that in statutory rape, the only subject of inquiry is whether the woman is below 12 years old or is demented and whether carnal knowledge took place; whereas force, intimidation and physical evidence of injury are not relevant considerations. With respect to acts of lasciviousness, R.A. No. 8353 modified Article 336 of the

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[32] Separate Opinion of J. Leonen in *People v. Tulagan*, G.R. No. 227363, March 12, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65020> [Per J. Peralta, En Banc].

RPC by retaining the circumstance that the offended party is under 12 years old in order for acts of lasciviousness to be considered as statutory and by adding the circumstance that the offended party is demented, thereby rendering the evidence of force or intimidation immaterial. This is because the law presumes that the victim who is under 12 years old or is demented does not and cannot have a will of her own on account of her tender years or dementia; thus, a child's or a demented person's consent is immaterial because of her presumed incapacity to discern good from evil.

. . . .

It bears emphasis that violation of the first clause of Section 5(b), Article III of R.A. No. 7610 on sexual intercourse with a child exploited in prostitution or subject to other sexual abuse, is separate and distinct from statutory rape under paragraph 1(d), Article 266-A of the RPC. Aside from being dissimilar in the sense that the former is an offense under special law, while the latter is a felony under the RPC, they also have different elements. Nevertheless, sexual intercourse with a victim who is under 12 years of age or is demented is always statutory rape, as Section 5(b) of R.A. No. 7610 expressly states that the perpetrator will be prosecuted under Article 335, paragraph 3 of the RPC (now paragraph 1(d), Article 266-A of the RPC as amended by R.A. No. 8353).

Even if the girl who is below twelve (12) years old or is demented consents to the sexual intercourse, it is always a crime of statutory rape under the RPC, and the offender should no longer be held liable under R.A. No. 7610. For example, a nine (9)-year-old girl was sold by a pimp to a customer, the crime committed by the latter if he commits sexual intercourse with the girl is still statutory rape, because even if the girl consented or is demented, the law presumes that she is incapable of giving a rational consent[.][33] (Citations omitted)

It bears emphasis that the protection under the Revised Penal Code only applies to children below 12 years old, while the age of majority is at 18 years old. This situation presents a lacuna, which Republic Act No. 7610 resolved by providing criminal liability for acts of prostitution or other forms of sexual abuse done with a child between 12 and 18 years old.

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[33] Id.

Nevertheless, Republic Act No. 7610 takes into consideration that the age of sexual consent remains at 12 years old. This is "one [1] of the lowest globally and the lowest in the Asia-Pacific Region. [While] the average age of consent is 16 years old."[34] This is despite the fact that under our laws, minors do not have the capacity to enter contracts or marriage. However, a strict reading of the Revised Penal Code keeps the age of sexual consent at 12 years old.

Thus, in sexual intercourse with children between 12 and 18 years of age, as *Tulagan* concludes, Section 5 (b) of Republic Act No. 7610 leaves room for a child to give consent.[35] But this must be read with the policy espoused by the law, which states that "[t]he best interests of children shall be the paramount consideration[.]"[36] This obliges the courts to determine how consent to sexual conduct was given by the child, despite reaching an age where they could have reasonable discernment. To have a correct interpretation of the provision, this Court should first turn to the law's chapeau. It states:

> SECTION 5. *Child Prostitution and Other Sexual Abuse*. — Children, whether male or female, who **for money, profit, or any other consideration** or **due to the coercion or influence of any adult, syndicate or group**, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse[.] (Emphasis supplied)

The text of the law mandates that children exploited in prostitution or subject to other forms of sexual abuse (children in EPSOSA) must have consented: (1) due to money, profit, or any other consideration; or (2) due to the coercion or influence of an adult.

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[34] Id.

[35] *People v. Tulagan*, G.R. No. 227363, March 12, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65020> [Per J. Peralta, En Banc].

[36] Republic Act No. 7610 (1992), sec. 2.

In cases of children subjected to sexual abuse, the courts must determine whether coercion or influence was present, which compelled the child to indulge in sexual conduct. The resolution of this issue cannot be formulaic, but it must be based on the unique factual parameters of each case. Considering the range of age which covers children in EPSOSA, the courts must carefully ascertain if the child freely gave sexual consent to the sexual act.

For example, a 12-year-old child's judgment cannot be equated to that of a 17-year-old's. Moreover, the relationship of the child to the perpetrator must be taken into account. For instance, a 17-year-old, who is still deemed a child, who had sexual intercourse with an 18-year-old, is not comparable to a sexual intercourse of a 12-year-old with an adult twice or thrice his or her age.

Factors such as age difference, the victim and perpetrators' relationship, and the child's psychological disposition must be considered by this Court, having in mind the child's best interest.

III

In this case, it cannot be said that the victim freely consented to having sexual intercourse with petitioner.

This Court has concluded that the age difference between the victim and petitioner indicates coercion and intimidation. In *Caballo v. People*,[37] accused Caballo was 23 years old at the time he met AAA, who was then 17 years old. Caballo was able to persuade AAA to have sexual intercourse with him due to promises of marriage and the assurance that he would not get her pregnant. This Court ruled that the element of coercion or influence is present:

> [C]ase law further clarifies that sexual intercourse or lascivious conduct under the coercion or influence of any adult exists when there is some form of compulsion equivalent to intimidation which subdues the free exercise of the offended party's free will. Corollary thereto,

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[37] 710 Phil. 792 (2013) [Per J. Perlas-Bernabe, Second Division].

Section 2 (g) of the Rules on Child Abuse Cases conveys that sexual abuse involves the element of influence which manifests in a variety of forms. It is defined as:

> The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children.

To note, the term "influence" means the "improper use of power or trust in any way that deprives a person of free will and substitutes another's objective." Meanwhile, "coercion" is the "improper use of . . . power to compel another to submit to the wishes of one who wields it."[38] (Citations omitted)

This Court considered, among other factors, the age difference between AAA and Caballo as an indicium of coercion and influence:

[C]oupled with AAA's minority is Caballo's seniority. Records indicate that Caballo was 23 years old at the time of the commission of the offense and therefore, 6 years older than AAA, more or less. The age disparity between an adult and a minor placed Caballo in a stronger position over AAA so as to enable him to force his will upon the latter.[39]

In *People v. Errojo*:[40]

At a tender age of fourteen, innocent of the ways of the world, complainant is no match to the accused-appellant, a forty-one year old married individual who sexually assaulted her. The sheer force and strength of the accused-appellant would have easily overcome any resistance that complainant could have put up. What more if the assault was committed with a deadly knife, the sight of which would have necessarily evoked fear in complainant. Thus, it is understandable if she easily succumbed to the sexual intrusion. Her failure to disclose the outrage on her person to anybody including her parents is due to

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[38] Id. at 805-806.

[39] Id. at 807.

[40] 299 Phil. 51 (1994) [Per J. Nocon, Second Division].

the threats on her life and her brothers. Indeed, one cannot expect her to act like an adult or a mature and experienced woman who would have the courage and intelligence to disregard a threat to her life and complain immediately that she had been sexually assaulted. It is not uncommon for young girls to conceal for sometime the assaults on their virtue because of the rapist's threats on their lives.[41]

Similarly, in *People v. Clado*:[42]

It is therefore enough that it produces fear — fear that if the victim does not yield to the bestial demands of the accused, something would happen to heart the moment or thereafter, as when she is threatened with death if she reports the incident. This Court has noted in several cases that minors could be easily intimidated and cowed into silence even by the mildest threat against their lives. At the time of the commission of the crimes, Salve was a fifteen-year old girl who had just arrived in town to tend the beauty parlor of her sister. She was left all alone that night and intimidation would explain why she did not put up a determined resistance against her defiler.[43] (Citations omitted)

In these cases, this Court resolved that the victim's minority is an important consideration in determining whether he or she could freely and rationally give consent to a sexual act with an adult. Moreover, the victim and the adult's age difference could be a sign of coercion and intimidation. This is because a vast age difference can facilitate the assertion of dominance by the perpetrator over the victim.

Here, the 15-year age gap between petitioner and the victim indicates that there is coercion and intimidation in the sexual intercourse. It is difficult to accept how the victim, who just turned 12 years old at that time, could have entered into a relationship with an adult 15 years her senior.

Moreover, the victim's psychological disposition showed that she is vulnerable to petitioner's cajolery. As the Social Welfare

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[41] Id. at 60.

[42] 397 Phil. 813 (2000) [Per J. Gonzaga-Reyes, Third Division].

[43] Id. at 826.

Office report showed, the victim suffered multiple emotional crises as a child and that her decision to live with the accused is a result of her longing for a parental figure. This Court should also consider that the victim experienced sexual abuse when she was younger. Further, she was raped twice when she was just nine (9) and 11 years old.[44]

As the case study noted, the psychological trauma impeded the victim's growth and development. Given her psychological state, the *ponencia* should have been more cautious in concluding that there was sexual consent. This Court should not tolerate and further cement the abuse and psychological trauma on victims. Considering the wide age difference between petitioner and the victim, and the victim's psychological condition, there is coercion and intimidation. Accused evidently used the victim's minority and vulnerability to compel her to have sexual intercourse with him.

Moreover, petitioner's theory that they were sweethearts at that time is made questionable by the victim's filing of the criminal case against him. Petitioner's self-serving excuse that the victim's filing was only a result of a misunderstanding should not be given credence, considering the distressing process the victim had to go through just to be able to file the case. It is incomprehensible why the victim would choose to concoct a false story, to undergo physical examination, and to convince her brother to testify at court if she only wanted to get back at the accused.

While the victim allegedly filed an affidavit of desistance, this affidavit was not testified to by the victim in court. Moreover, it was not executed with the assistance of an older relative.[45]

Lastly, the *ponencia* maintains that the victim's cohabitation with petitioner, and the fact that they had another child, signifies her consent.

I disagree.

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[44] *Rollo*, p. 55.

[45] Id. at 60.

Subsequent cohabitation cannot act as pardon to the sexual abuse committed against the victim.

In *People v. Bongbonga*,[46] the accused was charged with the rape of AAA. As a defense, accused claimed that their sexual intercourse was consensual and that they were now living together as partners. In affirming the accused's guilt, this Court rejected his sweetheart defense and ruled that subsequent cohabitation does not pardon the prior sexual abuses done by the accused:

> On this note, Ruben anchors his claim of consensual sexual congress on the fact of his cohabitation with AAA. However, such claim was already addressed by the CA in the questioned Decision, which affirmed the findings of the RTC, that such cohabitation occurred only after the respective dates of the incidents. Here, such fact of cohabitation, by itself, had no bearing on the prior forcible advances committed by Ruben upon AAA. In fact, contrary to Ruben's assertions, any consent implied from the fact of cohabitation is dispelled by AAA's express declarations that she was forced against her will to live with Ruben out of fear of her father.
>
> To be sure, that a man and a woman are living in the same house is not enough to rule out the bestial act of forced sexual intercourse. Here, the fact of cohabitation is immaterial to the charge of rape as it only took place after the alleged incidents. In *People v. Bautista*, the Court aptly held:
>
> > Besides, even if he and the victim were really sweethearts, such a fact would not necessarily establish consent. It has been consistently ruled that "a love affair does not justify rape, for the beloved cannot be sexually violated against her will." The fact that a woman voluntarily goes out on a date with her lover does not give him unbridled license to have sex with her against her will.[47] (Citations omitted)

Moreover, the ruling of the *ponencia* is consistent with the idea that rape or sexual abuse may be pardoned. This Court

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[46] 816 Phil. 596 (2017) [Per J. Caguioa, First Division].

[47] Id. at 608-609.

has settled that rape is no longer pardoned through marriage. In *People v. Jumawan*:[48]

In 1997, R.A. No. 8353 eradicated the stereotype concept of rape in Article 335 of the RPC. The law reclassified rape as a crime against person and removed it from the ambit of crimes against chastity. More particular to the present case, and perhaps the law's most progressive proviso is the 2nd paragraph of Section 2 thereof recognizing the reality of marital rape and criminalizing its perpetration, *viz.*:

> Article 266-C. *Effect of Pardon*. — The subsequent valid marriage between the offended party shall extinguish the criminal action or the penalty imposed.
>
> In case it is the legal husband who is the offender, the subsequent forgiveness by the wife as the offended party shall extinguish the criminal action or the penalty: Provided, That the crime shall not be extinguished or the penalty shall not be abated if the marriage is void *ab initio*.
>
> . . . .

The paradigm shift on marital rape in the Philippine jurisdiction is further affirmed by R.A. No. 9262, which regards rape within marriage as a form of sexual violence that may be committed by a man against his wife within or outside the family abode[.]

. . . .

Clearly, it is now acknowledged that rape, as a form of sexual violence, exists within marriage. A man who penetrates her wife without her consent or against her will commits sexual violence upon her, and the Philippines, as a State Party to the CEDAW and its accompanying Declaration, defines and penalizes the act as rape under R.A. No. 8353.

A woman is no longer the chattel-antiquated practices labeled her to be. A husband who has sexual intercourse with his wife is not merely using a property, he is fulfilling a marital consortium with a fellow human being with dignity equal to that he accords himself. He cannot be permitted to violate this dignity by coercing her to

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[48] 733 Phil. 102 (2014) [Per J. Reyes, First Division].

engage in a sexual act without her full and free consent. Surely, the Philippines cannot renege on its international commitments and accommodate conservative yet irrational notions on marital activities that have lost their relevance in a progressive society.[49]

Jumawan considered the enactment of Republic Act No. 8353, which reclassified rape as a crime against person, and no longer a crime against chastity. This reclassification is not only nominal but a crucial shift in understanding the gravity and nature of rape.

Rape, including other forms of sexual abuse, should no longer be viewed as a crime against chastity, which focuses on the dishonor to the victim's father or family. Rape and sexual abuse is a strike against the person of the victim. It is a violation of one's autonomy, a "violation of free will, or the freely made choice to engage in sexual intimacy."[50]

To reiterate, sexual intercourse is a complex act which is not only physical or sensual. Beyond that, it comes with the complexity of intimacy, relationship, and reproductive consequences.

Sexual intimacy may be primarily done for procreation[51] or solely for pleasure.[52] How sexuality and intimacy is expressed, what constitutes sex, and with whom to be intimate with is a person's choice.[53]

Therefore, consent to sex does not only cover the physical act. Sex does not only involve the body, but it necessarily involves the mind as well. It embraces the moral and psychological dispositions of the persons engaged in the act, along with the

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[49] Id. at 133-141.

[50] Rosemary Hunter, et al., Choice and Consent 97 (2007).

[51] Alan Wertheimer, Consent to Sexual Relations 53-54 (2003).

[52] Id. at 56.

[53] *See* J. Leonen, Dissenting Opinion in *People v. Tulagan*, G.R. No. 227363, March 12, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65020> [Per J. Peralta, En Banc].

socio-cultural expectation and baggage that comes with the act.[54] For instance, there are observed differences in sexual expectations and behaviors among different genders, and more so, among individuals. The wide range of sexual desire and behavior are not only shaped by biology, but by culture and prevailing norms as well.[55] Full and genuine consent to sex, therefore, is "preceded by a number of conditions which must exist in order for act of consent to be performed."[56]

Part and parcel of a valid consent is the ability to have the intellectual resources and capacity to make a choice that reflects his or her judgments and values.[57] For someone to give sexual consent, he or she must have reached a certain level of maturity.[58]

This observation becomes more apparent in determining the validity of sexual consent given by adults compared to children. Sexual consent is not a switch, but a spectrum. As a child grows into adolescence, and later to adulthood, the measure of sexual consent shifts from capacity to voluntariness.[59] Under the law, sexual consent from a child is immaterial, because he or she is deemed incapable of giving an intelligent consent.[60] However, this presumption is relaxed as the child matures. In our jurisdiction, the gradual scale begins when the child reaches the age of 12 years old. From this age, the law may admit voluntariness on the part of the child.

Nevertheless, voluntariness or informed sexual consent of a child must be determined cautiously. Cases involving younger

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[54] Alan Wertheimer, Consent to Sexual Relations 37-49 (2003).

[55] Id.

[56] Rosemary Hunter, et al., Choice and Consent 98 (2007).

[57] Alan Wertheimer, Consent to Sexual Relations 126 (2003).

[58] Franklin Miller, et al., The Ethics of Consent 5 (2009). *See also* David Archard, Sexual Consent 91 (1997).

[59] Joseph J. Fischel, Sex and Harm in the Age of Consent 102-103 (2016).

[60] *See People v. Andres*, 324 Phil. 124 (1996) [Per J. Puno, Second Division].

victims must be resolved through more stringent criteria. Several factors, such as the age of the child, his or her psychological state, intellectual capability, relationship with the accused, their age difference, and other signs of coercion or manipulation must be taken into account in order to protect the child.

In this case, I am not convinced that a 12-year-old girl, who is merely in the sixth grade, can give a mature and informed consent to sexual intercourse with an adult 15 years her senior. Children of her age, generally, are still under the supervision of their parents or guardian, needing guidance and direction as they are only about to enter adolescence.

Considering her tender age, the victim could not have fully comprehended the significance and implications of sexual intimacy with another person. It was neither shown that she was mature enough to understand and express her sexuality nor to enter a relationship with an adult, more so to bear their child at such a young age.

Further, the victim's psychological disposition made her more vulnerable to petitioner's exploitation. This Court should have been warned by the findings of the lower courts, as well as the Social Welfare Office, confirming that the victim is psychologically vulnerable and emotionally abused. Her hampered development and longing for a father figure was taken advantage of by petitioner, manipulating her into relational dependence on him.

Given the circumstances of this case, I am not persuaded that sexual consent was given by the victim, who was only 12 years old at that time. While our laws regrettably contemplate cases of consensual sex with a child, the case before us clearly does not fall within this concession.

ACCORDINGLY, I vote to **DENY** the Petition.

FIRST DIVISION

[G.R. No. 236259. September 16, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **EMILIANO BATERINA y CABADING,** *Accused-Appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL TRANSPORTING OF DANGEROUS DRUGS; ELEMENTS, PRESENT IN THIS CASE; SHEER VOLUME OF THE MARIJUANA SEIZED FROM APPELLANT INDICATES HIS INTENT TO DELIVER AND TRANSPORT THEM.— The essential element of illegal transporting of dangerous drugs is the movement of the dangerous drugs from one (1) place to another. To establish the guilt of the accused, it must be proved that: (1) the transportation of illegal drugs was committed; and (2) the prohibited drug exists. In ***People v. Asislo***, the Court noted there was no definitive moment when an accused "transports" a prohibited drug. When the circumstances establish the purpose of an accused to transport and the fact of transporting itself, there should be no question as to the perpetration of the criminal act. The fact that there is actual conveyance suffices to support a finding that the act of transporting was committed. x x x Appellant was in the **act of transporting the drugs** when the police officers flagged him down at checkpoint. In fact, **he had already been moving the drugs from one place to another** as he drove his vehicle from his point of origin up until he reached the checkpoint where the drugs were seized and he and his co-accused got arrested. In any event, the Court ruled that the intent to transport illegal drugs is presumed whenever a huge volume thereof is found in the possession of the accused until the contrary is proved. In ***People v. Asislo***, the Court found three (3) plastic bags of marijuana leaves and seeds as a considerable quantity of drugs and that possession of a similar amount of drugs showed appellant's intent to sell, distribute, and deliver the same. x x x

Here, forty-eight thousand five hundred sixty-five point sixty-eight (48,565.68) grams or more than forty-eight (48) kilos of marijuana is by no means a miniscule amount clearly indicating appellant's intent to deliver and transport them in violation of Section 5, Article II of RA 9165.

2. REMEDIAL LAW; CRIMINAL PROCEDURE; WARRANTLESS ARREST; BY FAILING TO OBJECT TO HIS WARRANTLESS ARREST AND ACTIVELY PARTICIPATED IN THE PROCEEDINGS, APPELLANT IS DEEMED TO HAVE VOLUNTARILY SUBMITTED HIMSELF TO THE COURT'S JURISDICTION AND WAIVED HIS OBJECTION TO HIS ARREST.— [A]ppellant failed to object to his warrantless arrest before he entered his plea of "not guilty." He likewise did not move to quash the Information or to exclude the evidence subject of the search and seizure prior to his arraignment. In fact, he actively participated in the proceeding before the trial court. He, therefore, was deemed to have voluntarily submitted himself to the jurisdiction of the trial court and waived any objection to his warrantless arrest.

3. ID.; ID.; ID.; WARRANTLESS ARREST AS A CONSEQUENCE OF A SEARCH OF A MOVING VEHICLE WAS LAWFUL; THE EVIDENCE OBTAINED FROM SUCH ARREST AND THE SEIZURE OF THE MARIJUANA BRICKS ARE NOT FRUITS OF THE POISONOUS TREE AS THEY ARE IN FACT THE *CORPUS DELICTI* ITSELF.— [T]he police officers flagged down appellant's vehicle at a checkpoint. When PSI Soria approached the owner-type jeepney, **he readily smelled the distinctive odor of marijuana**. Notably, an owner-type jeepney has no windows or glass-enclosures. He was then prompted to inspect the vehicle where he saw one (1) bag slightly opened. When he looked inside the bag, he saw marijuana bricks wrapped with a yellow tape. On further search, the police officers found four (4) more plastic bags containing the same dangerous drugs. At that moment, the police officers had probable cause to search appellant's vehicle and seize the marijuana bricks found therein. For appellant was (1) **caught in the act of committing the crime of transporting dangerous drugs**, and (2) **his vehicle contained contraband items pertaining to the offense committed**. In this regard, the evidence obtained from a valid

search of appellant's vehicle and the consequent seizure of the marijuana bricks found inside are not fruits of a poisonous tree. **They are in fact the *corpus delicti* itself**. Appellant's warrantless arrest as a consequence thereof was lawful.

4. CRIMINAL LAW; RA 9165; CHAIN OF CUSTODY RULE; CIRCUMSTANCES IN THIS CASE LEAD TO THE CONCLUSION THAT THE CHAIN OF CUSTODY HAD NOT BEEN BREACHED.— The incident here happened before the enactment of RA 10640 in 2014, thus, the applicable law is RA 9165. Section 21 of its implementing rules requires that the physical inventory and photograph of the drugs should be done immediately after their seizure and confiscation in the presence of no less than three (3) witnesses, namely: (a) a representative from the media; (b) a representative from the Department of Justice (DOJ); and (c) any elected public official - - - who shall be required to sign copies of the inventory and given copy thereof. x x x Records show that upon seizure of the bags containing marijuana bricks here, PO2 Olete immediately marked them in the presence of appellant and his co-accused right at the place of arrest and seizure. After the marking, appellant and the seized items were brought to San Gabriel, La Union, Police Station where PO2 Olete did the inventory in the presence of appellant, his co-accused, Barangay Captain Estolas, DOJ representative Luciano Trinidad, and media representative Nestor Ducusin. Notably, the presence of the required insulating witnesses served to ensure the integrity and evidentiary value of the seized drugs. PO2 Olete also took photographs of the seized items. x x x PO2 Olete testified that he handed the request for laboratory examination and the specimens to SPO2 Campit who delivered the same to the PNP Regional Crime Laboratory, San Gabriel, La Union. Although SPO2 Campit did not testify in court, the same does not necessarily cast doubt on the integrity of the seized items. ***People v. Padua*** decreed: Further, **not all people who came into contact with the seized drugs are required to testify in court.** x x x Forensic Chemist Manuel received the request for laboratory examination and the specimens. Per her Chemistry Report No. D-073-10 dated August 3, 2010, she confirmed that the specimens yielded positive results for marijuana. She also testified that the seized items presented as evidence in court were the same items she subjected to qualitative examination. Indubitably, the

identity and integrity of marijuana bricks **remained intact** at the time they were seized from appellant up until they were turned over to the forensic chemist for qualitative examination and finally presented as evidence in court.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT AS AFFIRMED BY THE COURT OF APPEALS, ACCORDED RESPECT.— Going now to the credibility of PO2 Olete and PSI Soria as witnesses, both the trial court and the Court of Appeals found their testimony credible, straightforward, and direct. More important, both courts found that PO2 Olete and PSI Soria were not shown to have been impelled by malice or ill will to falsely charge appellant with such heinous offense of illegal transporting of a huge amount of marijuana. The Court, therefore, finds no reason to doubt the credibility of these witnesses. Indeed, in cases involving violations of RA 9165, credence should be given to the narration of the incident by the prosecution witnesses especially when they are police officers who are not only presumed but have been clearly shown to have performed their official duty in a regular manner.

LOPEZ, *J., concurring opinion*:

1. REMEDIAL LAW; CRIMINAL PROCEDURE; WARRANTLESS SEARCH; PROBABLE CAUSE TO JUSTIFY A WARRANTLESS SEARCH, EXPLAINED.— [P]robable cause refers to facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed, and that objects sought in connection with the offense are in the place sought to be searched. It must be shown by the best evidence that could be obtained under the circumstances. It demands more than bare suspicion and requires less than evidence which would justify conviction. Indeed, probable cause exists if a practical, common-sense evaluation of the facts and circumstances show a fair possibility that contrabands will be found in the asserted location.

2. ID.; ID.; ID.; THE INHERENT RIGHT OF THE STATE TO PROTECT ITS EXISTENCE AND PROMOTE PUBLIC WELFARE SHOULD PREVAIL OVER INDIVIDUAL'S RIGHT AGAINST WARRANTLESS SEARCH, WHICH IS

REASONABLY CONDUCTED.— [T]he facts established that the authorities received a text message from a concerned citizen that men and women on board a jeep will be transporting large volume of dried marijuana leaves. Immediately, the police officers set up a checkpoint. At 2:30 a.m. the following day, the authorities flagged down the accused's owner-type jeepney. Thereafter, one of the police officers smelled the distinctive odor of marijuana which prompted a thorough search and resulted in the confiscation of more than 48 kilograms of marijuana. On that point, the police officers are left with no choice because letting a suspect pass without further investigation is a euphemism of allowing a crime to run. To hold that no criminal can, in any case, be arrested and searched for the evidence and tokens of his crime without a warrant, would be to leave society, to a large extent, at the mercy of the shrewdest, the most expert, and the most depraved of criminals, facilitating their escape in many instances. On the other hand, the general allegation that the accused had been stopped and searched without a warrant at the checkpoint is insufficient to determine whether there was a violation of the right against unlawful search and seizure. The inherent right of the state to protect its existence and promote public welfare should prevail over an individual's right against a warrantless search which is however reasonably conducted.

CAGUIOA*, J., dissenting opinion*:

1. REMEDIAL LAW; CRIMINAL PROCEDURE; WARRANTLESS SEARCH; SEARCHES OF MOVING VEHICLES MUST GENERALLY BE LIMITED TO VISUAL SEARCHES IN ORDER TO BE VALID; WHERE PROBABLE CAUSE WAS BASED SOLELY ON THE TIPPED INFORMATION WITHOUT OTHER FACTS THAT WILL AROUSE SUSPICION, THE SEARCH CONDUCTED WAS INVALID AND THE SEIZED ITEMS MUST BE SET ASIDE FOR BEING FRUITS OF THE POISONOUS TREE. — It is true, as the *ponencia* holds, that searches at checkpoints are recognized exceptions to the general requirement of securing a warrant before conducting a search. Searches of moving vehicles, including checkpoint searches, however, must generally be limited only to visual searches in order to be valid. x x x An extensive search, however, may still be valid as long as probable cause exists **before the**

search was actually conducted. x x x Here, apart from the tip which the officers received, there was no other fact establishing probable cause. Of the two police officers presented on the stand, neither of them was able to establish that there was probable cause to conduct an extensive search of the vehicle. x x x It is thus clear that *in this particular case*, neither of the officers had probable cause — as the plastic bag, *by itself*, is not sufficient, and the claim of having smelled the marijuana has been disproven — apart from the tip from the "concerned citizen." Despite this, the officers still conducted an extensive and intrusive search. The Court, however, has already held with unequivocal clarity that in situations involving warrantless searches and seizures, **"law enforcers cannot act solely on the basis of confidential or tipped information. A tip is still hearsay no matter how reliable it may be. *It is not sufficient to constitute probable cause in the absence of any other circumstance that will arouse suspicion*."** x x x **To justify an extensive search, therefore, there must be other facts establishing probable cause apart from the tip received by the officers**. x x x From the facts of this case, however, it is very clear that the "tip" was the only real basis of the police officers, as the other supposed facts that supposedly constituted probable cause were shown to be incredible. Indeed, "it is doctrinal that **all** doubts must be resolved in favor of the accused," including the doubtful facts in the present case. Thus, as the search conducted by the police officers in this case was invalid, the seized items — despite their immense volume — must be set aside for being fruits of the poisonous tree.

2. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL TRANSPORTING OF DANGEROUS DRUGS; WHERE THE PROSECUTION FAILED TO PROVE THAT APPELLANT KNOWINGLY, FREELY, CONSCIOUSLY, AND INTENTIONALLY POSSESSED THE BAG KNOWING IT TO CONTAIN ILLEGAL DRUGS, WHICH CONSTITUTES REASONABLE DOUBT ON HIS GUILT, ACQUITTAL MUST FOLLOW.— The concept of possession contemplated under RA 9165 goes beyond mere actual and physical possession of the drug specimen. Otherwise, any unsuspecting person who is victimized by the planting of evidence will be unjustly prosecuted based on the sheer fact

that illegal drugs were found to be in his possession. To digress and to recall, the victims of "Laglag Bala" could not have been convicted if it is proven that the bullets found in their personal bags were not put there by them in the first place. It must be proven that the person in whose possession the drug specimen was found knew that they were possessing illegal drugs. Therefore, to prosecute an accused for illegally possessing, or in this case, transporting, illegal drugs, ***the prosecution must go beyond and provide evidence that the accused knowingly, freely, consciously, and intentionally possessed the bag knowing it to contain illegal drugs.*** Jurisprudence tells us that since knowledge refers to a mental state of awareness of a fact and, therefore, courts cannot penetrate the mind of an accused and thereafter state its perceptions with certainty, resort to other evidence is necessary. Hence, the intent to possess, being a state of mind, may be determined on a *case-to-case basis* by taking into consideration the prior or contemporaneous acts of the accused, as well as the surrounding circumstances. Its existence may and usually must be inferred from the attendant events in each particular case. After an intensive review of the records of this case, I strongly believe that there is ***reasonable doubt*** as to whether the bags even belonged to Baterina. To me, the surrounding factual circumstances, as established by the evidence on record, fail to clearly establish that there was *animus possidendi* on the part of Baterina. x x x Baterina and his wife both claimed that he was engaged in the business of driving, **and even his three co-accused confirmed** that they indeed hired him to transport them. It is not far-fetched for a group of people — like Baterina's co-accused — to bring bags on their way to a hospital. In fact, it is even more contrary to human experience if they did not actually bring bags if they truly were on their way to the hospital. Moreover, common sense and human experience dictates that hired vehicles are normally emptied before the start of the journey because the space inside should be for the use of the lessees, ***not the lessor***, during the time period. Thus, Baterina's testimony that he was just hired as a driver by his three co-accused, that the bags were not his, and that he did not know the contents of the bags has a ring of truth to it. In fact, it is my view that as between Baterina and his three co-accused, the RTC should have acquitted Baterina whose testimony is more consistent with logic, common

> sense, and human experience. Parenthetically, if there was anyone that the RTC should have convicted, it should have been one or all of Baterina's co-accused, not him. After all, the prosecution witness who received the initial tip himself testified that the text message he received mentioned that "**a group of men and women** will transport [a] big volume of dried marijuana" — a description that fits the group that hired Baterina. x x x **[T]he ownership of the bags containing marijuana was never established — a burden that the prosecution failed to discharge.** To my mind, this constitutes sufficient reasonable doubt on Baterina's guilt. In sum, Baterina should be acquitted because the *corpus delicti* of the crime is inadmissible for being fruit of the poisonous tree. Even assuming, however, that the seized items were admissible, Baterina should still be acquitted in consonance with the constitutional presumption of innocence due to the failure of the prosecution to establish that he owned — or at least had the intent to possess — the bags containing the contraband.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appelleee.

Taqued Taqued & Associates Law Offices for accused-appellant.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

Appellant Emiliano Baterina y Cabading assails the Court of Appeals' Decision[1] dated May 12, 2017, affirming his conviction for violation of Section 5, Article II of Republic Act No. 9165 (RA 9165).[2]

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[1] Penned by Associate Justice Romeo F. Barza and concurred in by Associate Justices Socorro B. Inting and Victoria Isabel A. Paredes, all members of the Special Seventeenth Division, *rollo*, pp. 2-15.

[2] Comprehensive Dangerous Drugs Act of 2002.

Proceedings Before the Trial Court

The Charge

By Information[3] dated April 4, 2010, appellant Emiliano Baterina, together with Josefa Dayao, Ben Pakoyan, and Melina Puklis was charged with violation of Section 5 in relation to Section 26, Article II of RA 9165, *viz.*:

> That on or about the 3rd day of August 2010 in the Municipality of San Gabriel, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping with one another, did then and there willfully, unlawfully, feloniously and knowingly transport and deliver marijuana fruiting tops with a total weight of FORTY EIGHT THOUSAND FIVE HUNDRED SIXTY FIVE POINT SIXTY EIGHT (48,565.683 grams) with the use of Red Owner Type Jeep with plate no. PGE 708, without the necessary authority or permit from the proper government authorities.
>
> Contrary to law.

The case was raffled to the Regional Trial Court (RTC)-Branch 66, San Fernando City, La Union.

On arraignment, appellant and his co-accused pleaded "not guilty."[4] Trial ensued.

The Prosecution's Evidence

The testimonies of Police Officer 2 Magno Olete (PO2 Olete) of Philippine National Police (PNP) San Gabriel, La Union, Police Senior Inspector Reynaldo Soria (PSI Soria) of La Union Police Provincial Office, Police Inspector Maria Theresa Amor Manuel of PNP San Fernando La Union Regional Crime Laboratory Office, Barangay Captain Romeo Estolas, Jr. (Barangay Captain Estolas), and Media Representative Nestor Ducusin may be summarized in this wise:

On August 2, 2010, PSI Soria received a text message from a concerned citizen that men and women on board a jeep were

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[3] Record, pp. 1-2.

[4] *Id.* at 44.

transporting a large volume of dried marijuana leaves.[5] PSI Soria immediately coordinated with the San Gabriel Police Station through Police Senior Inspector Eduardo Sarmiento (PSI Sarmiento). PSI Sarmiento conducted a briefing with his team composed of Police Officer 3 Reynaldo Abalos (PO3 Abalos), PO2 Olete, and Police Officer 1 Allain Ariz (PO1 Ariz).[6] The San Gabriel Police, along with PSI Soria and Police Chief Inspector Godfrey Bustolan (PCI Bustolan) immediately put up a checkpoint at Sitio Quilat, Barangay Bumbuneg, San Gabriel, La Union.[7]

Early morning of the following day, August 3, 2010, around 2:30, the team flagged down an owner-type jeepney driven by appellant Baterina.[8] Dayao, Pakoyan, Puklis, and a minor child were on board.[9] PSI Soria walked to the back of the jeepney which emitted the peculiar odor of marijuana.[10] He looked inside and saw a slightly opened bag containing marijuana bricks wrapped with a yellow tape.[11] The police officers then searched the vehicle and recovered several plastic bags also containing bricks of marijuana leaves.

At the *situs criminis*, and in the presence of appellant and his co-accused, PO2 Olete marked the seized items, *viz.*: one (1) green bag marked "A" containing four (4) bricks of marijuana, respectively marked as MOO and RTA A-1 to A-4;[12] one (1) black bag marked "B" containing two (2) bricks of marijuana, respectively marked MOO and RTA B-1 to B-2;[13] one (1) yellow

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[5] TSN, December 9, 2010, p. 5.

[6] Record, pp. 7-8.

[7] TSN, December 9, 2010, p. 6.

[8] *Id.* at 7.

[9] *Id.* at 6.

[10] *Id.* at 8.

[11] *Id.*

[12] TSN, October 5, 2010, p. 10.

[13] TSN, October 7, 2010, p. 11.

bag marked "C" containing eight (8) bricks of marijuana, respectively marked as MOO and RTA C-1 to C-8;[14] one (1) red bag marked "D" containing five (5) bricks of marijuana, respectively marked as MOO and RTA D-1 to D-5;[15] and one (1) blue bag marked "E" containing four (4) bricks of marijuana, respectively marked as MOO and RTA E-1 to E-4.[16]

The team brought appellant, Dayao, Pakoyan, Puklis, and the seized items to the San Gabriel Police Station for documentation. PO2 Olete prepared the inventory of the seized items in the presence of appellant and his co-accused, Barangay Captain Estolas, a representative from the Department of Justice (DOJ) Luciano Trinidad, and media representative Ducusin. PO2 Olete also took pictures of the seized items[17] and prepared the Request for Laboratory Examination.[18]

Thereafter, PO2 Olete turned over the seized items and the Request for Laboratory Examination to Senior Police Officer 1 Stanley Campit (SPO1 Campit) who brought them to the PNP Regional Crime Laboratory, San Fernando La Union. There, Forensic Chemist Maria Theresa Amor Manuel received the same and did a chemical analysis thereof.[19]

Per Chemistry Report No. D-073-10 dated August 3, 2010, Forensic Chemist Manuel confirmed that the specimens weighed forty-eight thousand five hundred sixty five point sixty eight (48,565.68) grams and were found positive for marijuana, a dangerous drug.[20]

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[14] TSN, October 5, 2010, p. 12.

[15] *Id.* at 14.

[16] *Id.* at 15.

[17] Record, pp. 22-23; TSN, October 7, 2010, p. 20.

[18] TSN, October 7, 2010, pp. 21-22.

[19] Record, p. 15.

[20] *Id.* at 15.

The prosecution submitted the following evidence: 1) Joint Affidavit;[21] 2) Request for Laboratory Examination;[22] 3) Chemistry Report No. D-073-10;[23] 4) Police Report;[24] 5) Appellant's Driver's license;[25] 6) Certificate of Inventory;[26] 7) Photographs of seized items;[27] and 8) the seized marijuana bricks.[28]

The Defense's Version

Appellant testified that in the evening of August 2, 2010,[29] he received a text message from his co-accused Melina Puklis[30] asking his help to bring her child to a hospital in Balballayang, San Gabriel, La Union.[31] He obliged and picked up Puklis and her child, Dayao, and Pakoyan. Appellant noticed they were carrying bags. When he asked them what was inside the bags they replied it was just clothes.[32] On their way to the hospital, the police officers flagged him down, requested him and his co-accused to alight from the vehicle, and bring out the bags.[33] When the police officers opened the bags, he was surprised that it contained marijuana bricks.[34] He and his co-accused were immediately brought to the San Gabriel, La Union police station.

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[21] *Id.* at 7-8.

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

[23] *Id.* at 15.

[24] *Id.* at 17.

[25] *Id.* at 21.

[26] *Id.* at 22-23.

[27] *Id.* at 26-29.

[28] *Id.* at 132.

[29] CA *rollo*, p. 70.

[30] TSN, May 28, 2013, p. 7.

[31] *Id.* at 3.

[32] *Id.* at 4.

[33] *Id.* at 5.

[34] *Id.*

Accused Melina Puklis, Josefa Dayao, and Ben Pakoyan on the other hand, testified that Dayao hired appellant's services to drive them and Puklis' child to the hospital. Inside appellant's owner-type jeep, they noticed five (5) plastic bags. They asked appellant about the bags and the latter replied he was bringing them to Baguio City. *En route* the hospital, they were flagged down by the San Gabriel Police. They were asked to alight from the vehicle and were informed that the bags inside appellant's vehicle contained marijuana.[35]

The Trial Court's Ruling

By Decision[36] dated March 12, 2015, the trial court found appellant guilty as charged but acquitted his co-accused for lack of evidence to prove that they acted in conspiracy with appellant, thus:

> **WHEREFORE**, in view of the foregoing, accused **EMILIANO BATERINA** is hereby found GUILTY beyond reasonable doubt of the crime charged in the Information and is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00.
>
> Accused **JOSEFA DAYAO, BEN PAKOYAN, AND MELINA PUKLIS** are hereby **ACQUITTED**, prosecution failed to establish the guilt of the three accused beyond reasonable doubt. Consequently, accused Josefa Dayao, Ben Pakoyan and Melina Puklis are ordered released from custody, unless they are being charged from some other lawful cause/s.
>
> The 48,565.68 grams of marijuana which are in the custody of the prosecution are ordered confiscated and turned over to the Philippine Drug Enforcement Agency (PDEA) for destruction in the presence of Court personnel and media.
>
> **SO ORDERED**.[37]

The trial court ruled that the police officers had probable cause to flag down and search appellant's vehicle. While

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[35] CA *rollo*, pp. 70-71.

[36] Penned by Judge Victor O. Conception, CA *rollo*, pp. 68-77.

[37] *Id.* at 77.

inspecting appellant's vehicle, PSI Soria smelled the distinctive odor of marijuana and in fact found marijuana bricks inside the vehicle.[38] The very act of transporting illegal drugs is *malum prohibitum* where intent or knowledge of what is being transported is not necessary.[39] Thus, appellant's argument that he had no knowledge of the contents of the bags had no merit. More, the seized illegal drugs from appellant were the same drugs presented as evidence in court.[40]

The Proceedings before the Court of Appeals

On appeal, appellant argued: his co-accused owned the bags and he had no knowledge that the same contained marijuana bricks;[41] the police officers had no probable cause to search his vehicle.[42] The search was not valid nor was his arrest, therefore, the seized items are inadmissible in evidence. Finally, the trial court erred when it overlooked the prosecution's breach of the chain of custody rule.[43]

For its part, the Office of the Solicitor General (OSG) through Assistant Solicitor General Ellaine Rose A. Sanchez-Corro and State Solicitor Manelyn E. Caturla, countered in the main: 1) the police officers had probable cause to effect a warrantless search and seizure;[44] 2) appellant was caught *in flagrante delicto*[45] at a checkpoint transporting marijuana; 3) appellant's objection to the legality of his arrest was deemed waived because he did not raise it prior to his plea;[46] and 4) the integrity and

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[38] *Id.* at 74.

[39] *Id.* at 75.

[40] *Id.* at 77.

[41] *Id.* at 36.

[42] *Id.* at 38.

[43] *Id.* at 57.

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

[45] *Id.* at 91.

[46] *Id.* at 109.

evidentiary value of the seized items negated appellant's argument that there was breach in the chain of custody.[47]

The Court of Appeals' Ruling

By Decision[48] dated May 12, 2017, the Court of Appeals affirmed. It held that the constitutional proscription against warrantless searches and seizures admits of certain exceptions, *i.e.*, where the search and seizure happened in a moving vehicle.[49] The police officers here had probable cause to search appellant's vehicle which upon inspection, emitted the odor of marijuana. They in fact readily confirmed that marijuana bricks were inside the vehicle.[50] The search was valid and so was appellant's arrest.[51] Besides, it was too late in the day to raise the issue against the legality of his arrest.[52] Finally, the chain of custody was likewise shown to have not been breached.[53]

The Present Appeal

Appellant now seeks affirmative relief from the Court and pleads anew for his acquittal.

In compliance with Resolution[54] dated March 19, 2018, the OSG manifested that in lieu of a supplemental brief, it was adopting its appellee's brief before the Court of Appeals.[55]

On September 10, 2018, appellant filed his supplemental brief reiterating that since his arrest was unlawful, the ensuing

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[47] *Id.* at 112.

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

[49] *Id.* at 9.

[50] *Id.*

[51] *Id.*

[52] *Id.*

[53] *Id.* at 11.

[54] *Id.* at 20-21.

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

warrantless search and seizure were illegal.[56] Consequently, the illegal drugs allegedly seized cannot be used against him for being fruits of a poisonous tree.

Issue

Did the Court of Appeals err when it affirmed appellant's conviction for violation of Section 5, Article II of RA 9165 specifically illegal transporting of forty-eight thousand five hundred sixty-five point sixty-eight (48,565.68) grams of marijuana?

Ruling

The essential element of illegal transporting of dangerous drugs is the movement of the dangerous drugs from one (1) place to another.[57] To establish the guilt of the accused, it must be proved that: (1) the transportation of illegal drugs was committed; and (2) the prohibited drug exists.[58]

In ***People v. Asislo***,[59] the Court noted there was no definitive moment when an accused "transports" a prohibited drug. When the circumstances establish the purpose of an accused to transport and the fact of transporting itself, there should be no question as to the perpetration of the criminal act.[60] The fact that there is actual conveyance suffices to support a finding that the act of transporting was committed.[61]

The following facts here are undisputed: 1) On August 2, 2010, the San Gabriel Police together with PSI Soria put a checkpoint at Sitio Quilat, Barangay Bumbuneg, San Gabriel, La Union after PSI Soria received a text message from a

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[56] *Id.* at 33.

[57] *People v. Asislo*, 778 Phil. 509, 522 (2016).

[58] *People v. Watamama*, 692 Phil. 102, 106 (2012).

[59] Supra note 57 at 523.

[60] *People v. Mariacos*, 635 Phil. 315, 333 (2010).

[61] *Id.*

concerned citizen that men and women on board a jeep were transporting a large volume of marijuana leaves; 2) In the evening of August 2, 2010, appellant drove his owner-type jeep from his residence to Balballayang, San Gabriel La Union to fetch Puklis who asked for his help to bring her sick child to the hospital; 3) Puklis, Dayao, and Pakoyan boarded appellant's vehicle for the purpose of bringing the child to the hospital; 4) *En route* the hospital early morning of the next day, they were flagged down as they reached the checkpoint at Sitio Quilat, Barangay Bumbuneg, San Gabriel, La Union; 5) PSI Soria approached appellant, Puklis, Dayao, and Pakoyan and asked them to alight from the vehicle; 6) When he proceeded to the back of the owner-type jeepney, he readily smelled the distinctive odor of marijuana leaves; 7) PSI Soria instantly saw one (1) slightly opened bag inside; 8) When he looked inside the bag, he saw marijuana bricks wrapped with a yellow tape; 9) This led the police officers to do a thorough search of appellant's owner-type jeep which yielded four (4) more plastic bags containing marijuana bricks.

Appellant was in the **act of transporting the drugs** when the police officers flagged him down at checkpoint. In fact, **he had already been moving the drugs from one place to another** as he drove his vehicle from his point of origin up until he reached the checkpoint where the drugs were seized and he and his co-accused got arrested.

In any event, the Court ruled that the intent to transport illegal drugs is presumed whenever a huge volume thereof is found in the possession of the accused until the contrary is proved.[62]

In ***People v. Asislo***,[63] the Court found three (3) plastic bags of marijuana leaves and seeds as a considerable quantity of drugs and that possession of a similar amount of drugs showed appellant's intent to sell, distribute, and deliver the same.

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[62] *People v. Asislo*, supra note 57; *People v. Alacdis*, 811 Phil. 219, 232 (2017).

[63] *Id.*

In ***People v. Alacdis***,[64] appellant was found in possession of almost one hundred ten (110) kilos of marijuana. The Court ruled that such sheer volume by itself is a clear *indicium* of one's purpose to transport these drugs.

Here, forty-eight thousand five hundred sixty-five point sixty-eight (48,565.68) grams or more than forty-eight (48) kilos of marijuana is by no means a miniscule amount clearly indicating appellant's intent to deliver and transport them in violation of Section 5, Article II of RA 9165.

To negate liability, however, appellant claims these bags containing marijuana bricks did not belong to him but to Dayao, Pakoyan, and Puklis. He also denies knowledge of these contents.

The argument must fail.

The very act of transporting methamphetamine hydrochloride is *malum prohibitum* punishable under RA 9165. In ***People v. Morilla***,[65] the Court held that the act of transportation of the bags containing volumes of marijuana bricks **need not be accompanied** by proof of appellant's criminal intent, motive, or knowledge of the contents thereof.[66] Similarly, ***People v. Noah***[67] ordains that proof of ownership and intent are not essential elements of the crime of illegal transporting of dangerous drugs.

Appellant further argues against his arrest allegedly because when the police officers searched his vehicle, they had no probable cause to do so.

We are not persuaded.

First, the right to question one's arrest should be made before one enters his or her plea on arraignment. ***People v. Alunday***[68] is relevant:

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[64] Supra note 62.

[65] 726 Phil. 244, 252 (2014).

[66] *Id.*

[67] G.R. No. 228880, March 6, 2019.

[68] 586 Phil. 120, 133 (2008).

The Court has consistently ruled that **any objection involving a warrant of arrest** or the procedure for the acquisition by the court of jurisdiction over the person of the accused **must be made before he enters his plea; otherwise, the objection is deemed waived**. We have also ruled that an accused may be estopped from assailing the illegality of his arrest if he fails to move for the quashing of the information against him before his arraignment. **And since the legality of an arrest affects only the jurisdiction of the court over the person of the accused, any defect in the arrest of the accused may be deemed cured when he voluntarily submits to the jurisdiction of the trial court.** (Emphasis supplied)

People v. Araza,[69] too, further clarified that the illegal arrest of an accused is not sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after a trial free from error. It will not even negate the validity of the conviction of the accused.

Here, appellant failed to object to his warrantless arrest before he entered his plea of "not guilty." He likewise did not move to quash the Information or to exclude the evidence subject of the search and seizure prior to his arraignment. In fact, he actively participated in the proceeding before the trial court. He, therefore, was deemed to have voluntarily submitted himself to the jurisdiction of the trial court and waived any objection to his warrantless arrest.

Be that as it may, in ***People v. Cogaed***,[70] the Court noted that one of the recognized instances of permissible warrantless search is the search of a moving vehicle. Police officers cannot be expected to appear before a judge and apply for a search warrant when time is of the essence considering the efficiency of vehicles in facilitating transactions involving contraband or dangerous articles.[71] A checkpoint search is a variant of a search of a moving vehicle[72] where only visual searches or inspections

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[69] 747 Phil. 20, 32 (2014).

[70] 740 Phil. 212, 228 (2014).

[71] *Caballes v. Court of Appeals*, 424 Phil. 263, 278 (2002).

[72] *People v. Manago*, 793 Phil. 505, 519 (2016).

are allowed. An extensive search may be conducted on a vehicle at a checkpoint when law enforcers have probable cause, *i.e.*, upon a belief, that the vehicle's driver or passengers **committed a crime** or **when the vehicle contains instruments of an offense**[73] which by law is subject to seizure and destruction.[74]

Here, the police officers flagged down appellant's vehicle at a checkpoint. When PSI Soria approached the owner-type jeepney, **he readily smelled the distinctive odor of marijuana**. Notably, an owner-type jeepney has no windows or glass-enclosures. He was then prompted to inspect the vehicle where he saw one (1) bag slightly opened. When he looked inside the bag, he saw marijuana bricks wrapped with a yellow tape. On further search, the police officers found four (4) more plastic bags containing the same dangerous drugs. At that moment, the police officers had probable cause to search appellant's vehicle and seize the marijuana bricks found therein. For appellant was (1) **caught in the act of committing the crime of transporting dangerous drugs**, and (2) **his vehicle contained contraband items pertaining to the offense committed**. In this regard, the evidence obtained from a valid search of appellant's vehicle and the consequent seizure of the marijuana bricks found inside are not fruits of a poisonous tree. **They are in fact the *corpus delicti* itself**. Appellant's warrantless arrest as a consequence thereof was lawful.

The Court, in ***Caballes v. Court of Appeals,***[75] elucidated that police officers had probable cause to conduct an extensive search of moving vehicle in situations where the police officers had received a confidential report from informers that a sizeable volume of marijuana would be transported along the route where the search was conducted; **and** when the moving vehicle was stopped on the basis of the intelligence information, **there had emanated from a package inside the vehicle a distinctive**

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[73] *Veridiano v. People*, 810 Phil. 642, 668 (2017).

[74] *People v. Libnao*, 443 Phil. 506, 515-516 (2003).

[75] Supra note 71.

smell of marijuana. The police officers **not just relied solely on the basis of the tipped information but also their personal experience**, *i.e.*, when they were able to smell the peculiar odor of marijuana from the package inside the vehicle which prompted them to do an extensive search.

Another case on probable cause involving illegal drugs is ***People v. Mariacos***.[76] There, a police officer received an information from a secret agent that a baggage of marijuana had been loaded on a passenger jeepney that was about to leave for the *poblacion*. The agent mentioned three (3) bags and one (1) blue plastic bag. The agent further described a backpack bag with an "O.K." marking. On the basis of the tip, a police officer did surveillance operations on board a jeepney. When he saw the bag with an "O.K." mark, he peeked inside and smelled the distinct odor of marijuana emanating from the bag. The Court ruled that tipped information **and** the police officer's personal observations gave rise to probable cause that rendered the warrantless search valid.

Appellant, next argues that the police officers failed to comply with the chain of custody rule. He claims that the prosecution failed to testify who brought the items to the police station[77] and later to the PNP Crime Laboratory for examination.[78]

We disagree.

Section 21 of RA 9165 prescribes the standard in preserving the *corpus delicti* in illegal drug cases, *viz.*:

Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment*. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals,

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[76] Supra note 60.

[77] *Rollo*, p. 57.

[78] *Id.* at 58.

as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

> (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, **physically inventory and photograph** the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;
>
> (2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/ paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;
>
> (3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: *Provided*, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours; *(Emphasis supplied)*

x x x

The Implementing Rules and Regulations of RA No. 9165 further decrees:

Section 21. (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, **physically inventory and photograph** the same in the presence of the accused or the person/s from whom such items were

confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at **the nearest police station or at the nearest office of the apprehending officer/team**, whichever is practicable, **in case of warrantless seizures**; Provided, further, that **non-compliance with these requirements** under justifiable grounds, **as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/ team, shall not render void and invalid such seizures of and custody over said items.** *(Emphasis and underscoring supplied)*

The incident here happened before the enactment of RA 10640 in 2014, thus, the applicable law is RA 9165. Section 21 of its implementing rules requires that the physical inventory and photograph of the drugs should be done immediately after their seizure and confiscation in the presence of no less than three (3) witnesses, namely: (a) a representative from the media; (b) a representative from the Department of Justice (DOJ); and (c) any elected public official — who shall be required to sign copies of the inventory and given copy thereof.

This is echoed in Section 2 (a) of the Dangerous Drugs Board (DDB) Regulation No. 1, Series of 2002, to wit:

a. The apprehending team having initial custody and control of dangerous drugs or controlled chemical or plant sources of dangerous drugs or laboratory equipment shall immediately, after the seizure and confiscation, **physically inventory and photograph** the same in the presence of:

(i) the person from whom such items were confiscated and/or seized or his/her representative or counsel;

(ii) a representative from the media;

(iii) a representative from the Department of Justice; and,

(iv) any elected public official.

who shall be required to sign copies of the inventory report covering the drugs/equipment and who shall 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 seizure without warrant**; Provided further that non-compliance with these requirement under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/ team x x x. (Emphasis supplied)

Records show that upon seizure of the bags containing marijuana bricks here, PO2 Olete immediately marked them in the presence of appellant and his co-accused right at the place of arrest and seizure.

After the marking, appellant and the seized items were brought to San Gabriel, La Union, Police Station where PO2 Olete did the inventory in the presence of appellant, his co-accused, Barangay Captain Estolas, DOJ representative Luciano Trinidad, and media representative Nestor Ducusin.[79] Notably, the presence of the required insulating witnesses served to ensure the integrity and evidentiary value of the seized drugs. PO2 Olete also took photographs of the seized items.[80]

PO2 Olete and PSI Soria testified, thus:

PO2 Olete's testimony:

Q: After you made the marking that you mentioned a while ago, what happened next?
A: We brought the bags back into the vehicle and we proceeded to the police station, sir.
Q: When you were at the police station, what did you do there?
A: x x x we conducted documentation and we prepared letter blotter.
Q: Aside from the blotter, what other documents did you prepare mister witness?
A: Inventory sir.[81]

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[79] Record, pp. 22-23.

[80] CA *rollo*, p. 99.

[81] TSN, October 7, 2010, p. 20.

PSI Soria's testimony:

Q: Why do you say that that is the Inventory you referred to?
A: I was present during that time, sir.
Q: In this inventory, there is a signature above the name Magno Olete, whose signature is this?
A: Magno Olete, Sir.
Q: There is also a signature here, whose signature is this?
A: Estolas, sir.
Q: And who is Estolas?
A: The Barangay Captain of Bunbeneg, sir.
Q: There is also a signature here, whose signature is this?
A: Nestor Ducusin sir, the media.
Q: And who is Nestor Ducusin?
A: The media representative, sir.
Q: There is also a signature here, whose signature is this?
A: The DOJ representative, sir.[82]

In ***Macad v. People***,[83] the Court decreed that under the Implementing Rules and Regulations of RA 9165, the physical inventory and photographing of the seized items shall be conducted at the place where the search warrant is served and the marking should be done upon immediate confiscation of the items in question. The Court though notes that Section 21 itself provides an exception in cases involving warrantless seizures where the physical inventory and photographing of the seized items may be conducted at the nearest police station or the nearest office of the apprehending officer/team, whichever is practicable, as in this case. ***Macad*** enunciated:

> As a rule, under the IRR, the physical inventory and photograph of the seized items shall be conducted at the place where the search warrant is served. Likewise, the marking should be done upon immediate confiscation. However, Section 21 of the IRR also provides an exception that the physical inventory and photography of the seized items may be conducted at the nearest police station or the nearest

[82] TSN, December 9, 2010, pp. 24-25.

[83] G.R. No. 227366, August 1, 2018.

office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures.[84]

PO2 Olete testified that he handed the request for laboratory examination and the specimens to SPO2 Campit who delivered the same to the PNP Regional Crime Laboratory, San Gabriel, La Union. Although SPO2 Campit did not testify in court, the same does not necessarily cast doubt on the integrity of the seized items. ***People v. Padua***[85] decreed:

> Further, **not all people who came into contact with the seized drugs are required to testify in court. There is nothing in Republic Act No. 9165 or in any rule implementing the same that imposes such requirement.** As long as the chain of custody of the seized drug was clearly established not to have been broken and that the prosecution did not fail to identify properly the drugs seized, **it is not indispensable that each and every person who came into possession of the drugs should take the witness stand.** x x x (Emphasis and underscoring supplied)

At the PNP Regional Crime Laboratory, Forensic Chemist Manuel received the request for laboratory examination and the specimens. Per her Chemistry Report No. D-073-10 dated August 3, 2010, she confirmed that the specimens yielded positive results for marijuana. She also testified that the seized items presented as evidence in court were the same items she subjected to qualitative examination.

Her Chemistry Report conformed with the details found in the inventory prepared by PO2 Olete. Thus, the prosecution's formal offer of evidence indicated that Exhibits H to H-3, H-4 to H-5, H-6 to H-13, H-14 to H-18, H-19 to H-22, and H-23 to H-27 represented the seized drugs themselves weighing forty-eight thousand five hundred sixty-five point sixty-eight (48,565.68) grams.[86] Notably, the defense **admitted** the genuineness and due execution of Forensic Chemist Manuel's

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[84] *Id.*

[85] 639 Phil. 235, 251 (2010).

[86] Record, p. 132.

Report[87] and **that the seized items reflected in her report were the same items presented in court as evidence**.[88]

Indubitably, the identity and integrity of marijuana bricks **remained intact** at the time they were seized from appellant up until they were turned over to the forensic chemist for qualitative examination and finally presented as evidence in court.

In ***People v. Sic-Open***,[89] the forensic chemist testified that the items presented as evidence against the accused for violation of Section 5, Article II of RA 9165 were the same items which had undergone laboratory examination as reflected in her report. The Court ruled that this documentary and testimonial evidence presented by the prosecution supported the conclusion that the chain of custody had not been breached.

At any rate, the Court, once again, notes the large amount of marijuana seized by the police officers. We held in ***Malillin v. People***[90] that the likelihood of tampering, loss, or mistake with respect to a seized illegal drug is greatest when the item is small and is one that has physical characteristics fungible in nature. But in ***People v. Bayang***,[91] we specifically pronounced that strict adherence to Section 21 of RA 9165 is required where the quantity of illegal drugs seized is minuscule, since it is highly susceptible to planting, tampering or alteration of evidence.

Applying ***Malillin*** and ***Bayang*** here, the forty-eight thousand five hundred sixty-five point sixty-eight (48,565.68) grams or more than forty-eight (48) kilos of marijuana here is by no means a minuscule amount, logically precluding the probability of planting, tampering, or alteration.

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[87] TSN, September 28, 2010, pp. 5-6.

[88] *Id.* at 7-8.

[89] 795 Phil. 859, 868 (2016).

[90] 576 Phil. 576, 588 (2008).

[91] G.R. No. 234038, March 13, 2019.

Going now to the credibility of PO2 Olete and PSI Soria as witnesses, both the trial court and the Court of Appeals found their testimony credible, straightforward, and direct. More important, both courts found that PO2 Olete and PSI Soria were not shown to have been impelled by malice or ill will to falsely charge appellant with such heinous offense of illegal transporting of a huge amount of marijuana. The Court, therefore, finds no reason to doubt the credibility of these witnesses.

Indeed, in cases involving violations of RA 9165, credence should be given to the narration of the incident by the prosecution witnesses especially when they are police officers who are not only presumed but have been clearly shown to have performed their official duty in a regular manner. ***People v. Cabiles***[92] is apropos, *viz.*:

> The direct account of law enforcement officers enjoys the presumption of regularity in the performance of their duties. It should be noted that "**unless there is clear and convincing evidence that the police officers were inspired by any improper motive or did not properly perform their duty, their testimonies on the operation deserve full faith and credit**." **Thus, unless the presumption is rebutted, it becomes conclusive**. Since, accused-appellant failed to present or refute the evidence presented against him, therefore, the conduct of the operation of the police officers prevails and is presumed regular. (Emphasis and underscoring supplied)

Surely, appellant's bare denial and theory of frame up cannot prevail over the positive testimony of PO2 Olete and PSI Soria, let alone, the presumption of regularity accorded them in the performance of their official duty.

The Court of Appeals, therefore, did not err when it affirmed the trial court's verdict of conviction against appellant for violation of Section 5, Article II of RA 9165 as well as the penalty of life imprisonment and fine imposed on him.

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[92] 810 Phil. 969, 976 (2017).

ACCORDINGLY, the appeal is **DISMISSED** and the Decision dated May 12, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 07617, **AFFIRMED**. Appellant Emiliano Baterina y Cabading is found **GUILTY** of illegal transporting of forty-eight thousand five hundred sixty-five point sixty-eight (48,565.68) grams of marijuana, a dangerous drug as defined and penalized under Section 5, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002. He is sentenced to **LIFE IMPRISONMENT** and ordered to pay a **FINE** of ₱500,000.00.

SO ORDERED.

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

Lopez, J., see concurring opinion.

Caguioa, J., see dissenting opinion.

CONCURRING OPINION

LOPEZ, *J.*:

I register my concurrence with the *ponencia* which affirmed the conviction of the accused for the crime of illegal transportation of dangerous drugs. Specifically, I agree that there is probable cause to justify the warrantless search.

Notably, probable cause refers to facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed, and that objects sought in connection with the offense are in the place sought to be searched. It must be shown by the best evidence that could be obtained under the circumstances. It demands more than bare suspicion and requires less than evidence which would justify conviction. Indeed, probable cause exists if a practical, common-sense evaluation of the facts and circumstances show a fair possibility that contrabands will be found in the asserted location.[1]

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[1] *SPO4 Laud (Ret.) v. People*, 747 Phil. 503, 521-522 (2014), citing *Santos v. Pryce Gases, Inc.*, 563 Phil. 781 (2007).

Here, the facts established that the authorities received a text message from a concerned citizen that men and women on board a jeep will be transporting large volume of dried marijuana leaves. Immediately, the police officers set up a checkpoint. At 2:30 a.m. the following day, the authorities flagged down the accused's owner-type jeepney. Thereafter, one of the police officers smelled the distinctive odor of marijuana which prompted a thorough search and resulted in the confiscation of more than 48 kilograms of marijuana.

On that point, the police officers are left with no choice because letting a suspect pass without further investigation is a euphemism of allowing a crime to run. To hold that no criminal can, in any case, be arrested and searched for the evidence and tokens of his crime without a warrant, would be to leave society, to a large extent, at the mercy of the shrewdest, the most expert, and the most depraved of criminals, facilitating their escape in many instances.[2] On the other hand, the general allegation that the accused had been stopped and searched without a warrant at the checkpoint is insufficient to determine whether there was a violation of the right against unlawful search and seizure.[3] The inherent right of the state to protect its existence and promote public welfare should prevail over an individual's right against a warrantless search which is however reasonably conducted. Besides, warrantless searches and seizures at checkpoints are quite similar to searches and seizures accompanying warrantless arrests during the commission of a crime, or immediately thereafter.[4]

Finally, it must be emphasized that the police officers are duty bound to respond to any information involving illegal activities. Yet, the involution of intelligence materials obliges the authorities to be discerning and vigilant in scintillating truthful

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[2] *People v. Kagui Malasugui*, 63 Phil. 221, 228 (1936), citing *United States v. Snyder*, 278 Fed. 650.

[3] *Valmonte v. Gen. De Villa*, 258 Phil. 838 (1989).

[4] *Id.*

information from the false ones. Similarly, if the courts of justice are to be of understanding assistance to our law enforcement agencies, it is necessary to adopt a realistic appreciation of the physical and tactical problems, instead of critically viewing them from the placid and clinical environment of judicial chambers.[5]

FOR THESE REASONS, I vote to **DENY** the appeal.

DISSENTING OPINION

CAGUIOA, *J.*:

I dissent.

The accused Emiliano Baterina (Baterina) should be acquitted from the charge of violating Section 5 of Republic Act No. (RA) 9165 as the *corpus delicti* of the crime is inadmissible as evidence and, in any event, there exists reasonable doubt as to his culpability.

Brief review of the facts

Baterina, along with a few others, were charged with a violation of Section 5 of RA 9165, the accusatory portion of the Information reads:

> That on or about the 3rd day of August 2010 in the Municipality of San Gabriel, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another did then and there willfully, unlawfully, feloniously and knowingly transport and deliver marijuana fruiting tops with a total weight of FORTY EIGHT THOUSAND FIVE HUNDRED SIXTY FIVE POINT SIXTY EIGHT (48,565.683) grams with the use of Red Owner Type Jeep with plate no. PGE 708, without the necessary authority or permit from the proper government authorities.

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[5] *People v. Montilla*, 349 Phil. 640 (1998). See also Dissenting Opinion in *People v. Sapla*, G.R. No. 244045, June 16, 2020.

Contrary to law.[1]

According to the prosecution, the police officers in La Union received a text message from a concerned citizen that men and women would be transporting a large volume of dried marijuana leaves. Based on this tip, the police officers immediately put up a checkpoint. A few hours later, they were able to flag down an owner-type jeep driven by Baterina. There were four other passengers in the jeepney, including a minor child. Afterwards, one of the police officers proceeded to the back of the jeep to see what was inside the jeep and upon looking at a partially opened curtain, he allegedly smelled the odor of *marijuana* coming from inside the jeep. Thus, an inspection was conducted on the said vehicle in the presence of the *barangay* captain of the area.

The inspection then led to the discovery of several bags containing a total of 23 bricks of marijuana. The marking and initial inventory of the seized items were then immediately conducted. Subsequently, Baterina and the others were brought to the municipal hall for documentation. In the municipal hall, a full inventory of the seized items was conducted in the presence of all the three required witnesses: an elected official (the *barangay* captain) and representatives from the media and Department of Justice.

In his defense, Baterina testified that his wife received a text message from one of the passengers asking him to fetch a sick person and bring him to the hospital. It was the usual practice in the municipality to hire private vehicles. Upon meeting the persons who sent him the text message, he saw that they were carrying bags. Baterina was told by the passengers that it only contained their clothes. While traversing the road, the police officers flagged them down and told them to alight from the vehicle. The police officers likewise brought the baggage down to examine them and it was revealed that it contained marijuana, which surprised Baterina. Baterina further testified that he knew the one who texted his wife because she had hired him thrice already in the past.

[1] *Ponencia,* p. 2.

Baterina's three co-accused, his adult passengers, also testified and they confirmed that they hired Baterina to bring the child to the hospital. However, they claimed that the bags were not theirs but Baterina's. According to them, Baterina told them that he would be transporting the bags to Baguio City.

After trial, the RTC convicted Baterina of the crime but acquitted the others. Upon appeal to the CA, it affirmed Baterina's conviction.

Hence, the present case.

The *ponencia* affirms the conviction of Baterina, ratiocinating that the crime involved is *malum prohibitum* and that the act of transporting the prohibited drugs need not be proven to be accompanied with criminal intent. Meanwhile, on the argument that the discovery of the prohibited items was borne by an illegal search, the *ponencia* rules that questions on the illegality of arrest should have been raised prior to the arraignment and, in any event, search of a moving vehicle is a jurisprudentially recognized instance of a valid warrantless search. Finally, the *ponencia* holds that the chain of custody rule under RA 9165 was likewise followed by the police officers and successfully proven by the prosecution.

While I agree that the chain of custody rule was followed in this case, I find myself, with due respect, disagreeing with the decision to affirm the conviction. In my view, the *corpus delicti* of the crime is inadmissible, and that, in any event, there is reasonable doubt as to Baterina's guilt.

The discovery of the marijuana was borne by an illegal search

It is true, as the *ponencia* holds, that searches at checkpoints are recognized exceptions to the general requirement of securing a warrant before conducting a search. Searches of moving vehicles, including checkpoint searches, however, must generally be limited only to visual searches in order to be valid. As the Court explained in *Veridiano v. People*[2] *(Veridiano)*:

[2] G.R. No. 200370, June 7, 2017, 826 SCRA 382.

> Checkpoints per se are not invalid. They are allowed in exceptional circumstances to protect the lives of individuals and ensure their safety. They are also sanctioned in cases where the government's survival is in danger. **Considering that routine checkpoints intrude "on [a] motorist's right to 'free passage'" to a certain extent, they must be "conducted in a way least intrusive to motorists." <u>The extent of routine inspections must be limited to a visual search. Routine inspections do not give law enforcers carte blanche to perform warrantless searches.</u>**[3] (Emphasis and underscoring supplied)

An extensive search, however, may still be valid as long as probable cause exists **before the search** was actually conducted. As the Court held in *People v. Bagista*:[4]

> With regard to the search of moving vehicles, this had been justified on the ground that the mobility of motor vehicles makes it possible for the vehicle to be searched to move out of the locality or jurisdiction in which the warrant must be sought.
>
> This in no way, however, gives the police officers unlimited discretion to conduct warrantless searches of automobiles in the absence of probable cause. **When a vehicle is stopped and subjected to an extensive search, such a warrantless search has been held to be valid only as long as the officers conducting the search have reasonable or probable cause to believe <u>before the search</u> that they will find the instrumentality or evidence pertaining to a crime, in the vehicle to be searched.**[5] (Emphasis and underscoring supplied)

Here, apart from the tip which the officers received, there was no other fact establishing probable cause. Of the two police officers presented on the stand, neither of them was able to establish that there was probable cause to conduct an extensive search of the vehicle.

PO2 Magno Olete (PO2 Olete) attempted to justify the extensive search by claiming to have seen a plastic bag when he peeped through the curtain. He testified:

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[3] Id. at 409-410.

[4] G.R. No. 86218, September 18, 1992, 214 SCRA 63.

[5] Id. at 69.

Q: And so what did you do when the curtains was *(sic)* "naka-usli?"
A: We look at the curtain using our flashlight, sir.

Q: And what happened when you looked inside the jeep using flashlight?
A: We saw plastic bags, sir.

Q: And what happened when you saw plastic bags?
A: We saw the plastic bag, sir, we asked the occupants to alight from the vehicle.

Q: And what happened next mister witness?
A: We called on the Barangay captain who is 20 meters away from our check point.

Q: And what happened when the Barangay captain was called by you?
A: When the Barangay captain arrived, we conducted the search.

Q: And what is the result of that search?
A: When we already conducted the search, sir, we found out that the contents of the plastic bag were bricks of marijuana.[6] (Emphasis supplied)

On cross-examination, he confirmed that they ordered the passengers to step out of the vehicle — thus, an extensive search — only because of their having seen plastic bags:

Q: So, every motor vehicle that would pass in that highway would be flagged down mister witness?
A: Yes, sir.

Q: You also testified during the last hearing that you flagged down an owner type jeep?
A: Yes, sir.

Q: And you used a flashlight to see the contents of the owner type jeep?
A: Yes, sir.

Q: And upon see[ing] the plastic bag as you testified mister witness, you ordered them to step down from the vehicle?
A: Yes, sir.

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[6] TSN dated October 7, 2010, pp. 8-9.

Q: So, from that moment that you spotted, as you testified last hearing, you only saw plastic bags?
A: Yes, sir.

Q: So, from that moment mister witness, you did not see any marijuana bricks, alleged marijuana bricks?
A: I saw one plastic bag slightly opened.

Q: But you did not see any alleged marijuana bricks at that time that you spot your flashlight on that plastic bag?
A: Only one bag that was slightly opened, sir.

Q: No, I am asking you mister witness whether you saw marijuana bricks at that time?
A: None, sir.

Q: So, you only discovered the marijuana bricks after searching, opening the plastic bag and removing what was on top of that plastic bag?
A: Yes, sir.[7] (Emphasis supplied)

By no stretch, however, could it be reasonably argued that having plastic bags in the vehicle already suffices as probable cause so as to justify an extensive or intrusive search.

The other officer who took the stand, PSI Reynaldo Soria (PSI Soria), also tried to justify the extensive search by claiming that he was able to smell marijuana when he went to the back of the jeep. However, this claim proved to be incredible when tested during the trial, as shown by the following cross-examination of PSI Soria:

Q: Now Mr. Witness, you testified that you can smell marijuana at that time, isn't it?
A: Yes sir.

Q: It was merely based on a small opening, isn't it?
A: Yes sir.

Q: Now Mr. Witness, this marijuana bricks *(sic)* is very close to your nose, isn't it?
A: Yes sir.

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[7] TSN dated November 9, 2010, pp. 5-6.

Q: And yet, you could not smell it, isn't it?
A: Yes sir.

Q: You could identify that what is inside this thing is marijuana because you could not smell it, isn't it?
A: During the time of —

Q: My question is answerable by yes or no Mr. Witness?
A: Yes sir.

Q: Now Mr. Witness, you would agree with me that you allegedly smell marijuana at that time of the incident, you were around five (5) to ten (10) meters, isn't it?
A: No sir.

Q: How many meters are you away?
A: Very near sir.

x x x x

Q: Could you approximate how near is that Mr. Witness?
A: One inch from the gutter of the jeep sir.

Q: One inch from the gutter of the jeep. [M]y question is not from the gutter of the vehicle, but your distance from the marijuana or from the object evidence Mr. Witness, I'm not asking about the gutter of the jeep. I'm asking about the distance from the object evidence Mr. Witness, how far are you?
A: Very near sir.

Q: How near is that near Mr. Witness, the distance, I'm asking about the distance?
A: About one (1) foot only sir.

Q: So, you would agree with me that one (1) foot is here?
A: Yes sir.

Q: Now Mr. Witness, I'm holding a brick of marijuana that was identified by the Chemist, my question is can you smell the brick?
A: At present no sir.

Q: No, you could not smell it?
A: Yes sir, at present.

Q: But if you put it close to your nose, that would be the time that you would be able to smell it, isn't it?
A: Yes sir.

Q: So Mr. Witness, you would agree with me that in spite of the fact that this brick of marijuana is now removed from the bag, you could not smell the brick of marijuana in spite of the fact that I position myself one (1) foot away from you, is that correct?
A: At present sir, I cannot smell.[8] (Emphasis supplied)

During redirect examination, the prosecution attempted to establish that PSI Soria could not smell the marijuana in the courtroom because "the situation x x x inside the [c]ourtroom x x x is airconditioned"[9] and that the marijuana was newly repacked.[10] However, PSI Soria's "theories" immediately lost credibility when he was subjected to re-cross examination as follows:

Q: Now Mr. Witness, you also testified that there are two (2) reasons that's why you cannot smell marijuana in this Court room, isn't it?
A: Yes, sir.

Q: And one is because the place is enclosed, isn't it?
A: Yes, sir.

Q: And it has air con, isn't it?
A: Yes, sir.

Q: But you would agree with me that being a Police Officer, you finished science, isn't it?
A: Yes, sir.

Q: And it is basic in science that when a field is an open field, it is basic that you cannot smell what is in open, isn't it? Because it's a very big place, isn't it?
A: Yes, sir.

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[8] TSN dated January 20, 2011, pp. 28-31.

[9] TSN dated March 1, 2011, p. 4.

[10] TSN dated March 1, 2011, p. 5.

Q: And also basic in science is that, when it is an enclosed room, you will be able to smell what is inside that room, is it not? Because it is enclosed, isn't it?
A: This room is –

Q: My question again is answerable by yes or no?
A: Yes, sir.

x x x x

Q: Mr. Witness, you also testified that during that time the alleged marijuana was newly repacked, isn't it?
A: Yes, sir.

Q: Mr. Witness, were you present when the marijuana was repacked?
A: No, sir.

Q: So you do not know for a fact that it was newly packed or it was packed mo[n]ths ago, weeks ago or years ago, isn't it?
A: But during that time sir –

Q: My question is answerable by yes or no again Mr. Witness?
A: Yes, sir.[11]

It is thus clear that *in this particular case*, neither of the officers had probable cause — as the plastic bag, *by itself*, is not sufficient, and the claim of having smelled the marijuana has been disproven — apart from the tip from the "concerned citizen." Despite this, the officers still conducted an extensive and intrusive search. The Court, however, has already held with unequivocal clarity that in situations involving warrantless searches and seizures, **"law enforcers cannot act solely on the basis of confidential or tipped information. A tip is still hearsay no matter how reliable it may be. *It is not sufficient to constitute probable cause in the absence of any other circumstance that will arouse suspicion.*"**[12]

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[11] TSN dated March 1, 2011, pp. 7-9.

[12] *Veridiano v. People*, supra note 2 at 411. Emphasis and underscoring supplied.

Just recently, the Court *en banc* once again upheld this principle in *People v. Sapla*,[13] in which it explained the rationale as follows:

> It is not hard to imagine the horrid scenarios if the Court were to allow intrusive warrantless searches and seizures on the solitary basis of unverified, anonymous tips.
>
> Any person can easily hide in a shroud of anonymity and simply send false and fabricated information to the police. Unscrupulous persons can effortlessly take advantage of this and easily harass and intimidate another by simply giving false information to the police, allowing the latter to invasively search the vehicle or premises of such person on the sole basis of a bogus tip.
>
> On the side of the authorities, unscrupulous law enforcement agents can easily justify the infiltration of a citizen's vehicle or residence, violating his or her right to privacy, by merely claiming that raw intelligence was received, even if there really was no such information received or if the information received was fabricated.
>
> Simply stated, *the citizen's sanctified and heavily-protected right against unreasonable search and seizure will be at the mercy of phony tips*. The right against unreasonable searches and seizures will be rendered hollow and meaningless. The Court cannot sanction such erosion of the Bill of Rights.[14]

To reiterate, checkpoint searches are valid as warrantless searches only if they are conducted merely as visual searches. **To justify an extensive search, therefore, there must be other facts establishing probable cause apart from the tip received by the officers**. As the Court has extensively explained, still in *Veridiano*:

> That the object of a warrantless search is allegedly inside a moving vehicle does not justify an extensive search absent probable cause. **Moreover, law enforcers cannot act solely on the basis of confidential or tipped information. A tip is still hearsay no matter**

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[13] G.R. No. 244045, June 16, 2020, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66263>.

[14] Id.

how reliable it may be. It is not sufficient to constitute probable cause in the absence of any other circumstance that will arouse suspicion.

Although this Court has upheld warrantless searches of moving vehicles based on tipped information, there have been other circumstances that justified warrantless searches conducted by the authorities.

In *People v. Breis*, apart from the tipped information they received, the law enforcement agents observed suspicious behavior on the part of the accused that gave them reasonable ground to believe that a crime was being committed. The accused attempted to alight from the bus after the law enforcers introduced themselves and inquired about the ownership of a box which the accused had in their possession. In their attempt to leave the bus, one (1) of the accused physically pushed a law enforcer out of the way. Immediately alighting from a bus that had just left the terminal and leaving one's belongings behind is unusual conduct.

In *People v. Mariacos*, a police officer received information that a bag containing illegal drugs was about to be transported on a passenger jeepney. The bag was marked with "O.K." On the basis of the tip, a police officer conducted surveillance operations on board a jeepney. Upon seeing the bag described to him, he peeked inside and smelled the distinct odor of marijuana emanating from the bag. The tipped information and the police officer's personal observations gave rise to probable cause that rendered the warrantless search valid.

The police officers in *People v. Ayangao* and *People v. Libnao* likewise received tipped information regarding the transport of illegal drugs. In *Libnao*, the police officers had probable cause to arrest the accused based on their three (3)-month long surveillance operation in the area where the accused was arrested. On the other hand, in *Ayangao*, the police officers noticed marijuana leaves protruding through a hole in one (1) of the sacks carried by the accused.[15] (Emphasis and underscoring supplied)

From the facts of this case, however, it is very clear that the "tip" was the only real basis of the police officers, as the other

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[15] *Veridiano v. People*, supra note 2 at 411-412.

supposed facts that supposedly constituted probable cause were shown to be incredible. Indeed, "it is doctrinal that **all** doubts must be resolved in favor of the accused,"[16] including the doubtful facts in the present case.

Thus, as the search conducted by the police officers in this case was invalid, the seized items — despite their immense volume — must be set aside for being fruits of the poisonous tree.

The prosecution failed to establish that Baterina had intent to possess the prohibited items

I do not dispute the statement in the *ponencia* that criminal intent need not be proved in the prosecution of acts *mala prohibita*. However, in acts *mala prohibita*, **it is still required that the accused must have intended to commit the act** that is, by the very nature of things, the crime itself. In the words of former Chief Justice Panganiban in *People v. Lacerna*,[17] "[i]ntent to commit the crime is not necessary, but intent to perpetrate the act prohibited by the special law must be shown."[18]

In other words, even if the offense of illegal possession of dangerous drugs is *malum prohibitum*, "[t]his, however, does not lessen the prosecution's burden because it is still required to show that the prohibited act was intentional."[19] In cases involving the illegal possession of dangerous drugs, "the prosecution is not excused from proving that possession of the prohibited act was done 'freely and consciously,' which is an essential element of the crime."[20]

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[16] *People v. Delima*, G.R. No. 222645, June 27, 2018, 869 SCRA 94, 110.

[17] G.R. No. 109250, September 5, 1997, 278 SCRA 561.

[18] Id. at 581.

[19] Id.

[20] Id.

Hence, a critical element of the crime of illegal possession of dangerous drugs is the element of intent to possess or *animus possidendi*.

The Court has held that in criminal cases involving prohibited drugs, there can be no conviction unless the prosecution shows that the accused knowingly, freely, intentionally, and consciously possessed the prohibited articles in his person, or that *animus possidendi* is shown to be present together with his possession or control of such article.[21]

The concept of possession contemplated under RA 9165 goes beyond mere actual and physical possession of the drug specimen. Otherwise, any unsuspecting person who is victimized by the planting of evidence will be unjustly prosecuted based on the sheer fact that illegal drugs were found to be in his possession. To digress and to recall, the victims of "Laglag Bala" could not have been convicted if it is proven that the bullets found in their personal bags were not put there by them in the first place. It must be proven that the person in whose possession the drug specimen was found knew that they were possessing illegal drugs.

Therefore, to prosecute an accused for illegally possessing, or in this case, transporting, illegal drugs, ***the prosecution must go beyond and provide evidence that the accused knowingly, freely, consciously, and intentionally possessed the bag knowing it to contain illegal drugs.***

Jurisprudence tells us that since knowledge refers to a mental state of awareness of a fact and, therefore, courts cannot penetrate the mind of an accused and thereafter state its perceptions with certainty, resort to other evidence is necessary.[22] Hence, the intent to possess, being a state of mind, may be determined on a *case-to-case basis* by taking into consideration the prior or contemporaneous acts of the accused, as well as the surrounding

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[21] *People v. Peñaflorida, Jr.*, G.R. No. 175604, April 10, 2008, 551 SCRA 111, 126.

[22] Id.

circumstances. Its existence may and usually must be inferred from the attendant events in each particular case.[23]

After an intensive review of the records of this case, I strongly believe that there is ***reasonable doubt*** as to whether the bags even belonged to Baterina. To me, the surrounding factual circumstances, as established by the evidence on record, fail to clearly establish that there was *animus possidendi* on the part of Baterina.

For instance, in acquitting Baterina's co-accused, the RTC stated:

> In this case, the prosecution, other than its bare assertions that accused Baterina conspired with Pakoyan, Dayao and Puklis in transporting the five (5) bags of marijuana, failed to establish that there was indeed a conscious criminal design existing between them and accused Baterina to commit the said offense. True, accused Pakoyan, Dayao and Puklis were inside the jeep that fateful day of August 3, 2010, but it could not be deduced that they were aware of the contents of the five (5) plastic bags. These facts, standing alone, cannot give rise to a presumption of conspiracy.
>
> Certainly, conspiracy must be proven through clear and convincing evidence. **Indeed, it is possible that accused Pakoyan, Dayao and Puklis were telling the truth when they said that they merely hired accused Baterina to bring their sick child to the hospital.** In short, the Court finds that mere presence of accused Pakoyan, Dayao and Puklis inside the jeep as passengers were inadequate to prove that they were also conspirators of accused Baterina.[24] (Emphasis and Underscoring supplied)

It is important to note that the ownership of the bags was never truly established. Prescinding from this uncertainty, the RTC treated as reasonable doubt the ***possibility*** that these people did not actually own, possess, or at least know the contents, of the bags.

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[23] Id.

[24] CA *rollo,* p. 76.

The above reasoning of the RTC, however, could similarly be said about Baterina.

PO2 Olete, one of the witnesses for the prosecution, himself admitted that it was customary in the area to hire private vehicles as a mode of transportation. During the cross-examination, PO2 Olete testified as follows:

Q: How long have you been stationed in San Gabriel police station mister witness?
A: Three (3) years, sir.

Q: So, in that span of time you are aware of [the] topography of San Gabriel?
A: Yes, sir.

Q: And you are aware also that some parts of the Barangay are located in far flung areas?
A: Yes, sir.

Q: And the mode of transportation in going to and from these barangays is only through motorized vehicles. Is that right mister witness?
A: Yes, sir.

Q: So, you are also familiar with the arrangements in going to and from these places that it must be on a contract basis mister witness?
A: Yes, sir.

Q: That you have to hire a motor vehicle so that you can transport your things from these far flung areas?
A: During night only, sir.[25]

In addition, based on the defense evidence, Baterina and his wife both claimed that he was engaged in the business of driving, **and even his three co-accused confirmed** that they indeed hired him to transport them.

It is not far-fetched for a group of people — like Baterina's co-accused — to bring bags on their way to a hospital. In fact, it is even more contrary to human experience if they did not actually

[25] TSN dated November 9, 2010, pp. 6-7.

bring bags if they truly were on their way to the hospital. Moreover, common sense and human experience dictates that hired vehicles are normally emptied before the start of the journey because the space inside should be for the use of the lessees, ***not the lessor***, during the time period.

Thus, Baterina's testimony that he was just hired as a driver by his three co-accused, that the bags were not his, and that he did not know the contents of the bags has a ring of truth to it. In fact, it is my view that as between Baterina and his three co-accused, the RTC should have acquitted Baterina whose testimony is more consistent with logic, common sense, and human experience. Parenthetically, if there was anyone that the RTC should have convicted, it should have been one or all of Baterina's co-accused, not him. After all, the prosecution witness who received the initial tip himself testified that the text message he received mentioned that "**a group of men and women** will transport [a] big volume of dried marijuana"[26] — a description that fits the group that hired Baterina.

In this connection, it is well-settled that "if the inculpatory facts and circumstances are capable of two or more interpretations, one of which being consistent with the innocence of the accused and the other or others consistent with his guilt, then the evidence in view of the constitutional presumption of innocence has not fulfilled the test of moral certainty and is thus insufficient to support a conviction."[27]

Given the foregoing, the same possibilities that became the grounds for reasonable doubt on the part of Baterina's co-accused likewise exists, if not more, for Baterina. **To repeat, the ownership of the bags containing marijuana was never established — a burden that the prosecution failed to discharge.** To my mind, this constitutes sufficient reasonable doubt on Baterina's guilt.

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[26] TSN dated January 20, 2011, p. 5.

[27] *Franco v. People*, 780 Phil. 36 (2016).

In sum, Baterina should be acquitted because the *corpus delicti* of the crime is inadmissible for being fruit of the poisonous tree. Even assuming, however, that the seized items were admissible, Baterina should still be acquitted in consonance with the constitutional presumption of innocence due to the failure of the prosecution to establish that he owned — or at least had the intent to possess — the bags containing the contraband.

I would like to end this Opinion with a quote from a 1995 case that remains to ring true until today: "[m]uch as we share the abhorrence of the disenchanted public in regard to the proliferation of drug pushers, this Court cannot permit the incarceration of an individual based on insufficient factual nexus of that person's participation in the commission of the offense."[28]

In view of the foregoing, I vote to **GRANT** the Petition. The accused-appellant Emiliano Baterina y Cabading should be **ACQUITTED** from the charge of violating Section 5, Republic Act No. 9165.

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[28] *People v. Melosantos*, G.R. No. 115304, July 3, 1995, 245 SCRA 569, 587.

FIRST DIVISION

[G.R. No. 236325. September 16, 2020]

COMMISSIONER OF INTERNAL REVENUE, *Petitioner*, *v.* **FILMINERA RESOURCES CORPORATION,** *Respondent*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; CONTENTS OF A PETITION FOR REVIEW ON *CERTIORARI*; ATTACHING TO THE PETITION A DUPLICATE ORIGINAL OF AN OPINION, WHICH REPRODUCED VERBATIM THE REQUIRED CERTIFICATION, CONSTITUTES SUBSTANTIAL COMPLIANCE WITH THE REQUIREMENT.— Section 4, Rule 45 of the Rules of Court requires the CIR to attach all material portions of the record as would support the allegations in the petition. Here, the petition was accompanied by duplicate original of the CTA *En Banc*'s Decision dated March 29, 2017 and certified true copy of the Resolution dated November 16, 2017. The CIR, however, did not attach a copy of the BOI Certification dated January 27, 2010, which was the basis of the CTA in granting refund to Filminera Resources. Undoubtedly, the BOI Certification is a material portion of the records that should be attached to the petition.

Nonetheless, the BOI Certification was reproduced in the Dissenting Opinion of Presiding Justice Del Rosario to the Decision dated March 29, 2017. The CIR attached to the petition duplicate original of the dissenting opinion.

. . .

Thus, by attaching to the petition a duplicate original of the Dissenting Opinion which reproduced *verbatim* the BOI Certification, the CIR, at the very least, substantially complied with the requirements embodied in Rule 45 of the Rules of Court. We have consistently held that a strict and rigid application of rules that would result in technicalities that tend to frustrate rather than promote substantial justice must be avoided, as in this case.

2. ID.; ID.; ID.; THE ISSUE OF WHETHER THE SALES MADE TO A CORPORATION ARE ZERO-RATED EXPORT SALES BASED ON BOI CERTIFICATION IS A QUESTION OF LAW THAT IS WELL WITHIN THE BOUNDS OF A RULE 45 PETITION.— [T]he issue is whether the sales made to PGPRC for the third and fourth quarters of the FY ending June 30, 2010 are zero-rated export sales based on the certification issued by the BOI on January 27, 2010. This is a question of law which does not burden the Court to examine the probative value of the BOI Certification presented. The petition mainly requires us to determine the scope of the BOI Certification and the period when PGPRC exported 100% of its products. These are questions well within the bounds of a Rule 45 Petition.

3. TAXATION; 1997 NATIONAL INTERNAL REVENUE CODE; VALUE-ADDED TAX (VAT); EXPORT SALES, DEFINED.— "Export sales" is defined in Executive Order No. 226 as "the Philippine port F.O.B. value x x x of export products exported directly by a registered export producer or the net selling price of export product sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same: Provided, That sales of export products to another producer or to an export trader shall only be deemed export sales when ***actually exported*** by the latter x x x."

4. ID.; ID.; ID.; ID.; CROSS BORDER DOCTRINE; DESTINATION PRINCIPLE; SALES OF EXPORT PRODUCTS THAT ARE ACTUALLY CONSUMED IN A FOREIGN COUNTRY ARE FREE FROM VAT.— The tax treatment of export sales is based on the Cross Border Doctrine and Destination Principle of the Philippine VAT system. Under the Destination Principle, goods and services are taxed only in the country where these are consumed. In this regard, the Cross Border Doctrine mandates that no VAT shall be imposed to form part of the cost of goods destined for consumption outside the territorial border of the taxing authority. Hence, actual export of goods and services from the Philippines to a foreign country must be free of VAT; while, those destined for use or consumption within the Philippines shall be imposed with VAT. Plainly, sales of export products to another producer or to an

export trader are subject to zero percent rate provided the export products are actually exported and consumed in a foreign country.

5. ID.; ID.; ID.; ID.; ID.; SALES MADE TO PEZA–REGISTERED ENTERPRISES ARE ZERO-RATED; ECOZONE IS TREATED AS A SEPARATE CUSTOMS TERRITORY.— In Revenue Memorandum Circular No. 74-99, the Bureau of Internal Revenue (BIR) clarified that sales made to PEZA-registered enterprises qualify for zero-rating pursuant to the cross-border doctrine. The ECOZONE is treated as a separate customs territory such that the buyer is treated as an importer and is imposed the corresponding import taxes and customs duties on his purchase of products from within the ECOZONE. While ECOZONE enterprises are not necessarily manufacturer-exporters of products, taken as a whole, all their integrated activities eventually translate into manufactured products which are either actually exported to foreign countries, in which case, no VAT shall form part of the export price; or actually sold to buyers from the customs territory, in which case, the regular VAT shall be paid by the buyers.

6. ID.; ID.; ID.; ID.; SALES MADE TO A BOI-REGISTERED BUYER MAY BE CONSIDERED AS EXPORT SALES SUBJECT TO THE ZERO PERCENT RATE UPON COMPLIANCE WITH THREE CONDITIONS.— The BIR similarly applied the cross-border doctrine to sales made by VAT-registered suppliers to BOI-registered enterprises whose products are 100% exported.. . .

. . . [S]ales made to a BOI-registered buyer are export sales subject to the zero percent rate if the following conditions are met: (1) the buyer is a BOI-registered manufacturer/producer; (2) the buyer's products are 100% exported; and (3) the BOI certified that the buyer exported 100% of its products. For this purpose, the BOI Certification is vital for the seller-taxpayer to avail of the benefits of zero-rating. The certification is evidence that the buyer exported its entire products and shall serve as authority for the seller to claim for refund or tax credit.

7. ID.; ID.; ID.; ID.; ID.; SALES DO NOT QUALIFY FOR ZERO-RATING IN THE ABSENCE OF A BOI CERTIFICATION THAT THE GOODS WERE ACTUALLY EXPORTED AND CONSUMED IN A FOREIGN COUNTRY; CASE AT BAR. — A plain reading of the certification shows that PGPRC

exported a total of 3,820,982.5 grams, or 100% of its total sales volume/value, from **January 1 to December 31, 2009.** However, nothing in the certification shows that PGPRC similarly exported its entire products for the third and fourth quarters of FY 2010, or from **January 1 to June 30, 2010.** Without the certification from the BOI that the products sold to PGPRC during the third and fourth quarters of FY 2010 were ***actually exported and consumed in a foreign country,*** the sales cannot be considered export sales.

. . .

. . . The validity period of the certification is intended to accord zero-rating status to sales made during the extended period, but not as proof that PGPRC exported its entire products during the same period. This is logical since the BOI can attest to the actual exportation only *after* the end of the taxable year. As in this case, the certification issued by the BOI on January 27, 2010 is not relevant for purposes of treating the sales made to PGPRC from January 1 to December 31, 2009 zero-rated. When the certification was issued on January 27, 2010, Filminera Resources had *already* classified its sales as zero-rated. Instead, the certification serves as authority for Filminera Resources to accord zero-rating status to sales made to PGPRC *within one year from validity,* or from **January 1 to December 31, 2010.** . . .

In order for the sales made to PGPRC during the third and fourth quarters of FY 2010 qualify as zero-rated sales, the BOI must still certify that PGPRC actually exported its entire product from January 1 to December 31, 2010. The BOI Certification dated January 27, 2010 failed to ascertain this fact.

8. ID.; ID.; ID.; ID.; TAX REFUND; TAX CREDIT; ZERO-RATED SALES MUST ALSO COMPLY WITH INVOICING REQUIREMENTS.— The validity period of the BOI certification should not be confused with the period identified in the certification when the buyer actually exported 100% of its products. It must be remembered that taxpayers with zero-rated sales may claim a refund or tax credit for the VAT previously charged by the suppliers (*i.e.*, the input tax) because the sales had no output tax. However, to be entitled for the refund or tax credit, the taxpayer must not only prove the existence of zero-rated sales, but must also prove that the zero-rated sales were issued valid invoice or official receipts

pursuant to Sections 113 (A) and (B), and 237 of the 1997 NIRC, in relation to Section 4.113-1(B) of RR No. 16-2005. In Revenue Memorandum Circular No. 42-2003, the BIR clarified that if the claim for refund or tax credit is based on the existence of zero-rated sales by the taxpayer but it fails to comply with the invoicing requirements in the issuance of sales invoices, *e.g.* the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt, the claim for refund or tax credit shall be denied.

9. ID.; ID.; TAX CREDIT OR REFUND BEING AN EXEMPTION FROM TAXATION, TAX REFUNDS MUST BE STRICTLY CONSTRUED AGAINST THE CLAIMANT. — We stress that the taxpayer-claimant has the burden of proving the legal and factual bases of its claim for tax credit or refund. After all, tax refunds partake the nature of exemption from taxation, and as such, must be looked upon with disfavor. It is regarded as in derogation of the sovereign authority, and should be construed in *strictissimi juris* against the person or entity claiming the exemption. The taxpayer who claims for exemption must justify his claim by the clearest grant of organic or statute law and should not be permitted to stand on vague implications. The burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for refund.

10. ID.; ID.; ID.; CONDITIONS BEFORE A SELLER MAY CLAIM A REFUND OR TAX CREDIT FOR THE INPUT VAT ATTRIBUTABLE TO ITS ZERO-RATED SALES; FAILURE TO PROVE THAT THE SALES ARE EXPORT SALES RESULTS IN THE DENIAL OF THE CLAIM.— Under Section 112(A) of the 1997 NIRC, the seller may claim a refund or tax credit for the input VAT attributable to its zero-rated sales subject to the following conditions: (1) the taxpayer is VAT-registered; (2) the taxpayer is engaged in zero-rated or effectively zero-rated sales; (3) the claim must be filed within two years after the close of the taxable quarter when such sales were made; (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax; and (5) in case of zero-rated sales under Section 106(A)(2)(a)(1) and (2), Section 106(B) and Section 108(B)(1) and (2) of the 1997 NIRC, the acceptable foreign currency

exchange proceeds have been duly accounted for in accordance with *Bangko Sentral ng Pilipinas* rules and regulations.

. . .

As for the second requisite, Filminera Resources failed to prove that its sales to PGPRC for the third and fourth quarters of FY 2010 are export sales. We reiterate that without the certification from the BOI attesting actual exportation by PGPRC of its entire products from January 1 to June 30, 2010, the sales made during that period are not zero-rated export sales made during that period are not zero-rated export sales. The second requisite not having been met, there is no need for us to discuss the fourth requirement.

In fine, Filminera Resources Corporation is not entitled to a refund or the issuance of tax credit certificate in the amount of ₱111,579,541.76, representing its unutilized input value-added tax attributable to zero-rated sales for the third and fourth quarters of the fiscal year ending June 30, 2010.

APPEARANCES OF COUNSEL

BIR Litigation Division for Petitioner.
Salvador Llanillo & Bernardo for Respondent.

D E C I S I O N

LOPEZ, *J.*:

Proof of actual exportation of goods sold by a Value Added Tax (VAT)-registered taxpayer to a Board of Investments (BOI)-registered enterprise is vital for the transaction to be considered as zero-rated export sales.

This is a Petition for Review on *Certiorari*[1] filed under Rule 45 of the Rules of Court assailing the Decision[2] dated March

[1] *Rollo*, pp. 27-40.

[2] *Id.* at 49-81; penned by Associate Justice Cielito N. Mindaro-Grulla, with the concurrence of Associate Justices Juanito C. Castañeda, Jr., Lovell

29, 2017 and Resolution[3] dated November 16, 2017 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 1362, which upheld the Amended Decision[4] dated May 25, 2015 and Resolution dated September 10, 2015 of the CTA Division in CTA Case Nos. 8528 & 8576 ordering the Commissioner of Internal Revenue (CIR) to refund or issue a tax credit certificate (TCC) in favor of Filminera Resources Corporation (Filminera Resources) in the amount of ₱111,579,541.76.

ANTECEDENTS

On July 5, 2007, Filminera Resources and Philippine Gold Processing and Refining Corporation (PGPRC), a domestic corporation registered with the BOI, entered into an Ore Sales and Purchase Agreement.[5] For the third and fourth quarters of the fiscal year (FY) ending June 30, 2010, Filminera Resources' sales were all made to PGPRC.[6]

On March 30, 2012 and June 29, 2012, Filminera Resources filed its amended quarterly VAT returns for the third and fourth quarters, respectively.[7] On the same dates, Filminera Resources filed administrative claims for refund or issuance of TCC of its unutilized input VAT attributable to its zero-rated sales for the third and fourth quarters.

Thereafter, on August 16, 2012 and November 23, 2012, Filminera Resources filed separate petitions for review before the CTA, which were docketed as CTA Case No. 8528 and

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R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, and Ma. Belen M. Ringpis-Liban, and the dissent of Presiding Justice Roman G. Del Rosario and Associate Justice Catherine T. Manahan.

[3] *Id.* at 89-96.

[4] *Id.* at 126-138; penned by Associate Justice Juanito C. Castañeda, Jr., with the concurrence of Associate Justices Caesar A. Casanova and Amelia R. Cotangco-Manalastas.

[5] *Id.* at 98.

[6] *Id.* at 135.

[7] *Id.*

CTA Case No. 8576.[8] The CIR filed his answer in CTA Case No. 8528 on October 23, 2012,[9] and in CTA Case No. 8576 on December 12, 2012.[10] The two cases were consolidated,[11] and thereafter, trial on the merits ensued.

On September 25, 2014, the CTA Division denied Filminera Resources' petitions on the ground of insufficiency of evidence.[12] The CTA Division held that Filminera Resources failed to prove that its sales to PGPRC during the third and fourth quarters of FY 2010 qualify as export sales subject to the zero percent (0%) rate under Section 106(A)(2)(a)(5)[13] of the 1997 National Internal Revenue Code,[14] as amended by Republic Act No. 9337 (1997 NIRC), and Section 4.106-5(a)(5)[15] of Revenue Regulations (RR) No. 16-2005.[16]

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[8] *Rollo*, p. 99.

[9] *Id.* at 104.

[10] *Id.* at 99.

[11] *Id.* at 118.

[12] *Id.* at 97-125. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for insufficiency of evidence.

SO ORDERED. *Id.* at 124. (Emphasis in the original.)

[13] SECTION 106. *Value-added Tax on Sale of Goods or Properties*. — (A) Rate and Base of Tax. — x x x

x x x x

(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) Export Sales. — The term "export sales" means:

x x x x

(5) Those considered export sales under Executive Order No. 226, otherwise known as the "Omnibus Investment Code of 1987[,"] and other special laws.

[14] Republic Act (RA) No. 8424, December 11, 1997.

[15] SECTION 4.106-5. *Zero-Rated Sales of Goods or Properties*. — A zero-rated sale of goods or properties (by a VAT-registered person) is a taxable transaction for VAT purposes, but shall not result in any output tax. However, the input tax on purchases of goods, properties or services, related to such zero-rated sale, shall be available as tax credit or refund in accordance with these Regulations.

Filminera Resources sought reconsideration and submitted a certified true copy of BOI Certification dated January 27, 2010[17] to establish that PGPRC was a BOI-registered enterprise that exported its total sales volume from July 1, 2009 to June 30, 2010. The CIR counter-argued that the BOI Certification failed to prove that all of PGPRC's products from January 1, 2010 to June 30, 2010 were actually exported.

On May 25, 2015, the CTA Division amended its Decision[18] on petitioner's motion for reconsideration dated September 25, 2014. Considering that the validity period of the BOI Certification covered the period subject of the claims for refund, the CTA Division concluded that Filminera Resources' sales were zero-rated, *viz.*:

WHEREFORE, [Filminera Resources'] **Motion for Reconsideration of the Decision dated 25 September 2014** is **PARTIALLY GRANTED**. Accordingly, the assailed Decision promulgated on September 25, 2014 is hereby **AMENDED** to read as follows:

The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) Export sales. — "*Export Sales*" shall mean:

x x x x

(5) Transactions considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and other special laws.

x x x x

For purposes of zero-rating, the export sales of registered export traders shall include commission income. The exportation of goods on consignment shall not be deemed export sales until the export products consigned are in fact sold by the consignee; and Provided, finally, that **sales of goods, properties or services made by a VAT-registered supplier to a BOI-registered manufacturer/producer whose products are 100% exported are considered export sales. A certification to this effect must be issued by the Board of Investment (BOI) which shall be good for one year unless subsequently re-issued by the BOI**. (Emphasis supplied.)

[16] Consolidated Value-Added Tax Regulations of 2005, September 1, 2005.

[17] *Rollo*, pp. 128 and 131.

[18] *Supra* note 4.

> "**WHEREFORE**, premises considered, the instant Petitions for Review are **PARTIALLY GRANTED**. Accordingly, [the CIR] is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of [Filminera Resources] in the amount of ₱111,579,541.76, representing [Filminera Resources'] unutilized input VAT attributable to its zero-rated sales for the third and fourth quarters of FY ending June 30, 2010."
>
> **SO ORDERED**.[19] (Emphasis in the original.)

The CIR's motion for reconsideration was denied on September 10, 2015.[20] Hence, the CIR elevated the case to the CTA *En Banc*.

On March 29, 2017, the CTA *En Banc* dismissed the petition for lack of merit.[21] On reconsideration, the CIR insisted that the BOI Certification was not sufficient to support Filminera Resources' claim for refund because there must be proof of actual exportation of PGPRC's products.[22] Besides, the BOI Certification was a forgotten evidence, which was not presented during the trial.

On November 16, 2017, the CTA *En Banc* denied the CIR's motion and ruled:[23]

> x x x, with the formal offer and admission into evidence of the BOI Certification that PGPRC exported 100% of its total sales volume, [Filminera Resources'] sales thus qualify for VAT zero-rating under the law.
>
> **WHEREFORE**, premises considered, the [CIR]'s Motion for Reconsideration is hereby **DENIED** for lack of merit.

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[19] *Rollo*, pp. 136-137.

[20] *Id.* at 50.

[21] *Supra* note 2. The dispositive portion of the Decision reads:
WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of merit.
SO ORDERED. *Rollo*, p. 80. (Emphasis in the original.)

[22] *Rollo*, pp. 89-90.

[23] *Supra* note 3.

SO ORDERED.[24] (Emphasis in the original.)

Hence, the CIR filed the instant petition before this Court.

The CIR maintains that the BOI Certification dated January 27, 2010 does not satisfy the conditions imposed by law and the rules for the sales made to PGPRC be considered as zero-rated sales. The certification merely provides that the period covered is from January 1 to December 31, 2009, and does not state that PGPRC exported 100% of its products from January 1 to June 30, 2010, which are the period subject of the claims for refund. Further, it was impossible for the BOI to certify that PGPRC exported its entire products from January 1 to June 30, 2010 because the certification was issued only on January 27, 2010. Lastly, the extension of the certification's validity period until December 31, 2010 was intended to give taxpayers an extended period to avail of the benefits of zero-rating.

In compliance with this Court's Resolution[25] dated June 18, 2018, Filminera Resources filed its Comment[26] on October 23, 2018, after requesting for two extensions.[27]

Filminera Resources counters that the petition should be dismissed outright for failure to conform to the prescribed format in violation of Section 4,[28] Rule 45 of the Rules of Court.

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[24] *Rollo*, p. 95.

[25] *Id.* at 180A-180B.

[26] *Id.* at 198-209.

[27] *Id.* at 186-189, 192-195.

[28] Section 4. *Contents of petition.* — The petition shall be filed in eighteen (18) copies, with the original copy intended for the court being indicated as such by the petitioner and shall (a) state the full name of the appealing party as the petitioner and the adverse party as respondent, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received; (c) set forth concisely a statement of the matters involved, and the reasons or arguments relied on for the allowance of the petition; (d) be accompanied by a clearly legible duplicate original, or a certified true

Filminera Resources avers that its copy of the petition was not accompanied by any copy of the CTA *En Banc*'s assailed Decision and Resolution, as well as material portions of the records as would support the petition. Further, the petition raises a question of fact which is beyond the ambit of a Rule 45 petition. In any case, Filminera Resources posits that the CTA *En Banc* did not err in concluding that its sales for the third and fourth quarters of FY 2010 were zero-rated.

In his Reply,[29] the CIR claims that a copy of the petition served to Filminera Resources had the attachments required by the Rules of Court. Also, what the petition seeks to correct is the CTA *En Banc*'s wrongful appreciation of the BOI Certification as sufficient compliance with one of the conditions imposed by law and the rules for the transaction to be considered export sales. This is a question of law and not a question of fact.

RULING

The petition is meritorious.

Procedurally, Section 4,[30] Rule 45 of the Rules of Court requires the CIR to attach all material portions of the record as would support the allegations in the petition. Here, the petition was accompanied by duplicate original of the CTA *En Banc*'s Decision[31] dated March 29, 2017 and certified true copy of the Resolution[32] dated November 16, 2017. The CIR, however, did not attach a copy of the BOI Certification dated January 27, 2010, which was the basis of the CTA in granting refund to

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copy of the judgment or final order or resolution certified by the clerk of court of the court a quo and the requisite number of plain copies thereof, and such material portions of the record as would support the petition; and (e) contain a sworn certification against forum shopping as provided in the last paragraph of section 2, Rule 42.

[29] *Rollo*, pp. 219-224.

[30] *Supra*.

[31] *Rollo*, pp. 49-81.

[32] *Id.* at 89-96.

Filminera Resources. Undoubtedly, the BOI Certification is a material portion of the records that should be attached to the petition.

Nonetheless, the BOI Certification was reproduced in the Dissenting Opinion[33] of Presiding Justice Del Rosario to the Decision dated March 29, 2017. The CIR attached to the petition duplicate original of the dissenting opinion.[34]

In *Cusi-Hernandez v. Sps. Diaz*,[35] we held that "[t]he fact that no certified true copy of the Contract to Sell was attached to the Petition before the CA did not weaken the petitioner's case."[36] Based on *Cadayona v. Court of Appeals*,[37] not all of

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[33] See *id.* at 83-84.

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

[35] 390 Phil. 1245 (2000), cited in *Atillo v. Bombay*, 404 Phil. 179, 188 (2001).

[36] *Id.* at 1251.

[37] 381 Phil. 619 (2000). Relevant portion of the decision reads: ''Section 6 of Rule 1 states that the Rules "shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding." In line with this guideline, **we do not construe the above-quoted section as imposing the requirement that all supporting papers accompanying the petition should be certified true copies**. A comparison of this provision with the counterpart provision in Rule 42 (governing petitions for review from the RTC to the CA) would show that under the latter, only the judgments or final orders of the lower courts need be certified true copies or duplicate originals. Also under Rule 45 of the Rules of Court (governing Appeals by *Certiorari* to the Supreme Court), only the judgment or final order or resolution accompanying the petition must be a clearly legible duplicate original or a certified true copy thereof certified by the clerk of court of the court a quo. Even under Rule 65 governing *certiorari* and prohibition, petitions need be accompanied by certified true copies of the questioned judgment, it being sufficient that copies of all other relevant documents should accompany the petition. Numerous resolutions issued by this Court emphasize that **in appeals by *certiorari* under Rules 45 and original civil actions for *certiorari* under Rule 65 in relation to Rules 46 and 56, what is required to be a certified true copy is the copy of the questioned judgment, final order or resolution. No plausible reason suggests itself why a different treatment, *i.e.*, a stricter requirement, should be given to petitions under Rule 43, which**

the supporting papers accompanying the petition should be certified true copies. In that case, the documents attached by the petitioner consisted only of the original duplicate copies of the assailed Decisions and Orders of the lower court but the contract to sell was not annexed. Since the Metropolitan Trial Court Decision attached to the petition reproduced *verbatim* the contract to sell and a certified true copy of the contract was also attached to the motion for reconsideration, we declared that there was substantial compliance with the rules.[38]

Thus, by attaching to the petition a duplicate original of the Dissenting Opinion which reproduced *verbatim* the BOI Certification, the CIR, at the very least, substantially complied with the requirements embodied in Rule 45 of the Rules of Court. We have consistently held that a strict and rigid application of rules that would result in technicalities that tend to frustrate rather than promote substantial justice must be avoided,[39] as in this case.

The issue raised before this Court is a question of law.

It is well-settled that only questions of law may be raised in a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court. Questions of fact are generally proscribed. As applied to claims for refund of taxes, a question of law may be distinguished from a question of fact, as follows:

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governs appeals from the Court of Tax Appeals and quasi-judicial agencies to the Court of Appeals. None could have been intended by the framers of the Rules. A contrary ruling would be too harsh and would not promote the underlying objective of securing a just, speedy and inexpensive disposition of every action and proceeding. It must be conceded that obtaining certified true copies necessary entails additional expenses that will make litigation more onerous to the litigants. Moreover, certified true copies are not easily procurable and party litigants must wait for a period of time before the certified true copies are released. At any rate, the entire records of the case will eventually be elevated to the appellate court." *Id.* at 626-627. (Emphasis supplied.)

[38] *Id.* at 627.

[39] *Cusi-Hernandez v. Sps. Diaz, supra* note 35 at 1252. See also *Spouses Lanaria v. Planta*, 563 Phil. 400, 416 (2007).

x x x the proper interpretation of the provisions on tax refund that *does not* call for an examination of the probative value of the evidence presented by the parties-litigants is a question of law. Conversely, it may be said that if the appeal essentially calls for the re-examination of the probative value of the evidence presented by the appellant, the same raises a *question of fact. Often repeated is the distinction that there is a question of law in a given case when doubt or difference arises as to what the law is on a certain state of facts; there is a question of fact when doubt or difference arises as to the truth or falsehood of alleged facts*.[40] (Italics supplied.)

The CIR asserts that the BOI Certification issued on January 27, 2010 merely established that PGPRC exported 100% of its products for the period from January 1 to December 31, 2009. It does not prove that PGPRC similarly exported its entire products during the period subject of the claims for refund — the third and fourth quarters of FY 2010 or from January 1 to June 30, 2010. The BOI Certification, therefore, does not satisfy one of the conditions imposed under the 1997 NIRC that the BOI-registered buyer exported 100% of its products. Also, the extension of the validity period of the certification until December 31, 2010 is intended to give the seller-taxpayer an extended period to avail of the benefits of zero-rating and does not apply to subsequent sales not identified in the certification.

Essentially, the issue is whether the sales made to PGPRC for the third and fourth quarters of the FY ending June 30, 2010 are zero-rated export sales based on the certification issued by the BOI on January 27, 2010. This is a question of law which does not burden the Court to examine the probative value of the BOI Certification presented. The petition mainly requires us to determine the scope of the BOI Certification and the period when PGPRC exported 100% of its products. These are questions well within the bounds of a Rule 45 Petition.

The sales made to PGPRC during the third and fourth quarters of FY 2010 do not qualify for zero-rating;

[40] *Fortune Tobacco Corp. v. Commissioner of Internal Revenue*, 762 Phil. 450, 460 (2015).

Filminera Resources is not entitled to a refund or credit of input VAT attributable to such sales.

"Export sales" is defined in Executive Order No. 226[41] as "the Philippine port F.O.B. value x x x of export products exported directly by a registered export producer or the net selling price of export product sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same: Provided, That sales of export products to another producer or to an export trader shall only be deemed export sales when ***actually exported*** by the latter x x x."[42]

The foregoing export sales was included in the list of sales subject to the zero percent rate under Section 106(A)(2)(a)(5) of the 1997 NIRC:

SECTION 106. Value-added Tax on Sale of Goods or Properties. —

(A) *Rate and Base of Tax*. — x x x

x x x x

(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) *Export Sales*. — The term '*export sales*' means:

x x x x

(5) **Those considered export sales under Executive Order No. 226**, otherwise known as the Omnibus Investment Code of 1987, and other special laws x x x. (Emphasis supplied.)

The tax treatment of export sales is based on the Cross Border Doctrine and Destination Principle of the Philippine VAT system. Under the Destination Principle, goods and services are taxed only in the country where these are consumed.[43] In this regard,

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[41] THE OMNIBUS INVESTMENTS CODE OF 1987, July 16, 1987.

[42] See Executive Order No. 226, Article 23.

[43] *Atlas Consolidated Mining and Dev't. Corp. v. Commissioner of Internal Revenue*, 551 Phil. 519, 544 (2007), citing *Commissioner of Internal Revenue*

the Cross Border Doctrine mandates that no VAT shall be imposed to form part of the cost of goods destined for consumption outside the territorial border of the taxing authority.[44] Hence, actual export of goods and services from the Philippines to a foreign country must be free of VAT; while, those destined for use or consumption within the Philippines shall be imposed with VAT. Plainly, sales of export products to another producer or to an export trader are subject to zero percent rate provided the export products are actually exported and consumed in a foreign country.

In Revenue Memorandum Circular No. 74-99,[45] the Bureau of Internal Revenue (BIR) clarified that sales made to PEZA-registered enterprises qualify for zero-rating pursuant to the cross-border doctrine. The ECOZONE[46] is treated as a separate customs territory such that the buyer is treated as an importer and is imposed the corresponding import taxes and customs duties on his purchase of products from within the ECOZONE. While ECOZONE enterprises are not necessarily manufacturer-exporters of products, taken as a whole, all their integrated activities eventually translate into manufactured products which are either actually exported to foreign countries, in which case, no VAT shall form part of the export price; or actually sold to buyers from the customs territory, in which case, the regular VAT shall be paid by the buyers.

The BIR similarly applied the cross-border doctrine to sales made by VAT-registered suppliers to BOI-registered enterprises

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v. Seagate Technology (Phils.), 491 Phil. 317 (2005).

[44] *Atlas Consolidated Mining and Dev't. Corp. v. Commissioner of Internal Revenue, id.*

[45] Tax Treatment of Sales of Goods, Properties and Services Made by a Supplier from the Customs Territory to a PEZA Registered Enterprise, and Sale Transactions Made by PEZA Registered Enterprises Within and Without the ECOZONE, October 15, 1999.

[46] The ECOZONES are selected areas with highly developed or which have the potential to be developed into agro-industrial, industrial tourist/recreational, commercial, banking, investment and financial centers. See Sec. 4(a), RA No. 7916.

whose products are 100% exported. Section 2 of Revenue Memorandum Order (RMO) No. 09-00[47] states:

SECTION 2. Rationale. — In Revenue Memorandum Circular No. 74-99, x x x it has been clarified that sales of goods, property and services made by VAT-registered suppliers to PEZA-registered enterprises shall qualify for zero-rating pursuant to the provisions of Section 106(A)(2)(a)(5) of the National Internal Revenue Code of 1997, in relation to Section 23 of R.A. No. 7916 (the PEZA Law) and Article 77 (2) of Executive Order No. 226 (the Omnibus Investments Code of 1987). **This treatment is anchored on the "Cross Border Doctrine" of the VAT System, which in essence means that no value-added tax shall form part of the cost component of products which are destined for consumption outside of the territorial border of the Philippines. This principle is achieved through the application of VAT zero-rating products exported from the Philippines to foreign countries**. Furthermore, Article 25 of the Omnibus Investments Code provides, among others, that products sold "to bonded manufacturing warehouses of export-oriented manufacturers shall be considered "constructively exported" while Section 106(A)(2)(a)(5) NIRC of 1997, provides for the **application of zero rating to "those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws."**

The rationale of RMC 74-99 may also find application to sales made by VAT registered suppliers to BOI-registered enterprises whose manufactured products are 100% exported to foreign countries and therefore said sales can likewise be accorded automatic zero-rating treatment. (Emphases supplied.)

To qualify for VAT zero-rating, Section 3 of RMO No. 09-00[48] requires compliance with the following conditions:

SECTION 3. *Sales of goods, properties or services made by a VAT-registered supplier to a BOI registered exporter shall be accorded automatic zero-rating, i.e., without necessity of applying for and*

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[47] Tax Treatment of Sales of Goods, Properties and Services Made by VAT-registered Suppliers to BOI-registered Manufacturers-Exporters with 100% Export Sales, February 2, 2000.

[48] *Id.*

securing approval of the application for zero-rating as provided in Revenue Regulations No. 7-95, subject to the following conditions:

(1) The supplier must be VAT-registered;

(2) The BOI-registered buyer must likewise be VAT-registered;

(3) The buyer must be a BOI-registered manufacturer/producer whose products are 100% exported. For this purpose a Certification to this effect must be issued by the Board of Investments (BOI) and which certification shall be good for one year unless subsequently re-issued by the BOI;

(4) The BOI-registered buyer shall furnish each of its suppliers with a copy of the aforementioned BOI Certification which shall serve as authority for the supplier to avail of the benefits of zero-rating for its sales to said BOI-registered buyers; and

(5) The VAT-registered supplier shall issue for each sale to BOI-registered manufacturer/exporters a duly-registered VAT invoice with the words "zero-rated" stamped thereon in compliance with Sec. 4.108-1(5) of RR 7-95. The supplier must likewise indicate in the VAT invoice the name and BOI-registry number of the buyer.

In 2005, the BIR issued RR No. 16-2005, or the Consolidated VAT Regulations of 2005. Section 4.106-5(a)(5) classified sales to BOI-registered entities as zero-rated export sales, *viz.*:

SECTION 4.106-5. Zero-Rated Sales of Goods or Properties. — A zero-rated sale of goods or properties (by a VAT-registered person) is a taxable transaction for VAT purposes, but shall not result in any output tax. However, **the input tax on purchases of goods, properties or services, related to such zero-rated sale, shall be available as tax credit or refund in accordance with these Regulations**.

The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) Export sales. — "Export Sales" shall mean:

x x x x

(5) Transactions considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and other special laws.

x x x x

For purposes of zero-rating, the export sales of registered export traders shall include commission income. The exportation of goods on consignment shall not be deemed export sales until the export products consigned are in fact sold by the consignee; and Provided, finally, that **sales of goods, properties or services made by a VAT-registered supplier to a BOI-registered manufacturer/producer whose products are 100% exported are considered export sales. A certification to this effect must be issued by the Board of Investment (BOI) which shall be good for one year unless subsequently re-issued by the BOI**. (Emphasis supplied.)

Accordingly, sales made to a BOI-registered buyer are export sales subject to the zero percent rate if the following conditions are met: (1) the buyer is a BOI-registered manufacturer/producer; (2) the buyer's products are 100% exported; and (3) the BOI certified that the buyer exported 100% of its products. For this purpose, the BOI Certification is vital for the seller-taxpayer to avail of the benefits of zero-rating. The certification is evidence that the buyer exported its entire products and shall serve as authority for the seller to claim for refund or tax credit.

In the present case, the Certification issued by the BOI to PGPRC on January 27, 2010 reads:

RMO 9-2000/BOI-ID Certificate No. 2010-057
Date Filed: January 15, 2010
Appln. No.: 2010-C107

C E R T I F I C A T I O N

This is to certify that PHIL. GOLD PROCESSING & REFINING CORP. is registered with the BOARD of Investments (BOI) pursuant to Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, with the following data:

x x x x

Information is hereby given that **the firm exported 100% of its total sales volume/value for the calendar year covering January 01 to December 31, 2009** based on the attached documents (Annexes B & C) submitted to the BOI, summarized as follows:

TIN	233-903-100-000
Total Sales Volume/Value*	3,820,982.5 g/$75,178,299.96
Total Export Sales Volume/Value	3,820,982.5 g/$75,178,299.96
Direct Export Volume/Value	3,820,982.5 g/$75,178,299.96
Constructive Export Volume/Value	None
Indirect Export Volume/Value	None
% of Export to Total Sales	**100%**
Period Covered	**CY January 01 to December 31, 2009**

*subject to post audit in case of computational discrepancy

It is understood that based on the affidavit executed by Phil. Processing & Refining Corp., attached as Annex "A[,"] all information provided therein are true and correct, and any misrepresentation shall be a ground for cancellation of BOI registration without prejudice to the institution of criminal and civil actions that may be warranted under the premises.

This Certification is issued pursuant to the Guidelines on the issuance of BOI Certification per Revenue Memorandum Order No. 9-2000 entitled "Tax Treatment of Sales of Goods, Properties and Services made by VAT-registered Suppliers to BOI-registered Manufacturers-Exporters with 100% Export Sales" dated February 2, 2000.

This Certification is valid from January 01 to December 31, 2010 unless sooner revoked by the BOI Governing Board for any or all of the following grounds: (a) Failure of the herein registered enterprise to comply with any of its BOI registration terms, commitment, and conditions; (b) Failure to export 100% in any of the instances set forth in Section 2 of RMO No. 9-2000; (c) Submission of fraudulent documents; and (d) Failure to submit Audited Financial Statements, Annual Income Tax Return and Annual Report on Actual Operations.

Since the [firm's] accounting reporting period ends every 30th day of June, its succeeding application should be filed within fifteen (15) days from the end of the said fiscal year period in order that the BOI [C]ertification to be issued shall be valid for a period of one (1) year effective from the date of the start of the new fiscal year.

This Certification is issued in accordance to Section 3.3 of subject RMO No. 9-2000 on this 27th day of January 2010 at Makati City,

Philippines, upon the request of the Phil. Gold Processing & Refining Corp., subject to the foregoing conditions.

(signed)
LUCITA P. REYES
Executive Director
Project Assessment Group[49]
(Emphasis supplied.)

The CTA *En Banc* noted that the certification was valid from January 1 to December 31, 2010. Considering that the period of the claim for refund (January 1 to June 30, 2010) was within the validity period of the certification, the CTA *En Banc* concluded that Filminera Resources' sales for the third and fourth quarters of FY 2010 were zero-rated.

We do not agree.

First. A plain reading of the certification shows that PGPRC exported a total of 3,820,982.5 grams, or 100% of its total sales volume/value, from **January 1 to December 31, 2009**. However, nothing in the certification shows that PGPRC similarly exported its entire products for the third and fourth quarters of FY 2010, or from **January 1 to June 30, 2010**. Without the certification from the BOI that the products sold to PGPRC during the third and fourth quarters of FY 2010 were ***actually exported and consumed in a foreign country***, the sales cannot be considered export sales.

Second. The validity period of the BOI certification should not be confused with the period identified in the certification when the buyer actually exported 100% of its products. It must be remembered that taxpayers with zero-rated sales may claim a refund or tax credit for the VAT previously charged by the suppliers (*i.e.*, the input tax) because the sales had no output tax. However, to be entitled for the refund or tax credit, the taxpayer must not only prove the existence of zero-rated sales, but must also prove that the zero-rated sales were issued valid invoice or official receipts pursuant to Sections 113(A) and

[49] *Rollo*, pp. 83-84.

(B),[50] and 237[51] of the 1997 NIRC, in relation to Section 4.113-1 (B)[52] of RR No. 16-2005.[53] In Revenue Memorandum Circular

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[50] SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons*. —

(A) *Invoicing Requirements*. — A VAT-registered person shall issue:

(1) A VAT invoice for every sale, barter or exchange of goods or properties; and

(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

(B) *Information contained in the VAT Invoice or VAT Official Receipt*. — The following information shall be indicated in the VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: Provided, that:

x x x x

(c) If the sale is subject to zero percent (0%) value-added tax, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt;

x x x x

[51] SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices*. — All persons subject to an internal revenue tax shall, for each sale and transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sale or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: *Provided, however*, That where the receipt is issued to cover payment made as rentals, commissions, compensation or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client.

x x x x

[52] SECTION 4.113-1. *Invoicing Requirements*. —

x x x x

(B) Information contained in VAT invoice or VAT official receipt. — The following information shall be indicated in VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his TIN;

No. 42-2003,[54] the BIR clarified that if the claim for refund or tax credit is based on the existence of zero-rated sales by the taxpayer but it fails to comply with the invoicing requirements in the issuance of sales invoices, *e.g.*, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt, the claim for refund or tax credit shall be denied.[55]

To ensure compliance with invoicing requirements, Section 3 of RMO No. 09-00 requires the BOI-registered buyer to furnish

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(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; Provided, That:

x x x x

(c) If the sale is subject to zero percent (0%) VAT, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt;

x x x x. (Emphasis supplied)

[53] See *Western Mindanao Power Corp. v. Commissioner of Internal Revenue*, 687 Phil. 328 (2012); and *Microsoft Phils., Inc. v. Commissioner of Internal Revenue*, 662 Phil. 762 (2011). See also *J.R.A. Philippines, Inc. v. Commissioner of Internal Revenue*, 716 Phil. 566 (2013).

[54] Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters, July 15, 2003.

[55] Revenue Memorandum Circular No. 42-2003; Q-13: Should penalty be imposed on TCC application for failure of claimant to comply with certain invoicing requirements, ([*e.g.*], sales invoices must bear the TIN of the seller)?

A-13: Failure by the supplier to comply with the invoicing requirements on the documents supporting the sale of goods and services will result to the disallowance of the claim for input tax by the purchaser-claimant.

If the claim for refund/TCC is based on the existence of zero-rated sales by the taxpayer but it fails to comply with the invoicing requirements in the issuance of sales invoices ([*e.g.*] failure to indicate the TIN), **its claim for tax credit/refund of VAT on its purchases shall be denied considering that the invoice it is issuing to its customers does not depict its being a VAT-registered taxpayer whose sales are classified as zero-rated sales**. x x x. (Emphasis supplied.)

its suppliers with a copy of the BOI Certification attesting that it exported 100% of its products. The certification having been issued by the BOI, there is a presumption that it was issued in the regular performance of official duties. Thus, the supplier can rely on the certification and accord zero-rating status to sales made to the BOI-registered buyer while the BOI certification is valid. Consequently, the seller would be able to comply with the invoicing requirements. The BOI-registered buyer must, however, *actually export* its products. To be sure, the certification contains a *proviso* that the attestation of 100% exportation by the BOI-registered buyer will be revoked in case of non-compliance with any of the specified grounds, particularly, the failure to export its entire products:

> **This Certification is valid from January 01 to December 31, 2010 unless sooner revoked by the BOI Governing Board for any or all of the following grounds**: (a) Failure of the herein registered enterprise to comply with any of its BOI registration terms, commitment, and conditions; (b) **Failure to export 100% in any of the instances set forth in Section 2 of RMO No. 9-2000**; (c) Submission of fraudulent documents; and (d) Failure to submit Audited Financial Statements, Annual Income Tax Return and Annual Report on Actual Operations.[56] (Emphasis supplied.)

Indeed, while the BOI certification allows the seller to accord VAT zero-rating status to sales made to the BOI-registered buyer during the extended period of the certification, this must be pre-empted by the condition that the BOI-registered buyer *actually and eventually exported* such products. This is consistent with the Cross Border Doctrine and Destination Principle of the Philippine VAT system. To hold otherwise would render nugatory the principle that goods are taxed only in the country where these are consumed and that no VAT shall form part of the cost of products which are destined for consumption outside of the territorial border of the Philippines.

Third. The validity period of the certification is intended to accord zero-rating status to sales made during the extended

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[56] *Supra* note 49.

period, but not as proof that PGPRC exported its entire products during the same period. This is logical since the BOI can attest to the actual exportation only *after* the end of the taxable year. As in this case, the certification issued by the BOI on January 27, 2010 is not relevant for purposes of treating the sales made to PGPRC from January 1 to December 31, 2009 zero-rated. When the certification was issued on January 27, 2010, Filminera Resources had *already* classified its sales as zero-rated. Instead, the certification serves as authority for Filminera Resources to accord zero-rating status to sales made to PGPRC *within one year from validity*, or from **January 1 to December 31, 2010**. The BOI Certification is clear:

> Since the [firm's] accounting reporting period ends every 30th day of June, its succeeding application should be filed within fifteen (15) days from the end of the said fiscal year period **in order that the BOI Certification to be issued shall be valid for a period of one (1) year effective from the date of the start of the new fiscal year**.[57] (Emphasis supplied.)

In order for the sales made to PGPRC during the third and fourth quarters of FY 2010 qualify as zero-rated sales, the BOI must still certify that PGPRC actually exported its entire product from January 1 to December 31, 2010. The BOI Certification dated January 27, 2010 failed to ascertain this fact.

Fourth. We stress that the taxpayer-claimant has the burden of proving the legal and factual bases of its claim for tax credit or refund.[58] After all, tax refunds partake the nature of exemption from taxation, and as such, must be looked upon with disfavor. It is regarded as in derogation of the sovereign authority, and should be construed in *strictissimi juris* against the person or entity claiming the exemption. The taxpayer who claims for exemption must justify his claim by the clearest grant of organic or statute law and should not be permitted to stand on vague

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[57] *Rollo*, p. 84.

[58] *Atlas Consolidated Mining and Dev't. Corp. v. Commissioner of Internal Revenue*, *supra* note 43 at 546.

implications. The burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for refund.

Under Section 112(A)[59] of the 1997 NIRC, the seller may claim a refund or tax credit for the input VAT attributable to its zero-rated sales subject to the following conditions: (1) the taxpayer is VAT-registered; (2) the taxpayer is engaged in zero-rated or effectively zero-rated sales; (3) the claim must be filed within two years after the close of the taxable quarter when such sales were made; (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax; and (5) in case of zero-rated sales under Section 106(A)(2)(a)(1) and (2),[60] Section 106(B)[61] and Section 108

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[59] Section 112. *Refunds or Tax Credits of Input Tax*. —

(A) *Zero-Rated or Effectively Zero-Rated Sales*. — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106 (A) (2) (a) (1), (2) and (B) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.

[60] SEC. 106. Value-Added Tax on Sale of Goods or Properties. —

(A) *Rate and Base of Tax*. —

x x x x

(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) Export Sales. – The term "export sales" means:

(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer

(B)(1) and (2)[62] of the 1997 NIRC, the acceptable foreign currency exchange proceeds have been duly accounted for in

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of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(2) Sale of raw materials or packaging materials to a nonresident buyer for delivery to a resident local export-oriented enterprise to be used in manufacturing, processing, packing or repacking in the Philippines of the said buyer's goods and paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

x x x x.

[61] SEC. 106. *Value-Added Tax on Sale of Goods or Properties*. —

x x x x.

(B) *Transactions Deemed Sale*. — The following transactions shall be deemed sale:

(1) Transfer, use or consumption not in the course of business of goods or properties originally intended for sale or for use in the course of business;

(2) Distribution or transfer to:

(a) Shareholders or investors as share in the profits of the VAT-registered persons; or

(b) Creditors in payment of debt;

(3) Consignment of goods if actual sale is not made within sixty (60) days following the date such goods were consigned; and

(4) Retirement from or cessation of business, with respect to inventories of taxable goods existing as of such retirement or cessation.

[62] SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties*. —

x x x x

(B) Transactions Subject to Zero Percent (0%) Rate. — x x x

(1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(2) Services other than those mentioned in the preceding paragraph, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

x x x x.

accordance with *Bangko Sentral ng Pilipinas* rules and regulations.[63]

The first and third requisites have been established before the CTA. Filminera Resources is a VAT-registered taxpayer that filed administrative and judicial claims for refund within the period prescribed by law.[64] Meanwhile, the fifth requisite is not applicable.[65]

As for the second requisite, Filminera Resources failed to prove that its sales to PGPRC for the third and fourth quarters of FY 2010 are export sales. We reiterate that without the certification from the BOI attesting actual exportation by PGPRC of its entire products from January 1 to June 30, 2010, the sales made during that period are not zero-rated export sales. The second requisite not having been met, there is no need for us to discuss the fourth requirement.

In fine, Filminera Resources Corporation is not entitled to a refund or the issuance of tax credit certificate in the amount of ₱111,579,541.76, representing its unutilized input value-added tax attributable to zero-rated sales for the third and fourth quarters of the fiscal year ending June 30, 2010.

FOR THESE REASONS, the Petition for Review on *Certiorari* is **GRANTED**. The Decision dated March 29, 2017 and Resolution dated November 16, 2017 of the Court of Tax Appeals *En Banc* in CTA EB No. 1362 are **REVERSED**. Filminera Resources Corporation is not entitled to a refund or the issuance of a tax credit certificate in the amount of ₱111,579,541.76.

SO ORDERED.

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

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[63] *AT&T Communications Services Phils., Inc. v. Commissioner of Internal Revenue*, 640 Phil. 613, 617 (2010), citing *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, 550 Phil. 751 (2007).

[64] See *rollo*, pp. 74-75.

[65] See *supra* notes 60, 61 and 62.

FIRST DIVISION

[G.R. No. 236498. September 16, 2020]

TRANS-GLOBAL MARITIME AGENCY, INC. and/or GOODWOOD SHIP MANAGEMENT, PTE., LTD., and/or ROBERT F. ESTANIEL, *Petitioners, v.* **MAGNO T. UTANES,** *Respondent*.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45 OF THE RULES OF CIVIL PROCEDURE; ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN FOR THE COURT IS NOT A TRIER OF FACTS AND IS NOT DUTY-BOUND TO REEXAMINE AND CALIBRATE THE EVIDENCE ON RECORD.—** The general rule is that only questions of law may be raised in and resolved by this Court on petitions brought under Rule 45 of the Rules of Civil Procedure, because the Court, not being a trier of facts, is not duty-bound to reexamine and calibrate the evidence on record. Findings of fact of quasi-judicial bodies, especially when affirmed by the CA, are generally accorded finality and respect. There are, however, recognized exceptions to this general rule, such as the instant case, where there is manifest mistake in the inference made from the findings of fact and judgment is based on a misapprehension of facts.

2. **LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT; COMPENSATION AND BENEFITS; PRE-EXISTING ILLNESS OR CONDITION; WHEN PRESENT.—** Section 20, paragraph E of the POEA-SEC clearly provides that "*[a] seafarer who knowingly conceals a pre-existing illness or condition in the Pre-Employment Medical Examination (PEME) shall be liable for misrepresentation and shall be disqualified from any compensation and benefits.* x x x" The rule seeks to penalize seafarers who conceal information to pass the pre-employment medical examination. It even makes such concealment a just cause for termination. Under the 2010 POEA-

SEC, there is a "*pre-existing illness or condition*" if prior to the processing of the POEA contract, any of the following is present: (a) the advice of a medical doctor on treatment was given for such continuing illness or condition; or (b) the seafarer has been diagnosed and has knowledge of such illness or condition but failed to disclose it during the pre-employment medical examination, and such cannot be diagnosed during such examination.

3. ID.; ID.; ID.; THE SEAFARER'S WILLFUL CONCEALMENT OF PRE-EXISTING ILLNESS OR CONDITION IN HIS PRE-EMPLOYMENT MEDICAL EXAMINATION DISQUALIFIES HIM FROM CLAIMING DISABILITY BENEFITS.— Here, Utanes' September 18, 2014 PEME indicated that he was not suffering from any medical condition likely to be aggravated by service at sea or which may render him unfit for sea service. His medical history likewise did not show that he had heart disease/vascular/chest pain, high blood pressure, or that he underwent treatment for any ailment and was taking any medication. Notably, he signed the PEME acknowledging that he had read and understood and was informed of the contents of the medical certificate. On the other hand, the company-designated doctor's medical report, dated September 17, 2015, stated that Utanes disclosed that he has a history of coronary artery disease for which he underwent percutaneous coronary intervention of the left anterior descending artery in 2009. Evidently, Utanes obscured his pre-existing cardiac ailment. This concealment disqualifies him from disability benefits notwithstanding the medical attention extended by the company-appointed physicians upon his repatriation. It is immaterial that Utanes' misrepresentation was discovered during the course of his treatment with the company-appointed doctors. That medical attention was extended by the company-appointed physicians cannot cancel out his deception. x x x Utanes' willful concealment of vital information in his PEME disqualifies him from claiming disability benefits. The Court on many occasions disqualified seafarers from claiming disability benefits on account of fraudulent misrepresentation arising from their concealment of a pre-existing medical condition. This case is not an exception. For knowingly concealing his history of coronary artery disease during the PEME, Utanes committed fraudulent misrepresentation which unconditionally bars his right to receive any disability compensation from petitioners.

4. ID.; ID.; ID.; PRE-EMPLOYMENT MEDICAL EXAMINATION; GENERALLY NOT EXPLORATORY IN NATURE AND IS NOTHING MORE THAN A SUMMARY EXAMINATION OF THE SEAFARER'S PHYSIOLOGICAL CONDITION WHICH IS JUST ENOUGH FOR THE EMPLOYER TO DETERMINE HIS FITNESS FOR THE NATURE OF THE WORK FOR WHICH HE IS TO BE EMPLOYED.— Time and again, it has been ruled that a PEME is generally not exploratory in nature, nor is it a totally in-depth and thorough examination of an applicant's medical condition. It does not reveal the real state of health of an applicant, and does not allow the employer to discover any and all pre-existing medical condition with which the seafarer is suffering and for which he may be taking medication. The PEME is nothing more than a summary examination of the seafarer's physiological condition and is just enough for the employer to determine his fitness for the nature of the work for which he is to be employed. Since it is not exploratory, its failure to reveal or uncover Utanes' ailments cannot shield him from the consequences of his deliberate concealment. The "fit to work" declaration in the PEME cannot be a conclusive proof to show that he was free from any ailment prior to his deployment.

5. ID.; ID.; ID.; TOTAL AND PERMANENT DISABILITY; A SEAFARER IS NOT ENTITLED TO TOTAL AND PERMANENT DISABILITY BENEFITS WHEN HE FAILS TO DISCHARGE HIS BURDEN TO PROVE THE RISKS INVOLVED IN HIS WORK, THAT HIS ILLNESS IS CONTRACTED AS A RESULT OF HIS EXPOSURE TO THE RISKS WITHIN THE PERIOD OF EXPOSURE AND UNDER SUCH OTHER FACTS NECESSARY TO CONTRACT IT, AND THAT HE IS NOT NOTORIOUSLY NEGLIGENT.— In this case, Utanes suffered from coronary artery disease, a cardio-vascular illness under item 11 of Section 32-A of the POEA-SEC. The mentioned provision enumerates the conditions which must be met to show that the seafarer's work involve the risk of contracting the disease. Again, none of these conditions are present in this case; no proof of the required conditions was submitted by Utanes to demonstrate that his illness is work-related and, therefore, compensable. Thus, Utanes failed to discharge his burden to prove the risks

involved in his work, that his illness was contracted as a result of his exposure to the risks within the period of exposure and under such other factors necessary to contract it, and that he was not notoriously negligent. All told, Utanes is not entitled to total and permanent disability benefits.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioners.
Justinianio B. Panambo, Jr. for respondent.

R E S O L U T I O N

LOPEZ, *J.*:

Before this Court is a petition for review on *certiorari* assailing the Decision[1] dated April 21, 2017, and Resolution[2] dated January 3, 2018 of the Court of Appeals (CA) that upheld the findings of the labor tribunals and declared Magno T. Utanes (Utanes) entitled to permanent and total disability benefits.

ANTECEDENTS

On November 13, 2014, respondent Utanes was hired by petitioner Trans-Global Maritime Agency, Inc. (Trans-Global), in behalf of its foreign principal, Goodwood Ship Management, Pte., Ltd., as Oiler on board *MT G.C. Fuzhou* for a period of nine months. He was declared fit for sea duty in his pre-employment medical examination (PEME) and was thereafter allowed to board the vessel on November 15, 2014.

In the course of carrying out his duties, on January 25, 2015, Utanes suddenly felt severe chest pain, accompanied by dizziness

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[1] *Rollo*, pp. 59-73; penned by Associate Justice Magdangal M. De Leon, with the concurrence of Associate Justices Elihu A. Ybañez and Carmelita Salandanan Manahan.

[2] *Id.* at 74-75; penned by Associate Justice Magdangal M. De Leon, with the concurrence of Associate Justices Justice Elihu A. Ybañez and Carmelita Salandanan Manahan.

and weakness. He was made to endure his condition until his repatriation on May 18, 2015. Upon arrival in the Philippines, Utanes was referred to Marine Medical Services. From May 20, 2015, Utanes was subjected to various tests and treatment for coronary artery disease. After five months of treatment, the company doctors discontinued his treatment. Consequently, Utanes consulted an independent cardiologist, Dr. May S. Donato-Tan, who concluded that the nature and extent of Utanes' illness rendered him permanently and totally unfit to work as a seaman. Thus, on January 19, 2016, Utanes filed a complaint for disability benefits, medical expenses, damages and attorney's fees.

For its part, petitioners alleged that Utanes denied history of high blood pressure or any kind of heart disease when he ticked the "No" box opposite 'High Blood Pressure' and 'Heart Disease Vascular/Chest Pain' under the section, Medical History in his PEME. It was on May 17, 2015, that Utanes complained of back and chest pains, with difficulty of breathing and easy fatigability, and was thereafter medically repatriated. During the course of his treatment by the company-designated physicians, sometime in September 2015, Utanes disclosed that, as early as 2009, he was diagnosed with Coronary Artery Disease, for which he underwent Percutaneous Coronary Intervention of the left anterior descending artery. Consequently, Utanes stopped receiving treatment from the company-designated physicians, prompting him to file a complaint for the payment of total and permanent disability benefits.

In a Decision dated June 15, 2016, the Labor Arbiter ruled in favor of Utanes and awarded him total and permanent disability benefits.[3] It was declared that Trans-Global is considered to

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[3] *Id.* at 101-118; penned by Labor Arbiter Thomas T. Que, Jr.
The dispositive portion states:
WHEREFORE, premises considered, judgment is hereby rendered declaring Complainant to have suffered total and permanent disability and, correspondingly, holding all the Respondents jointly and severally liable to pay Complainant his permanent disability compensation and sickness allowance in the respective amount of US$96,909 and $2,588, plus attorney's fees equal to 10% of the total judgment awards.

have waived its right to assert non-liability for disability benefits to Utanes because it continued to extend treatment despite the belated disclosure of his existing Coronary Artery Disease. The treatment constitutes an implied admission of compensability and work-relatedness of Utanes' lingering cardio-vascular illness. Likewise, Trans-Global failed to issue a final assessment of Utanes' illness or fitness to work, which failure deemed Utanes totally and permanently disabled.

On appeal, the National Labor Relations Commission (NLRC) affirmed the arbiter's ruling because Utanes illness occurred within the duration of his contract, and his treatment lasted for more than 120 days. Thus, the award of permanent total disability benefits is justified.[4] Petitioners moved for reconsideration, but was denied.[5]

All other claims are dismissed for lack of merit.

SO ORDERED. *Id.* at 117-118.

[4] *Id.* at 119-126. Petitioners' appeal was resolved by the NLRC in its Resolution dated July 29, 2016, to wit:

WHEREFORE, premised on all the foregoing considerations, the appealed Decision is hereby AFFIRMED with MODIFICATION deleting the award of sickness allowance.

Consequently, respondents are jointly and solidarily ordered to pay complainant Magno T. Utanes permanent disability benefits and attorney's fees in the Philippine Peso exchange rate of US$96,909.00 and US$9,690.00 at the time of payment respectively.

The claims for sickness allowance and damages are hereby DISMISSED for lack of merit.

SO ORDERED. *Id.* at 126.

[5] *Id.* at 127-128. In the NLRC's Resolution dated September 30, 2016, Trans-Global's motion for reconsideration was disposed of as follows:

After a careful consideration of the arguments and discussion raised by respondents in their Partial Motion for Reconsideration, We find no compelling justification or valid reason to modify, alter, much less reverse, the Resolution sought to be reconsidered.

ACCORDINGLY, let the instant Partial Motion for Reconsideration be, as it is hereby, DENIED for lack of merit. The Resolution of this Commission dated July 29, 2016 STANDS undisturbed.

No further motion of similar nature shall be entertained.

SO ORDERED. *Id.* at 128.

Petitioners then filed a petition for *certiorari* with the CA, which dismissed the petition.[6] Unsuccessful[7] at a reconsideration,[8] petitioners are seeking recourse before this Court, alleging that the CA committed serious errors of law in upholding the NLRC's Decision. Utanes is not entitled to permanent and total disability benefits and his other monetary claims because of deliberate concealment of his coronary artery disease.[9] For his part, Utanes maintains that he is entitled to total and permanent disability benefits since his illness was work-related and had contributed to the development of his condition that resulted in his disability.[10]

RULING

The petition is meritorious.

The general rule is that only questions of law may be raised in and resolved by this Court on petitions brought under Rule 45 of the Rules of Civil Procedure, because the Court, not being a trier of facts, is not duty-bound to reexamine and calibrate the evidence on record.[11] Findings of fact of quasi-judicial bodies, especially when affirmed by the CA, are generally accorded finality and respect.[12] There are, however, recognized exceptions[13] to this general rule, such as the instant case, where

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[6] *Supra* note 1.

[7] *Supra* note 2.

[8] *Rollo*, pp. 76-88.

[9] *Id.* at 33-51.

[10] *Id.* at 128-162.

[11] *Deocariza v. Fleet Management Services Philippines, Inc.*, G.R. No. 229955, July 23, 2018, 873 SCRA 397, 406, citing *Leoncio v. MST Marine Services (Phils.), Inc.*, 822 Phil. 494, 504 (2017).

[12] *Id.*, citing *Maersk Filipinas Crewing, Inc. v. Ramos*, G.R. No. 184256, January 18, 2017, 814 SCRA 428, 442.

[13] *Id.*, citing *Manila Shipmanagement & Manning, Inc., et al. v. Aninang*, 824 Phil. 916, 925 (2018); enumerating the following as exceptions: 1) when the findings are grounded entirely on speculations, surmises, or conjectures; 2) when the inference made is manifestly mistaken, absurd, or impossible; 3) when there is grave abuse of discretion; 4) when the judgment

there is manifest mistake in the inference made from the findings of fact and judgment is based on a misapprehension of facts.[14]

In the review of this case, we stress that entitlement of seafarers on overseas work to disability benefits is a matter governed, not only by medical findings, but by law and by contract. The material statutory provisions are Articles 197 to 199 of the Labor Code[15] in relation to Section 2(a), Rule X of the Amended Rules on Employee Compensation. By contract, the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC), the parties' collective bargaining agreement, if any, and the employment agreement between the seafarer and the employer are pertinent. Section 20, paragraph E of the POEA-SEC clearly provides that *"[a] seafarer who knowingly conceals a pre-existing illness or condition in the Pre-Employment Medical Examination (PEME) shall be liable for misrepresentation and shall be disqualified from any compensation and benefits. x x x"*

The rule seeks to penalize seafarers who conceal information to pass the pre-employment medical examination. It even makes such concealment a just cause for termination. Under the 2010 POEA-SEC, there is a *"pre-existing illness or condition"* if prior to the processing of the POEA contract, any of the following is present: (a) the advice of a medical doctor on treatment was

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is based on misapprehension of facts; 5) when the findings of fact are conflicting; 6) when in making its findings, the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; 7) when the findings are contrary to that of the trial court; 8) when the findings are conclusions without citation of specific evidence on which they are based; 9) when the facts set forth in the petition, as well as in the petitioner's main and reply briefs, are disputed by the respondent; 10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or 11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

[14] See *Deocariza v. Fleet Management Services Philippines, Inc., et al., supra* note 11.

[15] Formerly Articles 191 to 193 of the LABOR CODE.

given for such continuing illness or condition; or (b) the seafarer has been diagnosed and has knowledge of such illness or condition but failed to disclose it during the pre-employment medical examination, and such cannot be diagnosed during such examination.[16]

Here, Utanes' September 18, 2014, PEME indicated that he was not suffering from any medical condition likely to be aggravated by service at sea or which may render him unfit for sea service. His medical history likewise did not show that he had heart disease/vascular/chest pain, high blood pressure, or that he underwent treatment for any ailment and was taking any medication. Notably, he signed the PEME acknowledging that he had read and understood and was informed of the contents of the medical certificate. On the other hand, the company-designated doctor's medical report, dated September 17, 2015, stated that Utanes disclosed that he has a history of coronary artery disease for which he underwent percutaneous coronary intervention of the left anterior descending artery in 2009. Evidently, Utanes obscured his pre-existing cardiac ailment. This concealment disqualifies him from disability benefits notwithstanding the medical attention extended by the company-appointed physicians upon his repatriation.

It is immaterial that Utanes' misrepresentation was discovered during the course of his treatment with the company-appointed doctors. That medical attention was extended by the company-appointed physicians cannot cancel out his deception. In *Manansala v. Marlow Navigation Phils., Inc., et al.*,[17] the seafarer's concealment was revealed beyond the 120-day treatment period, after the issuance of a final assessment by the company-designated physicians, and even after a claim for benefits was filed. Nonetheless, the Court declared that the seafarer is not entitled to disability benefits because of concealment. Also, in *Status Maritime Corporation, et al. v. Sps. Delalamon*[18] and *Ayungo v. Beamko Shipmanagement Corp.*,

[16] 2010 POEA-SEC, Definition of Terms, Item No. 11 (a) and (b).

[17] 817 Phil. 84 (2017).

[18] 740 Phil. 175 (2014).

et al.,[19] the Court ruled against the seafarers, whose concealment were found out while being treated by company doctors. More so, in *Philman Marine Agency, Inc., et al. v. Cabanban*,[20] the Court did not award disability benefits to a seaman whose concealment was discovered as early as his examination at the port of his assignment and prior to repatriation.

Time and again, it has been ruled that a PEME is generally not exploratory in nature, nor is it a totally in-depth and thorough examination of an applicant's medical condition.[21] It does not reveal the real state of health of an applicant, and does not allow the employer to discover any and all pre-existing medical condition with which the seafarer is suffering and for which he may be taking medication.[22] The PEME is nothing more than a summary examination of the seafarer's physiological condition and is just enough for the employer to determine his fitness for the nature of the work for which he is to be employed.[23] Since it is not exploratory, its failure to reveal or uncover Utanes' ailments cannot shield him from the consequences of his deliberate concealment.[24] The "fit to work" declaration in the PEME cannot be a conclusive proof to show that he was free from any ailment prior to his deployment.[25]

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[19] 728 Phil. 244 (2014).

[20] 715 Phil. 454 (2013).

[21] *Vetyard Terminals & Shipping Services, Inc., et al. v. Suarez*, 728 Phil. 527, 534 (2014), citing *Escarcha v. Leonis Navigation Co., Inc., and/or World Marine Panama, S.A.*, 637 Phil. 418, 433 (2010).

[22] *Philman Marine Agency, Inc., et al. v. Cabanban, supra* note 20 at 480.

[23] *Id.*, citing *Francisco v. Bahia Shipping Services, Inc. and/or Mendoza, et al.*, 650 Phil. 200, 206 (2010).

[24] See *Vetyard Terminals & Shipping Services, Inc., et al. v. Suarez, supra* note 21.

[25] *Status Maritime Corporation, et al. v. Sps. Delalamon, supra* note 18 at 195, citing *Magsaysay Maritime Corp., et al. v. National Labor Relations Commission (2nd Division), et al.*, 630 Phil. 352, 367 (2010).

We reiterate the application provision of the POEA-SEC, to wit:

SECTION 20. COMPENSATION AND BENEFITS

x x x x

E. A seafarer who knowingly conceals a pre-existing illness or condition in the Pre-Employment Medical Examination (PEME) shall be liable for misrepresentation and shall be disqualified from any compensation and benefits. This is likewise a just cause for termination of employment and imposition of appropriate administrative sactions.

Here, Utanes' willful concealment of vital information in his PEME disqualifies him from claiming disability benefits. The Court on many occasions disqualified seafarers from claiming disability benefits on account of fraudulent misrepresentation arising from their concealment of a pre-existing medical condition.[26] This case is not an exception. For knowingly concealing his history of coronary artery disease during the PEME, Utanes committed fraudulent misrepresentation which unconditionally bars his right to receive any disability compensation from petitioners.[27]

Nevertheless, even if we were to disregard Utanes' fraudulent misrepresentation, his claim will still fail. Indeed, coronary artery disease, which is subsumed under cardio-vascular disease, and hypertension are listed as occupational diseases under Section 32-A, paragraph 11 of the POEA-SEC. However, before Utanes could be benefited, it is required that any of the following conditions be satisfied:[28]

a. If the heart disease was known to have been present during employment, there must be proof that an acute exacerbation

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[26] *Lerona v. Sea Power Shipping Enterprises, Inc.*, G.R. No. 210955, August 14, 2019, citing *Ayungo v. Beamko Shipmanagement Corp., et al.*, *supra* note 19; *Philman Marine Agency, Inc., et al. v. Cabanban, supra* note 20; *Status Maritime Corporation, et al. v. Sps. Delalamon*, *supra* note 18.

[27] *Id.*

[28] *Philman Marine Agency, Inc., et al. v. Cabanban*, *supra* note 20.

was clearly precipitated by an unusual strain by reasons of the nature of his work

b. The strain of work that brings about an acute attack must be sufficient severity and must be followed within 24 hours by the clinical signs of a cardiac insult to constitute causal relationship

c. If a person who was apparently asymptomatic before being subjected to strain at work showed signs and symptoms of cardiac injury during the performance of his work and such symptoms and signs persisted, it is reasonable to claim a causal relationship

d. If a person is a known hypertensive or diabetic, he should show compliance with prescribed maintenance medications and doctor-recommended lifestyle changes. The employer shall provide a workplace conducive for such compliance in accordance with Section 1(A) paragraph 5.

e. In a patient not known to have hypertension or diabetes, as indicated on his last PEME.

Records do not show that any of these conditions were met. Utanes failed to present sufficient evidence to show how his working conditions contributed to or aggravated his illness. The general statements in his Position Paper – "*[i]n the performance of Complainant's principal duty and responsibility, he was always exposed to the harsh condition and the perils at sea. He was also under severe stress while being away from his family and suffering from over fatigue while doing his duties and responsibilities on board the vessel due to long hours of work*" – were not validated by any written document or other proof given. Neither was any expert medical opinion presented regarding the cause of his condition.

In *Ventis Maritime Corporation v. Salenga*,[29] we emphasized that to be entitled to disability benefits for an occupation illness listed under Section 32-A of the POEA-SEC, a seafarer must show compliance with the following conditions:

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[29] G.R. No. 238578, June 8, 2020.

1. The seafarer's work must involve the risk described therein;
2. The disease was contracted as a result of the seafarer's exposure to the described risks;
3. The disease was contracted within a period of exposure and under such other factors necessary to contract it; and
4. There was no notorious negligence on the part of the seafarer.

We further enunciated:

In effect, the table of illnesses and the corresponding nature of employment in Section 32-A only provide the list of occupational illnesses. It does not exempt a seafarer from providing proof of the conditions under the first paragraph of Section 32-A in order for the occupational illness/es complained of to be considered as work-related and, therefore, compensable.

Further, x x x to determine the amount of compensation, the seafarer must show the resulting disability following as guide the schedule listed in Section 32.

x x x x

More importantly, the rule applies that whoever claims entitlement to benefits provided by law should establish his right thereto by substantial evidence which is more than a mere scintilla; it is real and substantial, and not merely apparent. Further, while in compensation proceedings in particular, the test of proof is merely probability and not ultimate degree of certainty, the conclusion of the courts must still be based on real evidence and not just inference and speculations.[30] (Citations omitted.)

In this case, Utanes suffered from coronary artery disease, a cardiovascular illness under item 11 of Section 32-A of the POEA-SEC. The mentioned provision enumerates the conditions which must be met to show that the seafarer's work involve the risk of contracting the disease. Again, none of these conditions are present in this case; no proof of the required conditions was submitted by Utanes to demonstrate that his illness is work-related and, therefore, compensable. Thus, Utanes failed to

[30] *Id.*

discharge his burden to prove the risks involved in his work, that his illness was contracted as a result of his exposure to the risks within the period of exposure and under such other factors necessary to contract it, and that he was not notoriously negligent.[31] All told, Utanes is not entitled to total and permanent disability benefits.

On a final note, we emphasize that the constitutional policy to provide full protection to labor is not meant to be a sword to oppress employers. Justice is for the deserving and must be dispensed within the light of established facts, the applicable law, and existing jurisprudence.[32] The Court's commitment to the cause of labor is not a lopsided undertaking. It cannot and does not prevent us from sustaining the employer when it is in the right.

FOR THE STATED REASONS, the petition is **GRANTED**. The April 21, 2017 Decision and January 3, 2018 Resolution of the Court of Appeals in CA-G.R. SP No. 148683 are **REVERSED** and **SET ASIDE**. The complaint filed by Magno T. Utanes against Trans-Global Maritime Agency, Inc. is **DISMISSED**.

SO ORDERED.

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

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[31] *Id.*

[32] *Panganiban v. Tara Trading Shipmanagement, Inc., et al.*, 647 Phil. 675, 691 (2010).

FIRST DIVISION

[G.R. No. 237850. September 16, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **RAYMOND BUESA *y* ALIBUDBUD,** *Accused-Appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA NO. 9165); ILLEGAL SALE OF PROHIBITED/DANGEROUS DRUGS, ELEMENTS THEREOF.— Under Section 5, Article II of R.A. No. 9165 or illegal sale of prohibited drugs, in order to be convicted of the said violation, the following must concur: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor. In illegal sale of dangerous drugs, it is necessary that the sale transaction actually happened and that "the (procured) object is properly presented as evidence in court and is shown to be the same drugs seized from the accused."

2. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS, ELEMENTS THEREOF.— Also, under Section 11, Article II of R.A. No. 9165 or illegal possession of dangerous drugs, the following must be proven before an accused can be convicted: (1) the accused was in possession of dangerous drugs; (2) such possession was not authorized by law; and (3) the accused was freely and consciously aware of being in possession of dangerous drugs.

3. ID.; ID.; THE CONFISCATED ILLICIT DRUGS COMPRISE THE *CORPUS DELICTI* OF THE CHARGES; THE IDENTITY OF THE DANGEROUS DRUG BOUGHT MUST BE PROVEN WITH CERTITUDE AS THE SAME SUBSTANCE OFFERED IN EVIDENCE.— In both cases involving illegal sale and illegal possession, the illicit drugs confiscated from the accused comprise the *corpus delicti* of the charges. Time and again, the Court held that it is of paramount importance that the identity of the dangerous drug be established beyond reasonable doubt; and that it must be proven with certitude that the substance bought during the buy-bust operation

is exactly the same substance offered in evidence before the court.

4. ID.; ID.; CHAIN OF CUSTODY RULE; THIS RULE ENSURES THAT UNNECESSARY DOUBTS CONCERNING THE IDENTITY OF THE EVIDENCE ARE REMOVED.— [T]he illegal drug must be produced before the court as exhibit and that which was exhibited must be the very same substance recovered from the suspect. Thus, the chain of custody carries out this purpose "as it ensures that unnecessary doubts concerning the identity of the evidence are removed."

. . .

. . . The chain of custody rule is but a variation of the principle that real evidence must be authenticated prior to its admission into evidence. To establish a chain of custody sufficient to make evidence admissible, the proponent needs only to prove a rational basis from which to conclude that the evidence is what the party claims it to be. In other words, the prosecution must offer sufficient evidence from which the trier of facts could reasonably believe that an item is still what the government claims it to be.

5. ID.; ID.; ID.; ESSENTIAL LINKS TO ESTABLISH AN UNBROKEN CHAIN OF CUSTODY OVER THE SEIZED DRUGS.— In *People v. Kamad*, we enumerated the essential links that must be proven by the prosecution in order to establish an unbroken chain of custody over the drugs seized in a buy-bust situation: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.

6. ID.; ID.; REMEDIAL LAW; EVIDENCE; WITNESSES; EVERY PERSON WHO CAME INTO POSSESSION OF THE DRUGS NEED NOT BE PRESENTED.— [T]he Court has held that the failure to present each and every person who came into possession of the drugs is not fatal to the prosecution's case. In *People v. Padua*, we elucidated:

> [N]ot all [the] people who came into contact with the seized drugs are required to testify in court. There is nothing in Republic Act No. 9165 or in any rule implementing the same that imposes such requirements. As long as the chain of custody of the seized drug was clearly established not to have been broken and that the prosecution did not fail to identify properly the drugs seized, it is not indispensable that each and every person who came into possession of the drugs should take the witness stand.

7. ID.; ID.; CHAIN OF CUSTODY RULE; WITNESSES REQUIRED TO BE PRESENT AT THE CONDUCT OF PHYSICAL INVENTORY AND PHOTOGRAPH OF THE DRUGS AFTER SEIZURE AND CONFISCATION.— [U]nder 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 physical 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 Department of Justice; 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.

8. ID.; ID.; ID.; ID.; A REPRESENTATIVE FROM THE MEDIA AND A REPRESENTATIVE FROM THE NATIONAL PROSECUTION SERVICE ARE NOW ALTERNATIVES TO EACH OTHER.— Buesa asserts the nullity of his arrest due to the absence of a representative of the National Prosecution Service. He failed to state, however, that a media representative was present during the conduct of the inventory. As the records

clearly reveal, PO2 Abad conducted an inventory of the seized items in the presence of Buesa, *Barangay Kagawad* Pedro Perez of *Barangay* Puypuy, and media representative Efren Chavez. Accordingly, we sustain the appellate court's finding that this constitutes due compliance with the mandate under the law. Indeed, the amendment under R.A. No. 10640 uses the disjunctive "or," *i.e.*, "with an elected public official and a representative of the National Prosecution Service **or** the media." Thus, a representative from the media and a representative from the National Prosecution Service are now alternatives to each other.

9. ID.; ID.; ID.; THE PHYSICAL INVENTORY AND PHOTOGRAPH OF THE SEIZED ILLEGAL DRUG MAY BE DONE AT THE POLICE STATION WHEN THE PLACE OF ARREST IS A DANGEROUS AND ACCIDENT-PRONE AREA; CASE AT BAR.— [T]he fact that the physical inventory and photograph of the illegal drug were not immediately done at the place of Buesa's arrest cannot alter the outcome of this case. Records show that while the marking of the evidence was done at the place of arrest, the police officers had to conduct the inventory and photograph at the police station because the place where Buesa was arrested was a dangerous and accident-prone area. . . .

. . .

Indeed, as long as the integrity and evidentiary value of an illegal drug were not compromised, non-compliance with R.A. No. 9165 and its IRR may be excused.

10. REMEDIAL LAW; EVIDENCE; DENIAL; FRAME-UP; THESE DEFENSES MUST FAIL ABSENT STRONG AND CONVINCING EVIDENCE AS AGAINST THE OVERWHELMING EVIDENCE FOR THE PROSECUTION.— [A]gainst this overwhelming evidence for the prosecution, Buesa's defenses of denial and frame-up must necessarily fail because they can easily be concocted and they are common and standard defense ploys in prosecutions for violation of R.A. No. 9165. In order to prosper, Buesa had the burden to prove his defenses of denial and frame-up with strong and convincing evidence, and defeat the presumption that the police officers properly performed their duties. But as duly found by the RTC and the CA, Buesa undeniably failed to discharge this burden.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

PERALTA, *C.J.*:

For consideration of the Court is the appeal of the Decision[1] dated December 7, 2017 of the Court of Appeals (*CA*) in CA-G.R. CR-H.C. No. 08929 which affirmed the Decision[2] dated December 5, 2016 of the Regional Trial Court (*RTC*), Branch 34, Calamba City, Laguna, in Criminal Case Nos. 26604-2016-C (P) and 26605-2016-C (P), finding accused-appellant Raymond Buesa *y* Alibudbud guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act (*R.A.*) No. 9165, or the Comprehensive Dangerous Drugs Act of 2002.

In two (2) separate Informations, Buesa was charged with Illegal Possession and Illegal Sale of Methamphetamine Hydrochloride (shabu), committed in the following manner:

Criminal Case No. 26604-2016-C:

That on or about April 25, 2016 in Bay, Laguna and within the jurisdiction of this Honorable Court, the above-named accused without any authority of law, did then and there, willfully, unlawfully and feloniously possess Four (4) heat-sealed transparent plastic sachet containing Methamphetamine Hydrochloride with a total weight of 0.24 gram, a dangerous drug, in violation of the aforementioned law.

CONTRARY TO LAW.

Criminal Case No. 26605-2016-C:

That on or about April 25, 2016 in Bay, Laguna and within the jurisdiction of this Honorable Court, the above-named accused without

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[1] *Rollo*, pp. 2-13; penned by Associate Justice Romeo F. Barza, with the concurrence of Associate Justices Ma. Luisa Quijano Padilla and Maria Filomena D. Singh.

[2] CA *rollo*, pp. 41-52; penned by Presiding Judge Maria Florencia B. Formes-Baculo.

any authority of law, did then and there, willfully, unlawfully and feloniously sell and deliver to a police poseur buyer One (1) heat-sealed transparent plastic sachet containing Methamphetamine Hydrochloride weighing 0.06 gram, a dangerous drug, in violation of the aforementioned law.

CONTRARY TO LAW.[3] (Citations omitted)

Upon arraignment, Buesa pleaded not guilty to the charges filed against him. Subsequently, trial on the merits ensued. During the joint pre-trial, the prosecution presented the testimony of Police Officer 2 (*PO2*) Jessie Abad and, upon stipulation, dispensed with the testimony of PO2 Richard Arienda for being merely corroborative to that of PO2 Abad. For the defense, the lone testimony of Buesa was presented.

It was established by the prosecution that on April 25, 2015, a confidential agent went to the Laguna Police Provincial Office, Bay Municipal Police, and reported that a certain Raymond Buesa was involved in selling illegal drugs. PO2 Abad immediately informed PO2 Jose Guzman, Intel Police Non-Commissioned Officer, who relayed the information to Police Chief Inspector (*PCI*) Owen L. Banaag. Upon verification of said report, PCI Banaag ordered a buy-bust operation. During the briefing, PO2 Abad was tasked as the poseur-buyer, while PO2 Arienda and PO2 Guzman were tasked as back-up member and security perimeter, respectively. Also, the team prepared the Pre-Operation Report and the Coordination Form, as well as a ₱500.00 marked money bearing the marking "JA."[4]

On-board a pick-up vehicle, the buy-bust team and the confidential agent proceeded to the target area in *Barangay* Tagumpay, Bay, Laguna. Upon advice of the agent that their target had transferred location, the team proceeded to Marianville Subdivision, *Barangay* Puypuy, Bay, Laguna instead. Thereat, the confidential agent and PO2 Abad met Buesa who affirmed that he had a prior arrangement with said agent for the sale of

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[3] *Rollo*, p. 3.

[4] *Id.* at 4.

shabu. After handing over the money to the target, PO2 Abad immediately made the signal by holding the right shoulder of Buesa. PO2 Arienda and PO2 Guzman responded. Then, PO2 Abad effected Buesa's arrest and conducted a preventive search which yielded one pouch containing four (4) plastic sachets. Next, the item subject of the sale was marked as RB-BB, while the items subject of the search were marked as RB-1 to RB-4. After marking the confiscated items and considering that they were in an accident-prone area, the buy-bust team proceeded to the police station. At the police station, PO2 Abad conducted an inventory of the confiscated items in the presence of a media representative, PO2 Arienda and a *barangay kagawad*. He also took photographs, prepared the request for laboratory examination, and delivered the same to the crime laboratory. After examination, the Chemistry Report revealed that the specimen submitted contained methamphetamine hydrochloride or "shabu," a dangerous drug.[5]

In his defense, Buesa testified that at 11:00 a.m. of April 25, 2016, he was onboard a borrowed motorcycle and about to fetch his wife at the public market in Calo, Bay, Laguna, when he was flagged down by four (4) armed persons. These armed persons asked for his driver's license, but he was only able to give a citation ticket. Suddenly, they apprehended and handcuffed him, telling him that he was in their watch list. They then brought him to the police station in *Barangay* Puypuy where he was interviewed and physically harmed. They also forced him to admit to a crime involving shabu. At 5:00 p.m., the armed men brought Buesa to Marianville Subdivision where Buesa saw another person and was told to point to something. When he did not obey the order, one of the armed men got mad. They then brought Buesa to the municipal hall where he was again investigated. They made him sit beside a table on which they placed all the items he was previously ordered to point to. Then, they took photographs. According to Buesa, he is not guilty of the charges against him nor was he informed of the same when he was arrested. But he did not file any complaint against the

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

persons who apprehended him because he did not know what to do nor did he have the money to do so.[6]

On December 5, 2016, the RTC rendered its Decision finding Buesa guilty beyond reasonable doubt of the crimes charged and disposed as follows:

> WHEREFORE, premises considered, the Court finds accused RAYMOND BUESA y ALIBUDBUD GUILTY beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. 9165 by selling 0.06 gram of shabu in a buy-bust operation and for possessing 0.24 gram of shabu [and] is accordingly SENTENCED to serve Life Imprisonment and to pay a Fine of Five Hundred Thousand Pesos (₱500,000.00) for violation of Section 5 in Criminal Case No. 26605-2016-C (P) and Twelve (12) Years and One (1) Day, as minimum, to Fifteen (15) Years, as maximum, and to pay a Fine of Three Hundred Thousand Pesos (₱300,000.00) for violation of Section 11 in Criminal Case No. 26604-2016-C (P).
>
> The five (5) transparent plastic sachets containing an aggregate weight of 0.30 gram of Methamphetamine Hydrochloride are ordered to be transmitted to the Philippine Drug Enforcement Agency (PDEA) for proper disposition in accordance with law.
>
> SO ORDERED.[7]

The RTC found that the prosecution duly established all the elements of illegal sale and illegal possession of shabu. According to the trial court, the candid and credible testimony of the arresting officer, PO2 Abad, leaves no doubt that Buesa, indeed, sold shabu to PO2 Abad, acting as a poseur-buyer, in the presence of the confidential agent who introduced them to each other. After consummation of the sale of shabu, and pursuant to the legal buy-bust operation, PO2 Abad frisked Buesa which yielded a coin purse or a small pouch containing small plastic sachets of shabu. Thus, between Buesa's bare allegations of denial and frame-up and the prosecution's clear and straightforward evidence, the trial court found the latter to be more worthy of credence and belief.[8]

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

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

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

In its Decision dated December 7, 2017, the CA affirmed the RTC ruling. It held that the findings of the trial court, which are factual in nature and which involve the credibility of witnesses, are accorded respect when no glaring errors, gross misapprehension of facts, and speculative, arbitrary, and unsupported conclusions can be gathered from such findings.[9]

Now before us, both Buesa and the People 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.[10] Buesa is consistent in arguing that he deserves to be acquitted in view of the prosecution's failure to prove his guilt beyond reasonable doubt. *First*, he claims that PO2 Abad's testimony is full of inconsistencies that reveal an undeniable irregularity in the buy-bust operation. *Second*, he maintains that the buy-bust team failed to follow the procedure mandated in Section 21, Article II of R.A. No. 9165, as amended by R.A. No. 10640. Specifically, he alleged the absence of a representative from the National Prosecution Service at the time of the conduct of the inventory. *Finally*, Buesa insisted that the prosecution also failed to establish an unbroken chain of custody of the alleged seized drugs. As such, his defenses of denial and frame-up should not have been brushed aside.

The appeal is unmeritorious.

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.[11] In illegal sale of dangerous drugs, it is necessary that the sale transaction actually happened and that "the (procured) object

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[9] *Rollo*, p. 7.

[10] *Id.* at 24-32.

[11] *People of the Philippines v. Jowie Allingag, et al.*, G.R. No. 233477, July 30, 2018.

is properly presented as evidence in court and is shown to be the same drugs seized from the accused."[12] Also, under Section 11, Article II of R.A. No. 9165 or illegal possession of dangerous drugs, the following must be proven before an accused can be convicted: (1) the accused was in possession of dangerous drugs; (2) such possession was not authorized by law; and (3) the accused was freely and consciously aware of being in possession of dangerous drugs.[13]

In both cases involving illegal sale and illegal possession, the illicit drugs confiscated from the accused comprise the *corpus delicti* of the charges.[14] Time and again, the Court held that it is of paramount importance that the identity of the dangerous drug be established beyond reasonable doubt; and that it must be proven with certitude that the substance bought during the buy-bust operation is exactly the same substance offered in evidence before the court. In fine, the illegal drug must be produced before the court as exhibit and that which was exhibited must be the very same substance recovered from the suspect. Thus, the chain of custody carries out this purpose "as it ensures that unnecessary doubts concerning the identity of the evidence are removed."[15]

In this case, the Court finds that all the foregoing requisites for the sale and possession of an illegal drug were met. As duly observed by the appellate court, PO2 Abad positively identified Buesa, the seller, as the same person who transacted with him and the confidential agent for the sale of shabu in the buy-bust operation. Upon the consummation of the sale, the members of the buy-bust team responded to the pre-arranged signal of PO2 Abad, and upon apprehension of Buesa, PO2 Abad searched his body. From Buesa, he recovered the marked money and one (1) pouch containing four (4) plastic sachets

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[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *Id.*, citing *People v. Ismael*, 806 Phil. 21, 29 (2017).

which, together with the plastic sachet subject of the sale, tested positive for the presence of Methamphetamine Hydrochloride.[16]

Contrary to Buesa's assertion, the prosecution successfully established an unbroken chain of custody. The chain of custody rule is but a variation of the principle that real evidence must be authenticated prior to its admission into evidence.[17] To establish a chain of custody sufficient to make evidence admissible, the proponent needs only to prove a rational basis from which to conclude that the evidence is what the party claims it to be. In other words, the prosecution must offer sufficient evidence from which the trier of facts could reasonably believe that an item is still what the government claims it to be. In the prosecution of illegal drugs, the well-established federal evidentiary rule in the United States is that when the evidence is not readily identifiable and is susceptible to alteration by tampering or contamination, courts require a more stringent foundation entailing a chain of custody of the item with sufficient completeness to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.[18]

In *People v. Kamad*,[19] we enumerated the essential links that must be proven by the prosecution in order to establish an unbroken chain of custody over the drugs seized in a buy-bust situation: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.[20]

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[16] *Rollo*, p. 8.

[17] *People of the Philippines v. Frankie Magalong*, G.R. No. 231838, March 4, 2019.

[18] *Id.*

[19] 624 Phil. 289 (2010).

[20] *Id.* at 304.

Here, the following facts were clearly established from the narrations of PO2 Abad:

1. Their confidential agent informed PO2 Abad about the illegal drugs activities of the accused prompting the police officers to plan a buy-bust operation after they verified said information;
2. The police officers duly prepared the requisite Coordination Form and Pre-Operation Report albeit such were not duly sent to the PDEA;
3. Their informant accompanied them to the place of the accused and later to Marianville Subdivision in Brgy. Puypuy since the accused left his place;
4. At 6:20 in the evening on April 25, 2016, the accused arrived onboard a motorcycle;
5. PO2 Abad was introduced to the accused by their informant as the latter's friend who would like to buy shabu;
6. PO2 Abad, acting as poseur buyer, told the accused that he would like to buy shabu worth ₱500.00;
7. After being paid with the marked money consisting of a ₱500.00 bill, the accused gave to PO2 Abad the specimen in a plastic sachet containing 0.06 gram of shabu, then with the illegal transaction consummated PO2 Abad made the prearranged signal of holding the shoulder of the accused;
8. PO2 Abad arrested the accused after introducing himself as a police officer and after PO2 Arienda handcuffed the accused, PO2 Abad conducted the preventive body search and recovered the marked ₱500.00 bill and confiscated a coin purse containing four plastic sachets of shabu from the possession of the accused;
9. In the place of arrest PO2 Abad marked the shabu specimen subject of the buy-bust operation with "RB-BB" and the four other shabu specimens with "RB-1", "RB-2", "RB-3" and "RB-4";
10. In the police station, in the presence of Barangay Kagawad Pedro Perez of Brgy. Puypuy and media representative Efren Chavez, PO2 Abad conducted the inventory and after said witnesses signed the Receipt/Inventory of Evidence Seized,

PO2 Abad took pictures of the accused and the two witnesses in front of the seized items;

11. Thereafter, the police investigator prepared the Request for Laboratory Examination and Drug Test, then PO2 Abad brought the seized items with the requests to the Crime Laboratory Office;

12. Chemistry Report No. LD-456-16 shows that the specimens submitted to the Crime Laboratory turned out positive for shabu, and said report was stipulated upon by the prosecution and the defense on its due execution and authenticity;

13. PO2 Abad had clear custody of the shabu specimens from the place of the arrest after the markings until he delivered the same to the Crime Laboratory; and

14. PO2 Abad identified in open Court the seized items and the marked money as well as the documents he and the police investigator prepared relative to the instant cases against the accused.[21]

Despite this, Buesa maintains that the prosecution's case must necessarily fail because the evidence custodian at the crime laboratory to whom the seized items were delivered for their examination was not presented in court to complete the chain of custody. Thus, the manner by which the items were preserved was not established. We are not persuaded. Time and again, the Court has held that the failure to present each and every person who came into possession of the drugs is not fatal to the prosecution's case.[22] In *People v. Padua*,[23] we elucidated:

> [N]ot all [the] people who came into contact with the seized drugs are required to testify in court. There is nothing in Republic Act No. 9165 or in any rule implementing the same that imposes such requirement. As long as the chain of custody of the seized drug was clearly established not to have been broken and that the prosecution

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[21] CA *rollo*, pp. 49-50.

[22] *People of the Philippines v. Jimboy Suico*, G.R. No. 229940, September 10, 2018.

[23] 639 Phil. 235 (2010).

did not fail to identify properly the drugs seized, it is not indispensable that each and every person who came into possession of the drugs should take the witness stand.[24] (Citation omitted)

Unfazed, Buesa further raises the prosecution's failure to observe the strict procedure provided under Section 21, Article II of R.A. No. 9165, as amended by R.A. No. 10640. According to him, he must be acquitted because no representative from the National Prosecution Service was present at the time of the conduct of the inventory. The argument, however, deserves scant consideration.

Section 21 (1) of R.A. No. 9165 provides:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.]

Supplementing the above-quoted provision, Section 21 (a) of the Implementing Rules and Regulations (*IRR*) of R.A. No. 9165 provides:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity

[24] *Id.* at 251.

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[.]

On July 15, 2014, R.A. No. 10640 was approved to amend R.A. No. 9165. Among other modifications, it essentially incorporated the saving clause contained in the IRR, thus:

(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: Provided, finally, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

The import of the foregoing excerpts is that 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 physical 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 Department of Justice; 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.[25]

In the present case, Buesa asserts the nullity of his arrest due to the absence of a representative of the National Prosecution Service. He failed to state, however, that a media representative was present during the conduct of the inventory. As the records clearly reveal, PO2 Abad conducted an inventory of the seized items in the presence of Buesa, *Barangay Kagawad* Pedro Perez of *Barangay* Puypuy, and media representative Efren Chavez.[26] Accordingly, we sustain the appellate court's finding that this constitutes due compliance with the mandate under the law. Indeed, the amendment under R.A. No. 10640 uses the disjunctive "or," *i.e.*, "with an elected public official and a representative of the National Prosecution Service **or** the media." Thus, a representative from the media and a representative from the National Prosecution Service are now alternatives to each other.[27]

Furthermore, the fact that the physical inventory and photograph of the illegal drug were not immediately done at the place of Buesa's arrest cannot alter the outcome of this case. Records show that while the marking of the evidence was done at the place of arrest, the police officers had to conduct the inventory and photograph at the police station because the place where Buesa was arrested was a dangerous and accident-prone area. PO2 Abad stated in his "Sinumpaang Salaysay ng Pag-aresto": "Dahil naroon kami noon sa tabing highway at accident prone area ang nasabing lugar agad kaming nagpasya

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[25] *People of the Philippines v. Lemuel Gonzales*, G.R. No. 229352, April 10, 2019.

[26] *Rollo*, p. 10.

[27] *Augusto Regalado v. People of the Philippines*, G.R. No. 216632, March 13, 2019.

na dalhin na sa aming himpilan ang nasabing si Raymond Buesa kasama ang mga ebidensiyang nakuha mula sa kanya[.]"[28] He also testified during his direct examination: "After the marking of the evidence, and considering that we are in the accident prone area we decided to proceed to the police station, ma'am."[29]

In *People of the Philippines v. Frankie Magalong*,[30] the Court sustained the conviction of the accused therein despite the fact that the inventory was conducted not at the place of arrest but at the Philippine Drug Enforcement Agency office, sustaining the explanation of the police officers that they needed to avoid commotion and ensure their own safety. Also, in *People v. Sic-open*,[31] the apprehending team similarly justified that they conducted a preliminary inventory of the seized items inside the car because it was too dark at the time and they were being cautious of their own safety as they were not sure if there were other persons within the vicinity aside from the accused therein.[32]

Indeed, as long as the integrity and evidentiary value of an illegal drug were not compromised, non-compliance with R.A. No. 9165 and its IRR may be excused.[33] As sufficiently shown by the prosecution's evidence, Buesa was clearly identified as the person who sold and possessed the illegal substances during the conduct of a valid buy-bust operation. As soon as the sale was consummated and the body of Buesa was frisked, PO2 Abad arrested Buesa and marked the seized items immediately at the place of arrest. Subsequently, due to the fact that said place of arrest was accident-prone, the police officers brought Buesa and the seized items to the police station to conduct the

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[28] Records, p. 11.

[29] TSN, September 19, 2016, p. 12.

[30] *Supra* note 17.

[31] 795 Phil. 859 (2016).

[32] *Id.* at 873, citing *People v. Asislo*, 778 Phil. 509 (2016); *People v. Mammad, et al.*, 769 Phil. 782 (2015); *Miclat, Jr. v. People*, 672 Phil. 191 (2011); and *People v. Felipe*, 663 Phil. 132 (2011).

[33] *People of the Philippines v. Frankie Magalong*, *supra* note 17.

inventory and taking of photographs in the presence of the witnesses required by law. Then, the seized items were brought to the crime laboratory where they tested positive for shabu. These very same items were duly identified and marked as exhibits in open court. PO2 Abad categorically testified as follows:

Q: What did you do after successfully buying from the accused?
A: After I handed to him the money, I immediately made the signal to my companion.

x x x x

Q: You said you were able to buy [from] the accused, how will you [be] able to identify the item that you bought from the accused?
A: I marked it with RB-BB.

Q: When did you mark it?
A: On April 25, 2016.

PROS. BELZA:

[Q:] Was it immediately after you arrested the accused or during the inventory?
[A:] After the arrest of the accused at the place of the incident, ma'am.

x x x x

PROS. BELZA:

May we move that the plastic sachet with marking RB-BB be marked as Exhibit K for the prosecution.

x x x x

Q: What did you do [to] the items seize[d]?

x x x x

A: After the markings of the evidence, and considering that we are in the accident prone area, we decided to proceed to the police station, ma'am.

PROS. BELZA:

Q: Who was holding the items confiscated from the accused?
A: Me, ma'am.

Q: Where did you place it?
A: Inside a transparent plastic, ma'am.

Q: You said you went back to the police station for the conduct of inventory, who were with you during the inventory, Mr. Witness?
A: The media representative, PO2 Arienda, and the barangay kagawad, ma'am.

x x x x

Q: After the conduct of the inventory, photograph taking, what else happened?

x x x x

A: We prepared the request for laboratory examination, ma'am.

Q: Who delivered the said request?
A: I was the one, ma'am.

x x x x

Q: Were you able to know the result of the examination?

x x x x

A: Yes, ma'am. Positive.

PROS. BELZA

The Chemistry Report was previously marked as Exhibit H, your honor. May we move that the FINDINGS AND CONCLUSION be bracketed and marked as Exhibit H-1 and the signature of the Forensic Chemist be marked as Exhibit H-2.[34]

Thus, against this overwhelming evidence for the prosecution, Buesa's defenses of denial and frame-up must necessarily fail because they can easily be concocted and they are common and standard defense ploys in prosecutions for violation of R.A. No. 9165. In order to prosper, Buesa had the burden to prove his defenses of denial and frame-up with strong and convincing evidence, and defeat the presumption that the police officers properly performed their duties.[35] But as duly found by the

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[34] TSN, September 19, 2016, pp. 9-15.

[35] *People of the Philippines v. Frankie Magalong, supra* note 17.

RTC and the CA, Buesa undeniably failed to discharge this burden.

With respect to the penalty imposed, we sustain the ruling of the RTC, as affirmed by the CA, in Criminal Case No. 26605-2016-C (P) and Criminal Case No. 26604-2016-C (P). On the one hand, Section 5, Article II of R.A. No. 9165 penalizes illegal sale of shabu with the penalty of life imprisonment and a fine ranging from Five Hundred Thousand Pesos (₱500,000.00) to Ten Million Pesos (₱10,000,000.00). On the other hand, Section 11, Article II of R.A. No. 9165 penalizes illegal possession of less than five (5) grams of methamphetamine hydrochloride or shabu with imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three Hundred Thousand Pesos (₱300,000.00) to Four Hundred Thousand Pesos (₱400,000.00). The evidence adduced by the prosecution established beyond reasonable doubt that Buesa possessed a total of 0.24 gram of shabu without any legal authority. Applying the Indeterminate Sentence Law, the minimum period of the imposable penalty shall not fall below the minimum period set by the law and the maximum period shall not exceed the maximum period allowed under the law. Taking that into consideration, the penalty meted out by the RTC, as affirmed by the CA, was within the range provided by R.A. No. 9165. The appropriate penalty was, therefore, imposed by the lower court.[36]

WHEREFORE, premises considered, the appeal is **DISMISSED**. The Decision dated December 5, 2016 of the Regional Trial Court, Branch 34, Calamba City, Laguna, in Criminal Case Nos. 26604-2016-C (P) and 26605-2016-C (P), as affirmed by the Decision dated December 7, 2017 of the Court of Appeals in CA-G.R. CR-H.C. No. 08929, convicting appellant Raymond Buesa *y* Alibudbud of Illegal Sale and Illegal Possession of Methamphetamine Hydrochloride (shabu), in violation of Sections 5 and 11, respectively, of Article II of Republic Act No. 9165, or the Comprehensive Dangerous Drugs

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[36] *People v. Eda*, 793 Phil. 885, 903 (2016).

Act of 2002, is **AFFIRMED**. He is hereby sentenced to serve the penalty of Life Imprisonment and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00) for violation of Section 5 in Criminal Case No. 26605-2016-C (P) and imprisonment of Twelve (12) Years and One (1) Day, as minimum, to Fifteen (15) Years, as maximum, and to pay a fine of Three Hundred Thousand Pesos (₱300,000.00) for violation of Section 11 in Criminal Case No. 26604-2016-C (P).

SO ORDERED.

Caguioa, Reyes, Jr., Lazaro-Javier, and *Lopez, JJ.*, concur.

FIRST DIVISION

[G.R. No. 238873. September 16, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **SUNDARAM MAGAYON *y* FRANCISCO,** *Accused-Appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; SEARCHES AND SEIZURES; SEARCH WARRANTS; ANY OBJECTION TO THE LEGALITY OF THE SEARCH WARRANT AND THE ADMISSIBILITY OF THE EVIDENCE OBTAINED THEREBY IS DEEMED WAIVED WHEN NO OBJECTION IS RAISED BY THE ACCUSED DURING TRIAL.— It is a matter of record that **appellant never assailed the search warrant and the evidence emanating therefrom before the trial court**. As the appellate court correctly observed, **appellant's objections were belatedly raised on appeal and, thus, are deemed waived**. In ***People v. Nuñez***, the Court had the opportunity to state that "any objection to the legality of the search warrant and the admissibility of the evidence obtained thereby was deemed waived when no objection was raised by appellant during trial. For sure, the right to be secure from unreasonable searches and seizures, like any other right, can be waived and the waiver may be made expressly or impliedly."

2. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTION; BILL OF RIGHTS; RIGHT AGAINST UNREASONABLE SEARCHES AND SEIZURES; SEARCH WARRANTS; A SEARCH WARRANT IS DEEMED TO HAVE DESCRIBED THE PLACE TO BE SEARCHED WITH SUFFICIENT PARTICULARITY WHEN THE PREMISES HAVE BEEN IDENTIFIED AS BEING OCCUPIED BY THE ACCUSED.— The rule is that **a description of the place to be searched is sufficient if the officer with the warrant can, with reasonable effort, ascertain and identify the place intended and distinguish it from other places in the community**. Any **designation or**

description known to the locality that **points out the place to the exclusion of all others, and on inquiry, leads the officers unerringly to it, satisfies the constitutional requirement**. A search warrant is deemed to have **described the place to be searched with sufficient particularity** when **the premises have been identified as being occupied by the accused**. x x x [T]he **search warrant here stated** that the place to be searched was **appellant's "rented residence and its premises** located [on] 6th Street, Guingona Subdivision, Barangay 25, Jose P. Rizal, Butuan City." The apprehending officers became and were in fact familiar with the place to be searched as a result of the test buy which they had conducted just hours before the search. Further, appellant **has not denied** that the **store formed part of the "rented residence"** and **was not a separate structure**. PO2 Maderal categorically testified that the store was part of the house and it was an open space on which a curtain hung as a divider. We therefore find no cogent reason to disturb the common findings of the courts below that **the house and its appurtenant store were found at the same address indicated in the search warrant**.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S FACTUAL FINDINGS THEREON ARE GENERALLY VIEWED AS CORRECT AND ENTITLED TO THE HIGHEST RESPECT.— Whether to believe the version of the prosecution or that of the defense, the trial court's factual findings thereon x x x [are] generally viewed as correct and entitled to the highest respect. For it had the opportunity to observe the witnesses' demeanor and deportment on the witness stand as they gave their testimonies. More so, where the trial court's factual findings on the credibility of witnesses carry the full concurrence of the Court of Appeals, as in this case. No compelling reason exists here to deviate from this rule.

4. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS; POSSESSION UNDER THE LAW INCLUDES NOT ONLY ACTUAL POSSESSION BUT ALSO CONSTRUCTIVE POSSESSION, AND EXCLUSIVE POSSESSION OR CONTROL IS NOT NECESSARY.— The elements of illegal possession of dangerous drugs under Section

11, Article II of RA 9165 are: (1) **possession** by the accused of an item or object identified to be a prohibited drug; (2) the possession is **not authorized by law**; and (3) the **free and conscious possession** of the drug by the accused. **Possession** under the law includes not only **actual possession** but also **constructive possession**. **Actual possession** exists when the drug is in the immediate physical possession or control of the accused. On the other hand, **constructive possession** exists when the drug is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found. Exclusive possession or control is **not** necessary. The accused cannot avoid conviction if his control and dominion over the place where the contraband is located were shared with another.

5. REMEDIAL LAW; EVIDENCE; EXTRAJUDICIAL CONFESSIONS; WHEN ADMISSIBLE IN EVIDENCE.— Records indubitably show that **appellant had frankly admitted his possession of the enormous amount of prohibited drugs** which found in and seized from his residence. x x x Extrajudicial confessions are admissible in evidence, provided they are: 1) voluntary; 2) made with the assistance of a competent and independent counsel; 3) express; and 4) in writing. Here, **appellant's admissions in his counter-affidavits are binding on him as they were knowingly and voluntarily made with assistance of his counsel of choice**, Atty. Poculan.

6. ID.; ID.; RECANTATIONS; DO NOT NECESSARILY CANCEL OUT AN EARLIER DECLARATION AND THEY SHOULD STILL BE TREATED LIKE ANY OTHER TESTIMONY AND AS SUCH, THEIR CREDIBILITY MUST BE TESTED DURING TRIAL.— Although appellant later on tried to retract x x x [his] statements in court, claiming it was not true that Cheche was blameless and it was in fact her former husband who owned the seized marijuana, his belated attempt to diffuse his past damaging admissions must fail. For courts may believe one part of the testimony of a witness and disbelieve another part. Courts are not required to accept or reject the whole of the testimony of a particular witness. While case law holds that recantations do not necessarily cancel out an earlier declaration, ultimately, x x x [they] should still be treated like any other testimony and as such, x x x [their] credibility must be tested during trial.

7. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL POSSESSION OF DANGEROUS DRUGS; THE ACCUSED'S ADMISSION OF OWNERSHIP AND POSSESSION OF THE SEIZED DRUGS WARRANTS HIS CONVICTION DESPITE HIS CONTENTION THAT THE APPREHENDING OFFICERS DID NOT FULLY COMPLY WITH THE CHAIN OF CUSTODY RULE.— In ***Regalado v. People***, Regalado admitted that he possessed the seized marijuana but contended that the apprehending officers did not fully comply with Section 21, Article II of RA 9165. The Court held that Regalado's damning admission warranted the affirmance of his conviction, albeit we sternly reminded police officers to be mindful of their duty to comply with the statutorily mandated procedure in drugs cases, lest their lapses become fatal to the prosecution's cause. Here, **appellant already admitted several times his possession of a large quantity of marijuana and did not pose substantial objections to the identity and integrity of the drugs confiscated at the place of his arrest**. The case records flatly contradicted his objections to the chain of custody of the seized drugs in question. x x x It is immaterial that appellant's counter-affidavit did not specify the amount of drugs found in his possession. This does not negate the applicability of ***Regalado***. A plain reading of his second counter-affidavit readily shows that he admitted to owning all 381.3065 grams of marijuana recovered during the search. Notably, when he executed his second counter-affidavit on February 2, 2005, about six (6) months after he got arrested, **he already knew by then that he was being charged with illegal possession of 381.3065 grams of marijuana**. Yet he still admitted ownership thereof **without qualification** as to its quantity. Thus, the trial court and the Court of Appeals cannot be faulted for construing the counter-affidavit as an admission of ownership and possession of the entire amount recovered. There was no piecemeal admission here. It was either appellant owned the entire quantity or none at all. As it was, the trial court and the Court of Appeals, in their final evaluation of the evidence before them, found that between appellant's admission, on the one hand, and his recantation, on the other, the former is more deserving of weight and credit. There exists no cogent reason to depart from these factual findings of the courts below.

8. ID.; ID.; CHAIN OF CUSTODY RULE; TO ESTABLISH THE IDENTITY OF THE DANGEROUS DRUG WITH MORAL CERTAINTY, THE PROSECUTION MUST BE ABLE TO ACCOUNT FOR EACH LINK OF THE CHAIN OF CUSTODY FROM THE MOMENT THE DRUGS ARE SEIZED UP TO THEIR PRESENTATION IN COURT AS EVIDENCE OF THE CRIME.— Section 21, Article II of RA 9165 on the chain of custody rule outlines the procedure that police officers must follow in handling the seized drugs in order to ensure the preservation of their integrity and evidentiary value. To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. Here, the **testimonies of PO2 Maderal and the forensic chemist sufficiently established every link** in the chain of custody **from the time** the prohibited drugs were **seized and inventoried right after** the search **at the place** of the search, **to the time** they were **brought to the police station** for the **booking**, **investigation**, and **forensic analysis**, **up until** the prohibited drugs were **presented in court**.

CAGUIOA, *J., dissenting opinion*:

1. REMEDIAL LAW; EVIDENCE; ADMISSIONS; AN ADMISSION IS DEEMED LESS THAN A CONFESSION AS IT ACKNOWLEDGES ONLY FACTUAL CIRCUMSTANCES THAT TEND TO PROVE THE GUILT OF THE ACCUSED WHEN CONNECTED WITH PROOF OF OTHER FACTS; CONFESSION AND ADMISSION, DISTINGUISHED.— [T]he language of Sundaram's sworn statements lacks a categorical acknowledgment of guilt, particularly with respect to his ownership and possession of the entire volume of drugs found in his residence. In this regard, the Court has always made a distinction between a confession and an admission. A confession refers to the express acknowledgment of guilt of the crime charged, while an admission "is an acknowledgment of some facts or circumstances which, in itself, is insufficient to authorize a conviction and which tends only to establish the ultimate facts of guilt." An admission is deemed less than a confession as it acknowledges only factual circumstances that tend to prove the guilt of the

accused when connected with proof of other facts. A careful examination of the statements in Sundaram's Counter-Affidavits would reveal that these were mistakenly characterized as a confession. In his August 14, 2004 Counter-Affidavit, Sundaram stated that the marijuana leaves were left in his residence, presumably by someone else, and that he was about to report this to the authorities. The appellant's passive reference to these drugs indicates an intention to distance himself therefrom. Rather than establishing a categorical admission of ownership on the part of the appellant, there is no discernible awareness in this statement that he freely and consciously possessed them. Meanwhile, in his February 2, 2005 Counter-Affidavit, Sundaram stated that "[t]he **alleged** prohibited drugs found in [his] possession" were only for his own personal use. He also concluded his sworn statement with the admission that he is a drug user but not a seller of prohibited drugs. The equivocalness in these statements is readily apparent. Aside from using the word "alleged" to refer to the prohibited drugs, the February 2, 2005 Counter-Affidavit does not specify the drugs involved or the amount purportedly found in his possession. The glaring absence of these details fail to lend credence to the *ponencia*'s ruling that Sundaram "**knowingly took full responsibility for the seized drugs**." This holds especially true in this case where Sundaram maintained that his acknowledgement of guilt only refers to his drug use. During his cross-examination, he denied the rest of the statements in his February 2, 2005 Counter-Affidavit x x x. Sundaram also denied the statements in the August 14, 2004 Counter-Affidavit. In his cross-examination, he testified that he was only made to sign the document x x x. At most, the statements in Sundaram's Counter-Affidavits should be considered as mere admissions as they are not tantamount to a categorical acknowledgment of guilt.

2. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL POSSESSION OF DANGEROUS DRUGS; IN CASES INVOLVING ILLEGAL POSSESSION OF DANGEROUS DRUGS, THE VOLUME OF DRUGS INVOLVED IS SIGNIFICANT TO THE CHARGE AGAINST THE ACCUSED FOR THE RANGE OF THE IMPOSABLE PENALTY DEPENDS ON THE QUANTITY OF DRUGS.— While Sundaram's admissions may be taken

as evidence against him, his statements are not an unequivocal declaration that he possessed "**a large quantity of marijuana**." Neither are these an admission that "the **seized drugs were marked and inventoried** at the **time and place of the search**." Since both of his Counter-Affidavits are ambiguous as to the amount of drugs involved, his statements do not contemplate that the drugs presented in court were the same ones taken from him. For the *ponencia*, however, the appellant's failure to specify the volume of drugs he possessed should be considered as an unqualified admission for the entire drug evidence. Either the appellant owned the entire quantity or none at all. This conveniently disregards the fact that according to the prosecution, two (2) operations were conducted prior to the arrest of the appellant: the buy-bust operation and the implementation of the search warrant. In both instances, the prosecution averred that the police officers were able to recover marijuana from the appellant. Without specific details as to the confiscated drugs referred to in the sworn statements of Sundaram, his admission that "[t]he alleged prohibited drugs found in [his] possession were for [his] own personal use and not for sale or distribution" could easily refer to the drugs recovered from either operation. The *ponencia*'s reliance on this statement to affirm the conviction of the appellant is therefore unwarranted. It must be emphasized that in cases involving illegal possession of dangerous drugs, the volume of drugs involved is significant to the charge against the accused. The range of the imposable penalty depends on the quantity of drugs — the larger the amount, the more severe the penalty. By conclusively holding that the identity and integrity of the drug evidence were preserved, the admissions of the appellant were dangerously interpreted beyond their actual meaning. In my view, the Court should exercise prudence and judiciousness in assigning weight to these extrajudicial statements of the appellant.

3. REMEDIAL LAW; EVIDENCE; EXTRAJUDICIAL CONFESSION; THE EXTRAJUDICIAL CONFESSION OF AN ACCUSED SHALL NOT BE SUFFICIENT GROUND FOR CONVICTION UNLESS CORROBORATED BY EVIDENCE OF *CORPUS DELICTI*.— Even if the *ponencia* correctly considered the sworn statements as an extrajudicial confession, this only forms a *prima facie* case against the appellant. As well, Section 3, Rule 133 of the Rules of Court

provides that the extra-judicial confession of an accused shall not be sufficient ground for conviction **unless corroborated by evidence of *corpus delicti***. The *corpus delicti* in drugs cases is the confiscated drug itself, and the manner through which its identity is preserved with moral certainty is through compliance with Section 21, Article II of R.A. No. 9165. This section lays down the chain of custody rule, the primary purpose of which is to ensure that the dangerous drugs presented before the trial court are the same items confiscated from the accused.

4. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); CHAIN OF CUSTODY RULE; EVERY LINK IN THE CHAIN OF CUSTODY MUST BE ESTABLISHED BY THE PROSECUTION.— As a mode of authenticating evidence, the Court requires the prosecution to establish the following links in the chain of custody: *first*, the seizure and marking, if practicable, of the illegal drugs recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drugs seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drugs to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drugs seized from the forensic chemist to the court.

5. ID.; ID.; ID.; MARKING; THE APPREHENDING OFFICERS ARE REQUIRED TO IMMEDIATELY MARK THE SEIZED ITEMS UPON THEIR CONFISCATION, OR AT THE EARLIEST REASONABLY AVAILABLE OPPORTUNITY, IN ORDER TO SEPARATE THE MARKED ITEMS FROM ALL OTHER SIMILAR OR RELATED EVIDENCE.— The marking of the drug evidence, as the initial step in the chain of custody, is essential because it is the primary reference point for the succeeding custodians of the confiscated drugs. The apprehending officers are required to immediately mark the seized items upon their confiscation, or at the "earliest reasonably available opportunity," in order to separate the marked items from all other similar or related evidence. x x x Here, it does not appear from the *ponencia* that the packets of marijuana, which were confiscated by virtue of the implementation of the search warrant, were immediately marked in Sundaram's residence. Neither do the records reflect this. x x x [I]t is clear that there was no marking made during

the inventory-taking, which is apparent from the lack of the marking details in the Certificate of Inventory and the pictures presented in evidence, and that the marking was made only prior to submission of the seized drugs to the laboratory as shown in the Request for Laboratory Examination. The Court could only suppose that the markings were made sometime between the intervening period from the confiscation of the drugs and the preparation of the Request for Laboratory Examination. This is precisely the ambiguity that the chain of custody rule seeks to prevent. x x x It should be further emphasized that marking is a significant preparatory act to the inventory and photographing of dangerous drugs, as the succeeding links in the chain of custody are supposed to record the marks placed on the confiscated drug evidence. A gap in these initial custodial requirements makes it difficult for the court to keep track of the evidence while it moves along the chain of custody. Notably, the police officers in this case were armed with a search warrant and yet, they failed to comply with these requirements. x x x Under the 1999 PNPDEM, the police officers implementing a search warrant were even required to mark the evidence twice: after it was found by the searching element, and upon turn-over to the duly designated evidence custodian. The apprehending team did not comply with either of these requirements. They likewise failed to indicate the weight of each packet of marijuana in either the inventory or the Request for Laboratory Examination, further engendering doubts in my mind that the drugs presented in court were indeed the same ones taken from the appellant.

6. ID.; ID.; ID.; PHYSICAL INVENTORY AND PHOTOGRAPHING OF SEIZED ITEMS; MUST BE IMMEDIATELY CONDUCTED IN THE PRESENCE OF THE REQUIRED WITNESSES.— After the marking, the arresting officers must immediately conduct a physical inventory and photograph the seized items in the presence of the following: (a) the accused or the person from whom the items were confiscated, or his representative or counsel; (b) a representative from the media; (c) a representative from the Department of Justice (DOJ); and (d) any elected public official. They should also sign the inventory and be given a copy thereof. **If the drugs were confiscated pursuant to a search warrant, the Implementing Rules and Regulations of R.A. No. 9165**

explicitly state that the physical inventory and photographing should be conducted at the place where the warrant is served. In the 1999 Philippine National Police Drug Enforcement Manual (PNPDEM), the operating manual in place at the time of this case, the police officers serving a search warrant were **also** directed to perform x x x [certain procedures].

7. ID.; ID.; ID.; ID.; REQUIRED WITNESSES; THE MANDATORY PRESENCE OF THE WITNESSES TO THE INVENTORY AND PHOTOGRAPHING IS REQUIRED IN ALL INSTANCES OF SEIZURE AND CONFISCATION OF DANGEROUS DRUGS.— Another glaring lapse on the part of the apprehending team is the absence of a DOJ representative during the inventory and photographing of the seized items. The mandatory presence of the witnesses to the inventory and photographing is required in all instances of seizure and confiscation of dangerous drugs. More so when the drug evidence was seized by virtue of a search warrant, which, like a buy-bust operation, requires advance planning and preparation. The police officers in this case had time to obtain a search warrant, prepare for the buy-bust operation that preceded the service of the warrant, and to make the necessary arrangements for the subsequent enforcement of the search warrant. Clearly, during the planning stage for the operation, the police officers likewise had ample time to secure the presence of the required witnesses. However, the only witnesses at the time of the inventory and photographing were the barangay officials and the representatives from the media. They did not obtain the presence of a DOJ representative.

8. ID.; ID.; ID.; THE ARRESTING OFFICERS ARE DUTY-BOUND TO OBSERVE THE CHAIN OF CUSTODY RULE FROM THE MOMENT THAT DANGEROUS DRUGS ARE SUPPOSEDLY CONFISCATED FROM THE POSSESSION OF THE ACCUSED REGARDLESS OF ANY SUBSEQUENT ADMISSION OR CONFESSION ON HIS PART.— Here, the apprehending team committed grave procedural lapses not only in the initial custody and handling of the seized marijuana, but with the witness requirements of Section 21, Article II of R.A. No. 9165. No explanation was alleged or proven to justify these deviations from these statutory requirements. Instead, the *ponencia* relied heavily on the vague statements in the appellant's Counter-Affidavits to prove that

the identity and integrity of the drug evidence were preserved. To be sure, the Court has not veered away from affirming the conviction of an accused when the requirements of Section 21 are duly observed. In particular, *Santos v. People* and *Concepcion v. People* involve the implementation of a search warrant, and in both instances, the arresting officers were easily able to comply with all the requirements of Section 21. These cases exhibit the reasonableness of the custodial requirements in R.A. No. 9165, and that it is entirely within the realm of possibility for law enforcement to perform their duties accordingly. The Court would be remiss in its duty to faithfully apply the law if, despite the inattentive and careless manner by which police officers performed their functions, the conviction of the accused would nonetheless be affirmed. The gaps in the chain of custody cannot be justified by the ambiguous admissions of the appellant in this case. The arresting officers were duty-bound to observe the chain of custody rule from the moment that dangerous drugs were supposedly confiscated from the possession of the appellant — regardless of any subsequent admission or confession on his part. **Failing this, the Court should not substitute the appellant's sworn statements for the required proof of the integrity and evidentiary value of the drug evidence, especially where, as here, the imprecise language of these statements being extant.**

9. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; THE AMOUNT OF DRUGS INVOLVED SHOULD NOT DICTATE THE MANNER BY WHICH THE COURT MUST EVALUATE THE GUILT OF THE ACCUSED, FOR THE ONLY MATTER ON WHICH THE QUANTITY OF DRUGS DEPENDS IS THE SEVERITY OF THE IMPOSABLE PENALTY FOR THE OFFENSE OF ILLEGAL POSSESSION OF DANGEROUS DRUGS.— I also respectfully disagree with the *ponencia*'s conclusion that since the present case involves a large volume of dangerous drugs, this "[goes] against the possibility of planting or substitution by the police." The amount of drugs involved should not dictate the manner by which the Court must evaluate the guilt of the accused. **Section 21, Article II of R.A. No. 9165 does not qualify its application depending on the volume of drugs involved.** The only matter under R.A. No. 9165, on which the quantity of drugs depends, is the severity of the imposable penalty

for the offense of illegal possession of dangerous drugs. This underscores the necessity for the Court's adherence to the chain of custody rule — to ensure that the accused is charged accurately to the last gram and found guilty only when the identity and integrity of the drug evidence are duly preserved.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This appeal assails the Decision dated January 26, 2018[1] of the Court of Appeals in CA-G.R. CR-HC No. 01411-MIN affirming the trial court's verdict of conviction against appellant Sundaram Magayon *y* Francisco for violation of Section 11, Article II of Republic Act 9165 (RA 9165) or the Comprehensive Dangerous Drugs Act of 2002.

The Proceedings before the Trial Court

The prosecution filed two (2) separate Informations against appellant for violation of Sections 5 and 11 of RA 9165, docketed as Crim. Case 10738 and 10739. Since appellant was already acquitted in Criminal Case 10738, this Decision will only focus on Crim. Case 10739. The Information reads:

That on or about the evening of August 3, 2004 at 6th Street, Guingona Subdivision, Barangay 25, JP Rizal, Butuan City, Philippines and within the jurisdiction of his Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously have in his possession, control and custody

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[1] Penned by Court of Appeals Associate Justice Perpetua T. Atal-Paño and concurred in by Associate Justices Edgardo A. Camello and Walter S. Ong, *rollo*, pp. 3-27.

two hundred seventy six point nine six six two (276.9662) grams of dried marijuana fruiting tops and one bundle of marijuana stalks weighing one hundred four point three four zero three (104.3403) grams, which is a dangerous drug.

CONTRARY TO LAW. (Violation of Sec. 11, Art. II of RA No. 9165).[2]

On arraignment, appellant pleaded not guilty.[3]

During the trial, PO2 Rey Gabrielle Busa Maderal (PO2 Maderal),[4] Barangay Kagawad Carmelita Torres Mangasep (Barangay Kagawad Mangasep), and Police Senior Inspector (PSI) Norman Gales Jovita (PSI Jovita) testified for the prosecution.[5] On the other hand, Richard Bentoso Amado (Amado) and appellant himself testified for the defense.[6]

Version of the Prosecution

PO2 Maderal testified that on August 3, 2004, about 6 o'clock in the evening, he, SPO4 Inocencio Amora (SPO4 Amora), PO3 Estelito Gono (PO3 Gono), PO2 Jaime delos Santos (PO2 delos Santos) and several other police officers conducted a buy-bust operation on appellant residence on 6th Street, Guingona Subdivision, Barangay 25, Jose P. Rizal, Butuan City.

PO2 delos Santos accompanied the confidential asset to the store which formed part of appellant's house. He (PO2 Maderal) stood near the store where he could clearly see the asset and PO2 delos Santos. When he saw the asset exchange the one hundred peso (₱100.00) marked money with a teabag-sized packet of alleged marijuana from appellant, he and his companions closed in and arrested appellant.

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[2] Record, p. 1.

[3] *Id.* at 26.

[4] In some parts of the record, this witness is sometimes referred to as PO3 Maderal.

[5] *Rollo*, p. 4.

[6] *Id.* at 8.

The *poseur*-buyer handed the packet of marijuana to PO2 delos Santos who, in turn, gave it to him (PO2 Maderal) for safekeeping. He recovered the marked money from appellant's "wife"[7] who received it from appellant right after the transaction. He and the other police officers informed appellant he was being arrested for illegally selling marijuana.[8]

SPO4 Amora informed appellant of the search warrant they had on his premises.[9] They waited for barangay officials and media personnel to arrive before they commenced the search.[10] Appellant and his "wife," too, were present during the search. The search yielded seventy-four (74) small packets[11] of marijuana in different parts of the house including the store. Inside appellant's room, they found a plastic bag of marijuana and marijuana inside a yellow plastic ice cream container.

In the presence of the barangay officials and the appellant, he prepared the inventory of the seized items. He further identified the pictures taken during the search including those of the seized items.[12]

He also prepared the certificate of orderly search which the witnesses from the barangay and the media signed. But since appellant refused to sign the certificate, the words "not willing to sign" were written on the space provided for appellant's signature. Thereafter, appellant, his "wife," and the seized items

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[7] The witnesses for the prosecution referred to this person as appellant's wife but appellant claimed that she was only his girlfriend.

[8] TSN dated August 10, 2006, pp. 5-6.

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

[10] *Id.* at 11.

[11] Nineteen (19) packets of marijuana were found in a black bag and a cellophane bag, another twenty-six (26) and twenty-nine (29) packets were found in the store and a room, all inside appellant's house *id.* at 13-14.

[12] *Id.* at 14-20.

were brought to the police station for booking and investigation. He kept custody of the items.[13]

At the police station, he and the other arresting officers prepared the booking, indorsement to the PNP Crime Laboratory of the items, return on the search warrant, and affidavit of apprehension.[14]

He was among those who signed the affidavit of apprehension. He identified his and his companions' signatures thereon. The seized items were surrendered to the court which issued the search warrant. Subsequently, with leave of court, the items were submitted to the crime laboratory for chemical examination. He himself delivered the items to the crime laboratory on the same day. He affirmed that the items he delivered were the same items recovered from appellant.[15]

On cross, he testified that SPO4 Amora, PO2 delos Santos and the police asset applied for a search warrant around 11 o'clock in the morning of August 3, 2004 after they did a test buy earlier that day. During the buy-bust, the police operatives were already accompanied by some barangay kagawads. They started the search of the premises only after the other barangay officials had arrived, together with the staff of DXBC and ABS-CBN.[16] In response to the trial court's clarificatory questions, PO2 Maderal averred that he clearly saw the exchange of illegal drugs and money between appellant and the *poseur*-buyer as he was observing them from just beside the store.[17]

Barangay Kagawad Mangasep testified that in the afternoon of August 3, 2004, a police officer, whose name she

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[13] ₱100 peso marked money, a total of seventy-four (74) small packets of marijuana, a plastic bag of dried marijuana stalks, and dried crushed marijuana leaves in a yellow plastic ice cream container.

[14] TSN dated August 10, 2006, pp. 21-22.

[15] *Id.* at 21-27.

[16] TSN dated January 11, 2007, pp. 3-5.

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

could no longer recall, came to her house and requested her to witness a raid that he and his companions were about to conduct.[18] When she arrived at the place, Kagawad Sisora, other police officers, and media personnel were already there. Only then did the search begin.[19]

After the search and seizure had ended, the police officers gathered and inventoried all the things they found and seized. Photographs of the seized items were taken before the same were brought to the police station.

Barangay Kagawad Mangasep signed an inventory and certification. She also identified her signature and those of her fellow barangay kagawad and the media personnel.[20] On cross, she admitted she was not present during the buy-bust operations.[21] During the search, she, Kagawad Manuel Sisora (Kagawad Sisora), two (2) media personnel, some police officers, appellant and his "live-in partner" were present.[22]

Forensic Chemist **PSI Jovita** testified that he received three (3) laboratory requests from Police Chief Inspector (PCI) Martin Mercado Gamboa (PCI Gamboa) in connection with the buy-bust against appellant and the search of his premises. These requests referred to the: 1) request for examination of one (1) tea bag of purported marijuana recovered during a test buy; 2) request for examination of one (1) tea bag of suspected marijuana subject of a buy-bust operation with marking "RBM-A1-08-03-04" (BUY-BUST); and 3) request for examination of seventy-four (74) tea bags/packets of alleged marijuana, marked as "RBM-A1-08-03-04 up to RBM-A19-08-03-04," "RBM-B1-08-03-04 up to RBM-B26-08-03-04," "RBM-C1-08-03-04 up to RBM-C29-08-03-04," and a plastic bag and a plastic ice cream container

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[18] TSN dated June 18, 2007, p. 3.

[19] *Id.* at 9.

[20] *Id.* at 4-6.

[21] *Id.* at 7.

[22] *Id.* at 9.

also containing suspected marijuana. These items came from the search done on the premises.[23] He immediately marked the items, as follows:

1. Chemistry Report D-125-2004
   Specimen A-1 — for one (1) heat-sealed transparent plastic sachet with markings "RBM-A1-08-03-04"

2. Chemistry Report D-126-2004
   Specimen A-1 — for one (1) heat-sealed transparent plastic packet with markings "RBM-A1-08-03-04 BUY-BUST"

3. Chemistry Report D-127-2004
   Specimen A-1 - A-19 — for one (1) leather bag color black with markings "RBM-A-08-03-04" containing nineteen (19) heat-sealed transparent plastic packets with markings "RBM-A1-08-03-04" up to "RBM-A19-08-03-04"

   Specimen B -1- B-26 — for one (1) knot-tied plastic bag color white and red with markings "RBM-B-08-03-04" containing twenty-six (26) heat-sealed transparent plastic packets with markings "RBM-B1-08-0304" up to "RBM-B26-08-03-04"

   Specimen C-1 - C-29 — for one (1) knot-tied plastic bag color white and red with markings "RBM-C-08-03-04" containing twenty-nine (29) heat-sealed transparent plastic packets with markings "RBM-C1-08-03-04" up to "RBM-C29-08-03-04"

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[23] TSN dated April 28, 2008, p. 7; *see* also request for examination (Exhibit O) and Chemistry Report No. D-127-2004 in the Exhibits Folder.

He weighed and tested the specimens and found them positive for marijuana. He recorded his findings in three (3) separate chemistry reports,[24] which he identified in open court. He brought all the items when he testified in court. When asked by the prosecutor what assurance he could give the court pertaining to the identity and integrity of these items, he replied that the items bore his markings which he personally inscribed as soon as he received them.[25]

After the prosecution witnesses had completed their testimony, the prosecution offered in evidence: 1) Search Warrant No. 416-2004 dated August 3, 2004; 2) Return on the search warrant; 3) Joint Affidavit of Apprehension; 4) Certificate of Inventory; 5) Certification stating that the raid conducted pursuant to the search warrant was done in a proper and orderly manner; 6) photocopy of the ₱100.00 marked money; 7) request for laboratory examination of one (1) packet/teabag of suspected marijuana; 8) photocopy of the police blotter entry on the buy-bust operation/raid conducted; 9) Chemistry Report No. D-126-2004 on one (1) plastic bag of marijuana fruiting tops weighing 6.3253 grams; 10) Chemistry Report No. D-127-2004 on the seventy four (74) packets, one (1) cellophane bag, and one (1) plastic ice cream container of marijuana which were recovered during the search; 11) a piece of coupon bond containing three (3) photographs of the marked money and the packet of suspected illegal drugs taken from a room; 12) a piece of coupon bond containing three (3) photographs of the plastic packets of marijuana; 13) a piece of coupon bond containing two (2) photographs: one showing appellant's mug shot and another showing the house and store subject of the raid; 14) a piece of coupon bond containing three (3) photographs of the seized items and inventory; 15) request for laboratory examination of the suspected marijuana; 16) request for withdrawal of the seized items from the court for laboratory examination; 17) cellophane

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[24] Although all three (3) chemistry reports are on record, the prosecution only formally offered two (2) of them as will be discussed further below.

[25] TSN dated April 28, 2008, pp. 8-19.

pack containing 6.3253 grams of marijuana subject of the buy-bust; 18) cellophane bag containing the seventy four (74) packets of marijuana and the rest of the items subject of the search;[26] 19) appellant's Counter-Affidavit dated February 2, 2005;[27] and 20) appellant's Counter-Affidavit dated August 14, 2004.[28]

Version of the Defense

Amado testified that on August 3, 2004, he went to Purok 7, Barangay Obrero, Butuan to take his lunch. A festivity was ongoing there.

Appellant's sister-in-law is Amado's cousin. Hence, he knew appellant because they had already met before. That day, they had a drinking session in the house of Amado's cousin. Around 2 o'clock in the afternoon, appellant asked him to accompany appellant in going to the rented house of the appellant's girlfriend on 6th Street, Guingona Subdivision.

Amado and appellant reached the place around 3 o'clock in the afternoon. The house had a store. It was the first time he met appellant's girlfriend. He only knew her as "Che-che." Appellant went inside the store where his girlfriend was while Amado stayed outside about five (5) meters away.

After appellant and his girlfriend briefly talked, Amado asked appellant if he could use the toilet inside Che-che's rented house. But appellant told him the owner of the house would not allow it. Appellant instead asked him to use the toilet in the house of appellant's sister around thirty (30) meters away.

Amado left the house of Che-che and proceeded to the house of appellant's sister. After relieving himself, he returned to the store. There, he was surprised to see people setting up a cordon around the place. A person went inside the store. Later, appellant, who was already handcuffed, and his girlfriend were

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[26] CA *rollo*, pp. 62-63.

[27] This was marked and verbally offered in the course of appellant's cross-examination, *id.* at 25.

[28] *Id.* at 26.

brought outside. The police did a search inside the store. Appellant and his girlfriend were boarded into the patrol car.[29]

Appellant testified that on August 3, 2004, he visited his brother at the latter's residence in Barangay Obrero, Butuan City. While he and his brother were drinking, Amado arrived and joined them. Sometime after, he asked Amado to go with him to the rented house of his girlfriend in Guingona Subdivision. His girlfriend's rented house was attached to a store. He decided to see his girlfriend to ask for money to buy additional bottles of "Tanduay" for himself and his companions. They headed to his girlfriend's house on board Amado's motorcycle and got there in ten (10) minutes.[30]

He went inside the store and asked his girlfriend for a bottle of "Tanduay." Meanwhile, someone also came to buy a "Sprite." Then they heard three (3) knocks on the door. It was a man holding a folder. The man showed him the folder on which the words "search warrant" were written. He was surprised to see his name on the "search warrant."

The man, together with three (3) others, searched the store. They recovered marijuana from his girlfriend's bag and a one hundred peso (₱100.00) bill from his girlfriend's wallet. They compared the bill with a photocopy they had at that time. They laid the items on the table, wrote on a piece of paper "Certificate of Inventory," and listed all the items they were able to recover. They made him sign a document. They later called for Barangay Kagawad Mangasep who was also made to sign a document. They gathered all the items on the table and brought him to the police station.[31]

There, a media person arrived and he was forced to answer questions in the presence of his girlfriend and the men who had arrested him. One (1) of the questions was whether he owned

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[29] TSN dated February 20, 2012, pp. 7-11.

[30] TSN dated January 15, 2015, pp. 3-4.

[31] *Id.* at 7-8.

the seized items. He did not answer. Someone advised him to secure the services of a lawyer. Another advised him to admit his ownership of the items so that he and his girlfriend would be set free. Two (2) men also advised him not to admit to anything. Since he was so confused, he said he would consult a lawyer first.[32]

On cross, he stated that Syntyche Litera ("Cheche") had only been his girlfriend for about a month when the buy-bust and search happened. Cheche was previously married to Noel Lanciola. It was Cheche who rented the place where the raid took place. As far as he knew, Cheche was the only one who resided there.

Appellant admitted he had executed two (2) counter-affidavits with assistance of his counsel *de parte,* Atty. Nelbert Poculan (Atty. Poculan).[33] In his first Counter-Affidavit dated August 14, 2004, he stated:

> I, SUNDARAM MAGAYON y Francisco, 31 years old, single and a resident of 6th St., Guingona Subd., Butuan City, after having been sworn to in accordance with law, do hereby depose and say THAT:
>
> I am the same Sundaram F. Magayon, who is one of the respondents in the complaint filed by SPO4 Inocencio T. Amora for [violation] of Sec. 11[,] Art. II of RA 9165, for the search and seizure of several sachets of marijuana leaves that occurred on Aug. 3, 2004 at around [6] o'clock in the evening at 6th St., Guingona Subd.;
>
> My [live-in] partner, Syntyche Litera y Lumacang, alias Cheche, has nothing to do with the activities that transpired in our residence;
>
> The marked money that was found in her possession came from me because I handed it to her because I was about to take a bath;
>
> That these marijuana leaves were left at my residence. I was about to report it to the authorities but the policemen must have heard of it because they raid[ed] my residence on August 3, 2004.

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

[33] *Id.* at 13-14, 20-21.

I am executing this affidavit for leniency from the authorities and that I be allowed to apply for the benefits of the Probation Law. Further, Syntyche should be absolved of any criminal liability since she is completely innocent thereof.

IN WITNESS WHEREOF, I hereunto affix my signature this 14th day of August, 2004 in Butuan City, Philippines.[34]

In his second Counter-Affidavit dated February 2, 2005, he averred:

I, SUNDARAM MAGAYON, of legal age, single and a resident of 6th St., Guingona Subd., Purok 4, Brgy. 25, JP Rizal, Butuan City, after having been sworn to in accordance with law, do hereby depose and say THAT:

I am the same person who stands accused before the Regional Trial Court of Agusan del Norte x x x Butuan City, Branch 4 for Violation of Sections 5 & 11, Art. II of RA 9165;

I asked for [a] reinvestigation of said case because the truth of the matter, is that I am not a pusher or [a] peddler of prohibited drugs but only a USER of the same;

It is not true that there was a poseur buyer who bought the illegal drugs, as manifested by the fact that he did not execute an affidavit to corroborate the statement of the police authorities;

The alleged prohibited drugs found in my possession were for my own personal use and not for sale or distribution to buyers;

There was an illegal seizure and search because the search warrant did not specifically mentioned what items were to be searched from my residence, nor did it specifically contain the right address;

I am executing this affidavit to state that I am only a USER of the prohibited drugs and not a pusher thereof, and that I be admitted to a rehabilitation center.

I know the legal consequences in executing this affidavit.

IN WITNESS WHEREOF, I hereunto [affix] my signature this 2nd day of February, 2005 in Butuan City, Philippines.[35]

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[34] CA *rollo*, p. 26.

[35] CA *rollo*, p. 25.

In open court, appellant stressed that he was not a pusher but only a user.[36] He claimed that the paragraph pertaining to his drug use was the only statement that was true in his second affidavit while the rest was someone else's idea.[37] He nonetheless admitted that the packets of marijuana shown in the photographs were taken from the place where he got arrested and the items were likewise marked and inventoried there.[38] On the stand, he asserted that it was Cheche's former husband who left the drugs in her house. Atty. Poculan did not force him to execute his affidavits.[39] Although there were false statements in the counter-affidavits, he did not blame Atty. Poculan for them.[40]

The Trial Court's Decision

By its Omnibus Decision[41] dated March 13, 2015, the trial court rendered a verdict of conviction against appellant for illegal possession of drugs under Section 11, Article II of RA 9165. It relied heavily on the following circumstances: (a) civilian witnesses accompanied the police officers during the search; (b) the inventory of the seized items was signed by appellant and the civilian witnesses; (c) the apprehending officers followed the rules on service of a search warrant and submitted a return thereon together with the request for withdrawal of items for laboratory examination; and (d) as possession may be actual or constructive, it was enough that "the prohibited items were found in [appellant's house], despite his protestation that the store was [only] leased by his girlfriend."[42] In sum, the trial court found that the prosecution was able to prove all the elements of the offense charged. The trial court disposed, thus:

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[36] TSN dated January 15, 2015, pp. 10-14.

[37] *Id.* at 15.

[38] *Id.* at 19-20.

[39] *Id.* at 21.

[40] *Id.* at 21-23.

[41] Penned by Judge Godofredo B. Abul, Jr., CA *rollo*, pp. 58-68.

[42] *Id.* at 66-67.

WHEREFORE, premises considered, the Court finds accused Sundaram Magayon y Francisco guilty beyond reasonable doubt in Criminal Case No. 10739 for violation of Section 11 of Article II of Republic Act 9165 (Comprehensive Dangerous Drugs Act of 2002), and considering that the weight of the prohibited drug is three hundred eighty-one point three zero six five (381.3065) grams (par. 2, Section 11, Art. II of Republic Act 9165), accused is hereby sentenced to undergo imprisonment of an indeterminate penalty of twenty (20) years and one (1) day as minimum to thirty (30) years as maximum and to pay a fine of five hundred thousand pesos (₱500,000.00) without subsidiary imprisonment in case of insolvency.

Accused shall serve his sentence at the Davao Prison and Penal Farm at Braulio E. Dujali, Davao del Norte and shall be credited [with] his preventive imprisonment conformably with Article 29 of the Revised Penal Code, as amended.

The marijuana are [sic] declared forfeited in favor of the government to be dealt with accordingly.

In Criminal Case No. 10738, for violation of Section 5, Article II of Republic Act 9165, for insufficiency of evidence, accused Sundaram Magayon y Francisco is acquitted of the charge.

SO ORDERED.[43]

The Proceedings before the Court of Appeals

On appeal, appellant faulted the trial court for rendering the verdict of conviction despite the alleged irregularities in the service of the search warrant, the seizure of the drugs, and the chain of custody. He argued, in the main:

First, the search was not valid and the items seized during the search were inadmissible in evidence against him. For while the search warrant only authorized the police to search the house, they also searched the store. Considering that an earlier test buy was conducted by the police officers, they should have been already familiar with the place to be searched; hence, they should have included the store in their application for the search warrant. Their failure to do so violated Section 2, Article III of

[43] *Id.* at 67-68.

the Constitution which requires the search warrant to describe with particularity the place to be searched.[44] More, he did not witness the search as required under Section 8, Rule 126 of the Rules of Criminal Procedure.[45]

Second, the prosecution failed to prove that he was the owner of the searched premises or that he exercised control over the place.

Third, the arresting officers failed to comply with the chain of custody requirements. There was allegedly no immediate marking of the seized items nor any showing that appellant witnessed the marking. The Certificate of Inventory lumped all the items together without any segregation *vis-à-vis* the specific place or places where the specimens were recovered. The Certificate of Inventory was also allegedly irregular because it did not bear the name and signature of PO2 Maderal. It was not PO2 Maderal who identified the seized items in court but the forensic chemist. The chain of custody should include testimony on every link in the chain from the moment the prohibited drugs were confiscated until they were offered in evidence.

On the other hand, the Office of the Solicitor General (OSG) through Assistant Solicitor General Rex Bernardo L. Pascual and Associate Solicitor Christian P. Castro, countered: (a) the

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[44] Section 2, Article III of the 1987 Constitution provides:

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

[45] Section 8, Rule 126 of the Rules of Criminal Procedure states:

SECTION 8. *Search of House, Room, or Premises to be Made in Presence of Two Witnesses*. — No search of a house, room, or any other premises shall be made except in the presence of the lawful occupant thereof or any member of his family or in the absence of the latter, two witnesses of sufficient age and discretion residing in the same locality.

search warrant clearly stated that the place to be searched was appellant's "rented residence and its premises located on 6th Street, Guingona Subdivision, Barangay 25, Jose P. Rizal, Butuan City" which necessarily included the store that formed part of the house; (b) the prosecution witnesses categorically testified that appellant and his "wife" were present during the search; (c) appellant cannot evade the verdict of conviction since he had constructive possession of the premises which he shared with his girlfriend or his "wife"; (d) appellant already admitted that the marijuana packets were seized from the house subject of the search warrant and any objection to the admissibility of the seized evidence based on non-compliance with Section 21, Article II of the RA 9165 cannot be raised for the first time on appeal; and (e) even assuming there was non-compliance with Section 21, the objection did not impact the admissibility but merely the weight of the evidence, hence, the trial court's factual findings in relation thereto must be respected.

The Court of Appeals affirmed through its assailed Decision[46] dated January 26, 2018. It held in the main:

First, appellant did not assail the search warrant before the trial court, nor object to its offer in evidence, much less, move to quash the search warrant. Hence, his objections against the search warrant and the admissibility of the seized items should be deemed waived.

Second, the judge correctly found probable cause to issue the search warrant as it was applied for only after an earlier test buy yielded positive results.

Third, the search was done in accordance with the Rules of Court.

Fourth, there was evidence on record that appellant resided with his girlfriend/live-in partner at the address stated in the search warrant.

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[46] *Rollo*, pp. 3-27.

Fifth, likewise appellant may no longer assail the chain of custody for the first time on appeal.

Sixth, the evidence on record showed that there was no break in the chain of custody and that the integrity of the confiscated items was not compromised.

The Present Appeal

Appellant prays anew for his acquittal.

In compliance with the Resolution dated July 11, 2018,[47] the OSG[48] manifested that it was no longer filing a supplemental brief as all matters and issues had already been adequately discussed in its Appellee's Brief before the Court of Appeals.

Appellant, in turn, filed a Supplemental Brief dated December 6, 2018.[49]

Issues

(1) Was the search conducted on the store valid?

(2) Was appellant's guilt for violation of Section 11, Article II of RA 9165 (illegal possession of dangerous drugs) proved beyond a reasonable doubt?

Ruling

1(a). Appellant's failure to object to the search warrant and the evidence adduced below precludes him from belatedly interposing his objections in the present proceedings.

It is a matter of record that **appellant never assailed the search warrant and the evidence emanating therefrom before the trial court**. As the appellate court correctly observed, **appellant's objections were belatedly raised on appeal and, thus, are deemed waived**.

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[47] *Id.* at 33-34.

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

[49] *Id.* at 43-57.

In ***People v. Nuñez***, the Court had the opportunity to state that "any objection to the legality of the search warrant and the admissibility of the evidence obtained thereby was deemed waived when no objection was raised by appellant during trial. For sure, the right to be secure from unreasonable searches and seizures, like any other right, can be waived and the waiver may be trade expressly or impliedly."[50] So must it be.

1(b). The search warrant described the place to be searched with sufficient particularity as required by the Constitution.

We reckon with Section 2, Article III of the Constitution:

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

Appellant argues that the search warrant did not specifically mention the store to be among the places to be searched thereby violating the *proviso* that the place or places to be searched must be described with particularity.

The rule is that **a description of the place to be searched is sufficient if the officer with the warrant can, with reasonable effort, ascertain and identify the place intended and distinguish it from other places in the community**. Any **designation or description** known to the locality that **points out the place to the exclusion of all others, and on inquiry, leads the officers unerringly to it, satisfies the constitutional requirement**.[51] A search warrant is deemed to have **described**

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[50] 609 Phil. 176, 185 (2009).

[51] *Uy v. Bureau of Internal Revenue*, 397 Phil. 892, 907-908 (2000); see also *People v. Posada y Sontillano*, 768 Phil. 324, 330 (2015).

the place to be searched with sufficient particularity when **the premises have been identified as being occupied by the accused**.[52]

As aptly found by the courts below, the **search warrant here stated** that the place to be searched was **appellant's**" **rented residence and its premises** located [on] 6th Street, Guingona Subdivision, Barangay 25, Jose P. Rizal, Butuan City."

The apprehending officers became and were in fact familiar with the place to be searched as a result of the test buy which they had conducted just hours before the search. Further, appellant **has not denied** that the **store formed part of the "rented residence"** and **was not a separate structure**.

PO2 Maderal categorically testified that the store was part of the house and it was an open space on which a curtain hung as a divider.[53]

We therefore find no cogent reason to disturb the common findings of the courts below that **the house and its appurtenant store were found at the same address indicated in the search warrant**. Hence, appellant's protestation that the search warrant failed to describe the place to be searched with sufficient particularity must fail.

1(c). The police officers fully complied with the Rules on the conduct of a valid search.

Section 8, Rule 126 ordains:

SECTION 8. *Search of House, Room, or Premises to be Made in Presence of Two Witnesses*. — No search of a house, room, or any other premises shall be made except in the presence of the lawful occupant thereof or any member of his family or in the absence of the latter, two witnesses of sufficient age and discretion residing in the same locality.

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[52] *See People v. Salanguit*, 408 Phil. 817, 833 (2001).

[53] TSN dated August 10, 2006, p. 13.

Although appellant does not dispute the fact that there were at least two (2) witnesses who were present during the search, he asserts that **he himself did not witness** it. This claim, however, is **belied by the categorical testimonies of the prosecution witnesses PO2 Maderal and Barangay Kagawad Mangasep that he and his girlfriend/common law wife were actually present** during the search. The Court of Appeals, too, aptly noted that **appellant himself testified that he witnessed the search** conducted by the police. We quote with approval the Court of Appeals' relevant disquisition:

> Also, this Court noted that Magayon was able to give a clear sequence of events when he recounted the search, which strongly bespeaks of his presence while the same was ongoing. Pertinent parts of his testimony states:
>
> ATTY. RULIDA:
>
> So, what happened after the search?
>
> MAGAYON:
>
> After the search, Sir, I noticed that they recovered marijuana from the bag of my girlfriend and a tea bag of marijuana.
>
> Q: After they discovered those items that you mentioned, what happened next?
> A: After that, they searched the wallet of my girlfriend.
>
> Q: After searching the wallet of your girlfriend, what happened next?
> A: They recovered the ₱100.00 bill.
>
> Q: After they recovered the ₱100.00 bill, what did they do to it, if any?
> A: After that, they compared the ₱100.00 bill recovered from the wallet of my girlfriend and the Xerox copy that they have at that time.
>
> Q: After that, what happened, if any?
> A: After that, Sir, they placed the items on a table.

The above precise statements of Magayon demonstrate how he actually witnessed the search. He obviously saw how and where the

items were recovered thus, negating his claim that the search was not done in his presence.[54]

The testimony of **defense witness Amado** that appellant and his girlfriend were outside the house/store when the search was conducted was rejected by both courts below for being **devoid of credence**. Surely, Amado **would not have known better** than appellant himself who testified that he and his girlfriend/wife were in fact present during the search, even as Amado went to the toilet to relieve himself some thirty (30) or fifty (50) meters away.

Whether to believe the version of the prosecution or that of the defense, the trial court's factual findings thereon is generally viewed as correct and entitled to the highest respect. For it had the opportunity to observe the witnesses' demeanor and deportment on the witness stand as they gave their testimonies.[55] More so, where the trial court's factual findings on the credibility of witnesses carry the full concurrence of the Court of Appeals, as in this case. No compelling reason exists here to deviate from this rule.

2(a). The evidence on record show that appellant did have dominion and control over the place of subject of the search.

The elements of illegal possession of dangerous drugs under Section 11, Article II of RA 9165 are: (1) **possession** by the accused of an item or object identified to be a prohibited drug; (2) the possession is **not authorized by law**; and (3) the **free and conscious possession** of the drug by the accused.[56]

Possession under the law includes not only **actual possession** but also **constructive possession**. **Actual possession** exists when the drug is in the immediate physical possession or

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[54] *Rollo*, p. 20.

[55] *See People v. Alboka*, 826 Phil. 487, 498 (2018).

[56] *People v. Obias, Jr. y Arroyo*, G.R. No. 222187, March 25, 2019.

control of the accused. On the other hand, **constructive possession** exists when the drug is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found.

Exclusive possession or control is **not** necessary. The accused cannot avoid conviction if his control and dominion over the place where the contraband is located were shared with another.[57]

Appellant nonetheless contends that he could not be guilty of illegal possession of dangerous drugs in view of the prosecution's alleged failure to prove that he owned or controlled the house and the store where the confiscated items were found. Appellant asserts that it was his girlfriend who rented the place subject of the search and she lived there alone.

The Court of Appeals correctly rejected this argument. For it was **plainly stated in appellant's own counter-affidavits that he resided in the address specified in the search warrant and where the search was actually conducted**. Specifically, in his Counter-Affidavit dated August 14, 2004, he stated that he and Cheche were live-in partners. Although, on the witness stand, appellant subsequently disavowed certain portions of his counter-affidavits, **the recanted statements did not include appellant's address nor the fact that he and Cheche were living together**. Appellant is **now estopped** from claiming otherwise. He is bound by the admissions in his sworn statements duly identified and marked in court. An admission in open court is a judicial admission.[58] In fine, appellant cannot disclaim his control and dominion over the place subject of the search where subject drugs were found.

2(b). Appellant's inculpatory admissions sustain his conviction and Section 21, Article II of RA 9165 will not come into play.

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[57] *People v. Batoon*, 650 Phil. 569, 578 (2010).

[58] *People v. Lacson*, 459 Phil. 330, 365 (2003).

Records indubitably show that **appellant had frankly admitted his possession of the enormous amount of prohibited drugs** which found in and seized from his residence.

To recall, appellant testified that **during the investigation at the police station** he refrained from answering the police officers' questions and told them he wished to consult with a lawyer first.

Appellant, thereafter, secured the services of counsel *de parte*, Atty. Poculan. With the **able assistance of Atty. Poculan**, he **executed and submitted** his **counter-affidavits** to the Office of the City Prosecutor.

In his Counter-Affidavit dated February 2, 2005,[59] he stated that "the alleged **prohibited drugs found in [his] possession were for [his] personal use** and not for sale or distribution to buyers." Too, in his earlier Counter-Affidavit dated August 14, 2004,[60] appellant **tried to absolve his girlfriend from any liability, as he stated, "[his] live in partner, Syntyche Litera y Lumacang alias [Che-che], had nothing to do with the activities that transpired** in [their] residence" and "**[t]he marked money that was found in her possession came from [him]** because [he] handed it to her because [he] was about to take a bath."

Clearly, appellant **knowingly took full responsibility for the seized drugs** in his counter-affidavits.

Extrajudicial confessions are admissible in evidence, provided they are: 1) voluntary; 2) made with the assistance of a competent and independent counsel; 3) express; and 4) in writing.[61] Here, **appellant's admissions in his counter-affidavits are binding on him as they were knowingly and voluntarily made with assistance of his counsel of choice**, Atty. Poculan.

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[59] This was identified by appellant and marked as the prosecution's Exhibit R.

[60] This was also identified by appellant and marked as the prosecution's Exhibit S.

[61] *See People v. Canatoy*, G.R. No. 227195, July 29, 2019.

Although appellant later on tried to retract the foregoing statements in court, claiming it was not true that Cheche was blameless and it was in fact her former husband who owned the seized marijuana, his belated attempt to diffuse his past damaging admissions must fail. For courts may believe one part of the testimony of a witness and disbelieve another part. Courts are not required to accept or reject the whole of the testimony of a particular witness.[62] While case law holds that recantations do not necessarily cancel out an earlier declaration, ultimately, it should still be treated like any other testimony and as such, its credibility must be tested during trial.[63]

On this score, **the Court of Appeals correctly took into account that appellant was not an unlettered person but was a third year college student majoring in Elementary Education**; hence, **he readily understood the statements in his counter-affidavits and could have refused to sign them if they were untrue**. He **did not charge** his lawyer with incompetence, neglect or impropriety. He **did not adduce evidence of coercion or intimidation** from anyone. These **counter-affidavits were notarized**, the first, by appellant's own counsel, and the second, by the city prosecutor. It **cannot be gainsaid** then that **appellant's extrajudicial admissions can stand on their own** to support a verdict of conviction.

In ***Regalado v. People***,[64] Regalado admitted that he possessed the seized marijuana but contended that the apprehending officers did not fully comply with Section 21, Article II of RA 9165. The Court held that Regalado's damning admission warranted the affirmance of his conviction, albeit we sternly reminded police officers to be mindful of their duty to comply with the statutorily mandated procedure in drugs cases, lest their lapses become fatal to the prosecution's cause.

Here, **appellant already admitted several times his possession of a large quantity of marijuana and did not pose**

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[62] *People v. Bombesa*, 245 Phil. 359, 364 (1988).

[63] *Balois-Alberto v. Court of Appeals*, 711 Phil. 530, 556-557 (2013).

[64] G.R. No. 216632, March 13, 2019.

substantial objections to the identity and integrity of the drugs confiscated at the place of his arrest. The case records flatly contradicted his objections to the chain of custody of the seized drugs in question.

Section 21, Article II of RA 9165 on the chain of custody rule outlines the procedure that police officers must follow in handling the seized drugs in order to ensure the preservation of their integrity and evidentiary value.[65] To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[66]

Here, the **testimonies of PO2 Maderal and the forensic chemist sufficiently established every link** in the chain of custody **from the time** the prohibited drugs were **seized and inventoried right after** the search **at the place** of the search, **to the time** they were **brought to the police station** for the **booking**, **investigation**, and **forensic analysis**, **up until** the prohibited drugs were **presented in court**.

Contrary to appellant's claim, the fact that PO2 Maderal's testimony focused on his preparation of the inventory and the documents relative to the investigation did not mean he was not present during the search. In fact, his testimony was replete with details which could have only been known by one who was personally present during the search.

On the marking of the seized items, **appellant himself admitted** that the **seized drugs were marked and inventoried** at the **time and place of the search**. Surely, he **could not have made** such a confirmation if the marking and inventory **had not been made** in his presence as required by Section 21.

Further, there is **no law or rule** requiring that the inventory should **segregate** the seized items according to the specific place

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[65] See *People v. Año y Remedios*, 828 Phil. 439, 448 (2018).

[66] *People v. Acabo*, G.R. No. 241081, February 11, 2019.

in the house or store where they were found. The **law simply and solely mandates** that an inventory of ***all*** the seized items be made by the apprehending officer/team. Notably, **appellant himself admitted** in court that the **items subject of the inventory** as photographed by the police officers **were indeed recovered from the place** where the search and arrest were made.

In sum, **appellant admitted the identity and integrity** of the drugs seized from his residence and those presented in court, although appellant did not specify the exact quantity or amount of drugs. In his Counter-Affidavit dated August 14, 2004, he categorically admitted that the police found the prohibited drugs in his residence, thus:

x x x x

That these marijuana leaves were left at my residence. I was about to report it to the authorities but the policeman must have heard of it because they raid my residence on August 3,

x x x x

Five (5) months later, he admitted the prohibited drugs were found in his possession and for his personal use in his second Counter-Affidavit dated February 2, 2005, *viz.*:

x x x x

The alleged prohibited drugs found in my possession were for my own personal use and not for sale or distribution to buyers;

x x x x

I am executing this affidavit to state that I am only a USER of the prohibited drugs and not a pusher thereof, and that I be admitted to a rehabilitation center.

I know the legal consequences in executing this affidavit. (Emphasis added)

As shown, appellant categorically stated that he knew the consequences of his admissions. He was even assisted by counsel when he affixed his signature on his counter-affidavit. As the

final nail in the coffin, appellant even stressed in open court that he was not a pusher but only a user.[67] These admissions are already sufficient to establish that he indeed illegally possessed the prohibited drugs. His belated, nay, self-serving claim that the drugs confiscated by the police belonged to another must, therefore fail. They cannot prevail over his prior categorical admissions which he voluntarily and knowingly made with assistance of counsel.

It is immaterial that appellant's counter-affidavit did not specify the amount of drugs found in his possession. This does not negate the applicability of ***Regalado***. A plain reading of his second counter-affidavit readily shows that he admitted to owning all 381.3065 grams of marijuana recovered during the search. Notably, when he executed his second counter-affidavit on February 2, 2005, about six (6) months after he got arrested, **he already knew by then that he was being charged with illegal possession of 381.3065 grams of marijuana**. Yet he still admitted ownership thereof **without qualification** as to its quantity.

Thus, the trial court and the Court of Appeals cannot be faulted for construing the counter-affidavit as an admission of ownership and possession of the entire amount recovered. There was no piecemeal admission here. It was either appellant owned the entire quantity or none at all. As it was, the trial court and the Court of Appeals, in their final evaluation of the evidence before them, found that between appellant's admission, on the one hand, and his recantation, on the other, the former is more deserving of weight and credit.

There exists no cogent reason to depart from these factual findings of the courts below. At any rate, appellant ought not to be allowed to swing from one version of facts to another. The Court should not condone his act of foisting different narratives to muddle the facts case and confuse the courts.

Suffice it to state that the large amount of the confiscated drugs involved here and appellant's own inculpatory judicial

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[67] TSN dated January 15, 2015, pp. 10-14.

admissions go against the possibility of planting or substitution by the police. Neither could appellant's mere denial and inconsistent statements overcome the positive testimonies of the prosecution witnesses.[68] This is especially true when there were shown not to have any ulterior motive to falsely testify against him in such grave offense of illegal possession of prohibited drugs.

ACCORDINGLY, the appeal is **DENIED**, and the Decision dated January 26, 2018 in CA-G.R. CR-HC No. 01411-MIN, **AFFIRMED**.

Sundaram Magayon y Francisco is found **GUILTY** of illegal possession of drugs under Section 11, Article II of RA 9165 and sentenced to indeterminate penalty of twenty (20) years and one (1) day as minimum to thirty (30) years as maximum and to pay a fine of five hundred thousand pesos (₱500,000.00) without subsidiary imprisonment in case of insolvency.

SO ORDERED.

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

Caguioa, J., see dissenting opinion.

DISSENTING OPINION

CAGUIOA, *J.*:

The *ponencia* denies the appeal of Sundaram Magayon *y* Francisco (Sundaram) for the crime of illegal possession of dangerous drugs, punishable under Section 11 of Republic Act (R.A.) No. 9165. The denial is primarily premised on the statements in Sundaram's Counter-Affidavits, which were considered as a voluntary confession of the crime charged against him.[1] Furthermore, despite the deviations from the chain of

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[68] See *People v. Buenaventura*, 677 Phil. 230, 240 (2011).

[1] *Ponencia*, p. 17.

custody rule, the *ponencia* ruled that the integrity and identity of the seized dangerous drugs were sufficiently established.[2]

I dissent.

The statements attributed to the appellant in this case do not amount to a confession for the possession of the entire volume of drugs stated in the Information. They are likewise not tantamount to an admission that the apprehending team sufficiently preserved the integrity and identity of the seized drug evidence.

From the records it appears that a buy-bust operation was conducted on August 3, 2004, in front of the residence of Sundaram. After the poseur buyer, PO2 Jaime delos Santos, exchanged his marked ₱100.00 for a tea-bag sized packet of suspected marijuana from Sundaram, the police officers moved in to arrest the appellant. His common-law wife, Syntyche Litera (Syntyche), was likewise arrested.[3]

The police officers thereafter informed Sundaram that they had a search warrant covering his residence.[4] Before proceeding with the search, the police officers waited for the arrival of barangay officials and media representatives to witness the search. The search yielded numerous small sachets of marijuana found inside the house and the adjacent store.[5] According to the prosecution, PO2 Rey Gabrielle Maderal (PO2 Maderal) marked the seized items with his initials. He also prepared the Certificate of Inventory to document the following items taken during the implementation of the search warrant: (a) a total of 74 tea-bag sized sachets of marijuana; (b) dried crushed leaves of marijuana inside a plastic container; and (c) one (1) white cellophane containing marijuana. The marked money used for the buy-bust operation, together with its serial number, was also recorded in the inventory. The barangay officials and the

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[2] Id. at 18.

[3] Records, p. 8.

[4] Id. at 4; TSN, August 10, 2006, p. 6.

[5] TSN, August 10, 2006, pp. 13-14.

media personnel from ABS-CBN Butuan and DXBC all signed the Certificate of Inventory, including the appellant.[6]

When the police officers returned to their office, PO2 Maderal took custody of the confiscated items from the buy-bust and search warrant operations. He prepared several more documents upon their arrival, including the return on the Search Warrant, the Affidavit of Apprehension, and the indorsement to the Philippine National Police (PNP) Crime Laboratory.[7]

Thereafter, PO2 Maderal delivered the request and the specimen to the PNP Crime Laboratory.[8] The examination of the drug evidence yielded a positive result for marijuana, a dangerous drug.[9]

Sundaram was charged in two (2) separate Informations for the illegal sale and illegal possession of dangerous drugs, in violation of Sections 5 and 11, Article II, of R.A. No. 9165, respectively. The trial court acquitted Sundaram of the charge of illegal sale of dangerous drugs for insufficiency of evidence, there being no markings or inventory on the packet of marijuana supposedly taken pursuant to the buy-bust operation. However, Sundaram was found guilty for the charge of illegal possession of 381.3065 grams of marijuana.[10]

The Court of Appeals (CA) affirmed the trial court's decision, which constrained Sundaram to file the present appeal before the Court.

I.

In the Decision, the *ponencia* affirmed the conviction of Sundaram on the basis of his supposed confession in his counter-affidavits during the preliminary investigation. In particular,

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[6] Exhibit "D," index of exhibits, p. 9; id. at 13-15.

[7] TSN, August 10, 2006, pp. 21-22.

[8] Id. at 23-25.

[9] Exhibits "I," "J," index of exhibits, pp. 15-16.

[10] *Ponencia*, pp. 9-10.

the following statements in Sundaram's August 14, 2004 Counter-Affidavit were deemed relevant:

> I, SUNDARAM MAGAYON y Francisco, 31 years old, single and a resident of 6th St., Guingona Subd., Butuan City, after having been sworn to in accordance with law, do hereby depose and say THAT:
>
> x x x x
>
> My live[-]in partner, [Syntyche], alias Cheche, has nothing to do with the activities that transpired in our residence;
>
> The marked money that was found in her possession came from me because I handed it to her because I was about to take a bath[.][11]

The following statement in his February 2, 2005 Counter-Affidavit was likewise considered as a voluntary confession: "[t]he alleged prohibited drugs found in my possession were for my personal use and not for sale or distribution to buyers."[12] For the *ponencia*, these were sufficient to support a verdict of conviction as Sundaram "**knowingly took full responsibility for the seized drugs**."[13]

In my view, however, these statements do not constitute a confession of Sundaram's guilt to the charge of illegal possession of 381.3065 grams of marijuana.

Preliminarily, the quoted statements in the August 14, 2004 Counter-Affidavit of Sundaram relate to the marked money that he purportedly received as a result of the buy-bust operation. These statements, therefore, are relevant only as to the charge of illegal sale of dangerous drugs, for which he was already acquitted. Stated simply, they cannot be relied upon to sustain a conviction for possession.

More importantly, the language of Sundaram's sworn statements lacks a categorical acknowledgment of guilt, particularly with respect to his ownership and possession of

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[11] CA *rollo*, p. 26; id. at 17.

[12] CA *rollo*, p. 25; *ponencia*, id.

[13] *Ponencia*, id.; emphasis in the original.

the entire volume of drugs found in his residence. In this regard, the Court has always made a distinction between a confession and an admission. A confession refers to the express acknowledgment of guilt of the crime charged, while an admission "is an acknowledgment of some facts or circumstances which, in itself, is insufficient to authorize a conviction and which tends only to establish the ultimate facts of guilt."[14] An admission is deemed less than a confession as it acknowledges only factual circumstances that tend to prove the guilt of the accused when connected with proof of other facts.[15]

A careful examination of the statements in Sundaram's Counter-Affidavits would reveal that these were mistakenly characterized as a confession. In his August 14, 2004 Counter-Affidavit, Sundaram stated that the marijuana leaves were left in his residence, presumably by someone else, and that he was about to report this to the authorities.[16] The appellant's passive reference to these drugs indicates an intention to distance himself therefrom. Rather than establishing a categorical admission of ownership on the part of the appellant, there is no discernible awareness in this statement that he freely and consciously possessed them.

Meanwhile, in his February 2, 2005 Counter-Affidavit, Sundaram stated that "[t]he **alleged** prohibited drugs found in [his] possession"[17] were only for his own personal use. He also concluded his sworn statement with the admission that he is a drug user but not a seller of prohibited drugs.[18]

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[14] *People v. Buntag*, G.R. No. 123070, April 14, 2004, 427 SCRA 180, 190-191.

[15] *Sanvicente v. People*, G.R. No. 132081, November 26, 2002, 392 SCRA 610, 618-619, citing *People v. Licayan*, G.R. No. 144422, February 28, 2002, 378 SCRA 281, 292.

[16] CA *rollo*, p. 26.

[17] Id. at 25; emphasis supplied.

[18] Id.

The equivocalness in these statements is readily apparent. Aside from using the word "alleged" to refer to the prohibited drugs, the February 2, 2005 Counter-Affidavit does not specify the drugs involved or the amount purportedly found in his possession. The glaring absence of these details fail to lend credence to the *ponencia*'s ruling that Sundaram "**knowingly took full responsibility for the seized drugs**."[19] This holds especially true in this case where Sundaram maintained that his acknowledgement of guilt only refers to his drug use. During his cross-examination, he denied the rest of the statements in his February 2, 2005 Counter-Affidavit, *viz.*:

[Prosecutor Aljay O. Go]

Q I'm showing you a Counter-Affidavit of Sundaram Magayon, of legal age, single, and a resident of 6th St., Guingona Subd., Purok 4, Brgy. 25, JP Rizal, Butuan City, subscribed before the City Prosecutor Felixberto L. Guiratan on February 21, 2005, are you referring to this counter-affidavit?

[Sundaram]

A Yes, Sir, this is the one that I was able to sign.

Q Is this your signature appearing above the name of Sundaram F. Magayon?

A Yes, Sir.

Q For emphasis, it was your lawyer, Atty. Poculan, who prepared this affidavit at that time?

A Yes, Sir.

x x x x

Q You mentioned in the second paragraph of your counter-affidavit, to quote:

"I asked for the reinvestigation of said case because the truth of the matter, is that I am not a pusher or peddler of prohibited drugs but only a USER of the same[.]"

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[19] *Ponencia*, p. 17; emphasis in the original.

Do you affirm the truthfulness of this statement?

A Yes, Sir.

x x x x

Q You said earlier that you attest [to] the veracity of the rest of your statement in this counter-affidavit, is it not?

A The one stated in the second paragraph is true.

Q I'm showing you your Counter-Affidavit and I will give you time to read the matter aside from the fourth paragraph of your statement, which you said, is not correct or true statement Mr. Witness (*sic*).

(Witness, at this juncture, is reading his sworn statement)

So, what are not the correct statements here?

A The second paragraph of the statement portion is the correct statement, and the rest were not my idea, Sir.[20] (Emphasis in the original)

Sundaram also denied the statements in the August 14, 2004 Counter-Affidavit. In his cross-examination, he testified that he was only made to sign the document:

Q The first counter-affidavit which I presented to you was executed on February 21, 2005. I'm showing you now another Counter-Affidavit of Sundaram Magayon y Francisco, 31 years old, single and a resident of 6th St., Guingona Subd., Butuan City, please go over this whether you executed this Counter-Affidavit with the assistance of Atty. Nelbert T. Poculan, who apparently notarized this counter-affidavit?

A I don't have any idea about this counter-affidavit.

Q By the way, please take a look at the signature of the affiant above the name Sundaram F. Magayon, is it not that this is your signature?

A Yes, Sir, but I was only made to sign this document.[21]

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[20] TSN, January 15, 2015, pp. 14-15.

[21] Id. at 20.

At most, the statements in Sundaram's Counter-Affidavits should be considered as mere admissions as they are not tantamount to a categorical acknowledgment of guilt.

While Sundaram's admissions may be taken as evidence against him, his statements are not an unequivocal declaration that he possessed "**a large quantity of marijuana**."[22] Neither are these an admission that "the **seized drugs were marked and inventoried** at the **time and place of the search**."[23] Since both of his Counter-Affidavits are ambiguous as to the amount of drugs involved, his statements do not contemplate that the drugs presented in court were the same ones taken from him.

For the *ponencia*, however, the appellant's failure to specify the volume of drugs he possessed should be considered as an unqualified admission for the entire drug evidence. Either the appellant owned the entire quantity or none at all.[24] This conveniently disregards the fact that according to the prosecution, two (2) operations were conducted prior to the arrest of the appellant: the buy-bust operation and the implementation of the search warrant. In both instances, the prosecution averred that the police officers were able to recover marijuana from the appellant. Without specific details as to the confiscated drugs referred to in the sworn statements of Sundaram, his admission that "[t]he alleged prohibited drugs found in [his] possession were for [his] own personal use and not for sale or distribution"[25] could easily refer to the drugs recovered from either operation. The *ponencia*'s reliance on this statement to affirm the conviction of the appellant is therefore unwarranted.

It must be emphasized that in cases involving illegal possession of dangerous drugs, the volume of drugs involved is significant to the charge against the accused. The range of the imposable penalty depends on the quantity of drugs — the larger the amount,

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[22] *Ponencia*, p. 18; emphasis in the original.

[23] Id.

[24] Id. at 20.

[25] CA *rollo*, p. 25.

the more severe the penalty.[26] By conclusively holding that the identity and integrity of the drug evidence were preserved, the admissions of the appellant were dangerously interpreted beyond their actual meaning. In my view, the Court should exercise prudence and judiciousness in assigning weight to these extrajudicial statements of the appellant.

II.

Even if the *ponencia* correctly considered the sworn statements as an extrajudicial confession, this only forms a *prima facie* case against the appellant.[27] As well, Section 3, Rule 133 of the Rules of Court provides that the extra-judicial confession of an accused shall not be sufficient ground for conviction **unless corroborated by evidence of *corpus delicti***.

The *corpus delicti* in drugs cases is the confiscated drug itself, and the manner through which its identity is preserved with moral certainty is through compliance with Section 21,[28] Article II of R.A. No. 9165. This section lays down the chain of custody rule, the primary purpose of which is to ensure that the dangerous

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[26] R.A. No. 9165, Art. II, Sec. 11.

[27] *People v. Satorre*, G.R. No. 133858, August 12, 2003, 408 SCRA 642, 648.

[28] The relevant paragraph of this section reads:

SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment*. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.]

drugs presented before the trial court are the same items confiscated from the accused.

The *ponencia* ruled that the testimonies of the arresting officer and the forensic chemist sufficiently established every link in the chain of custody.[29] With due respect, I again disagree.

As a mode of authenticating evidence, the Court requires the prosecution to establish the following links in the chain of custody: *first*, the seizure and marking, if practicable, of the illegal drugs recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drugs seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drugs to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drugs seized from the forensic chemist to the court.[30]

The marking of the drug evidence, as the initial step in the chain of custody, is essential because it is the primary reference point for the succeeding custodians of the confiscated drugs.[31] The apprehending officers are required to immediately mark the seized items upon their confiscation, or at the "earliest reasonably available opportunity,"[32] in order to separate the marked items from all other similar or related evidence.

After the marking, the arresting officers must immediately conduct a physical inventory and photograph the seized items in the presence of the following: (a) the accused or the person from whom the items were confiscated, or his representative or counsel; (b) a representative from the media; (c) a representative from the Department of Justice (DOJ); and (d)

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[29] *Ponencia*, p. 18.

[30] *People v. Nandi*, G.R. No. 188905, July 13, 2010, 625 SCRA 123, 133.

[31] *People v. Alejandro*, G.R. No. 176350, August 10, 2011, 655 SCRA 279, 289.

[32] *People v. Sabdula*, G.R. No. 184758, April 21, 2014, 722 SCRA 90, 100.

any elected public official. They should also sign the inventory and be given a copy thereof. **If the drugs were confiscated pursuant to a search warrant, the Implementing Rules and Regulations of R.A. No. 9165 explicitly state that the physical inventory and photographing should be conducted at the place where the warrant is served**.[33]

In the 1999 Philippine National Police Drug Enforcement Manual (PNPDEM),[34] the operating manual in place at the time of this case, the police officers serving a search warrant were **also** directed to perform the following:

CHAPTER V

x x x x

ANTI-DRUG OPERATIONAL PROCEDURES

x x x x

V. SPECIFIC RULES

x x x x

B. Conduct of Operation: (As far as practicable, all operations must be officer led)

x x x x

2. Service of Search Warrant — the following are the procedures in effecting the service of search warrant:

x x x x

h. Before entry, the Search Warrant shall be served by having a copy received by the respondent or any responsible occupant of the place to be searched;

1) In all cases, the search must be witnessed by the owner/occupant and in the presence of at least two (2) responsible persons in the vicinity, preferably two (2) barangay/town officials;

2) Only those personal property particularly described in the search warrant shall be seized to wit:

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[33] Sec. 21(a).

[34] PNPM-D-0-3-1-99 [NG], the precursor anti-illegal drug operations manual prior to the 2010 and 2014 AIDSOTF Manual.

a. subject matter of the offense;
b. stolen or embezzled and otherproceeds (*sic*) of fruits of the offense;
c. used or intended to be used in the commission of an offense;
d. objects which are illegal per se, e.g., F/As and explosives; and
e. those that may be used as proof of the commission of the offense.

i. If the house or building to be searched has two or more rooms or enclosures, each rooms or enclosures must be searched one at a time in the presence of the occupants and two (2) witnesses;

j. **The search group and evidence custodian, supervised by the team leader, shall take actual physical inventory of the evidence seized by weighing or counting, as the case may be, in the presence of the witnesses to include the suspect who must be placed under arrest upon discovery of any of the items described in the search warrant**.

k. **The duly designated searching element who found and seized the evidence must mark the same with his initials and also indicate the time, date and place where said evidence was found and seized and thereafter turn it over to the duly designated evidence custodian who shall also mark the evidence and indicate the time, date and place he received such evidence**;

l. **Take photographs of the evidence upon discovery without moving or altering its position in the place where it is placed, kept or hidden**;

m. **Weigh the evidence seized in the presence of the occupants and witnesses and prepare the drug weighing report to be signed by the arresting officers, evidence custodian, occupants an[d] witnesses. Again, take photographs of the evidence while in the process of inventory and weighing with the registered weight in the weighing scale focused by the camera**;

n. Prepare a receipt and drug weighing report based on the actual physical inventory and weighing of the evidence found and seized and furnished the owner/possessor copies thereof or in his absence the occupant the premises and to the two (2) other witnesses in the conduct of search;

o. Require the owner or occupant of the premises and the two (2) witnesses to execute and sign a certification that the search was conducted in an orderly manner in their presence and that nothing

was lost or destroyed during the search and nothing was taken except those mentioned in the search warrant;

p. Only the duly designated evidence custodian shall secure and preserve the evidence in an evidence bag or appropriate container and thereafter ensure its immediate presentation before the court that issued the search warrant;

q. The applicant shall cause the return of the search warrant (inc) together with the receipt of the seized evidence immediately after service of the warrant with p[r]ayer to the court that the evidence would be forwarded to PNP CLG for laboratory examination;

r. Upon completion of search, seizure and arrest and unless the tactical interrogation of the suspect on the scene shall lead to a follow-up operation, the team leader shall consolidate his forces to see to it that no ransacking or looting or destruction of property is committed;

s. Thereafter, the team shall immediately return to unit headquarters with the suspect and evidence for documentation. (Emphasis and underscoring supplied)

Here, it does not appear from the *ponencia* that the packets of marijuana, which were confiscated by virtue of the implementation of the search warrant, were immediately marked in Sundaram's residence. Neither do the records reflect this.

In his testimony, PO2 Maderal, one of the arresting officers, narrated that he placed markings on the seized items:

[(*Direct Examination of PO2 Maderal*)]

[Prosecutor Felixberto L. Guiratan]
Q By the way, if you recall, were there markings on the specimen *marijuana*?

[PO2 Maderal]
A Yes, Sir, my initial[s].

Q Who did the markings?

A I was the one.

Q If you recall also what were the markings you did on the one (1) sachet of *marijuana* recovered during the buy-bust?

A RBMA for the one (1) tea bag during the buy-bust. For the nineteen (19) tea bags it is marked RBMA 1 to RBMA 19; for the twenty-six (26) tea bags it is marked RBMB 1 to RBMB 26; for the twenty-nine (29) tea bags the markings were RBMC 1 to RBMC 29; and the other one RBMD to RBMD 1.[35]

PO2 Maderal, however, did not specify that these markings were immediately made at the place of the search. His testimony is also incongruous with the documentary evidence of the prosecution, particularly with the Certificate of Inventory and the Request for Laboratory Examination. While PO2 Maderal stated that he supposedly placed markings on the 74 individual bags of marijuana and on the other separate containers of marijuana, **these markings were not reflected in the Certificate of Inventory**. The pertinent portion of the inventory reads:

This is to certify further that the item was recovered and confiscated from the suspect's possession and control, during the said operation.

1) ONE HUNDRED PESO BILL, SN: EG768699, MARKED MONEY WITH ₱600.00 ALL PLACE[D] INSIDE A BLACK WALLET.
2) NINETEEN (19) TEA BAGS OF MARIJUANA DRIED LEAVES CRUSHED ALL PLACE[D] INSIDE COLOR BLACK BAG.
3) TWENTY[-]SIX (26) TEA BAGS OF MARIJUANA DRIED CRUSHED LEAVES WITH SEEDS.
4) TWENTY[-]NINE (29) TEA BAGS OF MARIJUANA DRIED CRUSHED LEAVES WITH SEEDS ALL PLACE[D] IN SEPARATE CELLOPHANES.
5) DRIED [CRUSHED] LEAVES OF MARIJUANA PLACE[D] INSIDE GOLDEN YELLOW PLASTIC ICE CREAM CONTAINER.
6) ONE (1) WHITE CELLOPHANE CONTAINING MARIJUANA DRIED STALKS.[36]

Oddly, the Request for Laboratory Examination[37] indicates that these marijuana packets were marked as follows:

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[35] TSN, August 10, 2006, pp. 26-27.

[36] Exhibit "D," index of exhibits, p. 9.

[37] Exhibit "O," index of exhibits, pp. 22-23.

Quantity/Description	Exhibit
1. Nineteen (19) packets/ teabags of suspected dried Marijuana [crushed] leaves with seeds all placed in a color black bag.	Marked as exhibit **RBM-A-08-03-04, RBM-A1-08-03-04, through RBM-A19-08-03-04.**
2. Twenty[-]six (26) packets/teabags of suspected dried Marijuana [crushed] leaves with seeds placed inside plastic cellophane.	Marked as exhibit **RBM-B-08-03-04 and RBM-B1-08-03-04 through RBM-B26-08-03-04.**
3. Twenty[-]nine (29) packets/teabags of suspected dried Marijuana [crushed] leaves with seeds placed inside plastic cellophane.	Marked as exhibit **RBM-C-08-03-04 and RBM-C1-08-03-04 through RBM-C29-08-03-04.**
4. One (1) cellophane color white of suspected several dried Marijuana stalks.	Marked as exhibit **RBM-D-08-03-04 and RBM-D1-08-03-04.**
5. Marijuana dried [crushed] leaves with seeds placed inside [oblong] color golden yellow plastic ice cream container.	Marked as exhibit **RBM-E1-08-03-04.**[38]

PO2 Maderal testified that the Certificate of Inventory was prepared right after the search,[39] and the rest of the documentation was completed after the apprehending team returned to their office. This includes the Request for Laboratory Examination,[40] the first document on record that reflects the markings PO2 Maderal purportedly made. However, it should be borne in mind that the Request for Laboratory Examination signals the turnover

[38] Id.; emphasis in the original.

[39] TSN, August 10, 2006, p. 14.

[40] Id. at 21-22.

of the drug evidence to the forensic chemist. As such, it is relevant only for purposes of documenting the status of the confiscated drugs prior to its transfer to the succeeding custodian in the chain of custody. It cannot establish that markings were immediately made thereon because at that stage, a significant amount of time had already passed from the seizure of the dangerous drugs.

Had PO2 Maderal immediately marked the seized drugs, the first record of these markings should be the Certificate of Inventory, the preparation of which follows right after making these markings. The prosecution could have also shown that the photographs of the confiscated items contain the markings that PO2 Maderal described in his testimony. And yet, the photographs taken at the place of the arrest do not exhibit each of the confiscated plastic sachets and containers of marijuana, or that these were marked accordingly.[41] The photos of the seized drugs laid out side by side were already taken at the apprehending team's office.[42] Again, none of the items appear to have been marked.[43]

Given the foregoing, it is clear that there was no marking made during the inventory-taking, which is apparent from the lack of the marking details in the Certificate of Inventory and the pictures presented in evidence, and that the marking was made only prior to submission of the seized drugs to the laboratory as shown in the Request for Laboratory Examination. The Court could only suppose that the markings were made sometime between the intervening period from the confiscation of the drugs and the preparation of the Request for Laboratory Examination. This is precisely the ambiguity that the chain of custody rule seeks to prevent.

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[41] Exhibits "K-2" and "K-3," "L-2" and "L-3," index of exhibits, pp. 18-19.

[42] TSN, August 10, 2006, pp. 18-19.

[43] Exhibits "K-1" and "L-1," index of exhibits, pp. 18-19.

As the Court explained in *People v. Dahil*,[44] the immediate marking of the evidence is a necessary safeguard against the planting, switching, and tampering of the seized dangerous drugs — the failure to do so would cast doubts on the authenticity of the *corpus delicti*:

> "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. 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 the criminal proceedings, **thus, preventing switching, planting or contamination of evidence**.
>
> It must be noted that marking is not found in R.A. No. 9165 and is different from the inventory-taking and photography under Section 21 of the said law. Long before Congress passed R.A. No. 9165, however, **this Court had consistently held that failure of the authorities to immediately mark the seized drugs would cast reasonable doubt on the authenticity of the *corpus delicti***.[45] (Emphasis supplied)

It should be further emphasized that marking is a significant preparatory act to the inventory and photographing of dangerous drugs, as the succeeding links in the chain of custody are supposed to record the marks placed on the confiscated drug evidence.[46] A gap in these initial custodial requirements makes it difficult for the court to keep track of the evidence while it moves along the chain of custody. Notably, the police officers in this case were armed with a search warrant and yet, they failed to comply with these requirements. The Court's observations in *People v. Gayoso*[47] is instructive on this matter:

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[44] G.R. No. 212196, January 12, 2015, 745 SCRA 221.

[45] Id. at 240-241.

[46] See *People v. Lumaya*, G.R. No. 231983, March 7, 2018, 858 SCRA 114, 131-132.

[47] G.R. No. 206590, March 27, 2017, 821 SCRA 516.

While marking of the evidence is allowed in the nearest police station, this contemplates a case of warrantless searches and seizures. **Here, the police officers secured a search warrant prior to their operation. They therefore had sufficient time and opportunity to prepare for its implementation. However, the police officers failed to mark immediately the plastic sachets of *shabu* seized inside appellant's house in spite of an Inventory of Property Seized that they prepared while still inside the said house**. The failure of the arresting officers to comply with the marking of evidence immediately after confiscation constitutes the first gap in the chain of custody.[48] (Emphasis supplied)

Under the 1999 PNPDEM, the police officers implementing a search warrant were even required to mark the evidence twice: after it was found by the searching element, and upon turn-over to the duly designated evidence custodian. The apprehending team did not comply with either of these requirements. They likewise failed to indicate the weight of each packet of marijuana in either the inventory or the Request for Laboratory Examination, further engendering doubts in my mind that the drugs presented in court were indeed the same ones taken from the appellant.

III.

Another glaring lapse on the part of the apprehending team is the absence of a DOJ representative during the inventory and photographing of the seized items. The mandatory presence of the witnesses to the inventory and photographing is required in all instances of seizure and confiscation of dangerous drugs. More so when the drug evidence was seized by virtue of a search warrant, which, like a buy-bust operation, requires advance planning and preparation.

The police officers in this case had time to obtain a search warrant, prepare for the buy-bust operation that preceded the service of the warrant, and to make the necessary arrangements for the subsequent enforcement of the search warrant. Clearly, during the planning stage for the operation, the police officers

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[48] *Id.* at 530.

likewise had ample time to secure the presence of the required witnesses. However, the only witnesses at the time of the inventory and photographing were the barangay officials and the representatives from the media.[49] They did not obtain the presence of a DOJ representative.

The Court held in *People v. Ramos*[50] that when there are lapses in the chain of custody rule, particularly when not all of the mandatory witnesses are present, there must be a "justifiable reason for such failure [to secure the attendance of these witnesses] or a showing of any genuine and sufficient effort to secure the required witnesses."[51] None was provided in the decision to justify the absence of the DOJ representative. There is also no indication in the records that the prosecution explained this lapse, or at the very least, that the apprehending team exerted earnest efforts to secure the attendance of the absent witness.

In *Dizon v. People*,[52] the Court held that the deviation from the requirements of Section 21, coupled by the absence of a justifiable ground therefor, compromised the integrity and evidentiary value of the *corpus delicti*:

> In this case, the apprehending team plainly failed to comply with the witness requirements under the law, *i.e.*, that the photographing and inventory of the seized items be witnessed by a representative from the media, the Department of Justice (DOJ), and any elected public official. The records are clear: only two (2) barangay officials were present to witness the operation, as observed by the RTC:
>
> x x x x
>
> Worse, there was no indication whatsoever that the apprehending team attempted, at the very least, to secure the presence of the other required witnesses.
>
> Thus, as a result of the foregoing irregularities committed by the government authorities, the conviction of Dizon now hangs in the

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[49] Exhibit "D," index of exhibits, p. 9.

[50] G.R. No. 233744, February 28, 2018, 857 SCRA 175.

[51] Id. at 190; emphasis and underscoring omitted.

[52] G.R. No. 239399, March 25, 2019.

balance. In this respect, in order not to render void the seizure and custody over the evidence obtained from the latter, the prosecution is thus required, as a matter of law, to establish the following: (i) that such non-compliance was based on justifiable grounds, and (ii) that the integrity and evidentiary value of the seized items were properly preserved.

x x x x

At the outset, the Court finds it brazen of the police officers to recognize their fatal error in procedure and yet at the same time offer no explanation or justification for doing so, which, as stated above, is required by the law. **What further catches the attention of the Court is the fact that Dizon was apprehended pursuant to a search warrant and therefore with more reason, the police officers could have secured the presence of the other witnesses, *i.e.*, the DOJ representative and media representative**.

However, despite the advantage of planning the operation ahead, the apprehending team nonetheless inexplicably failed to comply with the basic requirements of Section 21 of R.A. No. 9165. x x x[53] (Emphasis supplied; emphasis in the original omitted)

Here, the apprehending team committed grave procedural lapses not only in the initial custody and handling of the seized marijuana, but with the witness requirements of Section 21, Article II of R.A. No. 9165. No explanation was alleged or proven to justify these deviations from these statutory requirements. Instead, the *ponencia* relied heavily on the vague statements in the appellant's Counter-Affidavits to prove that the identity and integrity of the drug evidence were preserved.

To be sure, the Court has not veered away from affirming the conviction of an accused when the requirements of Section 21 are duly observed. In particular, *Santos v. People*[54] and *Concepcion v. People*[55] involve the implementation of a search warrant, and in both instances, the arresting officers were easily

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[53] Id. at 8-9.

[54] G.R. No. 242656, August 14, 2019.

[55] G.R. No. 243345, March 11, 2019.

able to comply with all the requirements of Section 21. These cases exhibit the reasonableness of the custodial requirements in R.A. No. 9165, and that it is entirely within the realm of possibility for law enforcement to perform their duties accordingly.

The Court would be remiss in its duty to faithfully apply the law if, despite the inattentive and careless manner by which police officers performed their functions, the conviction of the accused would nonetheless be affirmed. The gaps in the chain of custody cannot be justified by the ambiguous admissions of the appellant in this case. The arresting officers were duty-bound to observe the chain of custody rule from the moment that dangerous drugs were supposedly confiscated from the possession of the appellant — regardless of any subsequent admission or confession on his part. **Failing this, the Court should not substitute the appellant's sworn statements for the required proof of the integrity and evidentiary value of the drug evidence, especially where, as here, the imprecise language of these statements being extant**.

I also respectfully disagree with the *ponencia*'s conclusion that since the present case involves a large volume of dangerous drugs, this "[goes] against the possibility of planting or substitution by the police."[56] The amount of drugs involved should not dictate the manner by which the Court must evaluate the guilt of the accused. **Section 21, Article II of R.A. No. 9165 does not qualify its application depending on the volume of drugs involved**. The only matter under R.A. No. 9165, on which the quantity of drugs depends, is the severity of the imposable penalty for the offense of illegal possession of dangerous drugs. This underscores the necessity for the Court's adherence to the chain of custody rule — to ensure that the accused is charged accurately to the last gram and found guilty only when the identity and integrity of the drug evidence are duly preserved. Considering the police officers' blatant disregard of this rule in this case, I disagree with the finding of the *ponencia* to affirm the conviction of the appellant.

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[56] *Ponencia*, p. 20.

Based on the foregoing, I vote to **GRANT** the present appeal and **ACQUIT** the appellant Sundaram Magayon *y* Francisco on the basis of reasonable doubt.

FIRST DIVISION

[G.R. No. 239433. September 16, 2020]

RODEL F. BANTOGON, *Petitioner*, *v.* **PVC MASTER MFG. CORP.,** *Respondent*.

SYLLABUS

1. MERCANTILE LAW; CORPORATION LAW; PRIVATE CORPORATIONS; CORPORATE NAME; A CHANGE IN THE CORPORATE NAME DOES NOT MAKE A NEW CORPORATION, WHETHER EFFECTED BY SPECIAL ACT OR UNDER A GENERAL LAW, AND IT HAS NO EFFECT IN THE IDENTITY OF THE CORPORATION, OR ON ITS PROPERTY, RIGHTS, OR LIABILITIES.— In ***Zuellig Freight and Cargo Systems v. National Labor Relations Commission,*** the Court held that the mere change in the corporate name is not considered under the law as the creation of a new corporation. Hence, the renamed corporation remains liable for the illegal dismissal of its employee separated under that guise. Likewise, in ***P.C. Javier & Sons Inc. v. Court of Appeals,*** the Court ruled that a change in the corporate name does not make a new corporation, whether effected by a special act or under a general law. It has no effect on the identity of the corporation, or on its property, rights, or liabilities. The corporation, upon such change in its name, is in no sense a new corporation, nor the successor of the original corporation. It is the same corporation with a different name. Its character is in no respect changed. Further, in ***Philippine First Insurance Co., Inc. v. Hartigan,*** the Court enunciated that a change in the name of a corporation has no more effect upon its identity as a corporation than a change of name of a natural person has upon his identity. It does not affect the rights of the corporation or lessen or add to its obligations. After a corporation has effected a change in its name it should sue and be sued in its new name. Significantly, aside from a change of corporate name from Boatwin to PVC, there were no other changes in PVC's circumstances indicating that the supposed assets sale took place, much less, that it truly had a corporate existence distinct from that of Boatwin. To repeat, the so-called assets sale was never established.

2. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTION; SOCIAL JUSTICE AND HUMAN RIGHTS; LABOR; WHEN CONFLICTING INTERESTS OF LABOR AND CAPITAL ARE TO BE WEIGHED ON THE SCALES OF SOCIAL JUSTICE, THE HEAVIER INFLUENCE OF THE LATTER SHOULD BE COUNTERBALANCED WITH THE SYMPATHY AND COMPASSION THE LAW ACCORDS THE LESS PRIVILEGED WORKINGMAN.— The State is bound under the Constitution to afford full protection to labor. When conflicting interests of labor and capital are to be weighed on the scales of social justice, the heavier influence of the latter should be counterbalanced with the sympathy and compassion the law accords the less privileged workingman. This is only fair if the worker is to be given the opportunity and the right to assert and defend his cause not as a subordinate but as part of management with which he can negotiate on even plane. Hence, labor is not a mere employee of capital but its active and equal partner. Evidently, courts should be ever vigilant in the preservation of the constitutionally enshrined rights of the working class. Certainly, without the protection accorded by our laws and the tempering of courts, the natural and historical inclination of capital to ride roughshod over the rights of labor would run unabated.

3. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; AN EMPLOYER IS GUILTY OF ILLEGAL DISMISSAL WHEN IT ABRUPTLY PREVENTS ITS EMPLOYEE FROM REPORTING TO WORK WITHOUT JUST OR AUTHORIZED CAUSE, FOR IT FAILS TO ACCORD THE EMPLOYEE AN OPPORTUNITY TO BE HEARD AND DEFEND HIMSELF WHICH IS A BASIC REQUIREMENT OF DUE PROCESS IN THE TERMINATION OF EMPLOYMENT.— To consider PVC as a separate and distinct entity from Boatwin would be a clear disregard of petitioner's constitutional right to security of tenure. The Court will not allow PVC to circumvent the basic principles of labor laws which were meticulously crafted to ensure full protection to laborers. Undoubtedly, PVC is the employer of petitioner. Hence, as petitioner's employer, it had the burden to prove that petitioner's termination of employment

was valid. This PVC failed to do. Here, it is clearly proven that PVC constructively dismissed petitioner when it abruptly prevented him from reporting for work without just or authorized cause. It failed to accord petitioner an opportunity to be heard and defend himself which is a basic requirement of due process in the termination of employment. PVC is, thus, guilty of illegal dismissal.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Marco Cicero F. Domingo for respondent.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This petition[1] seeks to reverse and set aside the following dispositions of the Court of Appeals in CA-G.R. SP No. 139685:

1. Decision[2] dated November 24, 2017 reversing the ruling of the National Labor Relations Commission (NLRC) that petitioner was illegally dismissed; and
2. Resolution dated May 8, 2018 denying petitioner's motion for reconsideration.

Antecedents

Petitioner Rodel F. Bantogon charged respondent PVC Masters Mfg. Corp. with illegal dismissal. In his Position Paper dated June 24, 2014, petitioner essentially alleged: On May 20, 2012, he was employed by Boatwin International Corporation as a helper. In less than a year, he got promoted to machine operator.

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[1] RULES OF COURT, Rule 45, Petition for review on certiorari.

[2] Penned by Associate Justice Victoria Isabel A. Paredes with Associate Justices Jose C. Reyes, Jr. (now a member of this Court) and Jane Aurora C. Lantion concurring.

On January 2014, Boatwin changed its trade name to PVC. On March 2014, petitioner was prevented from reporting for work because of his participation in the illegal dismissal case of his brother against PVC.[3] When PVC learned of his participation in his brother's illegal dismissal case, it refused to give him any further assignment which consequently equated to constructive termination. PVC failed to observe the fundamental requirements of due process in dismissing him, hence, was guilty of illegal dismissal.[4]

For its part, PVC countered that it commenced operations just a month before the alleged dismissal or on February 14, 2014. It asserted that it is a separate and distinct entity from Boatwin. It denied that petitioner was ever its employee.[5] It submitted the following documents: (1) PVC Mayor's Permit; (2) PVC Application Form; (3) PVC Receipt for Application; (4) PVC Bill for Application; (5) PVC Securities and Exchange Commission (SEC) Registration; (6) PVC Articles of Incorporation; (7) PVC By-Laws; (8) Boatwin SEC Registration; and (9) Boatwin General Information Sheet. According to PVC, these documents are *res ipsa loquitur* and cannot be overturned by petitioner's bare allegations that he was PVC's employee and that he was illegally dismissed by PVC.[6]

Labor Arbiter's Ruling

By Decision[7] dated August 29, 2014, the Labor Arbiter held thus:

WHEREFORE, premises considered, respondent PVC Master Manufacturing Corporation is found guilty of illegal dismissal and is hereby ordered to pay complainant the aggregate provisional (computed up to date) sum of **ONE HUNDRED TWELVE**

[3] *Rollo*, p. 33.

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

[5] *Id.* at 33.

[6] *Id.* at 87-90.

[7] *Id.* at 59-60.

THOUSAND SEVEN HUNDRED EIGHTY FOUR & 21/100 PESOS (₱112,784.21) representing:

1. Backwages computed from the date of his dismissal up to finality of this decision;
2. Separation pay computed at one month pay for every year of service;
3. Wage differentials computed from February 14, 2014;
4. Unpaid 13th month pay; and
5. Attorney's fees equivalent to ten percent (10%) of the total monetary award.

All other claims are dismissed for lack of merit. The computation hereto attached is made an integral part thereof.

SO ORDERED.

In fine, the Labor Arbiter found that petitioner was an employee of PVC. During the interregnum of change from Boatwin to PVC, petitioner was not separated from his employment. In fact, he was not paid separation pay by Boatwin. When PVC assumed Boatwin's business, petitioner continued to work with PVC as a machine operator under the same working conditions he had in Boatwin. PVC, thus, merely assumed Boatwin's business and thus, absorbed its employees, including petitioner.[8]

Further, the Labor Arbiter decreed that petitioner was illegally dismissed by PVC. Petitioner was not allowed to continue working for PVC when the latter found out that he was involved in his brother's illegal dismissal case. PVC failed to prove that it dismissed petitioner for just or authorized cause.[9]

NLRC's Ruling

Under its Decision dated November 28, 2014, the NLRC affirmed. Petitioner worked in the same position and under the same working conditions from Boatwin to PVC. He was,

[8] *Id.* at 57.

[9] *Id.* at 58-59.

thus, an employee of PVC. Because petitioner was abruptly dismissed from service without just or authorized cause, PVC was guilty of illegal dismissal.[10]

PVC moved for reconsideration, which was denied by Resolution[11] dated January 21, 2015.

Court of Appeals' Proceedings

On PVC's petition for certiorari, it faulted the NLRC for allegedly disregarding the evidence proving that it was a separate and distinct entity from Boatwin.[12]

On the other hand, petitioner asserted that the factual findings of the Labor Arbiter and the NLRC were supported by substantial evidence. Thus, they should be accorded with great respect, even finality. The Labor Arbiter and the NLRC rightfully held that he was PVC's employee and that he was illegally dismissed by PVC.[13]

Court of Appeals' Ruling

Under its assailed Decision dated November 24, 2017, the Court of Appeals reversed. The issue of petitioner's alleged illegal dismissal hinged on the existence of employer-employee relationship between him and PVC. It is a factual issue that must be proven by substantial evidence. Here, petitioner failed to prove that he was PVC's employee. Petitioner's allegation that there was no interruption in the employment of petitioner from Boatwin to PVC is not proof of petitioner's employment with PVC.[14]

While PVC admitted that it is the successor-corporation to Boatwin's assets, there is no evidence to hold PVC jointly liable with respect to Boatwin's labor employment problems. In an

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

[11] *Id.* at 32.

[12] *Id.* at 69-73.

[13] *Id.* at 173.

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

assets sale, the buyer in good faith is not mandated to absorb the employees affected by the sale. It is likewise not liable for the payment of such employees' claims. PVC, hence, did not automatically become petitioner's employer when it commenced its operations on February 14, 2014. Having established that petitioner was not PVC's employee, the latter cannot be held guilty of the former's illegal dismissal.[15]

Petitioner moved for reconsideration. He argued that, even if Boatwin and PVC did enter into an assets sale, PVC would still be liable for Boatwin's debts and liabilities because it is merely a continuation of Boatwin. He did not receive any separation pay from Boatwin when PVC acquired the assets of Boatwin. When PVC commenced to operate its business, he continued to execute the same work under the same working conditions when he was an employee of Boatwin. Clearly, there was no interruption in his service. It was only after PVC learned that he helped his brother file a complaint for illegal dismissal against it that his services got terminated on the premise that PVC was separate and distinct from Boatwin.[16]

In its comment dated February 26, 2018, PVC alleged that petitioner's motion for reconsideration dated January 23, 2018 merely reiterated his previous allegations without submitting any substantial evidence to prove the same.[17]

By Resolution dated May 8, 2018, the Court of Appeals denied petitioner's motion for reconsideration dated January 23, 2018.[18]

The Present Petition

Petitioner now seeks affirmative relief from the Court via the present petition for review on certiorari.

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[15] *Id.* at 37-40.

[16] *Id.* at 187.

[17] *Id.* at 192-193.

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

Issue

Did the Court of Appeals commit reversible error when it ruled that petitioner was not an employee of PVC?

Ruling

Petitioner asserts that the employer-employee relationship between him and PVC was satisfactorily established. He claims that PVC is merely a continuation of Boatwin, hence, PVC is liable for the debts and liabilities of the latter.[19] More, he contends that he was illegally dismissed without just or authorized cause by PVC.[20]

For its part, PVC counters that the petition raises factual issues which are beyond the prism of Rule 45 of the Rules of Court.[21]

We grant the petition.

In its assailed Decision dated November 24, 2017, the Court of Appeals held that Boatwin and PVC entered into an assets sale and since PVC was a buyer in good faith, thus, it is not obligated to absorb the employees of Boatwin, including herein petitioner.[22]

We cannot agree.

To begin with, the alleged assets sale between Boatwin and PVC was never sufficiently established on record. In fact, the case records are utterly bereft of any showing that Boatwin and PVC did enter into the so-called assets sale.

For one, PVC did not even raise this defense at the very first opportunity when it filed its Position Paper dated June 3, 2014 before the Labor Arbiter.[23] It only did so belatedly on appeal before the NLRC.[24]

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[19] *Id.* at 18-21.

[20] *Id.* at 21.

[21] *Id.* at 209-210.

[22] *Id.* at 37-40.

[23] *Id.* at 87-90.

[24] *Id.* at 62-68.

Too, the best evidence of the so-called assets sale which is the deed of sale itself, if one truly existed, has never been presented either before the Labor Arbiter, the NLRC, the Court of Appeals, or even here.

Further, there was no notice to Boatwin's employees regarding the purported assets sale. Also, except for petitioner, there was no showing that Boatwin's employees had actually been terminated by reason of the supposed assets sale.

PVC does not even deny that it did continue to avail of petitioner's services as employee even after the assets sale purportedly took place. Markedly, PVC has not adduced in evidence its employees plantilla which may have shown that indeed petitioner was not its employee.

More, there was no payment of separation pay to petitioner by Boatwin as to indicate there was really an assets sale and that Boatwin and PVC were truly separate and distinct from each other.

Another, it is unrefuted that PVC and Boatwin are engaged in the same line of business, operate in the same vicinity, and have the same working conditions.

The sole argument of PVC is that it acquired Boatwin's assets through the so-called assets sale. But the Court finds that there was no assets sale to speak of. **What clearly happened was simply a change of corporate name from Boatwin to PVC**. But what's in a name?

In ***Zuellig Freight and Cargo Systems v. National Labor Relations Commission***,[25] the Court held that the mere change in the corporate name is not considered under the law as the creation of a new corporation. Hence, the renamed corporation remains liable for the illegal dismissal of its employee separated under that guise.

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[25] 714 Phil. 401, 403 (2013).

Likewise, in ***P.C. Javier & Sons, Inc. v. Court of Appeals***,[26] the Court ruled that a change in the corporate name does not make a new corporation, whether effected by a special act or under a general law. It has no effect on the identity of the corporation, or on its property, rights, or liabilities. The corporation, upon such change in its name, is in no sense a new corporation, nor the successor of the original corporation. It is the same corporation with a different name. Its character is in no respect changed.

Further, in ***Philippine First Insurance Co., Inc. v. Hartigan***,[27] the Court enunciated that a change in the name of a corporation has no more effect upon its identity as a corporation than a change of name of a natural person has upon his identity. It does not affect the rights of the corporation or lessen or add to its obligations. After a corporation has effected a change in its name it should sue and be sued in its new name.

Significantly, aside from a change of corporate name from Boatwin to PVC, there were no other changes in PVC's circumstances indicating that the supposed assets sale took place, much less, that it truly had a corporate existence distinct from that of Boatwin. To repeat, the so-called assets sale was never established.

The State is bound under the Constitution to afford full protection to labor. When conflicting interests of labor and capital are to be weighed on the scales of social justice, the heavier influence of the latter should be counterbalanced with the sympathy and compassion the law accords the less privileged workingman. This is only fair if the worker is to be given the opportunity and the right to assert and defend his cause not as a subordinate but as part of management with which he can negotiate on even plane. Hence, labor is not a mere employee of capital but its active and equal partner.[28]

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[26] 500 Phil. 419, 431 (2005).

[27] G.R. No. L-26370, July 31, 1970, 34 SCRA 252.

[28] *Fuentes v. National Labor Relations Commission*, 334 Phil. 22, 25 (1997).

Evidently, courts should be ever vigilant in the preservation of the constitutionally enshrined rights of the working class. Certainly, without the protection accorded by our laws and the tempering of courts, the natural and historical inclination of capital to ride roughshod over the rights of labor would run unabated.[29]

To consider PVC as a separate and distinct entity from Boatwin would be a clear disregard of petitioner's constitutional right to security of tenure. The Court will not allow PVC to circumvent the basic principles of labor laws which were meticulously crafted to ensure full protection to laborers.

Undoubtedly, PVC is the employer of petitioner. Hence, as petitioner's employer, it had the burden to prove that petitioner's termination of employment was valid. This PVC failed to do.

Here, it is clearly proven that PVC constructively dismissed petitioner when it abruptly prevented him from reporting for work without just or authorized cause. It failed to accord petitioner an opportunity to be heard and defend himself which is a basic requirement of due process in the termination of employment. PVC is, thus, guilty of illegal dismissal.

ACCORDINGLY, the petition is **GRANTED**. The Decision dated November 24, 2017 and Resolution dated May 8, 2018 of the Court of Appeals in CA-G.R. SP No. 139685 are **REVERSED** and **SET ASIDE**. The Decision of the National Labor Relations Commission dated November 28, 2014 in NLRC LAC No. 10-002672-14 (NCR-04-03877-14) is **REINSTATED**.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa, Zalameda,[*] and *Lopez, JJ.*, concur.

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[29] *Mabeza v. National Labor Relations Commission*, 338 Phil. 386, 389 (1997).

[*] Designated additional member in lieu of *J.* Reyes, Jr., per September 9, 2020 raffle.

SECOND DIVISION

[G.R. No. 240084. September 16, 2020]

RUBEN O. OLIVEROS and HOMER HENRY S. SANCHEZ, *Petitioners, v.* **THE HON. COURT OF APPEALS, FIRST LAGUNA ELECTRIC COOPERATIVE (FLECO), RAMIL F. DE JESUS, ARIES M. LLANES, GABRIEL C. ADEFUIN, RICHARD B. MONDEZ and HERMINIA A. DANDO,** *Respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; CANNOT BE A SUBSTITUTE FOR A LAPSED OR LOST APPEAL, WHICH LOSS IS DUE TO A PARTY'S FAULT OR NEGLIGENCE OR WHERE A PERSON FAILS, WITHOUT JUSTIFIABLE GROUND, TO INTERPOSE AN APPEAL DESPITE ITS ACCESSIBILITY; EXCEPTIONS.— Under Section 1, Rule 45 of the Rules of Court, it is explicitly stated that a judgment or a final order or resolution of the CA may be appealed with the Court *via* a verified petition for review on *certiorari*. On the other hand, Section 1, Rule 65 provides that for *certiorari* to prosper, (i) the writ must be issued against a tribunal, board, or any officer exercising judicial or quasi-judicial functions; (ii) the tribunal, board or officer committed grave abuse of discretion; and, (iii) there is no appeal, or any plain, speedy and adequate remedy in the ordinary course of law. The availability of the right to appeal is a bar to one's resort to a petition under Rule 65 for the apparent reason that a special civil action for *certiorari* may be pursued when there is no appeal that may be resorted to. *Certiorari* is not and cannot be a substitute for a lapsed or lost appeal, which loss was due to a party's fault or negligence or where a person fails, without justifiable ground, to interpose an appeal despite its accessibility. Indeed, where the rules provide for a specific remedy for the vindication of rights, the remedy should be availed of. x x x The Court is mindful that there are recognized situations where *certiorari* was granted even if appeal is available, such as

"(a) when public welfare and the advancement of public policy dictates; (b) when the broader interest of justice so requires; (c) when the writs issued are null and void; or (d) when the questioned order amounts to an oppressive exercise of judicial authority." However, none of the exceptions to the rule was established in this case.

2. ID.; ID.; APPEALS; THE RIGHT TO APPEAL IS A STATUTORY RIGHT AND ANY PERSON WHO SEEKS TO MAKE USE OF IT MUST COMPLY WITH THE RULES FOR ITS PERFECTION.— Time and again, the Court has stressed that the right to appeal is a statutory right and any person who seeks to make use of it must comply with the rules for its perfection. It, thus, follows that an appeal must be made in the manner and within the period set by law to do so. It is noteworthy that in the case, petitioners filed their petition beyond the 15 days reglementary period and as such, they did not observe the rules governing the filing of a petition under Rule 45. As a result, the CA Resolutions already attained finality, which precludes the Court from acquiring jurisdiction to review them.

3. ID.; ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; TO AMOUNT TO GRAVE ABUSE OF DISCRETION, THE ABUSE MUST BE SO PATENT AND GROSS TANTAMOUNT TO AN EVASION OF A POSITIVE DUTY OR TO A VIRTUAL REFUSAL TO CARRY OUT AN OBLIGATION THAT THE LAW REQUIRES, AS WHERE POWER IS EXERCISED ARBITRARILY BY REASON OF ONE'S HOSTILITY AND PASSION.— By grave abuse of discretion, we refer to the capricious, whimsical, or arbitrary exercise of jurisdiction of the respondent court which is equivalent to lack of jurisdiction. Further, to amount to grave abuse of discretion, the abuse must be so patent and gross tantamount to an evasion of a positive duty or to a virtual refusal to carry out an obligation that the law requires, as where power is exercised arbitrarily by reason of one's hostility and passion. In the case at bench, the CA's dismissal of the petition for *certiorari* is without abuse of discretion. It has justifiable ground in so doing considering that petitioners failed to abide by the requirement to submit material portions of the record pursuant to Section 3, Rule 46, in relation to Rule 65 of the Rules of Court. That the subject documents were material is highlighted by the fact that they

served as the relevant documents considered by the NLRC in ruling against petitioners. The documents would be necessary for the CA to in turn rule on the substantive issues of petitioners' *certiorari* proceedings before it. However, despite the extension of time they prayed to comply, petitioners still failed to submit the relevant documents supporting, and thus, the CA properly dismissed their *certiorari* petition.

4. ID.; ID.; ID.; ID.; WILL ISSUE ONLY TO CORRECT ERRORS OF JURISDICTION, NOT ERRORS IN THE FINDINGS OR CONCLUSIONS OF THE LOWER COURT.— [*C*]*ertiorari* will issue only to correct errors of jurisdiction, not errors in the findings or conclusions of the lower court. Since the CA acted within its jurisdiction, then the Court has no reason to overturn its decision to dismiss the petition for *certiorari*. "As long as the court *a quo* acts within its jurisdiction, any alleged errors committed in the exercise of its discretion will amount to nothing more than mere errors of judgment, correctible by an appeal or a petition for review under Rule 45 of the Rules of Court."

5. ID.; RULES OF PROCEDURE; MUST NOT BE VIEWED AS MERE TECHNICALITIES THAT MAY BE BRUSHED ASIDE TO SUIT A PARTY'S CONVENIENCE, FOR THEY MUST BE CONSCIENTIOUSLY OBSERVED AS THEY GUARANTEE THE ENFORCEMENT OF SUBSTANTIVE RIGHTS.— [T]he Court once again elucidates that rules of procedure must not be viewed as mere technicalities that may be brushed aside to suit a party's convenience. They must be conscientiously observed as they guarantee the enforcement of substantive rights through speedy and orderly administration of justice.

APPEARANCES OF COUNSEL

Caesar M. Angeles for petitioners.
Domingo T. Añonuevo for private respondents.

RESOLUTION

INTING, *J.*:

This Petition[1] for *Certiorari* under Rule 65 of the Rules of Court seeks to set aside and nullify the Resolution[2] dated October 27, 2017 of the Court of Appeals (CA) dismissing the Petition[3] for *Certiorari* under Rule 65 of the Rules of Court in CA-G.R. SP No. 147168 on the ground of procedural defects, violation of Rule 65 of the Rules of Court, and failure of Ruben O. Oliveros (Oliveros) and Homer Henry S. Sanchez (Sanchez) (collectively, petitioners) to comply with the CA Resolutions of September 22, 2016[4] and February 8, 2017.[5] Also challenged is the CA Resolution[6] dated April 13, 2018 denying petitioners' Motion for Reconsideration.[7]

The Antecedents

Prior to their termination, petitioners held the positions of distribution system analyst and system planning and design engineer, respectively, at First Laguna Electric Cooperative (FLECO), a cooperative franchised to retail electricity to certain towns in Laguna.[8] While they were still under its employ, FLECO received the following text message from an unknown source:

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[1] *Rollo*, pp. 3-17.

[2] *Id.* at 20-21-A; penned by Associate Justice Myra V. Garcia-Fernandez with Associate Justices Romeo F. Barza and Ramon Paul L. Hernando (now a member of the Court), concurring.

[3] *Id.* at 108-130.

[4] *Id.* at 133.

[5] *Id.* at 137.

[6] *Id.* at 23-24.

[7] *Id.* at 153-162.

[8] As culled from the Decision dated December 8, 2015 of the National Labor Relations Commission (NLRC) in NLRC Case No. RAB-IV 08-01002-15-L, *id.* at 40-41.

"[R]ubeno oliveros and henry homer sanchez owner of sergio paulo contractor services, that is not allowed in any electric cooperative."[9]

Acting on the text message, FLECO's Officer-in-Charge, Ramil F. De Jesus, issued a Memorandum[10] dated April 30, 2015 asking petitioners of any conflict of interest between their personal business and that of FLECO. The memorandum further indicated that FLECO had verified that petitioners had business interests in Sergio Paulo Contractor Services (Sergio Paulo), which was an accredited contractor of FLECO and engaged in the electrical work services within the latter's area coverage. Attached in the memorandum were documents supporting the charge against petitioners such as the: (1) Organizational Chart of Sergio Paulo; and (2) its Accomplishments and Projects.

In their Second Explanation Letter,[11] petitioners averred that there was nothing in the Code of Ethics of FLECO which allowed the management to act on any anonymous text. Conversely, they asserted that a sworn written complaint was necessary and the right to cross-examine the complainant must be accorded to them. They also requested to be informed of the extent of damage they caused to FLECO for them to properly explain their position on the matter.

On May 27, 2015, petitioners received another Memorandum[12] with attached sworn statements of its managers[13] attesting that petitioners indeed had business interest in Sergio Paulo. On even date, FLECO issued another memorandum furnishing petitioners with another documentary evidence against them

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[9] *Id.* at 43.

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

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

[12] *Id.* at 29.

[13] Emelyn C. Icarangal, Manager of First Laguna Electric Cooperative's (FLECO) Institutional Services Department; Belinda A. Lugmao, Manager of FLECO's Audit Department, and Jessie R. Zuñiga, Chief of FLECO's Administrative Division; id. at 30-31, 32-34.

— a Housewiring Report which stated that petitioners supposedly inspected the work done by Sergio Paulo.[14]

In their Explanation,[15] petitioners stated that the sworn statements were hearsay because those who executed them had no personal knowledge of the matters stated therein. They maintained that they did not compete with the business of FLECO and they did not, directly or through Sergio Paulo, enter into any contract with FLECO. They added that they did not own Sergio Paulo and never used company time to engage in personal business.

On June 26, 2015, a hearing was held on the charges against petitioners. Later and upon the eventual recommendation of the Grievance Committee,[16] FLECO terminated them effective July 31, 2015.[17] Consequently, petitioners filed a case for illegal dismissal and money claims against FLECO as well as Aries M. Llanes, Chairman of the Grievance Committee, and Gabriel C. Adefuin, Richard B. Mondez and Herminia A. Dando, Members of the Grievance Committee.

Ruling of the Labor Arbiter (LA)

On December 8, 2015, the LA declared that petitioners were illegally terminated as their employer violated their right to due process and failed to establish the basis for their dismissal. Accordingly, the LA ordered their reinstatement and payment of full backwages, moral damages in the amount of ₱100,000.00, exemplary damages in the amount of ₱50,000.00, and attorney's fees at the rate of 10% of the total award.[18]

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[14] *Id.* at 95; as culled from the NLRC Decision dated May 31, 2016.

[15] *Id.* at 35-37.

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

[17] *Id.* at 39.

[18] *Id.* at 40-62; penned by Labor Arbiter Napoleon V. Fernando.

Ruling of the National Labor Relations Commission (NLRC)

On appeal, the NLRC reversed[19] the LA Decision dismissing the complaint for lack of merit.

The NLRC ruled that FLECO did not violate petitioners' right to due process emphasizing that a notice of their infraction and an opportunity to be heard were given them. It also ratiocinated that FLECO was justified in terminating petitioners considering that they violated its rule against conflict of interest. It added that there was an obvious link between petitioners and Sergio Paulo as petitioners admitted ownership of the vehicles used by Sergio Paulo in its private contracts. The vehicles were included as assets of Sergio Paulo and cited as tools and equipment under its company profile. It also stressed on the standing of petitioners in Sergio Paulo noting that the latter's company profile indicated Sanchez as planning supervisor, while Oliveros as project supervisor; and its organizational chart placed them as second and third, respectively, to its President.

Thereafter, the NLRC denied petitioners' motion for reconsideration prompting them to file a Petition[20] for *Certiorari* under the Rules of Court with the CA.

Meanwhile, in its Resolution[21] dated September 22, 2016, the CA required petitioners to submit material portions of the record pursuant to Section 3, Rule 46, in relation to Rule 65 of the Rules of Court within five days from notice, among other matters.

However, instead of submitting a compliance, petitioners filed a Manifestation and Urgent Motion for Extension[22] requesting for an extension of 30 days within which to comply

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[19] *Id.* at 63-107; penned by Commissioner Mercedes R. Posada-Lacap with Presiding Commissioner Grace E. Maniquiz-Tan and Commissioner Dolores M. Peralta-Beley, concurring.

[20] *Id.* at 108-130.

[21] *Id.* at 133.

[22] *Id.* at 134-136.

with the CA Resolution of September 22, 2016. On February 8, 2017, the CA issued another Resolution[23] noting petitioners' manifestation and motion and directed their counsel to show cause why no disciplinary action be imposed against him for failure to comply with the Resolution dated September 22, 2016 despite the motion for extension he submitted for petitioners.

Thereafter, petitioners submitted their "Compliance with Motion for Leave to Submit Additional Annexes."[24] Petitioners filed therewith Annexes "G" to "J"[25] of its Petition for *Certiorari* as well as additional annexes (Annex "K" — MN Electro Certification and Annex "L" — Excerpt from FLECO security logbook).[26]

Ruling of the CA

On October 27, 2017, the CA dismissed the petition for *certiorari*.

The CA ruled that despite their motion for extension and their eventual "Compliance with Motion for Leave to Submit Additional Annexes," petitioners still failed to submit material portions of the record including (1) the Organizational Chart of Sergio Paulo; (2) its list of accomplishments (Company Profile); and (3) the Statement of Account and Material Costing and Housewiring Report dated November 6, 2013. It, thus, decreed that the petition must be dismissed on the ground of formal defects, for violation of the Rules of Court, and for failure of petitioners to comply with its Resolutions of September 22, 2016 and February 8, 2017.

On April 13, 2018, the CA denied petitioners' Motion for Reconsideration.

Hence, this petition.

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[23] *Id.* at 137.

[24] *Id.* at 138-141.

[25] *Id.* at 143-149.

[26] *Id.* at 150-151.

Issue

Whether the CA committed grave abuse of discretion in dismissing the petition for *certiorari*.

Petitioners' Arguments

Petitioners contended that the CA acted with grave abuse of discretion in dismissing their *certiorari* petition as it did not specifically require them to submit the Organizational Chart of Sergio Paulo, its list of accomplishments, and its Statement of Account and Material Costing. They asserted that the documents did not have any bearing on the arguments they raised before the CA. They argued that there was no sworn complaint against them, but FLECO engaged in a fishing expedition after receiving the above-mentioned text message against petitioners.

Respondents' Arguments

On the other hand, respondents countered that the instant Petition for *Certiorari* is a wrong remedy because the proper recourse to assail the dismissal of the Rule 65 petition filed with the CA is through a petition for review on *certiorari* under Rule 45 of the Rules of Court. They added that even if the Court treats the petition as one under Rule 45, it must still be dismissed for having been filed late and by reason of which, the assailed CA Resolutions already attained finality. At the same time, they argued that even assuming that this petition may be availed of, it must fail since the CA committed no grave abuse of discretion in dismissing the Petition for *Certiorari* filed therewith.

Our Ruling

The petition must fail for being a wrong remedy.

Under Section 1, Rule 45 of the Rules of Court, it is explicitly stated that a judgment or a final order or resolution of the CA may be appealed with the Court *via* a verified petition for review on *certiorari*.[27] On the other hand, Section 1, Rule 65 provides

[27] Section 1, Rule 45 of the Rules of Court provides:

that for *certiorari* to prosper, (i) the writ must be issued against a tribunal, board, or any officer exercising judicial or quasi-judicial functions; (ii) the tribunal, board or officer committed grave abuse of discretion; and, (iii) there is no appeal, or any plain, speedy and adequate remedy in the ordinary course of law.[28]

The availability of the right to appeal is a bar to one's resort to a petition under Rule 65 for the apparent reason that a special civil action for *certiorari* may be pursued when there is no appeal that may be resorted to. *Certiorari* is not and cannot be a substitute for a lapsed or lost appeal, which loss was due to a party's fault or negligence or where a person fails, without justifiable ground, to interpose an appeal despite its accessibility. Indeed, where the rules provide for a specific remedy for the vindication of rights, the remedy should be availed of.[29]

Here, the assailed issuances are final resolutions considering that the CA disposed of the petition for *certiorari* leaving the court with nothing more to do. This being so, the appropriate remedy for petitioners to challenge the CA's dismissal of their petition is through an appeal under Rule 45 of the Rules of

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SECTION 1. *Filing of Petition with Supreme Court.* — A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari.* x x x

[28] Section 1, Rule 65 of the Rules of Court

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.

[29] *Malayang Manggagawa ng Stayfast Phils., Inc. v. NLRC, et al.*, 716 Phil. 500, 512 (2013).

Court. However, despite this remedy, petitioners opted to file a petition for *certiorari*, which is an improper recourse and therefore, must be dismissed.

The Court is mindful that there are recognized situations where *certiorari* was granted even if appeal is available, such as "(a) when public welfare and the advancement of public policy dictates; (b) when the broader interest of justice so requires; (c) when the writs issued are null and void; or (d) when the questioned order amounts to an oppressive exercise of judicial authority."[30] However, none of the exceptions to the rule was established in this case.

It is also noteworthy that even if the Court treats the instant petition as one under Rule 45, it must still be dismissed for late filing.

Time and again, the Court has stressed that the right to appeal is a statutory right and any person who seeks to make use of it must comply with the rules for its perfection. It, thus, follows that an appeal must be made in the manner and within the period set by law to do so. It is noteworthy that in the case, petitioners filed their petition beyond the 15 days reglementary period and as such, they did not observe the rules governing the filing of a petition under Rule 45. As a result, the CA Resolutions already attained finality, which precludes the Court from acquiring jurisdiction to review them.[31]

Moreover, even if assuming, just for the sake of argument, that the present petition for *certiorari* is the proper recourse, it still deserves scant consideration as there is no showing that the CA committed grave abuse of discretion in dismissing the petition filed therewith.

By grave abuse of discretion, we refer to the capricious, whimsical, or arbitrary exercise of jurisdiction of the respondent

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[30] *AMA Computer College-Santiago City, Inc. v. Nacino*, 568 Phil. 465, 470 (2008).

[31] See *Albor v. Court of Appeals, et al.*, 823 Phil. 901, 912 (2018), citing *Prieto v. CA*, 688 Phil. 21, 29 (2012).

court which is equivalent to lack of jurisdiction. Further, to amount to grave abuse of discretion, the abuse must be so patent and gross tantamount to an evasion of a positive duty or to a virtual refusal to carry out an obligation that the law requires, as where power is exercised arbitrarily by reason of one's hostility and passion.[32]

In the case at bench, the CA's dismissal of the petition for *certiorari* is without abuse of discretion. It has justifiable ground in so doing considering that petitioners failed to abide by the requirement to submit material portions of the record pursuant to Section 3, Rule 46, in relation to Rule 65 of the Rules of Court. That the subject documents were material is highlighted by the fact that they served as the relevant documents considered by the NLRC in ruling against petitioners. The documents would be necessary for the CA to in turn rule on the substantive issues of petitioners' *certiorari* proceedings before it. However, despite the extension of time they prayed to comply, petitioners still failed to submit the relevant documents supporting, and thus, the CA properly dismissed their *certiorari* petition.

In sum, *certiorari* will issue only to correct errors of jurisdiction, not errors in the findings or conclusions of the lower court. Since the CA acted within its jurisdiction, then the Court has no reason to overturn its decision to dismiss the petition for *certiorari*. "As long as the court *a quo* acts within its jurisdiction, any alleged errors committed in the exercise of its discretion will amount to nothing more than mere errors of judgment, correctible by an appeal or a petition for review under Rule 45 of the Rules of Court."[33]

As a final note, the Court once again elucidates that rules of procedure must not be viewed as mere technicalities that may be brushed aside to suit a party's convenience. They must be conscientiously observed as they guarantee the enforcement

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[32] *Intec Cebu, Inc., et al. v. Court of Appeals, et al.*, 788 Phil. 31, 42 (2016), citing *Tan v. Spouses Antazo*, 659 Phil. 400, 404 (2011).

[33] *Albor v. Court of Appeals, et al., supra* note 31 at 910. Citations omitted.

of substantive rights through speedy and orderly administration of justice.[34] Finding no grave abuse of discretion on the part of the CA, there is no basis for the issuance of a writ of *certiorari*.

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

SO ORDERED.

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

Baltazar-Padilla, J., on leave.

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[34] *AMA Computer College-Santiago City, Inc. v. Nacino, supra* note 60 at 471.

[*] Designated additional member per Raffle dated November 27, 2019.

FIRST DIVISION

[G.R.No. 240662. September 16, 2020]

THE PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **RAYMUNDO RAPIZ y CORREA,** *Accused-Appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; ELEMENTS; NOT PROVEN BEYOND REASONABLE DOUBT.— The elements of rape under paragraph 1 of Article 266-A of the RPC are: (1) the offender is a **man who had carnal knowledge of a woman**; and (2) he **accomplished such act through force or intimidation** upon her; or she is deprived of reason or otherwise unconscious; or she is under 12 years of age or is demented. The RTC and the CA both found that complainant's testimony clearly established appellant's **carnal knowledge of her against her will** by **employing threat and intimidation.** x x x While **we believe complainant's claim** of sexual intercourse with appellant, the prosecution evidence **does not prove beyond a reasonable doubt** that **this was the result of** or **was accomplished through force** or **intimidation** or **moral ascendancy.**

2. ID.; ID.; ID.; CIRCUMSTANCES IN CASE AT BAR DO NOT SHOW THAT THE SEXUAL INTERCOURSE BETWEEN COMPLAINANT AND ACCUSED OCCURRED THROUGH FORCE, INTIMIDATION, OR MORAL ASCENDANCY; ACCUSED IS ACQUITTED ON GROUND OF REASONABLE DOUBT.— [A]ppellant **did not raise** the affirmative defense of consensual sex. He in fact **denied having carnal knowledge** of complainant. Hence, it behooves the **prosecution to prove** each of the elements of rape **beyond a reasonable doubt**, especially that the **sex** between complainant and accused **occurred through force, intimidation or moral ascendancy.** This the **prosecution evidence distinctly failed.** ***First.*** Complainant mentioned that appellant threatened her with a weapon. Interestingly, the type of weapon was never identified by complainant. She never described how it was used to threaten

her. x x x Surely, a person who has been threatened with a weapon will definitely remember what was used on him or her, especially in cases where a person is threatened to do something against his or her will, more so in the heinous crime of rape. x x x ***Second.*** x x x Complainant's claim that she was intimidated into submitting herself to appellant's lewd designs is likewise incredible. True, appellant is her mother's cousin and exercises moral ascendancy over her. But, complainant was already 20 years old at the time and she was of sound body since she was able to work as a helper at a nearby canteen. She may be illiterate, but the same cannot be considered as equivalent to mental retardation. She is of sufficient mental aptitude and is perfectly capable of at least resisting appellant's advances, if indeed his advances were unwanted. x x x As the boundaries between normality and retardation are difficult to delineate, proper identification requires competent clinical evaluation of psychosomatic parameters in conjunction with medical and laboratory tests. Here, the record is bereft of any evidence that a comprehensive medical evaluation was had to properly determine complainant's mental status. There is as well no allegation about deficiencies in her mental state. x x x Complainant never once mentioned that appellant forcibly held her or pushed her to a lying position. Appellant only laid his hands on her when he covered her mouth and seemingly took his time in taking off her clothes. Also, nowhere is it indicated in her testimony that appellant continually threatened to kill her if she did not comply with his wishes. Not once did she resist appellant's advances. We note that appellant threatened complainant only once and before he made his move on her. We simply find it implausible that a single threat, a weak one at that, would immediately deprive a woman of her free will and immediately subject her to the whims and caprices of a man without even giving the slightest resistance. x x x Nor can moral ascendancy be considered to have supplanted force and intimidation in this case. For moral ascendancy can only be considered if rape of minor was committed by a close kin or a relative within the third civil degree by consanguinity or affinity. x x x Complainant is a full grown 20-year old woman at the time of her alleged sexual ravishment. More, appellant is not even considered a close kin under the law, being her mother's cousin. Verily, moral ascendancy cannot be taken into account and considered as substitute for threat or intimidation.

> x x x ***Third.*** The reasonable doubt on the nature of complainant and appellant's sexual congress is reinforced by their subsequent actuations. x x x Here, complainant's actuations whenever she was with appellant are not those of a woman whose virtue had been outraged. Complainant admitted that the following day, on April 3, 2015, she had gone to rendezvous with appellant to a balete tree. There, he hugged her, kissed her on the lips, fondled her breasts, and touched her vagina. He lay near her and slept. She never mentioned that she was threatened or forced to go with him. x x x Again, on April 4, 2015, around 11 o'clock in the evening, she voluntarily went to the vulcanizing shop. She did not state that appellant threatened or compelled her to go to there in the middle of the night. x x x Thereafter, on April 6, 2015, appellant promised to buy her a pair of slippers and dress in Baclaran. When they went there, he did not make good his promise, but made another promise to buy for her another time. He then took her to a place with many animals and kissed her there. This time, there is no doubt that complainant went with appellant willingly - this little excursion could even be considered a date. x x x Taking into account all the foregoing considerations, the Court concludes that there is reasonable doubt on the element of force, threat or intimidation in this case. There is no moral certainty as to the crime of rape to speak of. x x x Appellant **RAYMUNDO RAPIZ *y* CORREA** is **ACQUITTED** of rape on ground of **REASONABLE DOUBT.**

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This appeal assails the Decision[1] dated February 7, 2018 of the Court of Appeals in CA-G.R. CR HC No. 08109 entitled

[1] Penned by Associate Justice Victoria Isabel A. Paredes and concurred in by Presiding Justice Romeo F. Barza and Associate Justice Mario A.

"*People of the Philippines v. Raymundo Rapiz y Correa*" which affirmed appellant's conviction for simple rape, thus:

WHEREFORE, premises considered, the appeal is **DENIED**. The assailed January 29, 2016 *Decision* of the Regional Trial Court, Branch 275, Las Pinas City, in Criminal Case No. 15-1121, is **MODIFIED** in that the awards of civil indemnity and moral damages are **INCREASED** to ₱75,000.00 **EACH**; and appellant is further **ORDERED** to **PAY** ₱75,000.00 as exemplary damages. Except as otherwise modified herein, the rest of the assailed *Decision* **STANDS**.

SO ORDERED.[2]

Facts

The Charge

Raymundo Rapiz *y* Correa (appellant) was charged with the rape of AAA[3] in Criminal Case No. 15-1121, *viz.*:

That on or about the 2nd day of April 2015, in the City of Las Pinas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of force, threat, and intimidation and did then and there willfully, unlawfully and feloniously have carnal knowledge with complainant AAA, against her will and consent.

CONTRARY TO LAW.[4]

The case was raffled to the Regional Trial Court (RTC), Branch 275, Las Piñas City. On arraignment, appellant pleaded not guilty.[5] Trial on the merits ensued.

Lopez (now a member of this Court), all members of the First Division, CA *rollo,* pp. 96-102.

[2] *Id.* at 101.

[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 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.

[4] CA *rollo,* p. 43.

[5] *Id.* at 44.

Proceedings before the Trial Court

Prosecution's Version

On **April 2, 2015,** AAA (complainant) and appellant were left all alone in the latter's house. When she heard appellant call for her, she immediately approached but he suddenly pointed a deadly weapon at her. She got shocked and was unable to react when he undressed her and himself too. He asked her to lie down on the bed, after which, he got on top of her and inserted his penis into her vagina. He threatened to kill her and her mother if she would tell her mother about the incident. Before her mother arrived, appellant tightly held her hands, went outside, and sharply stared at her. She could not do anything but cry.[6]

On **April 3, 2015,** appellant brought her near a balete tree. There, he **hugged her, kissed her on the lips, fondled her breasts, and touched her vagina.** He lay near her and slept. They went back to appellant's house by 11 o'clock in the evening.[7]

On **April 4, 2015**, around **11 o'clock in the evening**, appellant told her to go to the Canon Vulcanizing Shop where he was working. When she got there, appellant locked the door of the shop. **He proposed to court her**, but she refused because she thought he is her uncle, that is, she believed that he and her mother are cousins. Appellant got mad and no longer talked to her. They were able to go home by **1 o'clock in the morning**.[8]

On **April 6, 2015**, **around midnight**, appellant **promised to buy her a pair of slippers and dress** in Baclaran. They later went there, but he did not make good his promise. He just made another promise to buy for her another time. He then **took her to a zoo** and **kissed her there**. They went home afterwards.[9]

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[6] *Id.*

[7] *Id.* at 44.

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

[9] *Id.* at 45.

On **April 7, 2015**, her mother, BBB, filed a complaint before the *barangay* **against appellant's live-in partner**. The reason for the complaint was that complainant and appellant's live-in partner had apparently gotten into a fight. Appellant's live-in partner was jealous whenever complainant conversed with appellant. Complainant attended the hearing before the *barangay* where **she disclosed that appellant had inserted his penis into her vagina three (3) to four (4) times already** and it all happened in appellant's house.[10]

Medico-legal officer Police Senior Inspector Reah Mangroba Cornelio, M.D. (Dr. Cornelio) examined complainant and made the following findings:

x x x x

HYMEN: Presence of deep healed lacerations at 3 and 9 o'clock positions and deep healing laceration at 6 o'clock position.[11]

x x x x

Conclusion

Medico-legal evaluation shows clear evidence of recent blunt penetrating trauma to the hymen.[12]

Defense's Version

Appellant Raymundo Rapiz testified that complainant's mother BBB had falsely accused him of raping her daughter because **he refused to lend her ₱1,500.00.** BBB needed the money so she and complainant could go back to Mindoro.[13]

He worked at a vulcanizing shop owned by a certain Jonivie Canon and her husband, Antonio Canon (Spouses Canon). He used to reside in Montanes Compound at No. 358, Barrio Talon, Angela Road, Las Piñas City. The compound was owned by

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[10] *Id.*

[11] *Id.*

[12] *Id.* at 46.

[13] *Id.*

Antonio Jesus Montanes. On March 20, 2015, he chose to move and live in the vulcanizing shop because he was ashamed of the behavior of complainant and her mother. Both allegedly arrived at the compound on March 3, 2015, fighting and cursing each other - "Narinig ko pa yung sigaw nya doon na '*Tang ina ka. Kahit hubaran kita sa kalsada pagpilahan kita sa mga lalaki wala kang magagawa'*."[14]

Complainant and her mother were supposed to help him wash his clothes, but it never happened. Instead, BBB made complainant work as a canteen helper near the vulcanizing shop. BBB even told every man in the canteen to treat complainant as if she were his wife.[15]

The spouses Canon testified on appellant's character. They knew him to be industrious, very helpful, and accommodating to his relatives. They believed that appellant could not have raped complainant because he had a live-in partner, a certain Ana. In the later part of March 2015, appellant approached Antonio Canon and told him the latter stories on how BBB would do everything to put him in jail. Eventually, BBB's wish happened.[16]

The Trial Court's Ruling

By Decision[17] dated January 29, 2016, the trial court found appellant guilty as charged. The trial court observed that **complainant could write her name but did not know how to read. She could only count up to ten (10) in Filipino and up to thirty (30) in English.** She gave a truthful and accurate narration on how appellant sexually ravished her. By reason of **appellant's moral ascendancy over her**, being **her mother's cousin**, he was **able to unduly influence and intimidate** her into having sexual relations with him. The inconsistencies in complainant's testimony were badges of truth. Her testimony

[14] *Id.*

[15] *Id.*

[16] *Id.* at 47.

[17] *Id.* at 43-56.

on her sexual ravishment was corroborated by Dr. Cornelio's medico-legal. The supposed inconsistency as to the actual time the rape incident took place, *i.e.*, "April 2, 2015 at 4 o'clock in the afternoon" was indicated in the request for genital examination issued by Police Senior Inspector Joylene Bulan while "April 2, 2015 at 9:10 o'clock in the morning" was indicated in Dr. Cornelio's medico-legal report --- Refers to a trivial, if not irrelevant, detail. For time is not an element of rape. Appellant's denial is a weak defense when pitted against complainant's positive and categorical testimony. Further, BBB's alleged resentment against appellant for the latter's supposed refusal to lend her money is too shallow a reason, nay, motivation to falsely charge appellant with rape.[18] The trial court decreed:

> **WHEREFORE,** in view of the foregoing disquisitions, the court finds Raymundo Rapiz guilty with moral certainty of rape under Article 266-A paragraph l(a) of the Revised Penal Code, as amended by Republic Act No. 8353, without the possibility of parole. He is sentenced to suffer the penalty of reclusion perpetua and to pay AAA the amounts of ₱50,000.00 as indemnity and ₱50,000,00 as moral damages, with the interest at the rate of 6% *per annum* from the date of finality of this judgment until fully paid.
>
> **SO ORDERED**.[19]

Proceedings Before the Court of Appeals

On appeal, appellant faulted the trial court for rendering the verdict of conviction. He argued: a) the trial court erred in giving weight to complainant's and BBB's inconsistent and incredible testimonies on the circumstances surrounding the rape incident; b) the prosecution was unable to prove that the alleged rape actually happened on April 2, 2015 because complainant, on cross, testified that it happened on March 16, 2015. Further, there was a conflict between complainant's testimony and BBB's, *i.e.* complainant said she immediately informed her mother about the incident, while BBB asserted she learned of the incident only on April 9, 2015; c) **complainant's actions during and**

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[18] *Id.* at 47-56.

[19] *Id.* at 56.

after the alleged rape incident were inconsistent with those of a real rape victim: she could have resisted and shouted for help considering she was already a twenty (20) year old woman. She even visited appellant at the vulcanizing shop two (2) days later and went with him to Baclaran on the following day; and d) his defense of denial has more weight considering the incredible testimonies of complainant and her mother.[20]

The Office of the Solicitor General (OSG), through Assistant Solicitor General Bernard Hernandez and Senior State Solicitor Ma. Zorayda Tejones-Zuñiga, countered that complainant's testimony sufficiently established all the elements of rape. She is a credible witness because no woman would concoct a story of defloration and allow the examination of her private parts in the process. The medico-legal report materially corroborated complainant's tale of sexual ravishment. Time is not an element of the crime of rape, thus, whether the incident happened on April 2, 2015, or on another date is immaterial. The inconsistencies between the testimonies of complainant and her mother hinge on minor details which do not deviate from the fact that the rape incident did occur. Also, the alleged grudge that BBB had against him is too trivial a reason to impel her and complainant to falsely charge him with rape. Appellant's story that he was in the vulcanizing shop at the time the rape happened does not hold water because the vulcanizing shop is only about eight (8) meters away from his house. Nor can his defense of denial be accorded credence. The award of civil indemnity and moral damages should be increased from ₱50,000.00 to ₱75,000.00 each. Complainant should also be awarded ₱30,000.00 as exemplary damages.[21]

The Ruling of the Court of Appeals

By its assailed Decision[22] dated February 7, 2018, the Court of Appeals affirmed in the main, with modification increasing

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

[21] *Id.* at 70-85.

[22] Supra note 1.

the awards of civil indemnity and moral damages to ₱75,000.00 each and awarding exemplary damages of ₱75,000.00.

The Present Appeal

Appellant now seeks anew a verdict of acquittal. Both appellant[23] and the OSG[24] manifested that, in lieu of their supplemental briefs, they were adopting their respective briefs in the Court of Appeals.

Issue

Did the Court of Appeals err in convicting appellant of rape?

Ruling

We acquit.

The general rule is that the lone testimony of the victim in a prosecution for rape, if credible, is sufficient to sustain a verdict of conviction. The rationale is that, owing to the nature of the offense, the only evidence that can be adduced to establish the guilt of the accused is usually only the offended party's testimony.[25]

Yet, the constitutional presumption of innocence of the accused demands no less than a moral certainty of his guilt free of reasonable doubt. More, the prosecution evidence must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the defense. The testimony of the complainant must be scrutinized with utmost caution, and unavoidably, her own credibility must also be put on trial.[26]

The crime of Rape is defined and penalized under Article 266-A of *The Revised Penal Code* (RPC), *viz.*:

Article 266-A. Rape: When And How Committed. - Rape is committed:

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[23] *Rollo*, pp. 17-19.

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

[25] *People v. Umanito*, 784 Phil. 581, 586 (2016).

[26] *People v. Rondina*, 737 Phil. 410, 419 (2014).

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat, or intimidation;

b) When the offended party is deprived of reason or otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority; and

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

x x x x

The elements of rape under paragraph 1 of Article 266-A of the RPC are: (1) the offender is **a man who had carnal knowledge of a woman**; and (2) he **accomplished such act through force or intimidation** upon her; or she is deprived of reason or otherwise unconscious; or she is under 12 years of age or is demented. The RTC and the CA both found that complainant's testimony clearly established appellant's **carnal knowledge of her against her will** by **employing threat and intimidation.**

There being only one witness to her harrowing experience, the Court must go over complainant's testimony with close scrutiny. Complainant testified on what happened to her on April 2, 2015:

Fiscal Castillo

Q: You said that you got frightened. What did you do when you got frightened after your Tito Raymundo threatened you to kill you if you don't go near him?

Witness:

A: I did not do anything. I just remained silent.

Fiscal Castillo:

Q: After you go near your Tito Raymundo, what did he do next?

Witness:

A: He removed all my clothes

Fiscal Castillo:

Q: What were you then wearing?

Witness:

A: I was wearing a short and a t-shirt.

Fiscal Castillo:

Q: How did your Tito Raymundo remove your clothes?

Witness:

A: He held both of my hands and then he cover[ed] my mouth.

Fiscal Castillo:

Q: What [did] he [use] in covering your mouth?

Witness:

A: His hands, Prosecutor.

Fiscal Castillo:

Q: Which hand?

Witness:

A: His right hand, Prosecutor.

Fiscal Castillo:

Q: Which hand [did] he [use] in holding your hand?

Witness:

A: Left hand, Prosecutor.

Fiscal Castillo:

Q: Now, how did your Tito Raymundo remove your clothes?

Witness:

A: HINAWAKAN NIYA NGA PO.

x x x x

Fiscal Castillo:

Q: Will you please demonstrate it to the Honorable Court?

Witness:

A: He used both of his hands in removing my clothes.

Fiscal Castillo:

Q: Which [was] [removed] first, your t-shirt o[f] your shorts?

Witness:

A: My T-shirt, Prosecutor.

Fiscal Castillo:

Q: And after your T-shirt was remove[d] by your Tito Raymundo, what did he do next?

Witness:

A: Then he remove[d] also my bra, Prosecutor.

Fiscal Castillo:

Q: And what else did he do after removing your bra?

Witness:

A: Then he remove[d] my shorts, Prosecutor.

Fiscal Castillo:

Q: While your Tito Raymundo [was] removing your clothes, referring to your t-shirt, bra and your shorts, what were you doing?

Witness:

A: Nothing, Prosecutor.

Fiscal Castillo:

Q: Why [did] [you] not shout?

Witness:

A: Because I was frightened at that time, Prosecutor.

Fiscal Castillo:

Q: Why [did] [you] not run away?

Witness:

A: NATAKOT NA NGA PO AKO KAMI LANG PONG DALAWA NUON.

x x x x

Q: What did your Tito Raymundo do after removing your t-shirt, bra and your shorts?

Witness:

A: BINABOY NIYA PO AKO.

Fiscal Castillo:

Q: What do you mean by your answer "BINABOY"? What exactly did he do to you?

Witness:

A: PINASOK NIYA PO YONG ARI NIYA SA ANO KO PO.

x x x x

Fiscal Castillo:

Q: What do you mean by your statement "ANO"?

Witness:

A: PINASOK NIYO PO YONG TETE NIYA SA HARAPAN KO PO.

x x x x

Fiscal Castillo:

Q: What do you mean by your statement "HARAPAN"?

Witness:

A: BINABOY NIYA PO AKO DAHIL MAY GUSTO PO SIYA SA AKIN.

x x x x

Fiscal Castillo:

Q: Will you please point to the Interpreter what part of your body were you referring when you said "HARAPAN KO PO"?

Witness:

A: Here. (And the witness is referring to her vagina).

Court:

So there was this insertion of the penis to the vagina of the witness.

Fiscal Castillo:

Q: What did you feel Madam Witness when your Tito Raymundo inserted his penis in your vagina?

Witness:

A: It was painful. There was pain.

Fiscal Castillo:

Q: And for how long the male organ of your Tito Raymundo remained inside your vagina?

Witness:

A: NANGHIHINA NA PO AKO NUON NOONG SINUOT NIYA PO.

x x x x

Fiscal Castillo:

Q: Why [did] [you] not shout to call the attention of the people outside while your Tito Raymundo [was] inserting his penis into your vagina?

Witness:

A: Because he was threatening me, Prosecutor.

Fiscal Castillo:

Q: In what manner was he threatening you then?

Witness:

A: He tightly [held] my hands and I could not go outside the house. KASI PO PAG LUMABAS PO AKO PAPATAYIN NIYA PO AKO.

Fiscal Castillo:

Q: What was your position Madam Witness when your Tito Raymundo [was] inserting his penis into your vagina?

Witness:

A: I was lying, Prosecutor.

x x x x

Q: Why were you then lying when your Tito Raymundo was removing your t-shirt, bra and shorts?

Witness:

A: NAGHIHINA NA NGA PO AKO.[27]

In reviewing the foregoing testimony, we adhere to the guidelines laid down in ***People v. XXX***,[28] *viz.*:

Specifically, for the review of rape cases, the Court has consistently adhered to the following established principles: **a) an accusation of rape can be made with facility; it is difficult to prove, but more difficult for the person accused, though innocent, to disprove; b) in view of the intrinsic nature of the crime where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and c) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.**

Following these principles, the Court has also refined how rape is proved. The credibility of the complainant is the single most important issue in the prosecution of rape cases. **The categorical and candid testimony of the complainant suffices, and a culprit may be convicted solely on the basis of her testimony, provided that it hurdles the test of credibility. It should not just come from the mouth of a credible witness, it should likewise be credible and reasonable in itself, candid, straightforward and in accord with human experience. Where the discrepancies and contradictory statements on important details in the testimony seriously impair its probative value, cast serious doubt on its credibility, and erode the integrity of the testimony, the Court should acquit the accused.**

It is true that the Court accords great respect to the trial court's findings on witnesses' credibility. This is because trial provides judges

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[27] CA *rollo*, pp. 48-51.

[28] 828 Phil. 770, 782-783 (2018).

with the opportunity to detect cues and expressions that could suggest sincerity or betray lies and ill will, not reflected in the documentary or object evidence. The exception, of course, is when the trial court and/or the CA overlooked or misconstrued substantial facts that could have affected the outcome of the case. (Emphasis supplied)

Stated differently, where the credibility and reliability of witnesses and their respective testimonies are key, then:

First, if you believe the evidence of the accused, obviously you must acquit.

Second, if you do not believe the testimony of the accused but you are left in reasonable doubt by it, you must acquit.

Third, even if you are not left in doubt by the evidence of the accused, you must ask yourself whether, on the basis of the evidence which you do accept, you are convinced beyond a reasonable doubt by that evidence of the guilt of the accused.[29]

While **we believe complainant's claim** of sexual intercourse with appellant, the prosecution evidence **does not prove beyond a reasonable doubt** that **this was the result of** or **was accomplished through force** or **intimidation** or **moral ascendancy.**

It is the **prosecution's burden to prove beyond a reasonable doubt the elements** of the crime of rape, which includes as above stated that an accused **had carnal knowledge of a complainant through force or intimidation**. **Lack of consent** through any of the modes mentioned in the RPC or case law as where moral ascendancy is involved **is not to be presumed**.

However, where an **accused alleges consent to the sexual act as a defense**, it is **his burden of evidence** to prove this allegation by **substantial evidence**. Thus:

Consensual sexual congress as an affirmative defense needs convincing proof such as love notes, mementos, and credible witnesses attesting to the consensual romantic relationship between the offender and his supposed victim. Having admitted to carnal knowledge of

[29] *R. v. Lake*, 2005 NSCA 162 (CanLII), <http://canlii.ca/t/1m8c8>, retrieved on 2019-07-01.

the complainant, the burden shifts to the appellant to prove his defense by substantial evidence.... Furthermore, even assuming arguendo, that there was some form of amorous relationship, such averment will not necessarily rule out the use of force or intimidation by appellant to have sex against her will.[30]

Here, appellant **did not raise** the affirmative defense of consensual sex. He in fact **denied having carnal knowledge** of complainant. Hence, it behooves the prosecution to prove each of the elements of rape **beyond a reasonable doubt**, especially that the **sex** between complainant and accused **occurred through force, intimidation or moral ascendancy**. This the **prosecution evidence distinctly failed**.

First. Complainant mentioned that appellant threatened her with a weapon. Interestingly, the type of weapon was never identified by complainant. She never described how it was used to threaten her. Instead, she proceeded to describe how she felt weak and felt that she had no other choice but to comply with appellant's directives. As her testimony progressed, there was no longer any mention of the purported weapon. Did appellant continue to threaten her with it? Did appellant bring it with him when they went to the bedroom? What did appellant do with the weapon while he was raping her? We will never know.

Surely, a person who has been threatened with a weapon will definitely remember what was used on him or her, especially in cases where a person is threatened to do something against his or her will, more so in the heinous crime of rape. Testimonial evidence, to be believed, must come not only from the mouth of a credible witness, but must also be credible, reasonable, and in accord with human experience. A credible witness must, therefore, be able to narrate a convincing and logical story.[31] In this case, the weapon disappeared from the narrative without

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[30] *People v. Mantis*, 477 Phil. 275, 287 (2004); *People v. Nogpo*, 603 Phil. 722 (2009); *People v. Pascua*, 453 Phil. 946 (2003).

[31] *Sps. De Leon v. Bank of the Philippine Islands*, 721 Phil. 839, 850 (2013).

any logical explanation. Such omission leads us to conclude that the "weapon" was contrived by complainant to give color to her claim that she was threatened by appellant.

Second. Intimidation is peculiarly addressed to the mind of the person against whom it may be employed, and its presence is basically incapable of being tested by any hard and fast rule. Intimidation is normally best viewed in the light of the perception and judgment of the victim at the time and occasion of the crime.[32]

Complainant's claim that she was intimidated into submitting herself to appellant's lewd designs is likewise incredible. True, appellant is her mother's cousin and exercises moral ascendancy over her. But, complainant was already 20 years old at the time and she was of sound body since she was able to work as a helper at a nearby canteen. She may be illiterate, but the same cannot be considered as equivalent to mental retardation. She is of sufficient mental aptitude and is perfectly capable of at least resisting appellant's advances, if indeed his advances were unwanted.

The rule is that in making a diagnosis of mental retardation, a thorough evaluation based on history, physical, and laboratory examination made by a clinician is necessary.[33] The reason for this requirement is well-explained in both medical and psychology literature: mental retardation is a recognized clinical syndrome usually traceable to an organic cause, which determinants are complex and multifactorial.[34] As the boundaries between normality and retardation are difficult to delineate, proper identification requires competent clinical evaluation of psychosomatic parameters in conjunction with medical and laboratory tests.[35]

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[32] See *People v. Mateo,* 588 Phil. 543, 558 (2008).

[33] *People v. Lamarroza,* 359 Phil. 440, 448-449 (1998).

[34] *Ibid.*

[35] *Ibid.*

Here, the record is bereft of any evidence that a comprehensive medical evaluation was had to properly determine complainant's mental status. There is as well no allegation about deficiencies in her mental state.

In the absence of a weapon, appellant's threat of killing her would have been an idle threat, or at least considerably less threatening. Complainant never once mentioned that appellant forcibly held her or pushed her to a lying position. Appellant only laid his hands on her when he covered her mouth and seemingly took his time in taking off her clothes. Also, nowhere is it indicated in her testimony that appellant continually threatened to kill her if she did not comply with his wishes. Not once did she resist appellant's advances. We note that appellant threatened complainant only once and before he made his move on her. We simply find it implausible that a single threat, a weak one at that, would immediately deprive a woman of her free will and immediately subject her to the whims and caprices of a man without even giving the slightest resistance.

Admittedly, not all victims react the same way. Some people may cry out, some may faint, some may be shocked into insensibility, while others may appear to yield to the intrusion. Some may offer strong resistance while others may be too intimidated to offer any resistance at all. Resistance is not an element of rape. A rape victim has no burden to prove that she did all within her power to resist the force or intimidation employed upon her. As long as the force or intimidation is present, whether it was more or less irresistible is beside the point.[36] But in this case, complainant's total passivity is baffling. Her narration of the events simply does not make sense and makes her testimony incredible.

Nor can moral ascendancy be considered to have supplanted force and intimidation in this case. For moral ascendancy can only be considered if rape of minor was committed by a close kin or a relative within the third civil degree by consanguinity or affinity. ***People v. Gacusan***[37] explains:

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[36] *People v. Bisora*, 810 Phil. 339, 344 (2017).

[37] 809 Phil. 773, 785-787 (2017).

Recent cases reiterating that moral ascendancy replaces violence or intimidation in rape committed by a close-kin cited *People v. Corpuz.*

In *Corpuz,* the accused was the live-in partner of the victim's mother. The victim, AAA, was 13 years old when accused Corpuz started raping her. The repeated rape incidents made AAA pregnant.

Accused Corpuz admitted his sexual encounters with AAA. He insisted, however, that he never forced himself to AAA since he even courted her. Similarly, he admitted that he was the father of AAA's child.

Nonetheless, this Court affirmed his conviction and held that:

> [I]n rape committed by a close kin, such as the victim's father, stepfather, uncle, or the common-law spouse of her mother, it is not necessary that actual force or intimidation be employed; moral influence or ascendancy takes the place of violence or intimidation.

In *People v. Fraga,* accused Fraga raped the daughters of his common-law partner. Fraga tried evading his conviction by shifting from his defense of alibi to lack of force or intimidation. While this Court affirmed Fraga's conviction since force and intimidation was sufficiently proven, it also emphasized that:

> [A]ccused-appellant started cohabiting with complainants' mother in 1987. As the common-law husband of their mother, he gained such moral ascendancy over complainants that any more resistance than had been shown by complainants cannot reasonably be expected.

In *People v. Robles,* accused Robles raped his common-law wife's daughter. This Court affirmed his conviction and likened Robles' moral ascendancy over the victim to that of a biological father; thus:

> Moral ascendancy and influence by the accused, stepfather of the 12 year-old complainant, and threat of bodily harm rendered complainant subservient to appellant's lustful desires... Actual force or intimidation need not even be employed for rape to be committed where the over powering influence of a father over his daughter suffices, (citations omitted)

Complainant is a full grown 20-year old woman at the time of her alleged sexual ravishment. More, appellant is not even

considered a close kin under the law, being her mother's cousin. Verily, moral ascendancy cannot be taken into account and considered as substitute for threat or intimidation.

Indeed, rape is essentially a crime committed through force or intimidation, that is, against the will of the female. It is also committed without force or intimidation when carnal knowledge of a female is alleged and shown to be without her consent. Carnal knowledge of the female with her consent is not rape, provided she is above the age of consent or is capable in the eyes of the law of giving consent. The female must not at any time consent; her consent, given at any time prior to penetration, however reluctantly given, or if accompanied with mere verbal protests and refusals, prevents the act from being rape, provided the consent is willing and free of initial coercion.[38] Here, there is no doubt that complainant had impliedly given her consent for appellant to have carnal knowledge of her. Her actions, or lack thereof for that matter, speaks for itself.

Third. The reasonable doubt on the nature of complainant and appellant's sexual congress is reinforced by their subsequent actuations. Time and again, this Court has emphasized that a woman's conduct immediately after the alleged assault is of critical value in gauging the truth of her accusations. It must coincide with logic and experience.[39] Here, complainant's actuations whenever she was with appellant are not those of a woman whose virtue had been outraged.

Complainant admitted that the following day, on April 3, 2015, she had gone to rendezvous with appellant to a balete tree. There, he hugged her, kissed her on the lips, fondled her breasts, and touched her vagina. He lay near her and slept. She never mentioned that she was threatened or forced to go with him. There is reasonable doubt that she voluntarily submitted to appellant's ministrations while shielded by the balete tree from prying eyes.

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[38] *People v. Amarela, et al.*, 823 Phil. 1188, 1211-1212 (2018).

[39] *People v. Laurente*, 406 Phil. 337, 348 (2001).

Again, on April 4, 2015, around 11 o'clock in the evening, she voluntarily went to the vulcanizing shop. She did not state that appellant threatened or compelled her to go to there in the middle of the night. When she got there, appellant locked the door of the shop and proposed to court her — which can be construed as an attempt to formalize, or at least put a label on, their relationship. She refused mainly because he is her alleged uncle, which caused appellant to get mad and stop talking to her. Again, the Court observes that the actuations of both parties are those of lovers trying to determine if they should move forward and have a deeper connection after their physical communion with each other.

Thereafter, on April 6, 2015, appellant promised to buy her a pair of slippers and dress in Baclaran. When they went there, he did not make good his promise, but made another promise to buy for her another time. He then took her to a place with many animals and kissed her there. This time, there is no doubt that complainant went with appellant willingly – this little excursion could even be considered a date. Complainant was apparently comfortable and at ease in appellant's company that she would allow herself to be seen in public with him and even be kissed by him.

Taking into account all the foregoing considerations, the Court concludes that there is reasonable doubt on the element of force, threat or intimidation in this case. There is no moral certainty as to the crime of rape to speak of.

Reasonable doubt may arise from the evidence adduced or from the lack of evidence, and it should pertain to the facts constitutive of the crime charged. While no test definitively determines what is reasonable doubt under the law, the view is that it must involve genuine and irreconcilable contradictions based, not on suppositional thinking, but on the hard facts constituting the elements of the crime.[40]

It has been repeatedly ruled that in criminal litigation, the evidence of the prosecution must stand or fall on its own merits

[40] *People v. Ramos*, 369 Phil. 84, 101 (1999).

and cannot draw strength from the weakness of the defense. The burden of proof rests on the prosecution. Thus, its failure to discharge its burden in this case entitles appellant to an acquittal[41] as a matter of right. Surely, where the evidence of the prosecution is concededly weak, even if the evidence for defense itself is equally weak, an accused must be duly accorded the benefit of the doubt in view of the constitutional presumption of innocence that an accused enjoys.[42]

ACCORDINGLY, the appeal is **GRANTED**. The assailed Decision dated February 7, 2018 of the Court of Appeals in CA-G.R. CR HC No. 08109 is **REVERSED** and **SET ASIDE**. Appellant **RAYMUNDO RAPIZ y CORREA** is **ACQUITTED** of rape on ground of **REASONABLE DOUBT**.

The Director of the National Bilibid Prisons, Muntinlupa City, Metro Manila is ordered to immediately **RELEASE RAYMUNDO RAPIZ y CORREA** from detention unless he is being held in custody for some other lawful cause; and to **REPORT** to this Court his compliance within five (5) days from notice.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa, Reyes, Jr., and *Gaerlan,*[*] *JJ.,* concur.

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[41] *People v. Tionloc,* 805 Phil. 907, 920 (2017).

[42] *Astorga v. People,* 480 Phil. 585, 596 (2004).

[*] Designated as additional member vice J. Mario V. Lopez.

FIRST DIVISION

[G.R. No. 240882. September 16, 2020]

WILFREDO T. MARIANO, *Petitioner, v.* **G.V. FLORIDA TRANSPORT and/or VIRGILIO FLORIDA, JR.,** *Respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; FILING AND SERVICE OF PLEADINGS; REQUIRED PROOF OF FILING AND SERVICE; REGISTRY RECEIPT WITHOUT THE AFFIDAVIT OF THE PERSON WHO MAILED THE PLEADING IS INSUFFICIENT.— [W]e do not agree with the NLRC and the CA that respondents sufficiently justified the belated submission of their position paper as regards Mariano. Under Section 12, Rule 12 of the Rules of Court, when the existence of a pleading filed by registered mail is at issue, proof of such filing consists of: (1) the registry receipt issued by the mailing office; **and** (2) an affidavit of the person mailing the pleading containing a full statement of the date, place, and manner of service. Here, respondents submitted Registry Receipt No. 3252 issued on September 14, 2015 but not the affidavit of the person who mailed the pleading. The affidavit could have explained that two position papers were filed by registered mail by depositing them in one sealed envelope and mailing the same to the Office of the LA. As the party to whom the burden of proof to show that the position paper pertaining to Mariano was mailed and received by the addressee lay, respondents could have presented the affidavit of its messenger to satisfy the requirements of the Rules of Court. Respondents did not offer any explanation.

Additionally, respondents failed to comply with the requirements of proper proof of service under Section 13, Rule 13 of the Rules of Court. Respondents only attached Registry Receipt No. 3252 without the affidavit of the person mailing. We note that Mariano consistently raised in his Motion for Reconsideration to the NLRC and in his appeal to the CA the non-service of position paper to him thus violating his right to file a reply. Unfortunately, the NLRC and the CA did not rule

on the matter. We stress that if the service is done by registered mail, proof of service shall consist of the affidavit of the person effecting the mailing and the registry receipt, both of which must be appended to the paper being served. Absent one or the other, or worse both, there is no proof of service.

2. **ID.; ID.; RELAXATION OF TECHNICAL RULES; IN LABOR CASES, THE APPLICATION OF TECHNICAL RULES OF PROCEDURE MAY BE RELAXED.—** The procedural flaws notwithstanding, especially considering that this is a labor case, the ends of substantial justice would be better served by relaxing the application of technical rules of procedure. Technicalities should not be permitted to stand in the way of equitably and completely resolving the rights and obligations of the parties. This Court reiterates that where the ends of substantial justice would be better served, the application of technical rules of procedure may be relaxed.

3. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; FACETS OF DISMISSAL FROM EMPLOYMENT; REQUIRED QUANTUM OF EVIDENCE.—** Dismissal from employment has two facets: first, the legality of the act of dismissal, which constitutes substantive due process; and second, the legality of the manner of dismissal, which constitutes procedural due process. The burden of proof rests upon the employer to show that the disciplinary action was made for lawful cause or that the termination of employment was valid. In administrative and quasi-judicial proceedings, the quantum of evidence required is substantial evidence or "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Thus, unsubstantiated suspicions, accusations, and conclusions of the employer do not provide legal justification for dismissing the employee.

4. **ID.; ID.; ID.; ID.; JUST CAUSES FOR DISMISSAL; SERIOUS MISCONDUCT; ELEMENTS THAT MUST CONCUR FOR SERIOUS MISCONDUCT TO BE A VALID CAUSE FOR DISMISSAL; REPEATED AND NUMEROUS INFRACTIONS MAY BE SUBSUMED AS SERIOUS MISCONDUCT.—** For serious misconduct to be a just cause for dismissal, the concurrence of the following elements is required: (a) the misconduct must be serious; (b) it must relate

to the performance of the employee's duties showing that the employee has become unfit to continue working for the employer; and (c) it must have been performed with wrongful intent.

Here, respondents presented sufficient evidence to prove that Mariano committed numerous infractions of company rules and regulations since he started working with Florida Transport. . . . The repeated and numerous infractions committed by Mariano in driving the passenger bus assigned to him cannot be considered minor. The Court is entitled to take judicial notice of the gross negligence and the appalling disregard of the physical safety and property of others so commonly exhibited today by the drivers of passenger buses. Taking into account the nature of Mariano's job, the infractions are too numerous to be ignored or treated lightly and may already be subsumed as serious misconduct. Accordingly, this Court holds that Mariano was validly dismissed from employment on the ground of serious misconduct.

5. ID.; ID.; ID.; ID.; DISMISSAL WITHOUT PROCEDURAL DUE PROCESS; WHERE THE EMPLOYEE'S DISMISSAL IS FOR A JUST CAUSE BUT THE EMPLOYER DID NOT COMPLY WITH THE PROCEDURAL DUE PROCESS REQUIREMENTS, THE EMPLOYEE IS ENTITLED TO NOMINAL DAMAGES.— Respondents failed to afford Mariano the first written notice containing the specific causes or grounds for termination against him. Admittedly, Mariano submitted a lengthy explanation letter dated June 3, 2015 explaining his side on the incident that transpired two months back. We stress, however, that the burden of proving compliance with the notice requirement falls on the employer. The notice to the employee should embody the particular acts or omissions constituting the grounds for which the dismissal is sought, and that an employee may be dismissed only if the grounds cited in the pre-dismissal notice were the ones cited for the termination of employment. Thus, it was erroneous for the CA to "safely infer" that respondents duly notified Mariano and apprised him of the particular act for which his dismissal was sought just because Mariano submitted an explanation letter. In *Loadstar Shipping Co., Inc. v. Mesano,* we held that the employee's written explanation did not excuse the fact that there was a complete absence of the first notice. We sanctioned the employer for disregarding the due process requirements.

Where the dismissal is for a just cause, as in this case, the lack of statutory due process will not nullify the dismissal, or render it illegal or ineffectual. The employer will not be required to pay the employee back wages. However, the employer should indemnify the employee for the violation of his statutory right in the form of nominal damages in the amount of ₱30,000.00 in accordance with prevailing jurisprudence.

6. ID.; ID.; ID.; ID.; REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; WHEN THE EMPLOYEE ALLEGES NON-PAYMENT, THE BURDEN RESTS ON THE EMPLOYER TO PROVE PAYMENT; REASON THEREOF; CASE AT BAR.— The general rule is that the one who pleads payment has the burden of proving it. When the employee alleges non-payment, the burden rests on the employer to prove payment rather than on the employee to prove non-payment. The reason for the rule is that the pertinent personnel files, payrolls, records, remittances, and other similar documents are not in the possession of the employee but are in the custody and control of the employer. Here, respondents failed to disprove non-payment of wages for two round trips by presenting cash vouchers or documentary proofs that Mariano did not report for work or drive his assigned bus. Thus, Mariano is entitled to his claim for unpaid wages in the amount of ₱6,800.00 equivalent to two round trips.

7. ID.; ID.; ID.; ID.; 13TH MONTH PAY; AN EMPLOYEE WHOSE SERVICES WERE TERMINATED BEFORE THE PAYMENT OF THE 13TH MONTH PAY IS ENTITLED TO A PROPORTIONAL AMOUNT THEREOF WITH LEGAL INTEREST.— As regards the 13th month pay, an employee who has resigned, or whose services were terminated at any time before the payment of the 13th month pay, is entitled to this monetary benefit in proportion to the length of time he worked during the year, reckoned from the time he started working during the calendar year up to the time of his resignation or termination from the service. Considering that Mariano was terminated in June 2015, and there is no showing that the amount was paid, we sustain the proportionate 13th month pay awarded by the NLRC, as affirmed by the CA, in the amount of ₱3,150.00. Legal interest at the rate of 6% *per annum* is imposed on the total monetary award from the finality of this Decision until full payment.

8. ID.; ID.; ID.; ID.; COMPANY OFFICIALS CANNOT BE HELD SOLIDARILY LIABLE WITH THE CORPORATION FOR THE TERMINATION OF EMPLOYMENT ABSENT ANY SHOWING OF MALICE OR BAD FAITH.— [A]s to the propriety of impleading Virgilio Florida, Jr., the owner and manager of Florida Transport, we stress that company officials cannot be held solidarily liable with the corporation for the termination of the employee's employment absent any showing that the dismissal was attended with malice or bad faith. Other than his act of signing the termination letter, there is nothing in the records that show that Virgilio acted maliciously or in bad faith in dismissing Mariano.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Jose de Luna for respondents.

D E C I S I O N

LOPEZ, *J.*:

This resolves the Petition for Review on *Certiorari*[1] filed under Rule 45 of the Rules of Court assailing the Decision[2] dated October 26, 2017 and Resolution[3] dated July 12, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 146334 which affirmed the Decision[4] dated January 28, 2016 and Resolution[5] dated March 30, 2016 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 01-000385-16 (4) finding the dismissal of Wilfredo T. Mariano valid.

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[1] *Rollo*, pp. 11-24.

[2] *Id.* at 30-41; penned by Associate Justice Rosmari D. Carandang (now Member of this Court), with the concurrence of Associate Justices Stephen C. Cruz and Nina G. Antonio-Valenzuela.

[3] *Id.* at 44-46.

[4] *Id.* at 208-216; penned by Presiding Commissioner Gregorio O. Bilog, III, with the concurrence of Commissioners Erlinda T. Agus and Alan A. Ventura.

[5] *Id.* at 229-230.

ANTECEDENTS

The controversy stemmed from a Complaint[6] for illegal dismissal, non-payment of wages for two round trips and 13th month, refund of cash bond, damages and attorney's fees filed by Mariano and Francisco C. Arellano against G.V. Florida Transport and its owner, Virgilio Florida, Jr. Only Mariano filed the instant petition before this Court.

In his position paper, Mariano alleged that he was a bus driver for Florida Transport since August 5, 2005, receiving ₱3,400.00 *per* round trip plus commission, and plying the routes of Gonzaga, Cagayan to Metro Manila and *vice versa*.[7] On May 31, 2015, Mariano was preparing to leave the main station at Sampaloc, Manila when a representative from the head office of Florida Transport instructed him to alight from his assigned bus. Mariano was not allowed to continue the supposed trip to Gonzaga, Cagayan. The next day, Mariano reported for work but he was advised not to come to work in the meantime. He was told that the company will just send him an e-mail as to when he will be given a bus assignment.

On December 11, 2015, Labor Arbiter (LA) Ma. Lourdes R. Baricaua ruled that Mariano's allegations were deemed admitted because respondents failed to file their position paper relative to him.[8] The LA ordered respondents to pay Mariano his money claims in the total amount of ₱267,486.67, as follows:

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

[7] See *id.* at 127-128.

[8] *Id.* at 127-133. The dispositive portion of the Decision reads:

WHEREFORE, in view of the foregoing, **JUDGMENT** is hereby rendered declaring complainant **WILFREDO T. MARIANO** illegally dismissed while complainant **FRANCISCO C. ARELLANO** was validly dismissed. However, both are entitled to their meritorious money claims. Consequently, respondent **G.V. FLORIDA TRANSPORTATION** through **VIRGILIO FLORIDA, JR.** is hereby **ORDERED** to pay complainants the following:

1. Wilfredo T. Mariano — ₱267,486.67

2. Francisco C. Arellano — 32,428.00

Separation pay [₱252.00 x 30 days = ₱7,560.00 x 20 years]	₱151,200.00
Backwages [₱7,560.00 x 7.63 months]	₱57,682.00
Proportionate 13th month pay [₱57,682.80/12]	₱4,806.90
Unpaid wages — 2 round trips [₱3,400.00 x 2]	₱6,800.00
13th month pay — 3 recent years [₱7,560.00 x 3]	₱22,680.00
Attorney's fees [10% of total awards]	₱24,316.97[9]

In their appeal to the NLRC, respondents averred that they filed their position paper with respect to the claim of Mariano.[10] They prepared separate position papers for Mariano and Arellano, placed the two position papers in one sealed envelope, and mailed the envelope to the Office of the LA under Registry Receipt No. 3253. It was then impossible for the LA to receive only the position paper pertaining to Arellano.

On January 28, 2016, the NLRC admitted respondents' position paper. The NLRC ruled that respondents adequately explained the reason for the belated submission of evidence and that the pieces of documentary evidence attached to the position paper were material to establish respondents' cause.[11] The NLRC found that Mariano was involved in several reckless driving incidents that constitute misconduct — a just cause for dismissal. However, for failure to prove the dates when Mariano actually reported for work, the NLRC limited the award to proportionate 13th month pay, *viz.*:

WHEREFORE, premises considered, judgment is hereby rendered:

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or a total sum of **TWO HUNDRED NINETY NINE THOUSAND NINE HUNDRED FOURTEEN PESOS & 67/100 (₱299,914.67)**, Philippine Currency, representing separation pay, backwages, proportionate 13th month pay to complainant **Wilfredo T. Mariano** and 13th month pay, unpaid wages and attorney's fees to both complainants, within ten (10) calendar days from receipt hereof.

All other claims are hereby dismissed for lack of merit and basis.

SO ORDERED. *Id.* at 132-133. (Emphasis in the original.)

[9] *Id.* at 204.

[10] *Id.* at 140-143.

[11] *Supra* note 4.

1. REVERSING the Decision of Labor Arbiter Baric[a]ua with respect to complainant/appellee Wilfredo Mariano as this Office finds him to have been validly dismissed;

x x x x

3. ORDERING the payment of proportionate 13th month pay for Mariano in the amount of ₱3,150.00 x x x.

SO ORDERED.[12]

Failing to secure reconsideration,[13] Mariano appealed to the CA.

On October 26, 2017, the CA dismissed the petition for lack of merit.[14] The CA ruled that respondents amply explained the circumstances leading to the submission of the position paper and evidence on their appeal to the NLRC. There was a valid ground to dismiss Mariano and the respondents complied with the two-notice requirement under the Labor Code. Mariano sought reconsideration but was denied on July 12, 2018.[15]

Hence, this petition.

Mariano argues that respondents failed to justify the belated submission of their position paper with respect to him. More, he was not furnished with a copy of the position paper. Mariano insists that he was not given the first notice to explain as required by law, there was no hearing or conference to afford him an opportunity to present evidence to support his claim, and he did not receive the notice of termination. Finally, respondents

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[12] *Rollo*, pp. 215-216.

[13] *Supra* note 5.

[14] *Supra* note 2. The dispositive portion of the Decision reads:
WHEREFORE, in view of the foregoing consideration, the Petition is **DISMISSED** for lack of merit.
SO ORDERED. *Rollo*, p. 40. (Emphasis in the original.)

[15] *Supra* note 3. The dispositive portion of the Resolution reads:
WHEREFORE, in view of the foregoing consideration, the Motion for Reconsideration is **DENIED** for lack of merit.
SO ORDERED. *Id.* at 46. (Emphasis in the original.)

failed to substantiate his alleged cumulative infractions of company rules for reckless driving that warranted his dismissal.

In their Comment,[16] respondents counter that the NLRC, as affirmed by the CA, properly admitted their position paper. Further, the procedural and substantive requirements of due process were complied with. Meanwhile, Mariano reiterated in his Reply[17] that there was no legal ground to dismiss him and he was not afforded due process.

RULING

The petition is partly meritorious.

First off, labor tribunals, such as the NLRC, are not precluded from receiving evidence submitted on appeal as technical rules are not binding in cases submitted before them.[18] There is, however, a caveat to this policy. The delay in the submission of evidence should be adequately explained, the evidence adduced must be undeniably material to the cause of a party, and the subject evidence should sufficiently prove the allegations sought to be established.[19]

In the present case, we do not agree with the NLRC and the CA that respondents sufficiently justified the belated submission of their position paper as regards Mariano. Under Section 12,[20]

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[16] *Id.* at 275-281.

[17] *Id.* at 306-312.

[18] *Misamis Oriental II Electric Service Cooperative (MORESCO II) v. Cagalawan*, 694 Phil. 268, 281 (2012); *Clarion Printing House, Inc. v. NLRC*, 500 Phil. 61, 76-77 (2005); *Tanjuan v. Phil. Postal Savings Bank, Inc.*, 457 Phil. 993, 1004 (2003); *Phil. Industrial Security Agency Corp. v. Dapiton*, 377 Phil. 951 (1999).

[19] *Pelagio v. Philippine Transmarine Carriers, Inc.*, G.R. No. 231773, March 11, 2019, citing *Magsaysay Maritime Corp. v. Cruz*, 786 Phil. 457 (2016); see also *Princess Talent Center Production, Inc. v. Masagca*, G.R. No. 191310, April 11, 2018, 860 SCRA 602; *Anabe v. Asian Construction*, 623 Phil. 857 (2009); and *AG & P United Rank & File Association v. National Labor Relations Commission*, 332 Phil. 937 (1996).

[20] RULES OF COURT (1997), Rule 12, Section 12.

Rule 12 of the Rules of Court, when the existence of a pleading filed by registered mail is at issue, proof of such filing consists of: (1) the registry receipt issued by the mailing office; **and** (2) an affidavit of the person mailing the pleading containing a full statement of the date, place, and manner of service. Here, respondents submitted Registry Receipt No. 3252[21] issued on September 14, 2015 but not the affidavit of the person who mailed the pleading. The affidavit could have explained that two position papers were filed by registered mail by depositing them in one sealed envelope and mailing the same to the Office of the LA. As the party to whom the burden of proof to show that the position paper pertaining to Mariano was mailed and received by the addressee lay, respondents could have presented the affidavit of its messenger to satisfy the requirements of the Rules of Court.[22] Respondents did not offer any explanation.

Additionally, respondents failed to comply with the requirements of proper proof of service under Section 13,[23]

Sec. 12. Proof of filing. — The filing of a pleading or paper shall be proved by its existence in the record of the case. If it is not in the record, but is claimed to have been filed personally, the filing shall be proved by the written or stamped acknowledgement of its filing by the clerk of court on a copy of the same; **if filed by registered mail, by the registry receipt and by the affidavit of the person who did the mailing, containing a full statement of the date and place of depositing the mail in the post office in a sealed envelope addressed to the court**, with postage fully prepaid, and with instructions to the postmaster to return the mail to the sender after ten (10) days if not delivered. (Emphasis supplied.)

[21] *Rollo*, pp. 165-171.

[22] See *American Express Int'l., Inc. v. Judge Sison, et al.*, 591 Phil. 182 (2008).

[23] RULES OF COURT (1997), Rule 13, Section 13.

Section 13. Proof of service. — Proof of personal service shall consist of a written admission of the party served or the official return of the server, or the affidavit of the party serving, containing a full statement of the date, place and manner of service. If the service is by ordinary mail, proof thereof shall consist of an affidavit of the person mailing of facts showing compliance with section 7 of this Rule. **If service is made by registered mail, proof shall be made by such affidavit and registry receipt issued by the mailing office. The registry return card shall be filed immediately upon its**

Rule 13 of the Rules of Court. Respondents only attached Registry Receipt No. 3252[24] without the affidavit of the person mailing. We note that Mariano consistently raised in his Motion for Reconsideration[25] to the NLRC and in his appeal to the CA the non-service of position paper to him thus violating his right to file a reply.[26] Unfortunately, the NLRC and the CA did not rule on the matter. We stress that if the service is done by registered mail, proof of service shall consist of the affidavit of the person effecting the mailing and the registry receipt, both of which must be appended to the paper being served.[27] Absent one or the other, or worse both, there is no proof of service.[28] In *Valley Golf and Country Club, Inc. v. Dr. Reyes*,[29] we emphasized that registry receipt *per se* does not constitute proof of receipt. Undoubtedly, Registry Receipt No. 3252 is not conclusive proof that respondents served a copy of their position paper to Mariano, nor is it conclusive proof that Mariano received its copy of the position paper. Respondents should have submitted an affidavit proving that they mailed the position paper together with the registry receipt issued by the post office. Thereafter, they should have immediately filed the registry return card. They did not.

The procedural flaws notwithstanding, especially considering that this is a labor case, the ends of substantial justice would be better served by relaxing the application of technical rules

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receipt by the sender, or in lieu thereof the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee. (Emphasis supplied.)

[24] *Rollo*, p. 171.

[25] *Id.* at 217-224.

[26] *Id.* at 57.

[27] *Lisondra v. Megacraft International Corp., et al.*, 775 Phil. 310, 317 (2015), citing *Cruz v. Court of Appeals*, 436 Phil. 641, 652 (2002).

[28] *Valley Golf and Country Club, Inc. v. Dr. Reyes*, 772 Phil. 458, 466 (2015).

[29] *Id.*, citing *Petition for Habeas Corpus of Benjamin Vergara v. Gedorio, Jr.*, 450 Phil. 623, 634 (2003).

of procedure.[30] Technicalities should not be permitted to stand in the way of equitably and completely resolving the rights and obligations of the parties. This Court reiterates that where the ends of substantial justice would be better served, the application of technical rules of procedure may be relaxed.[31]

We now proceed to discuss the merits of the case.

Dismissal from employment has two facets: first, the legality of the act of dismissal, which constitutes substantive due process; and second, the legality of the manner of dismissal, which constitutes procedural due process.[32] The burden of proof rests upon the employer to show that the disciplinary action was made for lawful cause or that the termination of employment was valid. In administrative and quasi-judicial proceedings, the quantum of evidence required is substantial evidence or "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Thus, unsubstantiated suspicions, accusations, and conclusions of the employer do not provide legal justification for dismissing the employee.

As to the substantive aspect, respondents terminated Mariano's employment on the ground of serious misconduct. For serious misconduct to be a just cause for dismissal, the concurrence of the following elements is required: (a) the misconduct must be serious; (b) it must relate to the performance of the employee's duties showing that the employee has become unfit to continue working for the employer; and (c) it must have been performed with wrongful intent.[33]

Here, respondents presented sufficient evidence to prove that Mariano committed numerous infractions of company rules and

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[30] *Panaga v. Court of Appeals*, 534 Phil. 809, 816 (2006).

[31] *Garcia v. PAL, Inc.*, 498 Phil. 808, 824 (2005), citing *Tres Reyes v. Maxim's Tea House*, 446 Phil. 388 (2003).

[32] *Maula v. Ximex Delivery Express, Inc.*, 804 Phil. 365, 378 (2017), citing *NDC Tagum Foundation, Inc. v. Sumakote*, 787 Phil. 67 (2016).

[33] *Imasen Philippine Manufacturing Corporation v. Alcon, et al.*, 746 Phil. 172, 181 (2014).

regulations since he started working with Florida Transport. The infractions can be traced as far back as 2002[34] up to the time he was rehired in 2008[35] when he admitted to hitting a concrete mixer truck in Baliuag, Bulacan. In the year 2009,[36] the side mirror of Mariano's assigned bus was destroyed while he was trying to overtake another bus; and in 2013,[37] he had an altercation with an inspector of Florida Transport for which he was meted a penalty of suspension. The last infraction was in March 2015 when he figured in a vehicular accident that caused injuries to his passengers.[38] The repeated and numerous infractions committed by Mariano in driving the passenger bus assigned to him cannot be considered minor. The Court is entitled to take judicial notice of the gross negligence and the appalling disregard of the physical safety and property of others so commonly exhibited today by the drivers of passenger buses.[39] Taking into account the nature of Mariano's job, the infractions are too numerous to be ignored or treated lightly and may already be subsumed as serious misconduct.[40] Accordingly, this Court holds that Mariano was validly dismissed from employment on the ground of serious misconduct.

Be that as it may, respondents did not comply with the procedural requirements of due process as laid down in *King of Kings Transport, Inc. v. Mamac*,[41] *viz.*:

To clarify, the following should be considered in terminating the services of employees:

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[34] *Rollo*, p. 156.

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

[36] *Id.* at 159.

[37] *Id.* at 160.

[38] *Id.* at 163.

[39] *Kapalaran Bus Line v. Coronado*, 257 Phil. 797, 807 (1989).

[40] *Quiambao v. Manila Electric Railroad and Light Company*, 623 Phil. 416 (2009).

[41] 553 Phil. 108 (2007).

(1) The **first written notice** to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.

(2) After serving the first notice, the employers should schedule and conduct a **hearing** or **conference** wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.

(3) After determining that termination of employment is justified, the employers shall serve the employees a **written notice of termination** indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment.[42] (Emphasis in the original; citations omitted.)

Respondents failed to afford Mariano the first written notice containing the specific causes or grounds for termination against him. Admittedly, Mariano submitted a lengthy explanation

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

letter[43] dated June 3, 2015 explaining his side on the incident that transpired two months back. We stress, however, that the burden of proving compliance with the notice requirement falls on the employer. The notice to the employee should embody the particular acts or omissions constituting the grounds for which the dismissal is sought, and that an employee may be dismissed only if the grounds cited in the pre-dismissal notice were the ones cited for the termination of employment.[44] Thus, it was erroneous for the CA to "safely infer" that respondents duly notified Mariano and apprised him of the particular act for which his dismissal was sought just because Mariano submitted an explanation letter.[45] In *Loadstar Shipping Co., Inc. v. Mesano*,[46] we held that the employee's written explanation did not excuse the fact that there was a complete absence of the first notice. We sanctioned the employer for disregarding the due process requirements.

Where the dismissal is for a just cause, as in this case, the lack of statutory due process will not nullify the dismissal, or render it illegal or ineffectual.[47] The employer will not be required to pay the employee back wages. However, the employer should indemnify the employee for the violation of his statutory right in the form of nominal damages in the amount of ₱30,000.00 in accordance with prevailing jurisprudence.[48]

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[43] *Supra* note 38.

[44] *Sy, et al. v. Neat, Inc., et al.*, 821 Phil. 751, 776 (2017), citing *Glaxo Wellcome Phils., Inc. v. Nagkakaisang Empleyado ng Wellcome-DFA*, 493 Phil. 410, 427 (2005).

[45] *Rollo*, p. 39.

[46] 455 Phil. 936 (2003).

[47] *Aparece v. J. Marketing Corp. and/or Aguillon*, 590 Phil. 653 (2008).

[48] See *Benitez v. Santa Fe Moving and Relocation Services, et al.*, 758 Phil. 557 (2015); *Libcap Marketing Corp., et al. v. Baquial*, 737 Phil. 349 (2014); *Unilever Philippines, Inc. v. Rivera*, 710 Phil. 124 (2013); *Mantle Trading Services, Inc. and/or Del Rosario v. NLRC, et al.*, 611 Phil. 570 (2009); *King of Kings Transport, Inc. v. Mamac*, *supra* note 41; *Agabon v. NLRC*, 485 Phil. 248 (2004).

With respect to Mariano's claim for unpaid wages equivalent to two round trips and 13th month pay, this Court finds the claim in order. In *RTG Construction, Inc. and/or Go/Russet Construction and Dev't. Corp. v. Facto*[49] and in *Agabon v. NLRC*,[50] we awarded the employee his money claims despite the dismissal was for a just cause.

The general rule is that the one who pleads payment has the burden of proving it. When the employee alleges non-payment, the burden rests on the employer to prove payment rather than on the employee to prove non-payment. The reason for the rule is that the pertinent personnel files, payrolls, records, remittances, and other similar documents are not in the possession of the employee but are in the custody and control of the employer.[51] Here, respondents failed to disprove non-payment of wages for two round trips by presenting cash vouchers or documentary proofs that Mariano did not report for work or drive his assigned bus. Thus, Mariano is entitled to his claim for unpaid wages in the amount of ₱6,800.00 equivalent to two round trips. As regards the 13th month pay, an employee who has resigned, or whose services were terminated at any time before the payment of the 13th month pay, is entitled to this monetary benefit in proportion to the length of time he worked during the year, reckoned from the time he started working during the calendar year up to the time of his resignation or termination from the service.[52] Considering that Mariano was terminated in June 2015,[53] and there is no showing that the amount was paid, we sustain the proportionate 13th month pay awarded by the NLRC, as affirmed by the CA, in the amount of ₱3,150.00. Legal interest at the rate of 6% *per annum* is imposed on the total monetary award from the finality of this Decision until full payment.[54]

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[49] 623 Phil. 511 (2009), cited in *Villanueva v. Ganco Resort and Recreation, Inc.*, G.R. No. 227175, January 8, 2020.

[50] *Supra*.

[51] *Villar v. NLRC*, 387 Phil. 706 (2000).

[52] *St. Michael Academy v. NLRC*, 354 Phil. 491 (1998).

[53] See *rollo*, p. 192.

[54] *Nacar v. Gallery Frames, et al.*, 716 Phil. 267 (2013).

Finally, as to the propriety of impleading Virgilio Florida, Jr., the owner and manager of Florida Transport, we stress that company officials cannot be held solidarily liable with the corporation for the termination of the employee's employment absent any showing that the dismissal was attended with malice or bad faith.[55] Other than his act of signing the termination letter, there is nothing in the records that show that Virgilio acted maliciously or in bad faith in dismissing Mariano.

FOR THESE REASONS, the Petition for Review on *Certiorari* is **PARTLY GRANTED**. The Decision dated October 26, 2017 and Resolution dated July 12, 2018 of the Court of Appeals in CA-G.R. SP No. 146334 are **MODIFIED**. G.V. Florida Transport is **DIRECTED** to indemnify Wilfredo T. Mariano ₱30,000.00 as nominal damages for failure to comply with the due process requirement in terminating his employment, ₱6,800.00 as unpaid wages, and ₱3,150.00 as proportionate 13th month pay. The total monetary award shall be subject to legal interest at the rate of 6% *per annum* from the finality of this decision until full payment.

SO ORDERED.

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

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[55] *Coca-Cola Bottlers Phils., Inc. v. Daniel*, 499 Phil. 491, 512 (2005), citing *AHS/Phil., Inc. v. CA*, 327 Phil. 129, 142 (1996); *Santos v. NLRC*, 325 Phil. 145 (1996); *Pabalan v. National Labor Relations Commission*, 263 Phil. 434 (1990); *Bogo-Medellin Sugarcane Planters Asso., Inc. v. National Labor Relations Commission*, 357 Phil. 110 (1998).

FIRST DIVISION

[G.R. No. 241363. September 16, 2020]

TERESITA B. RAMOS, *Petitioner, v.* **ANNABELLE B. ROSELL AND MUNICIPALITY OF BAGANGA, DAVAO ORIENTAL,** *Respondents*.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; NEWLY-DISCOVERED EVIDENCE, REQUISITES TO BE ADMISSIBLE; POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; THE SUBSTITUTE PERSONAL DATA SHEET (PDS) IS ADMISSIBLE AS NEWLY DISCOVERED EVIDENCE AND IS A MATERIAL EVIDENCE THAT COULD HAVE ALTERED THE DECISION IN THIS CASE.— Newly-discovered evidence may be admissible in evidence if the following requisites are present: (1) that the evidence was discovered after trial; (2) that the evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; (3) that it is material, not merely cumulative, corroborative or impeaching; and (4) that the evidence is of such weight that, if admitted, would probably change the judgment. It is essential that the offering party exercised reasonable diligence in seeking to locate the evidence before or during the trial but nonetheless failed to secure it. Here, the substitute PDS meets the criteria for newly discovered evidence.

As early as in her Answer to the formal charge issued by the CSC RO No. XI, Ramos already raised the existence of the substitute PDS claiming that she submitted a new PDS to replace the March 28, 2005 PDS. . . . Unfortunately, the substitute PDS could not be found in the records of the HRMO of the Municipality of Baganga. It was only after the CSC RO No. XI issued its Decision finding Ramos guilty of the administrative charges, and after Ramos reiterated in her Motion for Reconsideration the existence of the substitute PDS, that Ramos was provided by the HRMO with a copy of the substitute PDS. In the circumstances, we are convinced that Ramos diligently searched and exerted earnest efforts to locate the substitute PDS and

produce it during the administrative hearings. Most importantly, the substitute PDS is material evidence that if admitted, could have altered the decision of the CSC finding her guilty of the administrative offenses.

2. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; DISHONESTY; DISHONESTY IS A QUESTION OF INTENTION THAT CAN BE ASCERTAINED FROM ONE'S CONDUCT AND OUTWARD ACTS.— As an administrative offense, dishonesty is defined as the concealment or distortion of truth in a matter of fact relevant to one's office or connected with the performance of his duty. It is the "disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity, lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray." Dishonesty requires malicious intent to conceal the truth or to make false statements. In short, dishonesty is a question of intention. Although this is something internal, we can ascertain a person's intention not from his own protestation of good faith, which is self-serving, but from the evidence of his conduct and outward acts.

3. ID.; ID.; ID.; ID.; THE ABSENCE OF BAD FAITH AND INTENT TO DECEIVE, NEGATES A FINDING OF SERIOUS DISHONESTY; CASE AT BAR.— The totality of circumstances, in this case, negates Ramos' bad faith and intent to deceive when she accomplished her May 21, 1999 and March 28, 2005 PDS, and the substitute PDS. . . .

The **rating of 80.03** was written in the March 28, 2005 PDS *only*, and thereafter deleted in the substitute PDS on the same day. . . .

As to her eligibility status, Ramos explained that she wrote "**C.S. Sub-Professional**" in the May 21, 1999 PDS and March 28, 2005 PDS because she was of the impression that a BOE is equivalent to a career service eligibility. . . .

Noteworthy is Item No. 11, Part V of CSC Memorandum Circular No. 12, s. 2003 which states that "*x x x BOE shall be considered appropriate for appointment to first level positions in the career service, except positions covered by board laws and/or those that require other special eligibilities as determined by the Commission or those that require licenses x x x*." In the

July 12, 2011 letter of Annabelle Rosell, Director IV of the CSC, to the Municipal Mayor of the Municipality of Baganga, she stated that Ramos is qualified for the position of Computer Operator IV based on her credentials. The position required "Career Service (Subprofessional) First Level Eligibility" and CSC records show that Ramos' eligibility is "Barangay Official Eligibility (First Level Eligibility)." These reinforce Ramos' honest belief, albeit mistaken, that a BOE is the same as CSSPE.

4. **ID.; ID.; ID.; GRAVE MISCONDUCT; LACK OF EVIDENCE OF CORRUPTION OR ILL MOTIVE NEGATES LIABILITY FOR GRAVE MISCONDUCT.—** [T]here is no substantial evidence that Ramos was impelled by any corrupt or ill motive or intent to gain or profit that would constitute the offense of grave misconduct. Grave misconduct is defined as the transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer coupled with the elements of corruption, willful intent to violate the law or to disregard established rules. Ramos repeatedly explained and stressed that the false entries on the March 28, 2005 PDS had no effect on her promotion to a higher position.

5. **ID.; ID.; ID.; CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE; FALSIFICATION OF OFFICIAL DOCUMENTS; THE SUBMISSION OF PDS WHICH CONTAINS VARIOUS ENTRIES, BUT WHICH WAS LATER ON CORRECTED, CONSTITUTES AS NEITHER CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE NOR FALSIFICATION OF AN OFFICIAL DOCUMENT.—** [W]e exonerate Ramos of the administrative offenses of conduct prejudicial to the best interest of the service and falsification of official documents. The submission of the March 28, 2005 PDS containing erroneous entries, which was later on corrected, does not constitute as conduct prejudicial to the best interest which deals with a demeanor of a public officer that "tarnished the image and integrity of his/her public office." Further, while making a false statement in a PDS amounts to a falsification of an official document, we have held that laws and rules should be interpreted and applied not in a vacuum or in isolated abstraction but in light of surrounding circumstances and attendant facts in order to afford justice to all.

6. ID.; ID.; ID.; SIMPLE NEGLIGENCE; ACTS DONE IN GOOD FAITH, THOUGH MISTAKEN, CONSTITUTE SIMPLE NEGLIGENCE; PENALTY; CASE AT BAR.— Ramos is liable for simple negligence. An act done in good faith, which constitutes only an error of judgment and for no ulterior motives and/or purposes, is merely simple negligence. Simple negligence means the failure of an employee or official to give proper attention to a task expected of him or her, signifying a disregard of a duty resulting from carelessness or indifference.

Here, Ramos was negligent in filling out her PDS when she declared that she was a CSSPE holder and that she obtained a rating of 80.03 in the CS examination. She was likewise negligent when she failed to verify that the HRMO forwarded the corrected or updated PDS to the CSC. . . .

. . .

Simple negligence, which is akin to simple neglect of duty, is a less grave offense punishable with suspension without pay for one (1) month and one (1) day to six (6) months, for the first offense.

Considering that Ramos admitted her omissions which do not appear to have been attended by bad faith or fraudulent intent and that there is nothing in the record that shows that she had committed similar infractions in the past, this Court finds that Ramos deserves to be suspended for only one (1) month and one (1) day.

7. ID.; ID.; ID.; BACKWAGES; THE MERE REDUCTION OF A PENALTY ON APPEAL DOES NOT ENTITLE A GOVERNMENT EMPLOYEE TO BACK SALARIES.— Ramos, however, is not entitled to backwages because she is not completely exonerated from the charges. We have held that a finding of liability for a lesser offense is not equivalent to exoneration; and, the mere reduction of the penalty on appeal does not entitle a government employee to back salaries as he was not exonerated of the charge against him.

APPEARANCES OF COUNSEL

Onkingco Locsin & Lim Law Offices for petitioner.

Provincial Legal Officer for respondent Municipality of Baganga.

D E C I S I O N

LOPEZ, *J.*:

Before Us is a Petition for Review on *Certiorari*[1] filed under Rule 45 of the Rules of Court seeking to set aside the Decision[2] dated November 29, 2017 and Resolution[3] dated July 2, 2018, both of the Court of Appeals (CA)-Cagayan de Oro City in CA-G.R. SP No. 07919-MIN, which affirmed the Civil Service Commission's (CSC) Decision[4] dated August 5, 2016, finding Teresita B. Ramos guilty of Serious Dishonesty, Grave Misconduct, Conduct Prejudicial to the Best Interest of the Service, and Falsification of Official Documents.

ANTECEDENTS

This case stemmed from a letter dated June 7, 2012 of the CSC Field Office-Davao Oriental requesting verification of Teresita B. Ramos' certificates of eligibility. On November 25, 2013, the CSC Regional Office No. XI issued Spot Verification Report stating that Ramos declared in her Personal Data Sheet[5] (PDS) dated March 28, 2005 that she took the Career Service Sub-Professional Eligibility (CSSPE) examination on April 6, 1994 in Davao City and passed with a rating of 80.03. However, the records did not show that a career service examination was conducted on that date and that Ramos was included in the Register of Eligibles. Instead, Ramos was issued a Barangay Official Certificate of Eligibility (BOE) on April 26, 1994 in Davao City. On April 21, 2014, the CSC RO No.

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[1] *Rollo*, pp. 15-46.

[2] *Id.* at 52-60; penned by Associate Justice Ruben Reynaldo G. Roxas, with the concurrence of Associate Justices Romulo V. Borja and Oscar V. Badelles.

[3] *Id.* at 61-62.

[4] *Id.* at 140-149; penned by Commissioner Alicia dela Rosa-Bala, with the concurrence of Commissioner Robert S. Martinez, and the attestation of Director IV Dolores B. Bonifacio.

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

XI formally charged Ramos with the administrative offenses of Serious Dishonesty, Grave Misconduct, Conduct Prejudicial to the Best Interest, and Falsification of Official Documents.[6]

In her Answer,[7] Ramos admitted that she did not possess a CSSPE but only a BOE. She claimed that her supposed rating in the March 28, 2005 PDS was already deleted when she submitted another PDS (substitute PDS) to the Human Resource Management Office (HRMO) of the Municipality of Baganga. In any case, the false entries in the March 28, 2005 PDS were not used to deceive for her benefit.

On August 17, 2015, the CSC RO No. XI found Ramos guilty of the offenses and imposed upon her the penalty of dismissal from the service.[8] The CSC RO No. XI noted that Ramos declared in her PDS dated May 21, 1999 and March 28, 2005 that she was a CSSPE holder, thus:

> All told, it cannot be denied that [Ramos] has done the dishonest act not only once but twice.
>
> Premises considered, it is hereby declared that [Ramos] is **GUILTY** as charged and is meted the penalty of **DISMISSAL** from the service with all the accessory penalties of perpetual disqualification from entering the government service and from taking CS examinations; forfeiture of retirement benefits and cancellation of CS eligibilities.[9] (Emphasis in the original.)

Ramos sought reconsideration,[10] explaining that entries in the March 28, 2005 PDS relating to her eligibility status were made inadvertently. She reiterated that she accomplished another PDS to correct these erroneous entries, yet, the substitute PDS was not found in her 201 files brought by the HRMO during

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[6] *Id.* at 78-79.

[7] *Id.* at 80-88.

[8] *Id.* at 99-103; penned by Annabelle B. Rosell.

[9] *Id.* at 103.

[10] *Id.* at 104-110.

the hearing. On November 20, 2015, Ramos filed a motion to admit the substitute PDS[11] as newly discovered evidence.[12]

The CSC RO No. XI denied the motion for reconsideration in its Resolution No. 15-01204 dated December 9, 2015.[13] The CSC RO No. XI noted that Ramos still wrote "CS Sub-Professional" as her eligibility in the substitute PDS. Further, the substitute PDS was not newly discovered evidence because it existed in the records of the HRMO but not produced during trial.

Unsatisfied, Ramos filed a petition for review before the CSC arguing that a BOE is equivalent to a CSSPE; hence, she should not be faulted for writing "CS Sub-Professional" as her eligibility. She insisted that the substitute PDS should be admissible in evidence.

On August 5, 2016, the CSC issued its Decision No. 160848 affirming Ramos' guilt of the administrative charges, *viz.*:[14]

WHEREFORE, the Petition for Review of Teresita B. Ramos, Computer Operator IV, Municipal Government of Baganga, Davao Oriental, is hereby **DISMISSED**. Accordingly, Resolution No. 15-01204 dated December 9, 2015 issued by Civil Service Commission Regional Office No. XI, Davao City, affirming its Decision No. 2015-39 dated August 17, 2015 finding her guilty of Serious Dishonesty, Grave Misconduct, Conduct Prejudicial to the Best Interest of the Service and Falsification of Official Documents is **AFFIRMED**. Ramos is hereby dismissed from the service with the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, except

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[11] *Id.* at 70-73, 114-117, 238-241.

[12] *Id.* at 111-112.

[13] *Id.* at 118-120. The dispositive portion of the Resolution reads:

WHEREFORE, foregoing premises considered, the motion for reconsideration filed by Teresita B. Ramos, is hereby **DENIED** for lack of merit. CSCRO XI Decision No. 2015-39 promulgated on August 17, 2015 STANDS.

Davao City, Philippines. *Id.* at 119. (Emphasis in the original.)

[14] *Supra* note 4.

terminal/accrued leave benefits, and personal contributions to the GSIS, if any, perpetual disqualification from holding public office and bar from taking civil service examinations.

Copies of this Decision shall be furnished the Commission on Audit-Municipal Government of Baganga, and the Government Service Insurance System (GSIS), for their Information and appropriate action.

Quezon City.[15] (Emphasis in the original.)

The CSC denied Ramos' motion for reconsideration in its Resolution[16] No. 1601353 dated December 5, 2016.

Aggrieved, Ramos appealed to the CA. On November 29, 2017, the CA sustained the findings and conclusion of the CSC that the substitute PDS cannot be considered newly discovered evidence and that Ramos was guilty of the administrative charges.[17] Ramos sought reconsideration but was denied.[18]

Hence, this petition.

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[15] *Rollo*, p. 149.

[16] *Id.* at 167-171. The dispositive portion of the Resolution reads:

WHEREFORE, the Motion for Reconsideration of Teresita B. Ramos, Computer Operator IV, Municipal Government of Baganga, Davao Oriental, is hereby **DENIED**. Accordingly, Decision No. 160848 dated August 5, 2016 issued by Civil Service Commission, which affirmed Resolution No. 15-01204 dated December 9, 2015 and Decision No. 2015-39 dated August 17, 2015 issued by Civil Service Commission Regional Office XI (CSC RO XI), Davao City, finding her guilty of Serious Dishonesty, Grave Misconduct, Conduct Prejudicial to the Best Interest of the Service and Falsification of Official Documents, and meting upon her the penalty of dismissal from the service with the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, except terminal/accrued leave benefits, and personal contributions to the GSIS, if any, perpetual disqualification from holding public office and bar from taking civil service examinations, **STANDS**.

Quezon City. *Id.* at 171. (Emphasis in the original.)

[17] *Supra* note 2. The dispositive portion of the Decision reads:

WHEREFORE, the petition is **DENIED**. The Resolution dated 5 December 2016 of the Civil Service Commission is hereby **AFFIRMED**.

SO ORDERED. *Id.* at 60. (Emphasis in the original.)

[18] *Supra* note 3. The dispositive portion of the Resolution reads:

Thus, We resolve to **DENY** petitioner's motion for reconsideration.

SO ORDERED. *Id.* at 62. (Emphasis in the original.)

Ramos insists on the admissibility of the substitute PDS claiming that she exerted earnest efforts to secure a copy from the HRMO but failed. She reiterates that she did not intend to falsify her March 28, 2005 PDS because she honestly believed that a BOE is the same as a CSSPE. The false entries did not affect her eligibility for promotion or cause any damage or prejudice to the government or any party. As such, the dishonesty, if it exists, is only simple dishonesty that is punishable by suspension. Further, she cannot be held liable for grave misconduct since the act complained of is not related to the performance of her official duties; or for conduct prejudicial to the best interest of service because she did not commit any act that could tarnish the image or integrity of the public office. Lastly, the mitigating circumstances of good faith, length of service, first time offender, acknowledgement of infraction and feeling of remorse, and humanitarian considerations should be appreciated in her favor in the imposition of the penalty.

Annabelle B. Rosell, Director IV of the CSC RO No. XI, through the Office of the Solicitor General (OSG), counters that there is substantial evidence to hold Ramos liable for the administrative charges. Entries of specific details, such as eligibility, rating, and date of examination, do not arise from mere inadvertence or mistake but a determined effort to mislead and deceive. The OSG avers that the substitute PDS is not a newly discovered evidence because it could have been secured and presented during the proceedings before the CSC RO No. XI with reasonable diligence. Finally, mitigating circumstances cannot be appreciated since dismissal from service is an indivisible penalty, and hence, not susceptible to mitigation.

Meanwhile, the Municipality of Baganga filed a Manifestation and Comment[19] stating that it will abide by whatever judgment or award this Court may deem proper.

ISSUES

The issues are: (1) whether the substitute PDS is admissible as a newly discovered evidence; and (2) whether Ramos is guilty

[19] *Id.* at 483-485.

of the administrative offenses of Serious Dishonesty, Grave Misconduct, Conduct Prejudicial to the Best Interest of the Service, and Falsification of Official Documents.

RULING

The petition is partly meritorious.

Prefatorily, findings of facts of the CSC are conclusive when supported by substantial evidence and are accorded due respect and weight, especially when affirmed by the appellate court. In this case, both the CSC and the CA found that Ramos declared in her March 28, 2005 PDS that she possessed a CS Sub-Professional eligibility, took the CS examination on April 6, 1994, and passed with a rating of 80.03. Ramos wrote the same eligibility in her May 21, 1999 PDS. However, records and Ramos' own admission reveal that she only possessed a Barangay Official Certificate of Eligibility issued on April 26, 1994. Accordingly, these findings of fact are conclusive and binding and shall no longer be delved into. This Court shall confine itself to the determination of the proper administrative offense chargeable against Ramos and the appropriate penalty. We shall also determine whether the substitute PDS can be considered as newly discovered evidence.

The substitute PDS is admissible as newly discovered evidence.

Newly-discovered evidence may be admissible in evidence if the following requisites are present: (1) that the evidence was discovered after trial; (2) that the evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; (3) that it is material, not merely cumulative, corroborative or impeaching; and (4) that the evidence is of such weight that, if admitted, would probably change the judgment.[20] It is essential that the offering party exercised reasonable diligence in seeking to locate the evidence

[20] See *Kondo v. Civil Registrar General*, G.R. No. 223628, March 4, 2020.

before or during the trial but nonetheless failed to secure it.[21] Here, the substitute PDS meets the criteria for newly discovered evidence.

As early as in her Answer[22] to the formal charge issued by the CSC RO No. XI, Ramos already raised the existence of the substitute PDS claiming that she submitted a new PDS to replace the March 28, 2005 PDS. She wrote the Municipality of Baganga, Davao Oriental on October 28, 2013[23] to request for her 201 files, and for all her PDS submitted with the HRMO on October 20, 2014.[24] Unfortunately, the substitute PDS could not be found in the records of the HRMO of the Municipality of Baganga. It was only after the CSC RO No. XI issued its Decision finding Ramos guilty of the administrative charges, and after Ramos reiterated in her Motion for Reconsideration[25] the existence of the substitute PDS, that Ramos was provided by the HRMO with a copy of the substitute PDS. In the circumstances, we are convinced that Ramos diligently searched and exerted earnest efforts to locate the substitute PDS and produce it during the administrative hearings. Most importantly, the substitute PDS is material evidence that if admitted, could have altered the decision of the CSC finding her guilty of the administrative offenses.

Ramos is not liable for Serious Dishonesty, Grave Misconduct, Conduct Prejudicial to the Best Interest of the Service, and Falsification of Official Documents. She is liable for simple negligence only.

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[21] *De Villa v. Director, New Bilibid Prisons*, 485 Phil. 368 (2004). See also *Tumang v. Court of Appeals*, 254 Phil. 329 (1989).

[22] *Rollo*, pp. 80-88.

[23] *Id.* at 75, 90.

[24] *Id.* at 96.

[25] *Id.* at 104-109.

As an administrative offense, dishonesty is defined as the concealment or distortion of truth in a matter of fact relevant to one's office or connected with the performance of his duty.[26] It is the "disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity, lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray."[27] Dishonesty requires malicious intent to conceal the truth or to make false statements.[28] In short, dishonesty is a question of intention. Although this is something internal, we can ascertain a person's intention not from his own protestation of good faith, which is self-serving, but from the evidence of his conduct and outward acts.[29]

Apropos is the case of *Wooden v. Civil Service Commission*[30] wherein the petitioner indicated in Item No. 17 of his PDS that he finished his Bachelor of Secondary Education (BSED) from Saint Louis University with inclusive dates of attendance from 1987 to 1991 and he graduated in March 1991; and in Item No. 18, he indicated that the date of Professional Board of Examination for Teachers is 1992. His Official Transcript of Records shows, however, that he graduated with BSED degree as of March 28, 1992. The Court ruled that the petitioner committed an honest mistake of fact in answering an entry in his PDS and excused him from the legal consequences of his act.

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[26] *Civil Service Commission v. Cayobit,* 457 Phil. 452, 460 (2003), citing F. Moreno, Philippine Law Dictionary 276 (3rd ed., 1988).

[27] *Villordon v. Avila*, 692 Phil. 388, 396 (2012). See also *Light Rail Transit Authority v. Salvaña*, 736 Phil. 123, 151 (2014), quoting *Office of the Ombudsman v. Torres*, 567 Phil. 46, 57 (2008), citing Black's Law Dictionary, 6th Ed. (1990).

[28] See *San Diego v. Fact-Finding Investigation Committee, OMB-MOLEO*, G.R. No. 214081, April 10, 2019.

[29] *Bacsasar v. Civil Service Commission*, 596 Phil. 858, 868 (2009), citing *Civil Service Commission v. Maala*, 504 Phil. 646 (2005).

[30] 508 Phil. 500 (2005).

[D]ishonesty, like bad faith, is not simply bad judgment or negligence. Dishonesty is a question of intention. **In ascertaining the intention of a person accused of dishonesty, consideration must be taken not only of the facts and circumstances which gave rise to the act committed by the petitioner, but also of his state of mind at the time the offense was committed, the time he might have had at his disposal for the purpose of meditating on the consequences of his act, and the degree of reasoning he could have had at that moment**.

The intent to falsify or misrepresent is inexistent at the time petitioner applied for the PBET when he indicated "March 1991" under "Date Graduated" since he in fact attended the graduation rites on March 24, 1991. Petitioner should not be faulted for his mistake or confusion in the interpretation of the term "graduated." Whether he should have indicated "May" in his PBET application should not be expected of him because his answer that he graduated "March 1991" was based on the honest belief, albeit mistaken, that once he completed his course deficiencies, which in fact he did in 1991 or several months prior to his application for the PBET, the actual conferment of the degree on him on March 24, 1991 was thereby made effective. At that point in time when he filled up his application for the PBET, the intent to deceive is absent. He was not asked when he actually completed his course; rather he was merely asked the date of his graduation.

x x x x

Petitioner should not be faulted when he wrote "1987-1991" in his PDS under "Inclusive Dates of Attendance" since he did attend the school during the given period and in fact graduated on March 24, 1991. It is an honest mistake of fact induced by no fault of his own and excuses him from the legal consequences of his act. *Ignorantia facti excusat*. To stress, petitioner was asked mainly about the inclusive dates of his attendance in SLU. The official transcript of records was issued on August 8, 1994. Understandably, it does not show the circumstances that led petitioner in giving the subject answers in his application for PBET and PDS. The transcript of records should not be made the basis for holding petitioner liable for dishonesty.

x x x x

Besides, the discrepancy in the PDS on the date of examination is susceptible of varied explanations and does not necessarily imply bad faith. The year "1992'' might simply be a typographical error or

petitioner might have merely indicated the date of release of the PBET. In any event, any inference of dishonest intent cannot be clearly drawn from such sole circumstance. The Court would be going far into the realm of uncertain speculation in attributing improper motives to petitioner based on such circumstance.

A complete and wholistic view must be taken in order to render a just and equitable judgment. In deciding cases, this Court does not matter-of-factly apply and interpret laws in a vacuum. General principles do not decide specific cases. Rather, laws are interpreted always in the context of the peculiar factual situation of each case. Each case has its own flesh and blood and cannot be decided simply on the basis of isolated clinical classroom principles. The circumstances of time, place, event, person, and particularly attendant circumstances and actions before, during and after the operative fact should all be taken in their totality so that the Court can rationally and fairly dispense with justice.[31] (Emphasis supplied; citations omitted.)

The totality of circumstances, in this case, negates Ramos' bad faith and intent to deceive when she accomplished her May 21, 1999 and March 28, 2005 PDS, and the substitute PDS. The pertinent entries in her PDS are as follows:

Date of PDS	Eligibility	Date of Examination or Conferment	Rating
May 22, 1996[32]	Brgy. Official Eligibility	April 26, 1994	Sub-Prof
May 21, 1999[33]	C.S. Sub-Professional	April 6, 1994	*blank*
March 28, 2005[34]	C.S. Sub-Professional	April 6, 1994	80.03
March 28, 2005[35] substitute PDS	C.S. Sub-Professional	April 6, 1994	*blank*

[31] *Id.* at 512-517.

[32] *Rollo*, pp. 222-223.

[33] *Id.* at 224-225.

[34] *Id.* at 234-237.

[35] *Supra* note 11.

April 8, 2008[36]	Barangay Eligibility (Sub-professional)	April 26, 1994	None
May 2, 2011[37]	Barangay Eligibility (Sub-professional)	*blank*	*blank*

The **rating of 80.03** was written in the March 28, 2005 PDS *only*, and thereafter deleted in the substitute PDS on the same day. Ramos reasoned that there were many forms to fill out then and she might have copied from her co-employees. To be sure, the submission of the substitute PDS could have cured the erroneous entry in the March 28, 2005 PDS. Unfortunately for her, the March 28, 2005 PDS was the document forwarded by the HRMO to the CSC instead of the substitute PDS. However, we cannot entirely fault her. It must be remembered that the substitute PDS was with the records of the HRMO all along. The HRMO had its own share of negligence in not submitting the corrected or updated PDS.

As to her eligibility status, Ramos explained that she wrote "**C.S. Sub-Professional**" in the May 21, 1999 PDS and March 28, 2005 PDS because she was of the impression that a BOE is equivalent to a career service eligibility. Ramos retained the "C.S. Sub-Professional" eligibility status in the substitute PDS. Further, she wrote "Sub-Prof" as her rating in the May 22, 1996 PDS.

Noteworthy is Item No. 11, Part V of CSC Memorandum Circular No. 12, s. 2003 which states that "*x x x BOE shall be considered appropriate for appointment to first level positions in the career service, except positions covered by board laws and/or those that require other special eligibilities as determined by the Commission or those that require licenses x x x*."[38] In

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[36] *Rollo*, pp. 230-233.

[37] *Id.* at 226-229.

[38] See http://www.csc.gov.ph/barangay-official-eligibility-boe.html; last accessed: August 6, 2020.

the July 12, 2011 letter[39] of Annabelle Rosell, Director IV of the CSC, to the Municipal Mayor of the Municipality of Baganga, she stated that Ramos is qualified for the position of Computer Operator IV based on her credentials. The position required "Career Service (Subprofessional) First Level Eligibility" and CSC records show that Ramos' eligibility is "Barangay Official Eligibility (First Level Eligibility)." These reinforce Ramos' honest belief, albeit mistaken, that a BOE is the same as CSSPE.

Likewise, the seemingly inconsistent date of issuance of the BOE should not be taken against her. Ramos claimed that her BOE certificate had long been submitted to the HRMO in 1996. It can be observed that Ramos consistently wrote "April 6" as the date of conferment in her PDS beginning 1999. Justice and equity demand that she should be given the benefit of the doubt.

Also, there is no substantial evidence that Ramos was impelled by any corrupt or ill motive or intent to gain or profit that would constitute the offense of grave misconduct. Grave misconduct is defined as the transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer coupled with the elements of corruption, willful intent to violate the law or to disregard established rules.[40] Ramos repeatedly explained and stressed that the false entries on the March 28, 2005 PDS had no effect on her promotion to a higher position.

Moreover, we exonerate Ramos of the administrative offenses of conduct prejudicial to the best interest of the service and falsification of official documents. The submission of the March 28, 2005 PDS containing erroneous entries, which was later on corrected, does not constitute as conduct prejudicial to the best interest which deals with a demeanor of a public officer that "tarnished the image and integrity of his/her public office."[41]

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[39] *Rollo*, pp. 444-445.

[40] *Fajardo v. Corral*, 813 Phil. 149, 158 (2017), citing *Office of the Ombudsman v. Apolonio*, 683 Phil. 553 (2012). See also *Civil Service Commission v. Ledesma*, 508 Phil. 569 (2005).

[41] *Id.* citing *Largo v. Court of Appeals*, 563 Phil. 293 (2007).

Further, while making a false statement in a PDS amounts to a falsification of an official document,[42] we have held that laws and rules should be interpreted and applied not in a vacuum or in isolated abstraction but in light of surrounding circumstances and attendant facts in order to afford justice to all.[43]

Be that as it may, Ramos is liable for simple negligence. An act done in good faith, which constitutes only an error of judgment and for no ulterior motives and/or purposes, is merely simple negligence.[44] Simple negligence means the failure of an employee or official to give proper attention to a task expected of him or her, signifying a disregard of a duty resulting from carelessness or indifference.[45]

Here, Ramos was negligent in filling out her PDS when she declared that she was a CSSPE holder and that she obtained a rating of 80.03 in the CS examination. She was likewise negligent when she failed to verify that the HRMO forwarded the corrected or updated PDS to the CSC. We remind Ramos that she should be more careful in filling out PDS, bearing in mind that it is an official document and hence, its contents are *prima facie* evidence of the facts stated therein.[46]

Penalty

Simple negligence, which is akin to simple neglect of duty,[47] is a less grave offense punishable with suspension without pay

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[42] See *Civil Service Commission v. Sta. Ana*, 435 Phil. 1 (2002).

[43] *Wooden v. Civil Service Commission, supra* note 30.

[44] *San Diego v. Fact-Finding Investigation Committee, OMB-MOLEO, supra* note 28. See also *Pleyto v. PNP-Criminal Investigation & Detection Group*, 563 Phil. 842, 910 (2007), citing *Camus v. Civil Service Board of Appeals, et al.*, 112 Phil. 301 (1961).

[45] *Paduga v. Dimson*, 829 Phil. 591, 596 (2018), citing *Office of the Ombudsman v. De Leon*, 705 Phil. 26, 38 (2013), citing *Republic v. Canastillo*, 551 Phil. 987, 996 (2007).

[46] *Villordon v. Avila, supra* note 27.

[47] See *San Diego v. Fact-Finding Investigation Committee, OMB-MOLEO, supra* note 28; *Daplas v. Department of Finance*, 808 Phil. 763 (2017); *Reyes v. Cabusao*, 502 Phil. 1 (2005).

for one (1) month and one (1) day to six (6) months, for the first offense.[48]

Considering that Ramos admitted her omissions which do not appear to have been attended by bad faith or fraudulent intent and that there is nothing in the record that shows that she had committed similar infractions in the past,[49] this Court finds that Ramos deserves to be suspended for only one (1) month and one (1) day.[50] Accordingly, Ramos' reinstatement is in order as she has been out of government service since November 2, 2016,[51] far beyond the period for her supposed suspension.[52]

Ramos, however, is not entitled to backwages because she is not completely exonerated from the charges. We have held that a finding of liability for a lesser offense is not equivalent to exoneration; and, the mere reduction of the penalty on appeal does not entitle a government employee to back salaries as he was not exonerated of the charge against him.[53]

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[48] See Section 46 (D) (1) of the Revised Rules on Administrative Cases in the Civil Service (RRACCS).

[49] Section 48 of the RRACCS provides, among others, that good faith and "first offense" may be considered as mitigating circumstances in the determination of the imposable penalty. The same provision states that the disciplining authority may, in the interest of justice, take and consider the circumstances *motu proprio*. See *Provincial Government of Bukidnon v. Pancrudo*, G.R. No. 239978, April 3, 2019.

[50] Section 49 of the RRACCS reads:

Section 49. *Manner of Imposition*. — When applicable, the imposition of the penalty may be made in accordance with the manner provided herein below:

a. The minimum of the penalty shall be imposed where only mitigating and no aggravating circumstances are present.

x x x x

[51] *Rollo*, p. 166.

[52] *Alfornon v. Delos Santos, et al.*, 789 Phil. 462 (2016).

[53] *Id.* See also *Civil Service Commission v. Cruz*, 670 Phil. 638 (2011); *Sec. of Education, Culture and Sports v. Court of Appeals*, 396 Phil. 187 (2000); *Jacinto v. CA*, 346 Phil. 656 (1997).

FOR THESE REASONS, the Petition for Review on *Certiorari* is **PARTLY GRANTED**. The Decision dated November 29, 2017 and Resolution dated July 2, 2018 of the Court of Appeals in CA-G.R. SP No. 07919-MIN is **SET ASIDE** and a new one is **ENTERED** finding Teresita B. Ramos **GUILTY** of **SIMPLE NEGLIGENCE**. She is sentenced to suffer the penalty of suspension of one (1) month and one (1) day.

Considering that Teresita B. Ramos was dismissed from the service effective November 2, 2016 during the time that her petition for review is pending before the Court of Appeals and this Court, she is hereby immediately **REINSTATED** to her original position without loss of seniority rights and is restored of all of her rights and benefits under the law without payment of back salaries.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 241701. September 16, 2020]

MR. & MRS. JOSE ALCANTARA, MR. & MRS. NICOLAS ALCANTARA, HENEDINA AMISTAD, TEOFILA AMISTAD, MR. & MRS. ANTONIO AMORIN, MR. & MRS. EMILIANA ANINIPOT, SPOUSES FORTUNATO ATON, JR., SPOUSES JUN & DELIA BADIC, MR. & MRS. EDUARDO BANGA, MR. & MRS. ROBERTA BAUTISTA, SPOUSES RODRIGO & PERLA BOSTON, SPOUSES VICENTE & CATHY CARTAGENA, SPOUSES JOSEPH & EVANGELINE DELA CRUZ, SPOUSES JOSE & SAYCENA DELA TORRE, SPOUSES BETO & FLAVIA DIGAO, MR. & MRS. ROSALIA GADAT, SPOUSES EDGARDO & LOVE GASATAN, MR. & MRS. JUDITH GASATAN, SPOUSES ALLAN & ANNALISA GONZALES, SPOUSES HARON & SARAPIYA PASOD, SPOUSES PEDRO & LILY IDPAN, JR., SPOUSES LORETO & HELEN JANDAYRAN, SR., SPOUSES AMELEL & BAILAGA JAPLOS, SPOUSES FRED & ELENA LANO, MR. & MRS. JUANITA LIMURAN, MR. & MRS. BONIFACIO LUBATON, MR. & MRS. ANTONIO BELARMINO, MR. & MRS. BUENAVENTURA MADRIGAL, SPOUSES RUBEN & LINDA BACUS MANGLICMOT, MR. & MRS. ARSENIA MILLENA, SPOUSES FELICIANO & GRACE NAVALES, SPOUSES FRANCISCA ONDOY, MR. & MRS. CARLOS ONRAS, MR. & MRS. TEODORA PAGAYON, SPOUSES DENNIS & ALICIA PASCUA, DELFIN PEREZ, MAXIMA LUMACAD, SPOUSES SEGUNDO & HERMOGINA REVILLA, MR. & MRS. GRACE MALACROTA, SPOUSES JESUS & GERTRUDES SAGAYNO, ADORACION SANIEL, MR. & MRS. ERNING PALARDO, SPOUSES BINGCONG SIA SU, MONDISA RODRIGUEZ, MR. & MRS. LETTY

SILAO, MR. & MRS. HILDA AMADOR, SPOUSES ARMAN & LORNA AMADOR, SPOUSES ANTONIO & LOURDES AMADOR, JR., SPOUSES ALBERTO & REMEDIOS AMADOR, SPOUSES LORENZO & LUISA AMPARADO, SPOUSES RAUL & VILMA APUSAGA, SPOUSES MIGUELA BACAISO, SPOUSES JAMES BERNASOR, SPOUSES HENRY & ADELA BUSTAMANTE, SPOUSES LEONARDO & LEONESSA CARTAGENA, SPOUSES TOTO & FRANCISCA CELIS, SPOUSES AURELIO & NORA DEMATAIS, SPOUSES ROSENDO & DAHLIA DEMATAIS, SPOUSES CHARLIE & LAARNI EMBALZADO, SPOUSES DALTON & ERLINDA ESPINO, SPOUSES ROMEO & ELIZABETH GABINAY, SPOUSES EDGAR & JOSIE GADAT, MR. & MRS. CANDIDA GONZALES, SPOUSES NOLI & ELNA GRADAS, SPOUSES DULCISIMO & ROSITA JAVIER, SPOUSES LEONILA JIMENA, SPOUSES JOSEPH LAUREN, SPOUSES ROLANDO & LUCRETIA LAUREN, SPOUSES ALLAN & SITTIE MACABANTOG, SPOUSES BONIFACIO & ISABELITA MORCILLO, SPOUSES CLEMENTE & TESSIS NOMEN, SPOUSES APOLONIA & JAMIE MUÑEZ, AND MR. & MRS. EPIFANIO PALACIOUS, *Petitioners, v.* **DELIA DUMACON-HASSAN, SALAMA DUMACON-MENDOZA, ABDUL DUMACON, BAILYN DUMACON-ABDUL, all represented by DELIA DUMACON-HASSAN as Administrator and Attorney-in-Fact,** *Respondents*.

SYLLABUS

1. REMEDIAL LAW; COURTS; JURISDICTION; DOCKET FEES; NON-PAYMENT OF THE APPROPRIATE DOCKET FEES DOES NOT DIVEST THE COURTS OF JURISDICTION ONCE IT IS ACQUIRED.— This Court is unconvinced that the RTC did not acquire jurisdiction over the instant case due to the non-payment of the docket fees. The fact that the respondents had raised the issue of the correctness

of such ruling of the RTC on appeal neither shows that they are not willing to pay the same nor manifest their intention to defraud the government.

Petitioners take into issue that the respondents did not pay immediately the correct docket fees upon receipt of the Decision dated December 7, 2017. However, it should be noted that the said decision ordered the RTC to determine the proper docket fees in Civil Case No. 2010-12 that would be paid by respondents. There was no showing that the RTC had already complied with the said order of the CA that could be the basis for the payment of docket fees by respondents.

2. ID.; ID.; ID.; ID.; A LIEN CAN BE PUT AGAINST THE PROPERTY TO SATISFY PAYMENT OF DEFICIENT DOCKET FEES.— Even if respondents failed to pay the said docket fees, the fair market value of the subject property was pegged at ₱19,931,608.00 as stated in the tax declaration. Therefore, a lien can be put against the subject property, which is sufficient to satisfy the payment of the deficient docket fees.

3. REMEDIAL LAW; CIVIL PROCEDURE; CIVIL LAW; PROPERTY; POSSESSION; ACTION FOR RECOVERY OF POSSESSION OR *ACCION PUBLICIANA;* IN SUCH ACTION, THE CORE ISSUE IS THE PRIORITY RIGHT TO POSSESSION OF A REAL PROPERTY, AND NOT PRIOR PHYSICAL POSSESSION.— [T]he core issue in an action for the recovery of possession of realty is who has the priority right to the possession of the real property. Prior possession is not relevant nor an issue in *accion publiciana*. Unlike in a complaint against forcible entry, where proof of prior physical possession of the subject property is an essential element for the action to prosper, the same is not required to be alleged nor proved in an action for recovery of possession of real property.

4. CIVIL LAW; PROPERTY; POSSESSION; POSSESSION CAN BE ACQUIRED BY JURIDICAL ACTS.— Possession of a property can be acquired not only by material occupation but also by the fact that a thing is subject to the action of one's will or by the proper acts and legal formalities established for acquiring such right. Thus, possession can be acquired by juridical acts, such as donations, succession, execution, and registration of

public instruments, inscription of possessory information titles and the like.

5. ID.; ID.; ID.; LEASE; POSSESSION BY LAWFUL TENANTS OF A PROPERTY BECOMES ILLEGAL UPON UNJUST REFUSAL TO PAY THE RENT.— As found by the RTC, while *Group B* petitioners were the lawful tenants of their respective portions over the subject property, their possession became illegal once they unjustly refused to pay their rent after learning that Delia's title was being disputed by Moises, Baldomero, and Annaliza.

Well-settled is the rule that a tenant, in an action involving the possession of the leased premises, can neither controvert the title of his/her landlord, nor assert any rights adverse to that title, or set up any inconsistent right to change the relation existing between himself/herself and his/her landlord. Regardless of whether there is an existing case before the courts questioning Delia's title over the subject property, *Group B* petitioners, as tenants, cannot unilaterally decide to hold their payment of rentals in violation of the terms of their lease contract unless there is a final order from the courts that Delia has no right to collect the same.

. . . [P]ossession of a tenant over a real property by virtue of a lease agreement, does not give him/her an unlimited right to withhold the same from the owner, especially when the former had violated the terms of the said agreement. Payment of rent is an indispensable obligation that a lessee should fulfill in order for a lease agreement to continue to subsist.

APPEARANCES OF COUNSEL

Vilmalen M. Temblor for petitioners.
Estanislao V. Valdez for respondents.

D E C I S I O N

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

Assailed in this Petition for Review on *Certiorari*[1] under Rule 45 of the 1997 Rules on Civil Procedure are the Decision[2] dated December 7, 2017, and the Resolution[3] dated July 19, 2018, both promulgated by the Court of Appeals Cagayan De Oro City (CA), in CA-G.R. SP No. 06154-MIN entitled "*Mr. & Mrs. Jose Alcantara, Mr. & Mrs. Nicolas Alcantara, Henedina Amistad, Teofila Amistad, Mr. & Mrs. Antonio Amorin, Mr. & Mrs. Emiliana Aninipot, Spouses Fortunato Aton, Jr., Spouses Jun & Delia Badic, Mr. & Mrs. Eduardo Banga, Mr. & Mrs. Roberta Bautista, Spouses Rodrigo & Perla Boston, Spouses Vicente & Cathy Cartagena, Spouses Joseph & Evangeline Dela Cruz, Spouses Jose & Saycena Dela Torre, Spouses Beto & Flavia Digao, Mr. & Mrs. Rosalia Gadat, Spouses Edgardo & Love Gasatan, Mr. & Mrs. Judith Gasatan, Spouses Allan & Annalisa Gonzales, Spouses Haron & Sarapiya Pasod, Spouses Pedro & Lily Idpan, Jr., Spouses Loreto & Helen Jandayran, Sr., Spouses Amelel & Bailaga Japlos, Spouses Fred & Elena Lano, Mr. & Mrs. Juanita Limuran, Mr. & Mrs. Bonifacio Lubaton, Mr. & Mrs. Antonio Belarmino, Mr. & Mrs. Buenaventura Madrigal, Spouses Ruben & Linda Bacus Manglicmot, Mr. & Mrs. Arsenia Millena, Spouses Feliciano & Grace Navales, Spouses Francisca Ondoy, Mr. & Mrs. Carlos Onras, Mr. & Mrs. Teodora Pagayon, Spouses Dennis & Alicia Pascua, Delfin Perez, Maxima Lumacad, Spouses Segundo & Hermogina Revilla, Mr. & Mrs. Grace Malacrota, Spouses Jesus & Gertrudes Sagayno, Adoracion Saniel, Mr. & Mrs. Erning*

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[1] *Rollo*, pp. 19-40.

[2] Penned by Associate Justice Edgardo A. Camello, with Associate Justice Ronaldo B. Martin and Associate Justice Tita Marilyn B. Payoyo-Villordon, concurring; id. at 43-54.

[3] Penned by Associate Justice Eduardo Carmello, with Associate Justices Tita Marilyn B. Payoyo-Villordon and Walter S. Ong, concurring; id. at 183-186.

Palardo, Spouses Bingcong Sia Su, Mondisa Rodriguez, Mr. & Mrs. Letty Silao, Mr. & Mrs. Hilda Amador, Spouses Arman & Lorna Amador, Spouses Antonio & Lourdes Amador, Jr. Spouses Alberto & Remedios Amador, Spouses Lorenzo & Luisa Amparado, Spouses Raul & Vilma Apusaga, Spouses Miguela Bacaiso, Spouses James Bernasor, Spouses Henry & Adela Bustamante, Spouses Leonardo & Leonessa Cartagena, Spouses Toto & Francisca Celis, Spouses Aurelio & Nora Dematais, Spouses Rosendo & Dahlia Dematais, Spouses Charlie & Laarni Embalzado, Spouses Dalton & Erlinda Espino, Spouses Romeo & Elizabeth Gabinay, Spouses Edgar & Josie Gadat, Mr. & Mrs. Candida Gonzales, Spouses Noli & Elna Gradas, Spouses Dulcisimo & Rosita Javier, Spouses Leonila Jimena, Spouses Joseph Lauren, Spouses Rolando & Lucretia Lauren, Spouses Allan & Sittie Macabantog, Spouses Bonifacio & Isabelita Morcillo, Spouses Clemente & Tessis Nomen, Spouses Apolonia & Jamie Muñez, and Mr. & Mrs. Epifanio Palacious v. Delia Dumacon-Hassan, Salama Dumacon-Mendoza, Abdul Dumacon, Bailyn Dumacon-Abdul, all represented by Delia Dumacon-Hassan as Administrator and Attorney-in-Fact."

The facts, as established by the evidence presented by the parties, are as follows:

Respondents alleged that they are the owners of a parcel of land located in Lot 31, Block 24, Pls-59, situated along the National Highway, Poblacion, Kidapawan City, containing an area of 43,881 square meters and covered by Transfer Certificate of Title (TCT) No. T-92084.[4] Petitioners, on the other hand, are the actual occupants of the subject property who were classified into two groups: 1) *Group A* petitioners who are squatters, occupying the land by mere tolerance of respondents; and, 2) *Group B* petitioners who are lessees of their respective portions of the land on a month to month basis, who failed to pay their rent.

Respondents asseverate that they repeatedly demanded petitioners to vacate the subject property, but to no avail. Thus,

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[4] Id. at 118-119.

respondents endorsed their complaint against herein petitioners with the *Lupong Tagapamayapa of Barangay* Poblacion but no settlement was reached between the parties and certifications to file action were issued thereto.

Thus, respondents filed a complaint for unlawful detainer against the petitioners before the Municipal Trial Court in Cities (MTCC), Kidapawan City.

Group A petitioners denied respondents' allegations and claimed that they are the legal occupants of the respective portion of the subject property they are occupying by virtue of a sale of the same; while *Group B* petitioners denied receiving any notice to vacate or notice to pay rents.

Ruling of the MTCC

On February 10, 2010, the MTCC, Kidapawan City rendered a Decision[5] in Civil Case No. 1307-02, dismissing the complaint against all the petitioners without prejudice to the filing of the proper complaint in the future, to wit:

> In light of all the foregoing, this case is ordered **DISMISSED** without prejudice to the filing of appropriate similar action in the future should it is, still, (sic) [be] available. Defendants' counterclaims are likewise dismissed for failure to prove the same by preponderance of evidence.
>
> **SO ORDERED.**

It ruled that the respondents failed to establish the elements of unlawful detainer since they did not allege and prove that they merely tolerated the occupation of *Group A* petitioners. Since the respondents alleged that they are *squatters* living illegally in the subject property, it had meant that *Group A* petitioners were occupying the same from the beginning. The lower court opined that "[t]o justify an action for unlawful detainer, the permission or tolerance must have been present at the beginning of the possession, for if the possession was

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[5] Penned by Assisting Presiding Judge Alexander B. Yarra; id. at 55-63.

unlawful from the start, an action for unlawful detainer would be an improper remedy."

For *Group B* petitioners, the MTCC declared that the respondents failed to effect notices to vacate and notice to pay rentals to the said group, which is a condition precedent to an action for unlawful detainer. Furthermore, in the notices, *Group B* petitioners were only given ten (10) days to vacate the subject property. The lower court enunciated that based on Section 2 of Rule 70, the lessor can proceed against the lessee only after fifteen (15) days, in case of land, from date of last notice to vacate the subject property.

Aggrieved, respondents filed their appeal before the Regional Trial Court (RTC), Branch 17, Kidapawan City, Cotabato.

Ruling of the RTC

On appeal, the RTC rendered a Decision[6] dated July 5, 2010 in Civil Case No. 2010-12, affirming the dismissal of the case against *Group A* petitioners for lack of jurisdiction, while the dismissal of the case against *Group B* petitioners was reversed and set aside. It remanded the case back to the MTCC for reception of evidence to prove the respondents' cause of action against them, as such:

> From the foregoing, the assailed decision is partially affirmed. The dismissal of the case against defendants/appellees who are classified as Group "A" is affirmed for lack of jurisdiction. The dismissal of the case against defendants/appellees classified as Group "B" is reversed. The court a quo is directed to receive evidence from the plaintiffs/appellants to prove their cause of action against the latter group of defendants/appellees.
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> No pronouncement as to costs.
>
> **SO ORDERED**.

The RTC opined that the case filed against *Group A* petitioners is obviously a complaint for forcible entry, not unlawful detainer,

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[6] Penned by Judge Rogelio R. Narisma; id. at 64-67.

based on the respondents' allegation that they are squatters over the subject property. Furthermore, for the MTCC to acquire jurisdiction in an action for forcible entry, it must be instituted within one year from the time of accrual of the cause of action. In the instant case, respondents had not alleged when they withdrew their tolerance of Group A petitioners' possession of the subject property or when these petitioners forcibly entered or squatted the property.

For *Group B* petitioners, the RTC found that the remedy availed of by the respondents partakes the nature of an action for unlawful detainer. The demand to vacate was made well within one year period prior to the filing of the instant case. The RTC stated that the 15-day rule mentioned in Section 2 of Rule 70 does not pertain to the number of days mentioned in the notice to vacate, but to the length of time lessees held their possession of the subject property after receipt of said notice.

Respondents moved for reconsideration of the Decision dated July 5, 2010 arguing that the RTC erred in remanding the case to the MTCC and should have proceeded to render its judgment.[7]

In an Order dated May 27, 2013, the RTC granted the respondents' motion for reconsideration and reversed its earlier ruling. It affirmed the dismissal of the case against *Group B* petitioners on the ground that respondents failed to allege in their complaint the date when the month-to-month lease was terminated. Nonetheless, the RTC found that Section 8, Rule 40 of the Rules of Court is applicable and considered the instant case as an action for recovery of possession. It required the respondents to pay additional docket fees based on the rules on docket fees as a condition precedent before proceeding to render judgment in the instant case.[8]

Respondents moved for reconsideration of the Order dated May 27, 2013.

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[7] Id. at 71.

[8] Id.

In its Decision[9] dated October 31, 2013, the RTC ruled that it erred when it required the payment of additional docket fees as a condition before it proceeded to decide the case. The RTC in the instant case is exercising not its original jurisdiction, but its appellate jurisdiction pursuant to Section 22 of Batas Pambansa Blg. 129, as amended by Republic Act No. 7691. As respondent had already paid the docket fees in appealing the decision of the MTCC to the RTC, the latter had already acquired jurisdiction over the case. It also opined that the possession of *Group B* petitioners became illegal when they stopped paying rentals after the expiration of their month-to-month lease contract, after learning that a case was filed by Moises Sibug (Moises), Baldomero Bayawan (Baldomero) and Annaliza Anabieza (Annaliza) against Delia Hassan (Delia). Thus, in treating respondents' complaint as an action for recovery of possession, the RTC found that the respondents are entitled to recover the possession of the subject property. Furthermore, the RTC imposed ₱200.00 rental fee per month against petitioners for the use and enjoyment of the portions of the subject property they are currently occupying, respectively.

Petitioners filed a Motion for Reconsideration while respondents filed a motion for the issuance of a writ of execution, both of which were denied by the RTC.[10]

Undaunted, the petitioners seasonably filed their appeal before the CA.

Ruling of the CA

In its Decision dated December 7, 2017, the CA affirmed the latest ruling of the RTC with modifications. It ordered the RTC to determine the proper docket fees to be paid in Civil Case No. 2010-12, which it deemed to be originally filed before the latter.

The CA found that the respondents paid the appeal fees under Rule 40 of the Rules of Court. However, the situation changed

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[9] Penned by Presiding Judge Arvin Sadin B. Balagot, CPA; id. at 68-90.

[10] Id. at 50.

when the RTC, *motu proprio,* took cognizance of the case as an original action for recovery of possession and ruled on the merits.

Thus, the CA held that there is a need for respondent to pay additional docket fees to be determined based on the fair market value of the subject property. While non-payment of docket fees may render an original action dismissible, the rule on payment of docket fees may be relaxed whenever the attending circumstance warrants it.

The CA denied petitioners' motion for reconsideration.

Hence, this Petition.

The Issues

THE HONORABLE [CA] ERRED IN AFFIRMING AND MODIFYING THE OCTOBER 31, 2013 DECISION OF THE [RTC] BRANCH 17, KIDAPAWAN CITY AND DID NOT DISMISS THE CASE FOR LACK OF JURISDICTION FOR FAILURE AND REFUSAL TO PAY THE CORRECT DOCKET/FILING FEES IN SPITE [OF] THE FACT THAT RTC-17 CONVERTED THE CASE TO ONE OF RECOVERY OF POSSESSION AND EXERCISING ORIGINAL JURISDICTION AND NOT APPELLATE JURISDICTION.

THE HONORABLE [CA] ERRED IN AFFIRMING AND MODIFYING THE OCTOBER 31, 2013 DECISION OF THE [RTC] BRANCH 17, KIDAPAWAN CITY IN SPITE [OF] KNOWLEDGE THAT RTC-17 DECIDED THE CASE WITHOUT DETERMINING PRIOR POSSESSION OF THE RESPONDENTS CONSIDERING THAT THE CASE IS ONE OF RECOVERY OF POSSESSION.

THE HONORABLE [CA] ERRED IN AFFIRMING AND MODIFYING THE OCTOBER 31, 2013 DECISION OF THE [RTC] BRANCH 17, KIDAPAWAN CITY IN SPITE [OF] THE SUPERVENING EVENTS AND PENDING CASES INVOLVING SAME PROPERTY WHICH GREATLY AFFECT THE CLAIM OF OWNERSHIP OF THE RESPONDENTS.[11]

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[11] Id. at 25-26.

The Court's Ruling

The petition is without merit.

Non-payment of the appropriate docket fees does not divest the courts of jurisdiction once it is acquired

Petitioners contend that the respondents' act of assailing the payment of the correct docket fees is a clear manifestation that they are not willing to pay the docket fees, pursuant to the decision of the CA. Thus, when the RTC rendered its Decision dated October 31, 2013, it did so without jurisdiction, hence it is null and void.

In *Aquino v. Hon. Casabar*,[12] this Court had held that should there be unpaid docket fees, the same should be considered as a lien on the judgment. Thus, even on the assumption that additional docket fees are required, its non-payment will not result in the court's loss of jurisdiction over the case.

This Court is unconvinced that the RTC did not acquire jurisdiction over the instant case due to the non-payment of the docket fees. The fact that the respondents had raised the issue of the correctness of such ruling of the RTC on appeal neither shows that they are not willing to pay the same nor manifest their intention to defraud the government.

Petitioners take into issue that the respondents did not pay immediately the correct docket fees upon receipt of the Decision dated December 7, 2017. However, it should be noted that the said decision ordered the RTC to determine the proper docket fees in Civil Case No. 2010-12 that would be paid by respondents. There was no showing that the RTC had already complied with the said order of the CA that could be the basis for the payment of docket fees by respondents.

Generally, in civil litigations, the party who alleges has the burden to prove his/her affirmative allegations.[13] Petitioners

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[12] 752 Phil. 1, 14 (2015).

[13] *Republic v. Sereno*, G.R. No. 237428, May 11, 2018.

had not shown even an ounce of proof that respondents refused or disregarded the order of the court to pay the deficient docket fees due against them. Even if respondents failed to pay the said docket fees, the fair market value of the subject property was pegged at ₱19,931,608.00 as stated in the tax declaration. Therefore, a lien can be put against the subject property, which is sufficient to satisfy the payment of the deficient docket fees.

An action for recovery of possession or accion publiciana is a plenary action to determine who has the better right of possession over a real property, and the question of who has prior possession has no relevance thereto

Petitioners also argue that the RTC should have tried the instant case on its merits as if the case was originally filed with it before rendering its Decision. In fact, the RTC did not touch the issue on possession but rather on jurisdiction. Petitioners insist that the RTC should have determined who has prior possession over the subject property to resolve the issue on who has better right to possess the same.

In *Spouses Valdez, Jr. v. Court of Appeals*,[14] the Court had held that an "*[a]ccion publiciana* is the plenary action to recover the right of possession which should be brought in the proper regional trial court when dispossession has lasted for more than one year. It is an ordinary civil proceeding **to determine the better right of possession of realty independently of title**."

Thus, the core issue in an action for the recovery of possession of realty is who has the priority right to the possession of the real property.[15] Prior possession is not relevant nor an issue in

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[14] 523 Phil. 39, 46 (2006).

[15] *Abobon v. Abobon*, 692 Phil. 530, 541-542 (2012).

accion publiciana. Unlike in a complaint against forcible entry, where proof of prior physical possession of the subject property is an essential element for the action to prosper, the same is not required to be alleged nor proved in an action for recovery of possession of real property.

Assuming *arguendo* that prior physical possession is material in an action for recovery of possession of real property, *Group B*'s contention still does not hold water. Possession of a property can be acquired not only by material occupation but also by the fact that a thing is subject to the action of one's will or by the proper acts and legal formalities established for acquiring such right. Thus, possession can be acquired by juridical acts, such as donations, succession, execution, and registration of public instruments, inscription of possessory information titles and the like.[16] It was established in the instant case that TCT No. T-92084 was issued in name of the respondents on October 20, 1997, from their predecessors-in-interest and that *Group B* petitioners subsequently entered possession of their respective portions of the subject property as lessees of Delia. Thus, *Group B* petitioners cannot now claim that they had prior possession over the subject property.

Group B petitioners' lawful possession of their respective portion in the subject property became illegal when they unjustly refused to pay their rents

As found by the RTC, while *Group B* petitioners were the lawful tenants of their respective portions over the subject property, their possession became illegal once they unjustly refused to pay their rent after learning that Delia's title was being disputed by Moises, Baldomero, and Annaliza.

Well-settled is the rule that a tenant, in an action involving the possession of the leased premises, can neither controvert the title of his/her landlord, nor assert any rights adverse to

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[16] *Mangaser v. Ugay*, 749 Phil. 372, 382 (2014).

that title, or set up any inconsistent right to change the relation existing between himself/herself and his/her landlord.[17] Regardless of whether there is an existing case before the courts questioning Delia's title over the subject property, *Group B* petitioners, as tenants, cannot unilaterally decide to hold their payment of rentals in violation of the terms of their lease contract unless there is a final order from the courts that Delia has no right to collect the same.

Petitioners had sorely misapplied this Court's ruling in the cited case of *David v. Cordova*.[18] In the case of *David*, we held that "regardless of the actual condition of the title to the property, the party in peaceable quiet possession shall not be thrown out by a strong hand, violence or terror. x x x Thus, a party who can prove prior possession can recover such possession even against the owner himself. Whatever may be the character of his possession in time, he has the security that entitles him to remain on the property until a person with a better right lawfully ejects him." Clearly, possession of a tenant over a real property by virtue of a lease agreement, does not give him/her an unlimited right to withhold the same from the owner, especially when the former had violated the terms of the said agreement. Payment of rent is an indispensable obligation that a lessee should fulfill in order for a lease agreement to continue to subsist.

Furthermore, in the aforementioned case, David filed a complaint for forcible entry against the Cordovas who illegally and forcibly entered the premises without the consent of the former. Thus, the essential elements of prior possession by David had to be established to determine whether the court had jurisdiction over the subject matter and eventually, who had the better right to the physical possession of the same. Clearly, the instant case does not stand on all fours with the cited case of *David*, considering that *Group B* petitioners merely entered possession of their respective portions of the subject property under a lease agreement and had lost such right to

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[17] *Santos v. NSO*, 662 Phil. 708, 721-722 (2011).

[18] 502 Phil. 626, 645 (2005).

possess the same after unilaterally refusing to pay their rentals to respondents.

Also, *Group B* petitioners are not being forcefully ejected from the subject property by the respondents through violence or intimidation. In fact, respondents had availed themselves of the remedy provided under the law and instituted the instant complaint against herein petitioners before the court in order to be peacefully granted the physical possession of the subject property. Even if we consider that petitioners may have been in prior possession of the subject property, it does not mean that they cannot be ordered to leave the premises and surrender possession of the same to respondents once it is proven that the latter has a better right to the said property.

WHEREFORE, the instant petition is **DENIED** due to lack of merit. The Decision dated December 7, 2017, and the Resolution dated July 19, 2018, of the Court of Appeals-Cagayan De Oro City in CA-G.R. SP No. 06154-MIN is hereby **AFFIRMED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 242474. September 16, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **XXX and YYY,** *Accused-Appellants*.

SYLLABUS

1. REMEDIAL LAW; APPEALS; AN APPEAL IN CRIMINAL CASES THROWS THE WHOLE CASE OPEN FOR REVIEW.— [An] appeal in criminal cases throws the whole case open for review and it is the duty of the appellate court to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.

2. CRIMINAL LAW; HOMICIDE; QUALIFYING CIRCUMSTANCES; TREACHERY; IF QUALIFYING CIRCUMSTANCES CANNOT BE PROVEN BEYOND REASONABLE DOUBT, THE ACCUSED MAY BE CONVICTED OF HOMICIDE ONLY.— After a careful review and scrutiny of the records, We hold that accused-appellants can only be convicted of Homicide, instead of Murder, as the qualifying circumstance of treachery was not proven in the killing of the victim.

. . .

If these qualifying circumstances are not present or cannot be proven beyond reasonable doubt, the accused may only be convicted with Homicide, defined in Article 249 of the Revised Penal Code. . . .

3. ID.; ID.; ID.; ID.; REQUISITES FOR TREACHERY TO BE APPRECIATED; QUALIFYING CIRCUMSTANCES; CASE AT BAR.— In determining whether the killing was committed with treachery, two conditions must be present, namely: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and (2) the said means or method of execution was deliberately or consciously adopted.

4. ID.; ID.; ID.; ID.; THERE IS NO TREACHERY WHEN THE ASSAULT IS PRECEDED BY AN ALTERCATION OR

FISTFIGHT; CASE AT BAR.— In the case at bar, the prosecution failed to prove that treachery was present in the killing of the victim.

As testified by Amonelo, there was an altercation prior to the stabbing incident, although it was only Austria and Del Mundo who saw the actual stabbing. Amonelo recounted that at around 9:00 p.m., it was accused-appellants' group who challenged them to a fight which led to a brawl. Rolando pacified the group but XXX threw a stone which hit Rolando. Thereafter, XXX threatened Rolando saying *"You will see Olan, we will return and we will kill you."* Rolando angrily pursued XXX and a fistfight ensued, forcing Amonelo to aid Rolando. However, Leonard and his companions arrived and Amonelo ran away.

. . .

To be sure, the attack made by accused-appellants was neither sudden nor unexpected. Even assuming that the version of the defense is to be considered, XXX and YYY narrated that there was a fistfight between them and Rolando's group on December 24, 1999 at around 10:00 p.m. As such, YYY's holding of Rolando's arms was just a part of the ongoing fight. Hence, this should have made Rolando aware that there was an impending attack on him. According to the prosecution witness Amonelo, after Rolando boxed XXX, Rolando ran away but was not able to run any further because his slippers were broken and XXX caught up with him.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S FINDINGS ON THE CREDIBILITY OF WITNESSES AND THEIR TESTIMONIES WILL NOT BE DISTURBED ON APPEAL; EXCEPTIONS; CASE AT BAR.— It is settled that the assessment of the credibility of witnesses and their testimonies is best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grueling examination. As such, the findings of the trial court on such matters will not be disturbed on appeal unless some facts or circumstances of weight were overlooked, misapprehended, or misinterpreted as to materially affect the disposition of the case.

After a thorough review of the records before Us, We disagree with the trial court finding that the testimony of prosecution

witness Del Mundo was clear and consistent. We observed that Del Mundo's reaction during the incident was contrary to human nature. He narrated that he was one arms-length away when he saw the victim being stabbed in front of him. Although he stopped his tricycle, he was not able to help the victim out of fear. To Our mind, his reaction is not consistent with ordinary human behavior. Surely, he was afraid that they might kill him because XXX was still holding a knife, but if he were truly afraid, he would have sped away and not dare attempt to stop his tricycle even with the engine running to just watch the incident. He also testified that the victim was stabbed in the chest and right eye, however the death certificate reveals that the victim sustained only one stab wound in the chest. To Our mind, there is doubt as to whether Del Mundo was present during the stabbing incident or that he actually saw Rolando being stabbed.

6. **ID.; ID.; ID.; WHEN A TESTIMONY IS GIVEN IN A CANDID AND STRAIGHTFORWARD MANNER, THERE IS NO ROOM FOR DOUBT THAT THE WITNESS IS TELLING THE TRUTH; CASE AT BAR.—** Jurisprudence also tells us that when a testimony is given in a candid and straightforward manner, there is no room for doubt that the witness is telling the truth. Here, Austria's testimony was clear and categorical that XXX stabbed Rolando, while YYY held his hands at the back. He was six meters from the stabbing incident and the place was well-lighted. In addition, his testimony was corroborated by the Certificate of Death attesting that Rolando died due to "Cardio-Respiratory Arrest due to Hypovolemic Shock due to Stab Wound, Chest."

7. **ID.; ID.; ID.; THE EYEWITNESSES' INABILITY TO HELP THE VICTIM DUE TO THEIR FEAR OF REPRISAL IS UNDERSTANDABLE AND NOT AT ALL CONTRARY TO COMMON EXPERIENCE; CASE AT BAR.—** Contrary to accused-appellants' claim, the failure of Austria to help and/or rescue Rolando from the hands of his assailants does not make his testimony incredible and unworthy of belief. Jurisprudence holds that the eyewitnesses' inability to help the victim due to their fear of reprisal is understandable and not at all contrary to common experience. Different people react differently to a given stimulus or situation and there is no standard form of behavioral response when one is confronted with a startling or frightful experience. Here, Austria explained that he shouted

"*Hoy tigilan nyo na yan*" after seeing the latter was stabbed. However, he was not able to report the incident to the police because he was ashamed to tell Rolando's father that he was unable to prevent Rolando's death. No law obligates a person to risk his/her own life to save another, although it may be the moral thing to do.

8. CRIMINAL LAW; CONSPIRACY; CONSPIRACY EXISTS WHEN TWO OR MORE PERSONS ACT IN CONCERT TO ACHIEVE THE SAME OBJECTIVE; CASE AT BAR.— Conspiracy was also established by the evidence on record because of the concerted efforts of both the accused. Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. It may be deduced from the manner in which the offense is committed, as when the accused act in concert to achieve the same objective. In this case, Austria testified that YYY held Rolando from behind while XXX stabbed him. Thus, YYY's participation in the commission of the crime charged is clear. Certainly, XXX and YYY cooperated with one another to achieve their purpose of killing the victim. It is sufficient that the accused acted in concert at the time of the commission of the offense, that they had the same purpose or common design, and that they were united in its execution.

9. ID.; ID.; WHEN CONSPIRACY IS ESTABLISHED, THERE IS NO NEED TO DETERMINE WHO AMONG THE ACCUSED DELIVERED THE FATAL BLOW, AS ALL OF THEM ARE LIABLE AS PRINCIPALS REGARDLESS OF THE EXTENT AND CHARACTER OF THEIR PARTICIPATION.— Accordingly, because conspiracy was established, there is no need to determine who among the accused delivered the fatal blow. All of the accused are liable as principals regardless of the extent and character of their participation, for in conspiracy the act of one is the act of all.

10. ID.; JUSTIFYING CIRCUMSTANCES; REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; IN INVOKING SELF-DEFENSE, BURDEN OF EVIDENCE IS SHIFTED TO THE ACCUSED; CASE AT BAR.— Anent XXX's contention that he was merely acting in self-defense, We are not persuaded. Self-defense is an affirmative allegation and offers exculpation from liability for crimes only if satisfactorily proved. Indeed,

in invoking self-defense, the burden of evidence shifted and the accused claiming self-defense must rely on the strength of his own evidence and not on the weakness of the prosecution. In this case, although XXX allegedly suffered injuries due to the fistfight between him and the victim, XXX failed to sufficiently establish that there was imminent danger to his life as the aggression no longer existed the moment Leonard and his companions arrived prompting the victim to run away. In addition, XXX did not present any evidence to prove that he sustained injuries. Considering the nature and location of the stab wound sustained by the victim, the plea of self-defense is untenable.

11. ID.; PRIVILEGED MITIGATING CIRCUMSTANCES; MINORITY; CASE AT BAR.— Therefore, without appreciating the qualifying circumstance of treachery, the crime is Homicide and not Murder. Under Article 249 of the RPC, any person found guilty of Homicide shall be meted the penalty of *reclusion temporal*, a penalty which contains three (3) periods.

Considering that XXX committed the crime when he was just 17 years and 7 months old, and YYY when he was just 15 years and 8 months old, they are entitled to the privileged mitigating circumstance of minority under Article 68(2) of the Revised Penal Code. Accordingly, the penalty to be imposed upon them shall be the penalty next lower in degree than that prescribed by law, but always in the proper period. Thus, the imposable penalty must be reduced by one degree from *reclusion temporal*, which is *prision mayor*. Being a divisible penalty, the Indeterminate Sentence Law is applicable. Given that there is no mitigating or aggravating circumstance, the penalty shall be imposed in its medium period.

Thus, applying the Indeterminate Sentence Law, the maximum penalty shall be *prision mayor* in its medium period, while the minimum penalty shall be *prision correccional* in any of its periods. Thus, accused-appellants are to suffer the Indeterminate penalty of six (6) years of *prision correccional*, as minimum, to ten (10) years of *prision mayor*, as maximum.

12. ID.; ID.; ID.; SUSPENSION OF SENTENCE OF MINOR DELINQUENTS; SUSPENSION OF SENTENCE LASTS ONLY UNTIL THE CHILD IN CONFLICT WITH THE LAW REACHES THE MAXIMUM AGE OF 21 YEARS;

CASE AT BAR.— We agree with the CA that the trial court erred when it ordered the automatic suspension of sentence of the accused because the said suspension of sentence lasts only until the child in conflict with the law reaches the maximum age of 21 years. In this case, XXX and YYY were more than 21 years old when the RTC promulgated its Decision on 2015.

13. ID.; REPUBLIC ACT NO. 9344 (JUVENILE JUSTICE AND WELFARE ACT OF 2006); REHABILITATION AND REINTEGRATION OF CHILDREN IN CONFLICT WITH THE LAW; A CHILD IN CONFLICT WITH THE LAW MAY SERVE HIS/HER SENTENCE IN AN AGRICULTURAL CAMP OR OTHER TRAINING FACILITIES OF THE BUREAU OF CORRECTIONS, IN COORDINATION WITH THE DEPARTMENT OF SOCIAL WELFARE AND DEVELOPMENT.— [T]he accused are entitled to the benefit of Section 51 of Republic Act No. 9344, despite their ages at the time of conviction. Thus, they may serve their sentence in an agricultural camp or other training facilities that may be established, maintained, supervised and controlled by the Bureau of Corrections, in coordination with the Department of Social Welfare and Development.

14. CIVIL LAW; DAMAGES; CIVIL LIABILITIES IN HOMICIDE CASES; CASE AT BAR.— Corrolarily, the damages awarded by the CA need to be modified in keeping with the recent jurisprudence. As provided for in *People v. Jugueta*, in the crime of Homicide where the penalty consists of divisible penalty, moral damages and civil indemnity is ₱50,000.00. Thus, the award of moral damages and civil indemnity in the amount of ₱75,000.00 are reduced to ₱50,000.00. Meanwhile, the award of ₱75,000.00 as exemplary damages should be deleted. The award of ₱60,000.00 as funeral expenses or actual damages is affirmed based on the receipts presented by prosecution.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellants.

D E C I S I O N

CARANDANG, *J.*:

Accused-appellants XXX[1] and YYY[2] appealed the Decision[3] dated November 29, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08398 affirming with modification the Decision[4] dated November 16, 2015 of the Regional Trial Court (RTC) of Santa Cruz, Laguna, Branch 26 in Criminal Case No. SC-8180 finding accused-appellants guilty of Murder.

Facts of the Case

Accused-appellants were charged with Murder under paragraph 1 of Article 248 of the Revised Penal Code (RPC) in the following Information, to wit:

> That on or about December 24, 1999, in the municipality of Sta. Cruz, province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused while conveniently armed and provided with deadly weapon, conspiring, confederating, and mutually helping each other, with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault, and stab one ROLANDO ABETRIA, thereby inflicting upon the latter stab wounds on the different parts of his body which directly caused his death, to the damage and prejudice of his surviving heirs.
>
> CONTRARY TO LAW.[5]

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[1] Pursuant to Amended Administrative Circular No. 83-15 on the use of fictitious initials and A.M. No. 02-1-18-SC, Rule on Juveniles in Conflict with the Law. The court shall employ measures to protect the confidentiality of proceedings against the minor accused and requiring the adoption of a system of coding to conceal material information leading to the child's identity.

[2] Id.

[3] Id. at 2-23.

[4] CA *rollo*, pp. 12-22.

[5] Records, p. 2.

Version of the Prosecution

The prosecution presented four witnesses, namely: (1) Ambrocio Del Mundo (Del Mundo); (2) Bayani Austria (Austria); (3) Wilson Amonelo (Amonelo); and (4) Roberto Abetria (Abetria).[6]

Del Mundo narrated that on December 24, 1999 at around 9:00 p.m., while he was driving his tricycle, he saw XXX, YYY, Leonard Ferrer (Leonard), and Jason Ferrer (Jason) angrily going towards the direction of Rolando Abetria (Rolando). He heard one of the accused say "*Papatayin kita*"[7] and saw XXX stab Rolando in the chest and right eye, while YYY held Rolando's arms at the back.[8] He was one (1) arm's length away from the incident; he stopped his tricycle but did not turn off the engine when he witnessed the stabbing.[9] After the incident, he proceeded to the Aglipay Church to drop off his passengers. He knew both accused-appellants because he was a resident of Barangay Pagsawitan for 13 years. He did not help Rolando because he feared for his life. He recounted that he saw barangay officials arrived and helped Rolando. On his way to Aglipay Church, he met Rolando's father and told him that his son was stabbed. In open court, he identified XXX and YYY and executed a sworn statement regarding the incident.[10]

Austria also positively identified XXX and YYY. He was inside his house watching TV when he heard the commotion at around 10:30 p.m. of December 24, 1999.[11] When he went outside his house to check, he saw XXX stab Rolando while YYY was holding Rolando's arms at the back. He was at a distance of six meters from the stabbing incident.[12] When Austria

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[6] *Rollo*, p. 4.

[7] TSN dated May 25, 2001, p. 26.

[8] *Rollo*, p. 4.

[9] Id.

[10] Id.

[11] Id.

[12] Id.

shouted "*Hoy, tigilan nyo na yan*,"[13] accused-appellants ran away. He heard someone shout "*Bumagsak si Olan*."[14] While rushing to Rolando, he saw other people were helping him and loaded him to the tricycle. He recounted that the place was lighted by an incandescent bulb and the light coming from Del Mundo's tricycle. After the incident, Austria went home and told the incident to Domeng who relayed the same to Rolando's father. He positively identified accused-appellants in open court.[15]

Amonelo testified that around 8:30 p.m., he was with his friends across the store of *Aling* Choleng in Barangay Pagsawitan, Sta. Cruz Laguna. XXX, YYY, Jason, and Leonard, who were all intoxicated, approached Amonelo's group and challenged them to a fight.[16] Thereafter, Wilson and XXX were then engaged in a fistfight while YYY rushed to aid his cousin, XXX. Leonard also fought Amonelo's group.[17] Rolando, the son of *Aling* Choleng, went out of their house to pacify them. After appeasing both parties, Rolando told them to leave.[18] However, XXX threw a stone at Amonelo and Rolando which hit the latter. XXX warned Rolando "*You will see Olan, we will return and we will kill you*"[19] and then XXX's group ran away.[20]

Amonelo recounted that an angry Rolando ran after XXX's group. Amonelo followed Rolando and saw him engaged in a fist fight with XXX, forcing him to help Rolando. However, Amonelo saw Leonardo running towards him and shouted "*he is my cousin*,"[21] hence, Amonelo ran away. Leonardo caught

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[13] TSN dated August 8, 2002, p. 7.

[14] Id. at 8.

[15] *Rollo*, p. 4.

[16] Id.

[17] Id. at 4-5.

[18] Id.

[19] TSN dated July 13, 2001, p. 16.

[20] *Rollo*, pp. 4-5.

[21] TSN dated February 7, 2002, p. 6.

up with Amonelo eventually. Meanwhile, Rolando could not run any further as his slippers were broken. When Leonardo caught up with Amonelo, Leonardo tried to strangle Amonelo but Amonelo's uncle and aunt pacified them. Amonelo was brought by his aunt to his grandmother's store where he relayed the incident to his parents. Thereafter, he went home with his parents to their house in Biñan, Laguna. It was at that time when he learned that Rolando was killed by accused-appellants. He positively identified XXX, YYY, and Leonardo in open court.[22]

Abetria, Rolando's father, narrated that his son was 19 years old and was a second-year college student. On the day of the incident, he was sleeping at their house when his friend arrived and informed him that his son was stabbed. He went to Laguna Doctor's Hospital where he saw his son being revived.[23] He then reported the incident to the police station and accused-appellants were apprehended. He executed a sworn statement in relation to the incident.[24]

Version of the Defense

The defense only presented two witnesses – XXX and YYY.[25]

YYY denied that he killed Rolando. He testified that around 9:00 p.m. he was with his parents and siblings at their house when XXX invited him out to eat dinner at Kapalaran Bus Line.[26] However, they were not able to eat because Amonelo boxed XXX after he urinated. He was 30 meters away from XXX during the incident. Thereafter, he rushed to XXX, who then fell to the ground. He tried to pacify Amonelo as he continued punching XXX, who did not fight back. When he was able to appease them, Amonelo's companions started

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[22] *Rollo*, p. 5.

[23] Id. at 6.

[24] TSN dated July 19, 2002; *rollo*, pp. 5-6.

[25] *Rollo*, pp. 6-7.

[26] Id. at 6.

punching him, so he ran away and hid between the plants near Biñan Rural Bank. He then saw his cousin Leonard with his friends and told him XXX was being mauled. Leonard rushed to the place of incident and chased Amonelo's companions away. He lifted XXX, who was bloodied and missing two front teeth. As he could not find a ride to a nearby hospital, he brought him to the house of XXX's uncle. Afterwards, the barangay *tanod* arrived and apprehended the two of them.[27]

XXX testified that he went to YYY's house to invite him for dinner. Along the way, he stopped to urinate while YYY kept walking. Afterwards, he followed YYY only to be called by Amonelo to ask why he was walking arrogantly, to which he replied that was the way he walked. Amonelo asked what he wanted to happen, and he said he did not want any trouble. Thereafter, Amonelo punched his face, but he could not retaliate as Amonelo's companions mauled him. YYY tried to pacify them, but Amonelo also hit him.[28] XXX and YYY ran towards the bus terminal but XXX could not run farther as he was hit by a stone in the back which made him fall to the ground. As he was on the ground, he felt someone hold his belt, raised him up and punched him. XXX heard Amonelo said "*get a stone and we will throne a stone on his head*."[29] He remembered he had a knife because he was slicing vegetables earlier at home. He took out the knife and stabbed the person holding him by making a downward thrust while lying on the ground facing downwards.[30] Consequently, the person released him from his hold. Leonard arrived and his assailants ran away. YYY assisted him in getting up and they went to his uncle's house to spend the night. However, the barangay officials arrived and apprehended them.[31]

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[27] TSN dated October 17, 2002; *rollo*, pp. 6-7.

[28] *Rollo*, p. 6.

[29] TSN dated June 20, 2003, p. 10.

[30] *Rollo*, p. 6.

[31] Id.

On November 16, 2015,[32] the RTC convicted XXX and YYY of murder and dismissed the case against Leonard and Jason for failure of the prosecution to present evidence, thus:

> **WHEREFORE**, after a careful scrutiny of the records of this case, accused [XXX] and [YYY] are hereby found guilty beyond reasonable doubt of the crime of murder.
>
> Accused [XXX] and [YYY] are hereby sentenced to suffer the penalty of imprisonment of Reclusion Perpetua. However, Sec. 38 of RA No. 9344 provides for the automatic suspension of sentence of a child in conflict with the law, even if he/she is already 18 years if age or more at the time of he/she is found guilty of the offense charged. Both accused are to undergo rehabilitation programs/ proceedings prepared by the Department of Social Welfare and Development (DSWD), Santa Cruz, Laguna, for a period of two years, who shall submit quarterly progress report on their conduct and activities. Thus, they should immediately report to the Department of Social Welfare and Development (DSWD), Santa Cruz, Laguna, after promulgation of judgment in the instant case, for the proper preparation of their rehabilitation programs/proceedings. Both accused must prove to the court that they have become fruitful citizens of mainstream society.
>
> The civil liability of the accused shall proceed accordingly and both of them are ordered to pay the heirs of Rolando Abetria jointly and severally, the amount of ₱80,000 for funeral expenses; Php75,000 as moral damages; and, exemplary damages in the amount of ₱30,000. Costs against both accused.
>
> Let a copy of this decision be furnished for immediate implementation to the Provincial Social Worker of Santa, Cruz, Laguna, who shall submit to this court, within fifteen (15) days from receipt of a copy of the decision, the action they have taken thereon.
>
> **SO ORDERED**.[33]

The RTC ruled that the prosecution witnesses' positive identification that XXX, in conspiracy with YYY, stabbed Rolando with a knife is superior than accused's claim of self-

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[32] Supra note 4.

[33] CA *rollo*, pp. 21-22.

defense and denial. Although XXX claimed he was mauled, his narration failed to convince the court that he did not kill the victim as he admitted that he stabbed Rolando. The RTC gave credence to the testimonies of Del Mundo and Austria that they saw XXX as the one who fatally stabbed Rolando, who was held in the arms by YYY. The RTC held that XXX's defense that he made a backward thrust of the knife has no merit considering the height of the victim, who was seven inches taller than XXX and YYY, whose heights are 5'4" to 5'5".[34]

However, the case against Jason was dismissed for failure of prosecution to present evidence. Meanwhile, the case against Leonard Ferrer was also dismissed for failure of the prosecution to prove the guilt of accused-appellants beyond reasonable doubt.[35]

On November 29, 2017,[36] the CA affirmed the conviction for murder but with modification as to the penalty because of the minority of accused-appellants when they committed the crime, to wit:

> **WHEREFORE**, the instant appeal is **DENIED**. The assailed Decision dated November 16, 2015 of the Regional Trial Court (RTC), Branch 26 of Sta. Cruz, Laguna in Criminal Case No. SC-8180 is **AFFIRMED with MODIFICATION**. Each of the accused-appellants, [XXX] and [YYY], are hereby sentenced to suffer the penalty of imprisonment of twelve (12) years of *prision mayor* as minimum, to seventeen (17) years of *reclusion temporal* as maximum.
>
> On account of minority of accused-appellants when they came in conflict with the law, they shall serve their sentences in an agricultural camp or training facility, in accordance with Section 51 of Republic Act No. 9344. For this purpose, the case is remanded to the Regional Trial Court of Sta. Cruz Laguna, Branch 26 for appropriate disposition.
>
> Lastly, accused-appellants are directed to jointly and severally pay the heirs of Rolando Abetria, the amounts Php75,000 as civil indemnity,

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[34] Id. at 20-21.

[35] *Rollo*, p. 7.

[36] Supra note 3.

Php60,000 as funeral expenses or actual damages, Php75,000 as moral damages, and Php75,000 as exemplary damages. All monetary awards shall earn interest at the legal rate of 6% per *annum* from the finality of this decision until fully paid.

SO ORDERED.[37] (Emphasis in the original)

The CA affirmed the findings of the RTC that the eyewitnesses positively identified XXX and YYY as the assailants of Rolando. Although their testimonies did not perfectly fit each other as to the weapon used or the number of stabbing incident, it did not dilute their credibility, nor the verity of their testimonies. It held that what is important is that their testimonies corroborated each other on material points. It also found that conspiracy existed because of the concerted acts of accused-appellants in the killing of Rolando. The CA was not persuaded that XXX acted in self-defense because there was no unlawful aggression on the part of Rolando, and the alleged injuries he sustained was not corroborated. Notably, the nature and location of stab wound sustained by Rolando negates the claim of self-defense.[38]

However, the CA found that the RTC erred in automatically suspending the sentence of accused appellant because both accused-appellants were beyond 21 years of age at the time of promulgation of the Decision on November 16, 2015.[39] Pursuant to the case of *People v. Jugueta*,[40] the CA awarded civil indemnity of ₱75,000.00 and increased the award of exemplary damages to ₱75,000.00. In addition, it reduced the award of actual damages to ₱60,000.00 based on the receipts presented by prosecution. It also imposed an interest of six percent (6%) *per annum* from the date of finality of the decision until full payment.[41]

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[37] *Rollo*, pp. 22-23.

[38] Id. at 16-20.

[39] Id. at 21.

[40] 783 Phil. 806 (2016).

[41] *Rollo*, p. 22.

Accused-appellants moved for reconsideration[42] which the CA denied in its Resolution[43] dated March 20, 2018. Accused-appellants then filed a Notice of Appeal[44] dated May 3, 2018. Accused-appellants manifested that they are adopting their Appellants' Brief before the CA as their supplemental brief. [45] The People of the Philippines, through the Office of the Solicitor General (OSG), manifested that it shall no longer file a supplemental brief considering that it had exhaustively discussed the issues and legal principles involved in the case in the Appellee's Brief dated May 30, 2017.[46]

Arguments of Accused-Appellants

Accused-appellant argued that the testimonies of Del Mundo and Austria were inconsistent with each other regarding the weapon used and the frequency of stabbing incident. Notably, both witnesses did not mention the presence of Amonelo nor the initial fight where Amonelo allegedly attacked XXX. Likewise, they claimed there were inconsistencies in the participation and presence of Leonard Ferrer and YYY during the incident. Del Mundo and Austria's credibility are also questionable for their failure to immediately report the incident to the police and inability to help Rolando during the incident. They insisted that Austria's behavior was highly unusual considering he knew Rolando since childhood.[47]

In addition, accused-appellants claimed that Amonelo did not see the actual stabbing incident and his testimony that XXX and YYY supposedly threatened and returned to kill Rolando was uncorroborated.[48] On the contrary, they argue that Amonelo

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[42] CA *rollo*, pp. 126-133.

[43] Id. at 145-146.

[44] Id. at 147-149.

[45] *Rollo*, p. 38.

[46] Id. at 33.

[47] CA rollo, p. 57.

[48] Id. at 59.

started the fight with XXX while YYY tried to pacify them.[49] Because YYY was also mauled by Amonelo, YYY ran away and saw his cousin Leonard whom he told about the situation. Upon learning what happened, Leonard rushed to XXX's aid and upon his arrival, Amonelo's companions ran away.[50] Hence, they contended that due to what appears to be a free for all fight, there is a possibility that Del Mundo and Austria mistook Amonelo for Rolando being held by Leonard especially since the incident happened at nighttime. They also insisted that XXX acted in self-defense to escape. Lastly, they claim that the prosecution failed to prove conspiracy existed, hence, YYY's participation in the incident is doubtful.[51]

Arguments of Plaintiff-Appellee

The OSG alleged that the prosecution witnesses are credible and the alleged inconsistencies in the testimonies of Del Mundo and Austria pertain only to minor matters. The inconsistencies alleged, such as the number of stabbing thrust and the weapon used are insignificant details because their testimonies corroborate on material points that XXX stabbed the victim while YYY held him so he could not defend himself. It further argued that Austria's failure to report the incident do not diminish his credibility because there is no standard behavior when a person witnesses a crime. Thus, he cannot be expected to react in a certain manner. As testified by Austria, he was not able to report to the police because he was afraid and ashamed that he was not able to do something to prevent the victim's death.[52]

The OSG argued that accused-appellants were not acting in self-defense because there was no unlawful aggression on the part of the victim. The OSG further averred that although Amonelo's group may have been the first to start the fight, unlawful aggression ceased the moment the victim, who had

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[49] Id.

[50] Id.

[51] Id. at 56, 59-60.

[52] Id. at 87-88.

no part in the brawl, pacified the group. In addition, the prosecution proved that it was XXX who first attacked the victim when he threw a stone at him and threatened him.[53]

Issue

The issue for the Court's resolution is whether accused-appellants are guilty of the crime of Murder.

Ruling of the Court

The appeal is partly meritorious.

At the outset, appeal in criminal cases throws the whole case open for review and it is the duty of the appellate court to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.[54] After a careful review and scrutiny of the records, We hold that accused-appellants can only be convicted of Homicide, instead of Murder, as the qualifying circumstance of treachery was not proven in the killing of the victim.

> 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 reclusión temporal in its maximum period 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 (Emphasis supplied)

If these qualifying circumstances are not present or cannot be proven beyond reasonable doubt, the accused may only be convicted with Homicide, defined in Article 249 of the Revised Penal Code:

> Art. 249. Homicide. — Any person who, not falling within the provisions of Article 246, shall kill another without the attendance

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[53] Id.

[54] *People v. Dahil*, 750 Phil. 212, 225 (2015).

of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by *reclusion temporal*.

In determining whether the killing was committed with treachery, two conditions must be present, namely: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and (2) the said means or method of execution was deliberately or consciously adopted.[55]

In the case at bar, the prosecution failed to prove that treachery was present in the killing of the victim.

As testified by Amonelo, there was an altercation prior to the stabbing incident, although it was only Austria and Del Mundo who saw the actual stabbing. Amonelo recounted that at around 9:00 p.m., it was accused-appellants' group who challenged them to a fight which led to a brawl.[56] Rolando pacified the group but XXX threw a stone which hit Rolando.[57] Thereafter, XXX threatened Rolando saying "*You will see Olan, we will return and we will kill you*."[58] Rolando angrily pursued XXX and a fistfight ensued, forcing Amonelo to aid Rolando. However, Leonard and his companions arrived and Amonelo ran away.[59]

Case law teaches us that there is no treachery when the assault is preceded by a heated exchange of words between the accused and the victim; or when the victim is aware of the hostility of the assailant towards the former.[60] The existence of a struggle before the fatal blows were inflicted on the victim clearly shows

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[55] *People v. Tumaob, Jr.*, 353 Phil. 331, 337 (1998).

[56] TSN dated July 13, 2001, pp. 11-14.

[57] TSN dated February 7, 2002, p. 11.

[58] TSN dated July 13, 2001, p. 16.

[59] TSN dated February 7, 2002, pp. 13-15.

[60] *People v. Reyes*, 420 Phil. 343, 353 (2001).

that he was forewarned of the impending attack, and that he was afforded the opportunity to put up a defense.[61]

To be sure, the attack made by accused-appellants was neither sudden nor unexpected. Even assuming that the version of the defense is to be considered, XXX and YYY narrated that there was a fistfight between them and Rolando's group on December 24, 1999 at around 10:00 p.m. As such, YYY's holding of Rolando's arms was just a part of the ongoing fight.[62] Hence, this should have made Rolando aware that there was an impending attack on him. According to the prosecution witness Amonelo, after Rolando boxed XXX, Rolando ran away but was not able to run any further because his slippers were broken and XXX caught up with him. In another case, the Court held that the qualifying circumstance of treachery cannot be appreciated against accused-appellants because the victim was forewarned of the impending attack and he could have in fact escaped had he not stumbled.[63]

It is settled that the assessment of the credibility of the witnesses and their testimonies is best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grueling examination. As such, the findings of the trial court on such matters will not be disturbed on appeal unless some facts or circumstances of weight were overlooked, misapprehended, or misinterpreted as to materially affect the disposition of the case.

After a thorough review of the records before Us, We disagree with the trial court finding that the testimony of prosecution witness Del Mundo was clear and consistent. We observed that Del Mundo's reaction during the incident was contrary to human nature. He narrated that he was one arms-length away when he saw the victim being stabbed in front of him. Although he stopped

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[61] *People v. Pajotal*, 420 Phil. 763, 778 (2001).

[62] *Rollo*, 6-7.

[63] *People v. Dela Cruz*, 461 Phil. 471, 478 (2003).

his tricycle, he was not able to help the victim out of fear. To Our mind, his reaction is not consistent with ordinary human behavior. Surely, he was afraid that they might kill him because XXX was still holding a knife, but if he were truly afraid, he would have sped away and not dare attempt to stop his tricycle even with the engine running to just watch the incident. He also testified that the victim was stabbed in the chest and right eye, however the death certificate reveals that the victim sustained only one stab wound in the chest. To Our mind, there is doubt as to whether Del Mundo was present during the stabbing incident or that he actually saw Rolando being stabbed.

In any event, another prosecution witness, Austria, identified XXX and YYY as the assailants in the instant case, in a simple, spontaneous, and straightforward manner, thus:

DIRECT-EXAMINATION BY ATTY. MACALALAG:

Q: Would you still recall where were you last December 24, 1999? About 9 in the evening?
A: I was inside my house, Sir.

Q: Where is your house located?
A: Brgy. Pagsawitan, Sta. Cruz, Laguna, Sir.

x x x x

Q: On that particular date, December 24, 1999, do you still recall any unusual occurrence that transpired?
A: I heard somebody pursuing each other and quarelling, sir.

Q: About what time is this?
A: About 10:30 in the evening, sir.

Q: What did you do upon hearing those commotion?
A: I went out of my house, sir.

Q: What did you say (*sic*) after you went out of your house?
A: I saw somebody quarelling and someone was holding the son of Abet Abetria, sir.

Q: If you will see those persons whom you saw that evening, would you be able to recall their faces?
A: Yes, sir.

Q: Look around in the court room, do you see their faces?
A: Yes sir, those 3 persons.

x x x x

INTERPRETER: Witness pointing to one wearing red and black t-shirt and khaki pants who identified himself as YYY (*sic*); another one wearing moss green polo shirt and maong pants who identified himself as Leonard Ferrer and the one in blue striped-tshirt and khaki pants who identified himself as XXX.

x x x x

Q: What were these 3 persons who were present before the Court doing when you saw them?
A: Those 2 persons (witness pointing to YYY (*sic*) and Leonard Ferrer) were the ones holding the victim, sir.

Q: And who is the victim?
A: Olan Abetria, sir.

x x x x

Q: And what about the other person you have identified earlier as one of the accused. What was he doing at the time, this XXX?
A: He was the one who stabbed the victim, sir.

Q: How far were you from XXX and the 2 others when the stabbing took place?
A: The same distance, 6 meters, sir.

Q: After you saw XXX stab the victim, what did you do, if any?
A: I shouted, "hoy tigilan nyo yan."

Q: What did they do after you after hearing your shout?
A: Two of them ran in opposite direction while the other one running in the right direction was pursuing somebody but was not able to catch him, sir.

Q: And who was that person running?
A: The person who stab (*sic*) the victim, Jeffrey, sir.

x x x x

Q: Was there illumination or light during that date and time?
A: There was an incandescent bulb and the tricycle of Boyong was in the middle, sir.

x x x x

Q: After you saw the incident, did you, in any way, help the victim?
A: No sir, because I saw that the victim was able to run.

x x x x

Q: What happened to him while he was running away from the incident?
A: I heard somebody shouted "bumagsak si Olan."

Q: What then did you do?
A: I was about to approach the victim but he was already loaded on a tricycle, sir.[64]

Jurisprudence also tells us that when a testimony is given in a candid and straightforward manner, there is no room for doubt that the witness is telling the truth.[65] Here, Austria's testimony was clear and categorical that XXX stabbed Rolando, while YYY held his hands at the back. He was six meters from the stabbing incident and the place was well-lighted. In addition, his testimony was corroborated by the Certificate of Death[66] attesting that Rolando died due to "Cardio-Respiratory Arrest due to Hypovolemic Shock due to Stab Wound, Chest."[67]

Contrary to accused-appellants' claim, the failure of Austria to help and/or rescue Rolando from the hands of his assailants does not make his testimony incredible and unworthy of belief. Jurisprudence holds that that the eyewitnesses' inability to help the victim due to their fear of reprisal is understandable and not at all contrary to common experience.[68] Different people react differently to a given stimulus or situation and there is no standard form of behavioral response when one is confronted

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[64] TSN dated August 8, 2002, pp. 4-7.

[65] *People v. Aquino*, 724 Phil. 739, 749 (2014).

[66] Records, p. 6.

[67] Id.

[68] *People v. Campit*, 822 Phil. 448, 458 (2017).

with a startling or frightful experience.[69] Here, Austria explained that he shouted "*Hoy tigilan niyo na yan*"[70] after seeing the latter was stabbed. However, he was not able to help during the fight because he was afraid for his life and was not able to report the incident to the police because he was ashamed to tell Rolando's father that he was unable to prevent Rolando's death. No law obligates a person to risk his/her own life to save another, although it may be the moral thing to do.

Conspiracy was also established by the evidence on record because of the concerted efforts of both the accused. Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[71] It may be deduced from the manner in which the offense is committed, as when the accused act in concert to achieve the same objective.[72] In this case, Austria testified that YYY held Rolando from behind while XXX stabbed him. Thus, YYY's participation in the commission of the crime charged is clear. Certainly, XXX and YYY cooperated with one another to achieve their purpose of killing the victim. It is sufficient that the accused acted in concert at the time of the commission of the offense, that they had the same purpose or common design, and that they were united in its execution.[73]

Accordingly, because conspiracy was established, there is no need to determine who among the accused delivered the fatal blow. All of the accused are liable as principals regardless of the extent and character of their participation, for in conspiracy the act of one is the act of all.[74]

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[69] Id.

[70] TSN dated August 8, 2002, p. 7.

[71] *People v. Baccay*, 348 Phil. 322, 331-332 (1998).

[72] *People v. Bautista*, 387 Phil. 183, 203 (2000).

[73] *People v. Adoc*, 386 Phil. 840, 857 (2000).

[74] *People v. Gungon*, 351 Phil. 116, 142 (1998).

Anent XXX's contention that he was merely acting in self-defense, We are not persuaded. Self-defense is an affirmative allegation and offers exculpation from liability for crimes only if satisfactorily proved.[75] Indeed, in invoking self-defense, the burden of evidence is shifted and the accused claiming self-defense must rely on the strength of his own evidence and not on the weakness of the prosecution.[76] In this case, although XXX allegedly suffered injuries due to the fistfight between him and the victim, XXX failed to sufficiently establish that there was an imminent danger to his life as the aggression no longer existed the moment Leonard and his companions arrived prompting the victim to run away. In addition, XXX did not present any evidence to prove that he sustained injuries. Considering the nature and location of the stab wound sustained by the victim, the plea of self-defense is untenable.

Therefore, without appreciating the qualifying circumstance of treachery, the crime is Homicide and not Murder. Under Article 249 of the RPC, any person found guilty of Homicide shall be meted the penalty of *reclusion temporal*, a penalty which contains three (3) periods.

Considering that XXX committed the crime when he was just 17 years and 7 months old, and YYY when he was just 15 years and 8 months old, they are entitled to the privileged mitigating circumstance of minority under Article 68 (2)[77] of the Revised Penal Code. Accordingly, the penalty to be imposed upon them shall be the penalty next lower in degree than that

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[75] *People v. Gutierrez*, 625 Phil. 471, 480 (2010).

[76] Id. at 481-482.

[77] Article 68. *Penalty to Be Imposed Upon a Person Under Eighteen Years of Age*. — When the offender is a minor under eighteen years and his case is one coming under the provisions of the paragraph next to the last of article 80 of this Code, the following rules shall be observed:

x x x x

2. Upon a person over fifteen and under eighteen years of age the penalty next lower than that prescribed by law shall be imposed, but always in the proper period.

prescribed by law, but always in the proper period.[78] Thus, the imposable penalty must be reduced by one degree from *reclusion temporal*, which is *prision mayor*. Being a divisible penalty, the Indeterminate Sentence Law is applicable.[79] Given that there is no mitigating or aggravating circumstance, the penalty shall be imposed in its medium period.

Thus, applying the Indeterminate Sentence Law, the maximum penalty shall be *prision mayor* in its medium period, while the minimum penalty shall be *prision correcional* in any of its periods. Thus, accused-appellants are to suffer the indeterminate penalty of six (6) years of *prision correccional*, as minimum, to ten (10) years of *prision mayor*, as maximum.

Nevertheless, We agree with the CA that the trial court erred when it ordered the automatic suspension of sentence of the accused because the said suspension of sentence lasts only until the child in conflict with the law reaches the maximum age of 21 years.[80] In this case, XXX and YYY were more than 21 years old when the RTC promulgated its Decision[81] on 2015. However, the accused are entitled to the benefit of Section 51 of Republic Act No. 9344,[82] despite their ages at the time of conviction. Thus, they may serve their sentence in an agricultural camp or other training facilities that may be established, maintained, supervised and controlled by the Bureau of Corrections, in coordination with the Department of Social Welfare and Development.

Corollarily, the damages awarded by the CA need to be modified in keeping with the recent jurisprudence. As provided for in *People v. Jugueta*,[83] in the crime of Homicide where the penalty consists of divisible penalty, moral damages and civil

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[78] *People v. Lababo*, G.R. No. 234651, June 6, 2018.

[79] Id.

[80] *People v. Jacinto*, 661 Phil. 224, 256 (2011).

[81] Supra note 4.

[82] Juvenile Justice and Welfare Act of 2006, Republic Act No. 9344.

[83] Supra note 40.

indemnity is ₱50,000.00. Thus, the award of moral damages and civil indemnity in the amount of ₱75,000.00 are reduced to ₱50,000.00. Meanwhile, the award of ₱75,000.00 as exemplary damages should be deleted. The award of ₱60,000.00 as funeral expenses or actual damages is affirmed based on the receipts presented by prosecution.

WHEREFORE, premises considered, the instant appeal is **PARTIALLY GRANTED**. The Decision dated November 29, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08398 is hereby **AFFIRMED with MODIFICATION**.

The Court declares XXX and YYY **GUILTY** beyond reasonable doubt of the crime of Homicide, with the privileged mitigating circumstance of minority, for which they are sentenced to suffer the indeterminate penalty of six (6) years of *prision correccional*, as minimum, to ten (10) years of *prision mayor*, as maximum.

On account of minority of accused-appellants when they came in conflict with the law, they may serve their sentences in an agricultural camp or training facility in accordance with Section 51 of Republic Act No. 9344. Thus, this case shall be **REMANDED** to the court of origin to effect the imposition of the full service of their sentence in an agricultural camp or other training facility.

Accused-appellants XXX and YYY are **ORDERED** to pay jointly and severally the heirs of Rolando Abetria the amount of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱60,000.00 as funeral expenses or actual damages. They are likewise **ORDERED** to pay a legal interest of six percent (6%) on the total amount of damages computed from the finality of this judgment until full payment thereof.

SO ORDERED.

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

THIRD DIVISION

[G.R. Nos. 242495-96. September 16, 2020]

MANILA CORDAGE COMPANY-EMPLOYEES LABOR UNION-ORGANIZED LABOR UNION IN LINE INDUSTRIES AND AGRICULTURE (MCC-ELU-OLALIA) AND MANCO SYNTHETIC, INC., EMPLOYEE LABOR UNION-ORGANIZED LABOR UNION IN LINE INDUSTRIES AND AGRICULTURE (MSI-ELU-OLALIA), *Petitioners, v.* **MANILA CORDAGE COMPANY (MCC) AND MANCO SYNTHETIC, INC. (MSI),** *Respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; *CERTIORARI*; THE EXISTENCE OF AN EMPLOYER-EMPLOYEE RELATIONSHIP OR LABOR-ONLY CONTRACTING IS A QUESTION OF FACT THAT MAY BE ACTED UPON BY THE COURT WHEN CERTAIN EXCEPTIONS ARE PRESENT; CASE AT BAR.— As a general rule, the Supreme Court is not a trier of facts. . . .

The existence of an employer-employee relationship or labor-only contracting is a question of fact because it entails an assessment of the probative value of the evidence presented in the lower courts. Thus, it is only appropriately acted upon by this Court when certain exceptions are present as laid down in *Pascual v. Burgos*:

. . . (7) The findings of the Court of Appeals are contrary to those of the trial court;

. . .

In this case, the factual findings of the Court of Appeals are contrary to those of the Secretary of Labor and Employment, thus, it becomes proper for this Court to delve into the factual circumstances and records of the case.

2. ID.; ID.; ID.; IN LABOR CASES, A PETITION FOR REVIEW ON *CERTIORARI* IS LIMITED TO THE

DETERMINATION OF THE EXISTENCE OF GRAVE ABUSE OF DISCRETION AND JURISDICTIONAL ERRORS ON THE PART OF THE LOWER TRIBUNAL.— In labor cases, petitions for review on *certiorari* under Rule 45 is limited to determining whether the Court of Appeals was correct in finding the presence or absence of grave abuse of discretion and jurisdictional errors on the part of the lower tribunal.

3. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; LEGITIMATE JOB CONTRACTING; LABOR-ONLY CONTRACTING.— Legitimate job contracting and labor-only contracting are defined in Article 106 of the Labor Code . . . .

San Miguel Foods, Inc. v. Rivera laid down the characteristics that differentiate legitimate job contractors from prohibited labor-only contractors and the legal consequences if an entity is found to be the latter. . . .

. . . [T]he permitted or permissible or legitimate job contracting or subcontracting is the one allowed and permitted by law. It is an arrangement whereby a principal agrees to put out or farm out with the contractor or subcontractor the performance or completion of a specific job, work, or service within a definite or predetermined period, regardless of whether such job, work, or service is to be performed or completed within or outside the premises of the principal. To determine its existence, these conditions must concur: (a) the contractor carries on a distinct and independent business and partakes the contract work on his account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of his work except as to the results thereof; (b) the contractor has substantial capital or investment; and (c) the agreement between the principal and the contractor or subcontractor assures the contractual employees' entitlement to all labor and occupational safety and health standards, free exercise of the right to self-organization, security of tenure, and social welfare benefits. Thus, in legitimate job contracting, the employer-employee relationship between the job contractor and his employees is maintained. While the law creates an employer-employee relationship between the employer and the contractor's employees, the same is only for the purpose of ensuring the payment of the employees' wages. . . .

In stark contrast, labor-only contracting is a prohibited act and it is not condoned by law. It is an arrangement where the contractor not having substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, supplies workers to an employer and the workers recruited are performing activities which are directly related to the principal business of such employer.

4. ID.; ID.; LABOR-ONLY CONTRACTING; A CONTRACTOR IS PRESUMED TO BE ENGAGED IN LABOR-ONLY CONTRACTING.— To protect the workforce, a contractor is generally presumed to be engaged in labor-only contracting, unless it proves otherwise by having substantial capital, investment, tools and the like. However, the burden of proving the legitimacy of the contractor shifts to the principal when it is the one claiming that status, such as in this case.

5. ID.; ID.; ID.; THE TOTALITY OF THE FACTS AND THE SURROUNDING CIRCUMSTANCES OF THE CASE MUST BE CONSIDERED IN DETERMINING THE ISSUE OF LABOR-ONLY CONTRACTING.— Respondents claim that Alternative Network Resources and Worktrusted Manpower Services are legitimate job contractors as supported by the Certificates of Registration awarded to them by the Department of Labor and Employment at the time the events of this case occurred. In addition, they argue that both entities have substantial capitalization with Alternative Network Resources having more than ₱10 million as deposit for future stock subscription and ₱30 million fully paid shares, and Worktrusted Manpower Services having ₱4 million in paid up capital.

Respondents also made much of the fact that both Alternative Network Resources and Worktrusted Manpower Services catered to other clients aside from them, claiming this indicates that they carry a separate and distinct business. Although this may be a badge of legitimate job contracting, it does not automatically convert a labor-only contractor to a legitimate job contractor because in the issue of labor-only contracting, "the totality of the facts and the surrounding circumstances of the case" must be considered.

6. ID.; ID.; ID.; PRESUMPTION OF LABOR-ONLY CONTRACTING; A CERTIFICATE OF REGISTRATION

MERELY PREVENTS THE PRESUMPTION OF LABOR-ONLY CONTRACTING AND GIVES RISE TO A DISPUTABLE PRESUMPTION THAT THE CONTRACTOR IS LEGITIMATE; CASE AT BAR.— A Certificate of Registration is not conclusive evidence of being a legitimate independent contractor. It merely prevents the presumption of labor-only contracting and gives rise to a disputable presumption that the contractor is legitimate.

In this case, it is worth noting that respondents entered into a Memorandum of Agreement with Alternative Network Resources and Worktrusted Manpower Services even before these contractors were issued Certificates of Registration by the Department of Labor and Employment. The Certificates of Registration presented by respondents covered the period of 2014 to 2017, yet records show that Alternative Network Resources undertook to provide respondent Manila Cordage with manufacturing support services as early as 2008 while Worktrusted Manpower Services entered into a Memorandum of Agreement with Manco Synthetic in 2009. This indicates that they supplied manpower to various clients even without the stamp of imprimatur from the Department of Labor and Employment.

7. ID.; ID.; ID.; CONDITIONS FOR AN ENTITY TO BE CONSIDERED AS LABOR-ONLY CONTRACTOR; THE PRESENCE OF AT LEAST ONE OF THE CONDITIONS SUFFICES FOR AN ENTITY TO BE HELD AS LABOR-ONLY CONTRACTOR; CASE AT BAR.— Section 5 of Department Order No. 18-02 provides that if at least one of the following conditions are present, then an entity would be considered a labor-only contractor:

(i) The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; or

(ii) the contractor does not exercise the right to control over the performance of the work of the contractual employee.

Here, both conditions are present. While both Alternative Network Resources and Worktrusted Manpower Services have

the required paid-up capital as seen in their Articles of Incorporation, Annual Income Tax and Audited Financial Statements, records show that they do not have substantial investment in the form of tools, equipment, and machineries necessary to carry out the functions of their alleged employees who perform activities directly related to the business of respondents. Instead, their alleged employees, herein petitioners, use respondents' equipment and machinery to carry out jobs related to rope manufacturing.

8. ID.; ID.; ID.; RIGHT TO CONTROL, DEFINED; PROOF OF SUBSTANTIAL CAPITAL DOES NOT MAKE AN ENTITY IMMUNE TO A FINDING OF LABOR-ONLY CONTRACTING WHEN THERE IS A SHOWING THAT CONTROL OVER THE EMPLOYEES RESIDE IN THE PRINCIPAL, AND NOT IN THE CONTRACTOR.— In *Dole Phils., Inc. v. Esteva*, this Court illustrates that an entity may still be held as a labor-only contractor despite numerous badges which supports the notion that it is a legitimate labor contractor.

. . .

. . .

Here, Alternative Network Resources and Worktrusted Manpower Services may still be considered as labor-only contractors given other circumstances surrounding the case. Further, proof of substantial capital does not make an entity immune to a finding of labor-only contracting when there is showing that control over the employees reside in the principal and not in the contractor. The right to control is defined in Section 5 of Department Order No. 18-02 as:

The "right to control" shall refer to the right reserved to the person for whom the services of the contractual workers are performed, to determine not only the end to be achieved, but also the manner and means to be used in reaching that end.

. . .

Despite Alternative Network Resources and Worktrusted Manpower Services' role in the hiring, disciplining and paying of wages of petitioners, it is still respondents who exercised control over petitioners' work performance and output.

9. ID.; ID.; ID.; THE EMPLOYEES OF THE SUPPOSED CONTRACTOR WHO PERFORM FUNCTIONS NECESSARY AND DIRECTLY RELATED TO THE PRINCIPAL'S MAIN BUSINESS ARE EMPLOYEES OF THE SUPPOSED PRINCIPAL; CASE AT BAR.— It is likewise clear that petitioners perform functions necessary and directly related to the main business of respondents, as they are involved in the core operations for the manufacturing and export of respondent's rope products. Further, petitioners have been performing these functions with respondents even before Alternative Network Resources and Worktrusted Manpower Services were registered as legitimate labor contractors with the Department of Labor and Employment. Thus, "the repeated and continuing need for the performance of the job is sufficient evidence of the necessity, if not indispensability of the activity to the business."

10. ID.; ID.; ID.; IN LABOR-ONLY CONTRACTING, THERE IS NO PRINCIPAL AND CONTRACTOR, AS THERE IS ONLY THE EMPLOYER'S REPRESENTATIVE WHO GATHERS AND SUPPLIES PEOPLE FOR THE EMPLOYER.— As respondents failed to adduce sufficient evidence to prove that Alternative Network Resources and Worktrusted Manpower Services are legitimate labor contractors, they are deemed engaged in labor-only contracting. Consequently, their alleged employees are in effect the employees of their principal, herein respondents. . . .

. . . In labor-only contracting, there is no principal and contractor; "there is only the employer's representative who gathers and supplies people for the employer[.]" Here, Alternative Network Resources and Worktrusted Manpower Services merely supplied manpower for respondents. Thus, petitioners are considered employees of respondents and the votes they casted during the Certification Elections held on January 27, 2016 are valid.

APPEARANCES OF COUNSEL

Banzuela & Associates for petitioners.
Sagayo Evangelista & Rebuelta for respondents.

D E C I S I O N

LEONEN, *J.*:

A labor contractor's Certificate of Registration with the Department of Labor and Employment is not conclusive evidence of its status as a legitimate labor contracting entity. At most, it causes a disputable presumption that the entity is a legitimate labor contractor which can be refuted by other evidence. In order to determine whether an entity is a labor-only contractor or a legitimate labor contractor, what must be considered is the totality of the facts and surrounding circumstances of the case.[1]

This resolves a Petition for Review on Certiorari[2] filed by Manila Cordage Company-Employees Labor Union-Organized Labor Union in Line Industries and Agriculture (MCC-ELU-OLALIA) and Manco Synthetic, Inc.-Employees Labor Union-Organized Labor Union in Line Industries and Agriculture (MSI-ELU-OLALIA), assailing the Consolidated Decision[3] and Resolution[4] of the Court of Appeals in CA-G.R. SP No. 146614 & 148154, which set aside the Decision of the Secretary of Labor and reinstated the Mediator-Arbiter's Decision which ruled in favor of Manila Cordage Company (Manila Cordage) and Manco Synthetic, Inc. (Manco Synthetic).

The Organized Labor Union in Line Industries and Agriculture (OLALIA) is a legitimate labor organization that established

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[1] *Polyfoam-RGC International Corp. v. Concepcion*, 687 Phil. 137 (2012) [Per J. Peralta, Third Division].

[2] Rollo, pp. 10-55.

[3] Id. at 233-250. The Decision dated January 19, 2018 was penned by Associate Justice Rodil V. Zalameda (now a member of this Court), and concurred in by Associate Justices Japar B. Dimaampao and Renato C. Francisco of the Seventh Division, Court of Appeals, Manila.

[4] Id. at 267-272. The Resolution dated September 20, 2018 was penned by Associate Justice Rodil V. Zalameda (now a member of this Court), and concurred in by Associate Justices Japar B. Dimaampao and Maria Filomena D. Singh of the Former Seventh Division, Court of Appeals, Manila.

local chapters in companies engaged in rope manufacturing.[5] MCC-ELU-OLALIA and MSI-ELU-OLALIA were its local chapters in Manila Cordage and Manco Synthetic, respectively.[6]

Considering that Manila Cordage and Manco Synthetic were unorganized and had no exclusive bargaining agent, OLALIA filed Petitions for Certification Election before the Department of Labor and Employment, Regional Office IV. Manila Cordage and Manco Synthetic opposed this, asserting that members of the subject labor unions are employees of their labor contractors, Alternative Network Resources Unlimited Multi-Purpose Cooperative (Alternative Network Resources) and Worktrusted Manpower Services Cooperative (Worktrusted Manpower Services).[7] The petitions were granted despite the opposition and certification elections were conducted in Manila Cordage and Manco Synthetic on January 27, 2016.[8]

The results of the certification elections were as follows:[9]

For Manila Cordage Company:

Yes	0
No	10
Challenged	294
Spoiled	0
TOTAL VALID VOTES CAST	304[10]

For Manco Synthetic, Inc.:

Yes	0
No	4

[5] Id. at 235.

[6] Id. at 311.

[7] Id. at 15 and 236.

[8] Id. at 235.

[9] Id.

[10] Id.

Challenged	139
Spoiled	0
TOTAL VALID VOTES CAST	143[11]

Manila Cordage Company filed a protest with the Mediator-Arbiter, challenging 294 of the 304 votes cast during the certification elections. Likewise, Manco Synthetic, Inc. filed a protest challenging 139 of 143 of the votes. Both contended that the challenged voters were not their employees but employees of their respective independent contractors.[12]

On March 28, 2016, Mediator-Arbiter Maureen Zena O. Serazon-Tongson (Med-Arbiter Tongson) issued two separate Orders,[13] granting the protests of Manila Cordage and Manco Synthetic.

Med-Arbiter Tongson found that Alternative Network Resources and Worktrusted Manpower Services were legitimate job contractors providing manpower services to Manila Cordage and Manco Synthetic and were thus, the employers of those challenged voters during the certification elections. Consequently, the votes cast during the Certification Elections were held invalid for the purpose of certifying MCC-ELU-OLALIA and MSI-ELU-OLALIA as the exclusive bargaining agents in Manila Cordage and Manco Synthetic.[14]

Aggrieved, both MCC-ELU-OLALIA and MSI-ELU-OLALIA separately filed a Memorandum of Appeal before the Department of Labor and Employment.[15] On May 13, 2016[16] and June 20, 2016,[17] Undersecretary Rebecca C. Chato (Undersecretary

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[11] *Id.* at 237.

[12] *Id.* at 236.

[13] *Id.* at 120-140 and 141-160.

[14] *Id.* at 138-139 and 156-157.

[15] *Id.* at 238.

[16] *Id.* at 215-222.

[17] *Id.* at 224-231.

Chato), by the authority of the Secretary of the Department of Labor and Employment, reversed Med-Arbiter Tongson's Orders and found that Alternative Network Resources and Worktrusted Manpower Services were labor-only contractors. Thus, the challenged votes cast by employees of Manila Cordage and Manco Synthetic should be considered.[18]

The dispositive portion of the May 13, 2016 Decision[19] of Undersecretary Chato in favor of MCC-ELU-OLALIA reads:

WHEREFORE, premises considered, the Appeal Memorandum filed by Manila Cordage Company Employees Labor Union-OLALIA is hereby **GRANTED**. The Order dated 28 March 2016 of the DOLE Regional Office IV-A Mediator-Arbiter Maureen Zena O. Serazon-Tongson is **REVERSED and SET ASIDE**.

Let the entire records be remanded to the Regional Office of origin for the opening and canvassing of the two hundred ninety-four (294) segregated ballots.[20] (Emphasis in the original)

Meanwhile, the dispositive portion of the June 20, 2016 Decision[21] in favor of MSI-ELU-OLALIA reads:

WHEREFORE, premises considered, the Appeal Memorandum filed by Manco Synthetic, Inc. Employee Labor Union-OLALIA is **PARTIALLY GRANTED**. The Order dated 28 March 2016 of the DOLE Regional Office No. IV-A Mediator-Arbiter Maureen Zena O. Serazon-Tongson is hereby **MODIFIED**. Accordingly, except for the ballots of Ronecito Advincula, Ferdinand Carino, Jaime Monterey, Jesus Villanueva, Michael Barbosa, Frederick Marzo, Dennis Rodriguez, Renaldo Tejares, Rogelo Tomas, Cecilito Torres, Edgardo Bayeta and Lutgardes Mutyaon, the segregated votes be opened and canvassed.

Let the entire records be remanded to the Regional Office of origin for the opening and canvassing of the one hundred twenty-seven (127) segregated ballots.

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[18] Id.

[19] Id. at 214-222.

[20] Id. at 222.

[21] Id. at 223-231.

SO RESOLVED.[22] (Emphasis in the original)

Manila Cordage and Manco Synthetic separately filed their Petitions for Certiorari before the Court of Appeals. In both Petitions, they alleged that the Secretary of Labor and Employment gravely abused its discretion when it ruled that there was an employer-employee relationship between them and the challenged voters of the certification election as Alternative Network Resources and Worktrusted Manpower Services were mere labor-only contractors.[23] On Motion by MCC-ELU-OLALIA, the two Petitions were consolidated.[24]

Finding grave abuse of discretion on the part of the Secretary of Labor, the Court of Appeals granted the Petitions for Certiorari filed by Manila Cordage and Manco Synthetic in its Consolidated Decision.[25]

According to the Court of Appeals, Manila Cordage and Manco Synthetic both submitted substantial evidence that Alternative Network Resources and Worktrusted Manpower Services were legitimate job contractors providing manpower services to them.[26] Specifically, they presented Certificates of Registration numbered NCR-MPFO-72600-3111-210-R and RO-IVA-08-10-28 issued by the Department of Labor and Employment, declaring the two as legitimate independent contractors.[27] Furthermore, it found that the two contractors have substantial capitalization, both having more than the required minimum paid up capital of ₱3 million. The Court of Appeals likewise held that the fact that the two contractors had other clients from various industries negates the conclusion that they are labor-only contractors.[28]

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[22] Id. at 231.

[23] Id. at 240-241.

[24] Id. at 241.

[25] Id. at 233-250.

[26] Id. at 248.

[27] Id. at 244.

[28] Id. at 245.

The dispositive portion of the January 19, 2018 Consolidated Decision reads:

WHEREFORE, premises considered, the instant consolidated petitions are hereby **GRANTED** and the assailed Decision dated 13 May 2016 and Resolution dated 20 June 2016 in OS-A-14-5-16, as well as the Resolutions dated 20 June 2016 and 08 September 2016 in OS-A-13-5-16, are **ANNULLED and SET ASIDE**.

Accordingly, the Orders dated 28 March 2016 in RO4A-LPO CE-06-26-05 and RO4A-LPO-CE-07-27-05-15 of the DOLE Regional Office No. IV-A are hereby **REINSTATED**.

SO ORDERED.[29]

MCC-ELU-OLALIA and MSI-ELU-OLALIA filed their respective Motions for Reconsideration, which the Court of Appeals denied in its September 20, 2018 Resolution.[30]

On December 3, 2018, MCC-ELU-OLALIA and MSI-ELU-OLALIA filed their Petition for Review on Certiorari[31] with this Court.

On June 3, 2019, the Court required respondents to comment on the Petition[32] which they did on September 10, 2019.[33]

On October 14, 2019, petitioners filed a Manifestation[34] informing this Court of the decision of the Court of Appeals in *Alternative Network Resources Unlimited Multi-Purpose Cooperative v. Department of Labor and Employment and Regional Director Angaracampita* docketed as CA G.R. S.P. No. 150758. In that case, workers under the payroll of various contractors were held to be employees of Manila Cordage after finding that Worktrusted Manpower Services Cooperative and

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[29] Id. at 249.

[30] Id. at 267-272.

[31] Id. at 10-47.

[32] Id. at 291-292.

[33] Id. at 305-323.

[34] Id. at 390-391.

Alternative Network Resources Unlimited Multi-Purpose Cooperative were labor-only contractors.

In their Petition for Review on Certiorari, MCC-ELU-OLALIA and MSI-ELU-OLALIA maintain that Alternative Network Resources and Worktrusted Manpower Services are engaged in labor-only contracting. Hence, the challenged voters of the certification elections should be deemed employees of respondents and their votes proclaimed as valid.[35]

Petitioners allege that the two contractors do not provide a specific service to respondents and merely supply manpower.[36] They further assert that Alternative Network Resources' and Worktrusted Manpower Services' substantial capital is not sufficient to prove that they complied with the requirements provided for in Department Order No. 18-A.[37] Petitioners maintain that respondents should have submitted evidence that the two contractors own tools, equipment, and machineries used in the main business of respondents, which is rope production.[38]

In their Comment,[39] respondents assert that the Petition should not be entertained as it tackles questions of fact and not of law.[40] They add that there is no employer-employee relationship between them and the employees with challenged votes since the latter were hired from independent job contractors[41] which had substantial capitalization and DOLE certifications.[42] Respondents submit that there was no need to prove that these contractors have investment in the form of tools, equipment and machineries since all that Department Order No. 18-A

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[35] Id. at 41-45.

[36] Id. at 25.

[37] Id. at 28.

[38] Id. at 29.

[39] Id. at 305-322.

[40] Id. at 315.

[41] Id. at 316.

[42] Id. at 311.

requires is either substantial capitalization or investment.[43] Respondents further state that they wield no power or control over the employees, except for the end result of their work.[44]

The main issue to be addressed is whether or not an employer-employee relationship exists between petitioners and respondent. To determine this, however, the issue of whether or not Alternative Network Resources Unlimited Multi-Purpose Cooperative and Worktrusted Manpower Services Cooperative are legitimate job contractors must first be answered.

The petition is meritorious.

As a general rule, the Supreme Court is not a trier of facts. In *Meralco Industrial v. National Labor Relations Commission*,[45] it was held:

> This Court is not a trier of facts. Well-settled is the rule that the jurisdiction of this Court in a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court is limited to reviewing only errors of law, not of fact, unless the factual findings complained of are completely devoid of support from the evidence on record, or the assailed judgment is based on a gross misapprehension of facts. Besides, factual findings of quasi-judicial agencies like the NLRC, when affirmed by the Court of Appeals, are conclusive upon the parties and binding on this Court.[46]

In labor cases, petitions for review on certiorari under Rule 45 is limited to determining whether the Court of Appeals was correct in finding the presence or absence of grave abuse of discretion and jurisdictional errors on the part of the lower tribunal.[47]

The existence of an employer-employee relationship or labor-only contracting is a question of fact because it entails an assessment of the probative value of the evidence presented in

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[43] Id. at 319.

[44] Id. at 321.

[45] 572 Phil. 94 (2008) [Per J. Chico-Nazario, Third Division].

[46] Id. at 117.

[47] *Fuji Television Network, Inc. v. Espiritu*, 749 Phil. 388, 414-415 (2014) [Per J. Leonen, Second Division].

the lower courts. Thus, it is only appropriately acted upon by this Court when certain exceptions are present as laid down in *Pascual v. Burgos*:[48]

> (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.
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> These exceptions similarly apply in petitions for review filed before this court involving civil, labor, tax, or criminal cases.[49] (Emphasis supplied, citations omitted)

In this case, the factual findings of the Court of Appeals are contrary to those of the Secretary of Labor and Employment, thus, it becomes proper for this Court to delve into the factual circumstances and records of the case.

Legitimate job contracting and labor-only contracting are defined in Article 106 of the Labor Code in this wise:

> ARTICLE 106. *Contractor or subcontractor*. — Whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code.
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> In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall

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[48] 776 Phil. 167 (2016) [Per J. Leonen, Second Division].

[49] Id. at 182-183.

be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.

The Secretary of Labor and Employment may, by appropriate regulations, restrict or prohibit the contracting-out of labor to protect the rights of workers established under this Code. In so prohibiting or restricting, he may make appropriate distinctions between labor-only contracting and job contracting as well as differentiations within these types of contracting and determine who among the parties involved shall be considered the employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code.

There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer.

In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

San Miguel Foods, Inc. v. Rivera[50] laid down the characteristics that differentiate legitimate job contractors from prohibited labor-only contractors and the legal consequences if an entity is found to be the latter.

Obviously, the permitted or permissible or legitimate job contracting or subcontracting is the one allowed and permitted by law. It is an arrangement whereby a principal agrees to put out or farm out with the contractor or subcontractor the performance or completion of a specific job, work, or service within a definite or predetermined period, regardless of whether such job, work, or service is to be performed or completed within or outside the premises of the principal. To determine its existence, these conditions must concur: (a) the contractor carries on a distinct and independent business and partakes the contract

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[50] 924 Phil. 961 (2018) [Per J. Velasco, Jr., Third Division].

work on his account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of his work except as to the results thereof; (b) the contractor has substantial capital or investment; and (c) the agreement between the principal and the contractor or subcontractor assures the contractual employees' entitlement to all labor and occupational safety and health standards, free exercise of the right to self-organization, security of tenure, and social welfare benefits. Thus, in legitimate job contracting, the employer-employee relationship between the job contractor and his employees is maintained. While the law creates an employer-employee relationship between the employer and the contractor's employees, the same is only for the purpose of ensuring the payment of the employees' wages. In short, the employer becomes jointly and severally liable with the job contractor but only for the payment of the employees' wages whenever the contractor fails to pay the same. Other than that, the employer is not responsible for any claim made by the contractor's employees.

In stark contrast, labor-only contracting is a prohibited act and it is not condoned by law. It is an arrangement where the contractor not having substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, supplies workers to an employer and the workers recruited are performing activities which are directly related to the principal business of such employer.[51]

To protect the workforce, a contractor is generally presumed to be engaged in labor-only contracting, unless it proves otherwise by having substantial capital, investment, tools and the like. However, the burden of proving the legitimacy of the contractor shifts to the principal when it is the one claiming that status, such as in this case.[52]

Here, the finding of the existence of labor-only contracting on the part of respondents' contractors, Alternative Network Resources and Worktrusted Manpower Services, would give rise to the creation of an employer-employee relationship between respondents as its principals, and petitioners as its alleged employees.

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[51] Id. at 973-974.

[52] *Alilin v. Petron Corp.*, 735 Phil. 509-529 (2014) [Per J. Del Castillo, Former Second Division].

Respondents claim that Alternative Network Resources and Worktrusted Manpower Services are legitimate job contractors as supported by the Certificates of Registration awarded to them by the Department of Labor and Employment at the time the events of this case occurred.[53] In addition, they argue that both entities have substantial capitalization[54] with Alternative Network Resources having more than ₱10 million as deposit for future stock subscription and ₱30 million fully paid shares, and Worktrusted Manpower Services having ₱4 million in paid up capital.[55]

Respondents also made much of the fact that both Alternative Network Resources and Worktrusted Manpower Services catered to other clients aside from them, claiming this indicates that they carry a separate and distinct business.[56] Although this may be a badge of legitimate job contracting, it does not automatically convert a labor-only contractor to a legitimate job contractor because in the issue of labor-only contracting, "the totality of the facts and the surrounding circumstances of the case" must be considered.[57]

A Certificate of Registration is not conclusive evidence of being a legitimate independent contractor. It merely prevents the presumption of labor-only contracting and gives rise to a disputable presumption that the contractor is legitimate.[58]

In this case, it is worth noting that respondents entered into a Memorandum of Agreement with Alternative Network Resources and Worktrusted Manpower Services even before these contractors were issued Certificates of Registration[59] by

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[53] *Rollo*, pp. 316-317.

[54] Id. at 244.

[55] Id. at 245.

[56] Id.

[57] *Petron Corp. v. Caberte*, 759 Phil. 353, 366 (2015) [Per J. Del Castillo, Second Division].

[58] *W.M. Manufacturing, Inc. v. Dalag*, 774 Phil. 353, 378 (2015) [Per J. Velasco, Jr., Third Division].

[59] *Rollo*, p. 220.

the Department of Labor and Employment. The Certificates of Registration presented by respondents covered the period of 2014 to 2017,[60] yet records show that Alternative Network Resources undertook to provide respondent Manila Cordage with manufacturing support services as early as 2008[61] while Worktrusted Manpower Services entered into a Memorandum of Agreement with Manco Synthetic in 2009.[62] This indicates that they supplied manpower to various clients even without the stamp of imprimatur from the Department of Labor and Employment.

In addition, Section 5 of Department Order No. 18-02 provides that if at least one of the following conditions are present, then an entity would be considered a labor-only contractor:

(i) The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; or

(ii) the contractor does not exercise the right to control over the performance of the work of the contractual employee.

Here, both conditions are present. While both Alternative Network Resources and Worktrusted Manpower Services have the required paid-up capital as seen in their Articles of Incorporation, Annual Income Tax and Audited Financial Statements, records show that they do not have substantial investment in the form of tools, equipment, and machineries necessary to carry out the functions of their alleged employees who perform activities directly related to the business of respondents. Instead, their alleged employees, herein petitioners, use respondents' equipment and machinery to carry out jobs related to rope manufacturing.[63]

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[60] Id. at pp. 219-220 and 228.

[61] Id. at p. 220.

[62] Id. at p. 228.

[63] Id. at 29.

Respondents claim that since the presence of both substantial capital and substantial investment in the form of tools, equipment, machineries, and work premises are not required by law, then Alternative Network Resources and Worktrusted Manpower Services must be considered legitimate labor contractors. Their argument does not hold water.

In *Dole Phils., Inc. v. Esteva*,[64] this Court illustrates that an entity may still be held as a labor-only contractor despite numerous badges which supports the notion that it is a legitimate labor contractor.

> While there is present in the relationship of petitioner and CAMPCO some factors suggestive of an independent contractor relationship (*i.e.*, CAMPCO chose who among its members should be sent to work for petitioner; petitioner paid CAMPCO the wages of the members, plus a percentage thereof as administrative charge; CAMPCO paid the wages of the members who rendered service to petitioner), many other factors are present which would indicate a labor-only contracting arrangement between petitioner and CAMPCO.
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> *First*, although petitioner touts the multi-million pesos assets of CAMPCO, it does well to remember that such were amassed in the years following its establishment. In 1993, when CAMPCO was established and the Service Contract between petitioner and CAMPCO was entered into, CAMPCO only had ₱6,600.00 paid-up capital, which could hardly be considered substantial. It only managed to increase its capitalization and assets in the succeeding years by continually and defiantly engaging in what had been declared by authorized DOLE officials as labor-only contracting.
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> *Second*, CAMPCO did not carry out an independent business from petitioner. It was precisely established to render services to petitioner to augment its workforce during peak seasons. Petitioner was its only client. Even as CAMPCO had its own office and office equipment, these were mainly used for administrative purposes; the tools, machineries, and equipment actually used by CAMPCO members when rendering services to the petitioner belonged to the latter.
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> *Third*, petitioner exercised control over the CAMPCO members, including respondents. Petitioner attempts to refute control by alleging

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[64] 538 Phil. 817 (2006) [Per J. Chico-Nazario, First Division].

the presence of a CAMPCO supervisor in the work premises. Yet, the mere presence within the premises of a supervisor from the cooperative did not necessarily mean that CAMPCO had control over its members. Section 8(1), Rule VIII, Book III of the implementing rules of the Labor Code, as amended, required for permissible job contracting that the contractor undertakes the contract work on his account, under his own responsibility, according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of the work except as to the results thereof. As alleged by the respondents, and unrebutted by petitioner, CAMPCO members, before working for the petitioner, had to undergo instructions and pass the training provided by petitioner's personnel. It was petitioner who determined and prepared the work assignments of the CAMPCO members. CAMPCO members worked within petitioner's plantation and processing plants alongside regular employees performing identical jobs, a circumstance recognized as an *indicium* of a labor-only contractorship.

Fourth, CAMPCO was not engaged to perform a specific and special job or service. In the Service Contract of 1993, CAMPCO agreed to assist petitioner in its daily operations, and perform odd jobs as may be assigned. CAMPCO complied with this venture by assigning members to petitioner. Apart from that, no other particular job, work or service was required from CAMPCO, and it is apparent, with such an arrangement, that CAMPCO merely acted as a recruitment agency for petitioner. Since the undertaking of CAMPCO did not involve the performance of a specific job, but rather the supply of manpower only, CAMPCO clearly conducted itself as a labor-only contractor.

Lastly, CAMPCO members, including respondents, performed activities directly related to the principal business of petitioner. They worked as can processing attendant, feeder of canned pineapple and pineapple processing, nata de coco processing attendant, fruit cocktail processing attendant, and etc., functions which were, not only directly related, but were very vital to petitioner's business of production and processing of pineapple products for export.

The findings enumerated in the preceding paragraphs only support what DOLE Regional Director Parel and DOLE Undersecretary Trajano had long before conclusively established, that CAMPCO was a mere labor-only contractor.[65]

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[65] Id. at 867-869.

Here, Alternative Network Resources and Worktrusted Manpower Services may still be considered as labor-only contractors given other circumstances surrounding the case. Further, proof of substantial capital does not make an entity immune to a finding of labor-only contracting when there is showing that control over the employees reside in the principal and not in the contractor.[66] The right to control is defined in Section 5 of Department Order No. 18-02 as:

> The "right to control" shall refer to the right reserved to the person for whom the services of the contractual workers are performed, to determine not only the end to be achieved, but also the manner and means to be used in reaching that end.

Respondents assert that they wield no power over the employees whose votes were challenged. According to them, petitioners are closely supervised by coordinators of Alternative Network Resources and Worktrusted Manpower who are assigned to Manila Cordage and Manco Synthetic. It is alleged that these coordinators monitor not only the attendance of the employees, but their performance and discipline as well.[67] Respondents also allege that it is Alternative Network Resources and Worktrusted Manpower Services who hire their employees and assign them to the sites of their clients as well as pay their wages, SSS, PhilHealth, and Pag-IBIG contributions.[68]

Respondents claims will not stand. *W.M. Manufacturing, Inc. v. Dalag*,[69] is persuasive:

> The second confirmatory element under DO 18-02 does not require the application of the economic test and, even more so, the four-fold test to determine whether or not the relation between the parties is one of labor-only contracting. All it requires is that the contractor does not exercise **control** over the employees it supplies, making

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[66] *Mago v. Sun Power Manufacturing Limited*, 824 Phil. 464, 480 (2018) [Per J. Reyes, Jr., Second Division].

[67] *Rollo*, pp. 316-317.

[68] Id. at 217-218, 247, 340.

[69] 774 Phil. 353 (2015) [Per J. Velasco, Jr., Third Division].

the control test of paramount consideration. The fact that Golden Rock pays for Dalag's wages and salaries then has no bearing in resolving the issue.

Under the same DO 18-02, the "right to control" refers to the right to determine not only the end to be achieved, but also the manner and means to be used in reaching that end. Here, notwithstanding the contract stipulation leaving Golden Rock the exclusive right to control the working warm bodies it provides WM MFG, evidence irresistibly suggests that it was WM MFG who actually exercised supervision over Dalag's work performance. As culled from the records, Dalag was supervised by WM MFG's employees. Petitioner WM MFG even went as far as furnishing Dalag with not less than seven (7) memos directing him to explain within twenty-four (24) hours his alleged work infractions. The company likewise took pains in issuing investigation reports detailing its findings on Dalag's culpability. Clearly, WM MFG took it upon itself to discipline Dalag for violation of company rules, regulations, and policies, validating the presence of the second confirmatory element.[70] (Emphasis in the original, citations omitted)

Despite Alternative Network Resources and Worktrusted Manpower Services' role in the hiring, disciplining and paying of wages of petitioners, it is still respondents who exercised control over petitioners' work performance and output. Records show that petitioners are assigned in departments tasked to accomplish the main business of respondents in the manufacturing of rope. The employees deployed in Manila Cordage were assigned to the following departments with the corresponding responsibilities:

(1) Engineering, which maintains and repairs the equipment and machineries; (2) Production, which takes case of the actual production of ropes; (3) Warehouse, which stores raw materials and manufactured ropes; (4) Quality, which is in charge of the quality standards of the manufactured ropes; (5) Matting, which packs the manufactured·ropes; and (6) Facility, which maintains the cleanliness in the entire production line.[71]

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[70] Id. at 380-381.

[71] *Rollo*, p. 221.

Similarly, the employees for Manco Synthetic were assigned to following departments with the same functions as enumerated above: engineering, production, matting, and facility.[72] While working in these departments, petitioners' manner and method of work were closely supervised and monitored by regular employees of Manila Cordage[73] and Manco Synthetic.[74] This negates respondents' contention that they did not exercise control over the work of petitioners as the supervisors deployed by Alternative Network Resources and Worktrusted Manpower Services merely dealt with administrative matters such as checking attendance and distributing payslips.[75]

It is likewise clear that petitioners perform functions necessary and directly related to the main business of respondents as they are involved in the core operations for the manufacturing and export of respondents' rope products. Further, petitioners have been performing these functions with respondents even before Alternative Network Resources and Worktrusted Manpower Services were registered as legitimate labor contractors with the Department of Labor and Employment.[76] Thus, "the repeated and continuing need for the performance of the job is sufficient evidence of the necessity, if not indispensability of the activity to the business."[77]

As respondents failed to adduce sufficient evidence to prove that Alternative Network Resources and Worktrusted Manpower Services are legitimate labor contractors, they are deemed engaged in labor-only contracting. Consequently, their alleged employees are in effect the employees of their principal, herein respondents. In *Petron Corp. v. Caberte*, this Court explained:

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[72] Id. at 230.

[73] Id. at 221.

[74] Id. at 230.

[75] Id. at 221 and 230.

[76] Id. at 220.

[77] *Petron Corp. v. Caberte*, 759 Phil. 353, 370 (2015) [Per J. Del Castillo, Second Division].

From the foregoing, it is clear at Petron failed to discharge its burden of proving that ABC is not a labor-only contractor. Consequently, and as warranted by the facts, the Court declares ABC as a mere labor-only contractor. "A finding that a contractor is a 'labor-only' contractor is equivalent to declaring that there is an employer-employee relationship between the principal and the employees of the supposed contractor, and the 'labor-only' contractor is considered as a mere agent of the principal, the real employer." Accordingly in this case, Petron is declared to be the true employer of respondents who are considered regular employees in view of the fact that they have been regularly performing activities which are necessary and desirable to the usual business of Petron for a number of years.[78] (Citation omitted)

Considering the foregoing, the findings of the Court of Appeals cannot stand. In labor-only contracting, there is no principal and contractor; "there is only the employer's representative who gathers and supplies people for the employer[.]"[79] Here, Alternative Network Resources and Worktrusted Manpower Services merely supplied manpower for respondents. Thus, petitioners are considered employees of respondents and the votes they casted during the Certification Elections held on January 27, 2016 are valid.

WHEREFORE, premises considered, the Petition is **GRANTED**. The Consolidated Decision dated January 19, 2018 and Resolution dated September 20, 2018 by the Court of Appeals in CA-G.R. SP Nos. 146614 & 148154 are **REVERSED** and **SETASIDE**. The decisions of the Secretary of Labor dated May 13, 2016 and June 20, 2016 are **REINSTATED**.

SO ORDERED.

Gesmundo, Carandang, Lopez,[*] and *Delos Santos,*[**] *JJ.*, concur.

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[78] Id. at 371.

[79] *Coca-Cola Bottlers Philippines, Inc. v. Dela Cruz*, 622 Phil. 886, 901 (2009) [Per *J.* Brion, Second Division].

[*] Designated additional Member per Raffle dated Sept. 9, 2020.

[**] Additional Member per S.O. No. 2753.

SECOND DIVISION

[G.R. No. 243805. September 16, 2020]

EDUARDO LACSON *y* MANALO, *Petitioner, v.* **PEOPLE OF THE PHILIPPINES,** *Respondent.*

SYLLABUS

1. **CRIMINAL LAW; PHYSICAL INJURIES INFLICTED IN A TUMULTUOUS AFFRAY.—** Article 252 of the RPC states: **ART. 252.** *Physical injuries inflicted in a tumultuous affray.* - When in a tumultuous affray as referred to in the preceding article, only serious physical injuries are inflicted upon the participants thereof and the person responsible thereof cannot be identified, all those who appear to have used violence upon the person of the offended party shall suffer the penalty next lower in degree than that provided for the physical injuries so inflicted. When the physical injuries inflicted are of a less serious nature and the person responsible therefor cannot be identified, all those who appear to have used any violence upon the person of the offended party shall be punished by *arresto mayor* from five to fifteen days. In *Wacoy v. People*, We held that a tumultuous affray takes place when a quarrel occurs between several persons and they engage in a confused and tumultuous affray, in the course of which some person is killed or wounded and the author thereof cannot be ascertained.

2. **ID.; LESS SERIOUS PHYSICAL INJURIES. —** Article 265 of the RPC, states: **ART. 265.** *Less serious physical injuries.* — Any person who shall inflict upon another physical injuries not described in the preceding articles, but which shall incapacitate the offended party for labor for ten days or more, or shall require medical assistance for the same period, shall be guilty of less serious physical injuries and shall suffer the penalty of *arresto mayor*. The law is clear that to be held liable for the crime of Less Serious Physical Injuries, the offender must have inflicted physical injuries to the offended party, and that the inflicted injuries incapacitated the offended party for labor or would require him medical assistance for ten (10) days or more.

3. ID.; ID.; PENALTY AND DAMAGES.— [S]ince the Santoses suffered physical injuries incapacitating them for a longer time of two (2) weeks to eight (8) weeks, the duration of the penalty of *arresto mayor* is for the maximum period of six (6) months. x x x In sum, We affirm the conviction of Eduardo for the crime of Less Serious Physical Injuries in Criminal Case Nos. 22292 to 22295 and he is sentenced to suffer the straight penalty of imprisonment of six (6) months of *arresto mayor* for each count, and ordered to pay the victims, jointly and severally with other co-accused, the amounts of ₱13,363.00 as actual damages for hospital expenses, and ₱50,000.00 as legal expenses. Also, to conform with prevailing jurisprudence, We award moral damages in the amount of ₱5,000.00 for each count.

4. ID.; CONSPIRACY AND PROPOSAL TO COMMIT FELONY; MAY BE PROVED BY CIRCUMSTANTIAL EVIDENCE. — Article 8 of the RPC states: **ART. 8.** *Conspiracy and proposal to commit felony*. - x x x A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Direct proof is not required to prove conspiracy. In a number of cases, the Court ruled that conspiracy may be proved by circumstantial evidence. It may be established through the collective acts of the accused before, during and after the commission of a felony, all the accused aimed at the same object, one performing one part and the other performing another for the attainment of the same objective; and that their acts, though apparently independent, were in fact concerted and cooperative, indicating closeness of personal association, concerted action and concurrence of sentiments.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

DELOS SANTOS, *J.*:

The Case

This is a Petition for Review on *Certiorari*[1] assailing the Decision[2] dated 12 September 2018 and the Resolution[3] dated 18 December 2018 of the Court of Appeals (CA) in CA-G.R. CR No. 40456, finding petitioner Eduardo Lacson *y* Manalo (Eduardo) guilty of the crime of Less Serious Physical Injuries under Article 265 of the Revised Penal Code (RPC).

The Facts

The case stemmed from six (6) separate Amended Informations for Attempted Homicide filed on 11 May 2011 by the Office of the City Prosecutor, City of San Fernando, Pampanga with the Municipal Trial Court in Cities (MTCC) of the City of San Fernando, Pampanga, Branch 1, against Eduardo, together with his co-accused Hernani M. Lacson (Hernani), Elizer M. Lacson (Elizer), Deborah Samson-Lacson (Deborah), Adonis M. Lacson (Adonis), and Erwin M. Lacson (Erwin; collectively, Lacsons).

The Amended Informations,[4] with the exception of the names of the victims, are similarly worded, which state:

Criminal Case No. 11-0287

That on or about the 5th day of May, 2011, in the City of San Fernando, province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping each other, with intent to kill, did then and there willfully, unlawfully and feloniously assault,

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[1] *Rollo*, pp. 13-33.

[2] Penned by Associate Justice Stephen C. Cruz, with Associate Justices Zenaida T. Galapate-Laguilles and Geraldine C. Fiel-Macaraig, concurring; id. at 38-49.

[3] Id. at 51-52.

[4] Id. at 84-86.

attack, and use personal violence upon one Gary Santos y Mallari, by then and there hitting the latter on different parts of his body, using steel pipe, inflicting physical injuries upon said Gary Santos y Mallari, in an attempt to end the latter's life, thereby commencing the commission of the offen[s]e of homicide directly by overt acts, but did not perform all the acts of execution which would produce the crime of homicide by reason (sic) causes or acts other than the accused's own spontaneous desistance, that is, by the timely intervention of some well meaning citizens.

CONTRARY TO LAW.

Criminal Case No. 11-0288

That on or about the 5th day of May, 2011, in the City of San Fernando, province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping each other, with intent to kill, did then and there willfully, unlawfully and feloniously assault, attack, and use personal violence upon one Rudy Santos y Lumba, by then and there hitting the latter on different parts of his body, using steel pipe, inflicting physical injuries upon said Rudy Santos y Lumba, in an attempt to end the latter's life, thereby commencing the commission of the offen[s]e of homicide directly by overt acts, but did not perform all the acts of execution which would produce the crime of homicide by reason (sic) causes or acts other than the accused's own spontaneous desistance, that is, by the timely intervention of some well meaning citizens.

CONTRARY TO LAW.

Criminal Case No. 11-0289

That on or about the 5th day of May, 2011, in the City of San Fernando, province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping each other, with intent to kill, did then and there willfully, unlawfully and feloniously assault, attack, and use personal violence upon one Richard Santos y Mallari, by then and there hitting the latter on different parts of his body, using steel pipe, inflicting physical injuries upon said Richard Santos y Mallari, in an attempt to end the latter's life, thereby commencing the commission of the offen[s]e of homicide directly by overt acts, but did not perform all the acts of execution which would produce the crime of homicide by reason (sic) causes or acts other than the

accused's own spontaneous desistance, that is, by the timely intervention of some well meaning citizens.

CONTRARY TO LAW.

Criminal Case No. 11-0290

That on or about the 5th day of May, 2011, in the City of San Fernando, province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping each other, with intent to kill, did then and there willfully, unlawfully and feloniously assault, attack, and use personal violence upon one Romeo Santos y Lumba, by then and there hitting the latter on different parts of his body, using steel pipe, inflicting physical injuries upon said Romeo Santos y Lumba, in an attempt to end the latter's life, thereby commencing the commission of the offen[s]e of homicide directly by overt acts, but did not perform all the acts of execution which would produce the crime of homicide by reason (sic) causes or acts other than the accused's own spontaneous desistance, that is, by the timely intervention of some well meaning citizens.

CONTRARY TO LAW.

Criminal Case No. 11-0291

That on or about the 5th day of May, 2011, in the City of San Fernando, province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping each other, with intent to kill, did then and there willfully, unlawfully and feloniously assault, attack, and use personal violence upon one Albert Santos y Mallari, by then and there hitting the latter on different parts of his body, using steel pipe, inflicting physical injuries upon said Albert Santos y Mallari, in an attempt to end the latter's life, thereby commencing the commission of the offen[s]e of homicide directly by overt acts, but did not perform all the acts of execution which would produce the crime of homicide by reason (sic) causes or acts other than the accused's own spontaneous desistance, that is, by the timely intervention of some well meaning citizens.

CONTRARY TO LAW.

Criminal Case No. 11-0292

That on or about the 5th day of May, 2011, in the City of San Fernando, province of Pampanga, Philippines, and within the

jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping each other, with intent to kill, did then and there willfully, unlawfully and feloniously assault, attack, and use personal violence upon one Rommel Santos y Mallari, by then and there hitting the latter on different parts of his body, using steel pipe, inflicting physical injuries upon said Rommel Santos y Mallari, in an attempt to end the latter's life, thereby commencing the commission of the offen[s]e of homicide directly by overt acts, but did not perform all the acts of execution which would produce the crime of homicide by reason (sic) causes or acts other than the accused's own spontaneous desistance, that is, by the timely intervention of some well meaning citizens.

CONTRARY TO LAW.

Upon arraignment, the Lacsons all pleaded not guilty. Thereafter, trial on the merits ensued.[5]

The prosecution presented six witnesses: (1) Rommel M. Santos (Rommel); (2) Gary M. Santos (Gary); (3) Richard M. Santos (Richard); (4) Rowena L. Santos-Cunanan (Rowena); (5) Romeo L. Santos (Romeo); and (6) Dr. Duane P. Cordero (Dr. Cordero).[6]

The prosecution summarized their version of the facts as follows:

On 5 May 2011, at around 9:00 P.M., Gary, Arnold Santos (Arnold), Eliza Santos (Eliza), and Joyce Ann Santos (Joyce Ann) arrived in their house at Sitio Boulevard, Barangay San Agustin, City of San Fernando, Pampanga. The group told Romeo, Rommel, Richard, and Albert Santos (Albert; collectively, Santoses) that they were being chased and stoned by the Lacsons.[7]

Arnold then left but while he was running towards the Lacsons' house, the group followed and tried to pacify him, but they failed. Upon reaching the Lacsons' house, Arnold had a heated

[5] Id. at 176.

[6] Id. at 90.

[7] Id. at 39.

discussion with Hernani and Elizer. Moments later, Rudy Santos (Rudy), who resides at the back of the Lacsons' house, arrived.[8]

Deborah, Hernani's wife, brought out a steel pipe out of their house and told Hernani "*Oyni ing tubo pamalwan mu la!*" (Here is a steel pipe, hit them). Eduardo responded by hitting Arnold's head with a steel pipe. The Santoses wanted to help Arnold who fell on the ground but the Lacsons likewise attacked them using steel pipes. As a result, Rommel, Gary, Richard, and Romeo sustained injuries on their heads and different parts of their bodies.[9]

When the barangay patrol arrived, Richard, Rommel, Romeo, and Gary, together with Albert and Rudy, were brought to Jose B. Lingad Memorial General Hospital, where they were treated by Dr. Cordero, the resident physician on duty at the Department of Surgery.[10]

Later on, Arnold died. A separate criminal case for Attempted Homicide was filed against Eduardo.[11]

Dr. Cordero cited mauling as the cause of the injuries and issued the Santoses' respective Medical Certificates summarized as follows:[12]

Name	Injuries Suffered	Periods of Healing
Richard	Cerebral concussion with lacerated wound; eyebrow, right, lacerated wound; occipital area secondary to mauling	Barring complication, the injuries will require a period more than 30 days of healing

[8] Id.

[9] Id. at 40.

[10] Id.

[11] Id. at 41.

[12] Id. at 73.

Rommel	Lacerated wound on parietal area; periorbital edema secondary to mauling; hemorrhage, left frontal, ethmoid and maxillary sinuses	Barring complication, the injuries will require a period of 2 weeks of healing
Romeo	Lacerated wound on temporal, auricular, and parietal areas, secondary to mauling; complete, displaced fracture, middle third of the left ulna, radiopaque foreign bodies, middle third of the right forearm	Barring complication, the injuries will require a period of 6-8 weeks of healing
Gary	Contusion hematoma on the parietal area, left; complete, non-displace fracture involving the distal third of the right radius; the right wrist joint space is narrowed; the left hand and left foot are unremarkable	Barring complication, the injuries will require a period of more than 30 days of healing

Prosecution evidence also showed that Rudy and Albert sustained injuries requiring a period of two (2) weeks of healing. However, while Rudy and Albert submitted their respective judicial affidavits, they were not presented to testify and affirm the same. Thus, the Lacsons were not given the opportunity to confront them.[13]

On the other hand, Adonis and Erwin were not arrested. Thus, the trial court did not acquire jurisdiction over their persons.[14]

After the presentation of the prosecution's testimonial evidence and the subsequent formal offer of its documentary evidence, the defense failed to present any witness. The MTCC declared

[13] Id. at 98-99.

[14] Id. at 99.

the Lacsons' right to present evidence as waived. Thereafter, the case was deemed submitted for decision.[15]

In a Joint Decision[16] dated 18 February 2016, the MTCC found the Lacsons guilty beyond reasonable doubt, not of the crime of Attempted Homicide as charged, but of Less Serious Physical Injuries under Article 265 of the RPC. The MTCC declared that intent to kill, an essential element of Attempted Homicide, was not clearly and convincingly proved by the prosecution. Absent such intent to kill, the offender would be liable for physical injuries only. The MTCC stated that the evidence showed that the alleged mauling started when Arnold, followed by Gary and the rest of the Santoses, went to accost Hernani and Elizer in front of the Lacsons' house. With the number of the Santoses and the Lacsons and their sudden engagement in the brawl, the MTCC held that the infliction of the injuries was indiscriminately done and not deliberately aimed at specific portions of the victims' bodies. Thus, the MTCC declared that the prosecution was able to prove conspiracy but failed to prove the element of intent to kill which downgraded the crime committed.[17] The dispositive portion states:

WHEREFORE, judgment is hereby rendered as follows:

CRIMINAL CASE NO. 11-0287

Accused Hernani Lacson *y* Manansala, Eduardo Lacson y Manalo, Elizer Lacson y Manansala and Deborah Samson-Lacson are hereby found guilty beyond reasonable doubt of the crime of Less Serious Physical Injuries defined and penalized under Article 265 of the Revised Penal Code and are sentenced to suffer the penalty of *arresto mayor* in its maximum period.

CRIMINAL CASE NO. 11-0288

Accused Hernani Lacson y Manansala, Eduardo Lacson y Manalo, Elizer Lacson y Manansala and Deborah Samson-Lacson are **ACQUITTED** of the charge of Attempted Homicide due to insufficiency of evidence.

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[15] Id. at 96.

[16] Penned by Presiding Judge Ma. Lourdes F. Tolentino; id. at 81-100.

[17] Id. at 97-99.

CRIMINAL CASE NO. 11-0289

Accused Hernani Lacson y Manansala, Eduardo Lacson y Manalo, Elizer Lacson y Manansala and Deborah Samson-Lacson are hereby found guilty beyond reasonable doubt of the crime of Less Serious Physical Injuries defined and penalized under Article 265 of the Revised Penal Code and are sentenced to suffer the penalty of *arresto mayor* in its maximum period.

CRIMINAL CASE NO. 11-0290

Accused Hernani Lacson y Manansala, Eduardo Lacson y Manalo, Elizer Lacson y Manansala and Deborah Samson-Lacson are hereby found guilty beyond reasonable doubt of the crime of Less Serious Physical Injuries defined and penalized under Article 265 of the Revised Penal Code and are sentenced to suffer the penalty of *arresto mayor* in its maximum period.

CRIMINAL CASE NO. 11-0291

Accused Hernani Lacson y Manansala, Eduardo Lacson y Manalo, Elizer Lacson y Manansala and Deborah Samson-Lacson are **ACQUITTED** of the charge of Attempted Homicide due to insufficiency of evidence.

CRIMINAL CASE NO. 11-0292

Accused Hernani Lacson y Manansala, Eduardo Lacson y Manalo, Elizer Lacson y Manansala and Deborah Samson-Lacson are hereby found guilty beyond reasonable doubt of the crime of Less Serious Physical Injuries defined and penalized under Article 265 of the Revised Penal Code and are sentenced to suffer the penalty of *arresto mayor* in its maximum period.

In addition, the accused are hereby ordered to jointly and severally pay the private complainants actual damages in the amount of Pesos Thirteen Thousand Three Hundred Sixty Three (PhP13,363.00) Philippine Currency for hospital expenses and Pesos Fifty Thousand (PhP50,000.00) Philippine Currency for legal expenses incurred.

SO ORDERED.[18]

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[18] Id. at 44-45.

Eduardo filed an Appeal,[19] in Criminal Cases Nos. 11-0287, 11-0289, 11-0290, and 11-0292, with the Regional Trial Court (RTC) of the City of San Fernando, Pampanga, Branch 44, docketed as Criminal Case Nos. 22292 to 22295.

Ruling of the RTC

In a Joint Decision[20] dated 30 January 2017, the RTC affirmed *in toto* the Decision of the MTCC. The dispositive portion states:

> WHEREFORE, premises considered, the Joint Decision of the MTCC, Br. I of City of San Fernando, Pampanga dated February 18, 2016, in Criminal Case Nos. 11-0287, 11-0289, 11-0290, and 11-0292, finding accused appellant Eduardo Lacson y Manalo guilty beyond reasonable doubt of the crimes of less serious physical injuries is AFFIRMED *en toto*.
>
> SO ORDERED.[21]

Eduardo filed a Motion for Reconsideration[22] but was denied by the RTC in a Joint Order[23] dated 14 September 2017 for lack of merit.

Eduardo filed a Petition for Review[24] with the CA.

Ruling of the CA

In a Decision[25] dated 12 September 2018, the CA dismissed the petition and affirmed *in toto* the findings of the RTC. The dispositive portion states:

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[19] Id. at 101-102.

[20] Penned by Presiding Judge Esperanza S. Paglinawan-Rozario; id. at 71-76.

[21] Id. at 76.

[22] Id. at 115-117.

[23] Id. at 77-80.

[24] Id. at 53-70.

[25] Id. at 38-49.

WHEREFORE, the instant petition is hereby **DISMISSED**. The appealed January 30, 2017 Joint Decision of the Regional Trial Court of San Fernando City, Pampanga, Branch 44, in Criminal Case Nos. M-22292-95, is hereby **AFFIRMED *in toto***.

SO ORDERED.[26]

Eduardo filed a Motion for Reconsideration[27] which was denied in a Resolution[28] dated 18 December 2018.

Hence, this petition.

The Issue

Whether or not the CA erred in finding Eduardo guilty of the crime of Less Serious Physical Injuries despite that (1) his participation in inflicting any injury to any of private complainants was never established, and (2) conspiracy was not proven.

The Court's Ruling

The petition lacks merit.

Eduardo contends that the brawl should be considered as a tumultuous affray under Article 252 of the RPC and that Article 265 of the RPC is inapplicable. Eduardo avers that even if tumultuous affray is found to have occurred, he could not be held liable since in Article 252, the person who used violence must be identified, but no such evidence was adduced against him. Also, Eduardo argues that conspiracy in this case was not proven.

Article 252[29] of the RPC states:

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[26] Id. at 48-49.

[27] Id. at 152-160.

[28] Id. at 51-52.

[29] Read in conjunction with Article 251 of the RPC, which states:

ART. 251. *Death caused in a tumultuous affray*. — When, while several persons, not composing groups organized for the common purpose of assaulting and attacking each other reciprocally, quarrel and assault each

ART. 252. *Physical injuries inflicted in a tumultuous affray*. — When in a tumultuous affray as referred to in the preceding article, only serious physical injuries are inflicted upon the participants thereof and the person responsible thereof cannot be identified, all those who appear to have used violence upon the person of the offended party shall suffer the penalty next lower in degree than that provided for the physical injuries so inflicted.

When the physical injuries inflicted are of a less serious nature and the person responsible therefor cannot be identified, all those who appear to have used any violence upon the person of the offended party shall be punished by *arresto mayor* from five to fifteen days.

In *Wacoy v. People*,[30] We held that a tumultuous affray takes place when a quarrel occurs between several persons and they engage in a confused and tumultuous affray, in the course of which some person is killed or wounded and the author thereof cannot be ascertained.[31]

In the present case, the dispute was between two distinct groups of individuals — the Santoses and the Lacsons. The records provide that the Santoses, namely Gary, Arnold, Eliza, and Joyce Ann were chased and stoned by some members of the Lacson family. Upon reaching their house, they told the rest of the Santos family, namely Romeo, Rommel, Richard, and Albert what happened. Arnold then ran ahead to the Lacsons' house and had a heated discussion with Hernani and Elizer. Eduardo, armed with a steel pipe given by Deborah, hit Arnold on the head and proceeded to hit the other members of the Santos family. The Lacsons, who by then had more steel pipes at their

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other in a confused and tumultuous manner, and in the course of the affray someone is killed, and it cannot be ascertained who actually killed the deceased, but the person or persons who inflicted serious physical injuries can be identified, such person or persons shall be punished by *prision mayor*.

If it cannot be determined who inflicted the serious physical injuries on the deceased, the penalty of *prision correccional* in its medium and maximum periods shall be imposed upon all those who shall have used violence upon the person of the victim.

[30] 761 Phil. 570 (2015).

[31] Id. at 578; citing *Sison v. People*, 320 Phil. 112, 134 (1995).

disposal, attacked the Santoses, who were not able to fight back and defend themselves. Clearly, this was a definite attack on the Santoses by the Lacsons, an identified group, and not a case of tumultuous affray where the assault occurred in a confused and disorganized manner, resulting in death or injuries of the ones involved, and the person responsible could not be determined. Here, Eduardo was sufficiently identified as the person who first hit Arnold on the head using a steel pipe then continued on to inflict injuries to the other members of the Santos family, with the help of the Lacsons.

Thus, We agree with the appellate and trial courts that Eduardo is guilty of the crime of Less Serious Physical Injuries under Article 265 of the RPC, which states:

> **ART. 265.** *Less serious physical injuries*. — Any person who shall inflict upon another physical injuries not described in the preceding articles, but which shall incapacitate the offended party for labor for ten days or more, or shall require medical assistance for the same period, shall be guilty of less serious physical injuries and shall suffer the penalty of *arresto mayor*.

The law is clear that to be held liable for the crime of Less Serious Physical Injuries, the offender must have inflicted physical injuries to the offended party, and that the inflicted injuries incapacitated the offended party for labor or would require him medical assistance for ten (10) days or more.

In this case, the prosecution established that the injuries suffered by the victims required varying periods of healing from two (2) weeks to eight (8) weeks. Dr. Cordero, the attending physician, testified and gave a detailed description of the injuries that they suffered and the accompanying amount of time they needed to rest and heal from such injuries.

In the similar case of *Mupas v. People*,[32] where the Information charged petitioners with Frustrated Homicide, we ruled upon a finding of guilt for the lesser offense of Less Serious Physical Injuries. We held that when intent to kill is lacking but wounds

[32] 568 Phil. 78 (2008).

were inflicted on the victim, the crime is not frustrated homicide but less serious physical injuries, considering that (1) the latter offense is necessarily included in the former, and since the essential ingredients of physical injuries constitute and form part of those constituting the offense of homicide; and (2) the attending physician's opinion that the wounds sustained by the victim would take two (2) weeks to heal. The penalty imposed was imprisonment of four (4) months and ten (10) days of *arresto mayor* in its maximum period. In some other cases[33] where we upheld Article 265 of the RPC, we imposed the penalty of imprisonment of two (2) months and one (1) day to four (4) months of *arresto mayor* in the medium period.

Here, since the Santoses suffered physical injuries incapacitating them for a longer time of two (2) weeks to eight (8) weeks, the duration of the penalty of *arresto mayor* is for the maximum period of six (6) months.

With regard to the allegation that conspiracy was not proven, We agree with the appellate and trial courts that conspiracy was adequately shown. Article 8 of the RPC states:

ART. 8. *Conspiracy and proposal to commit felony*. — x x x

A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.

Direct proof is not required to prove conspiracy. In a number of cases,[34] the Court ruled that conspiracy may be proved by circumstantial evidence. It may be established through the collective acts of the accused before, during and after the commission of a felony, all the accused aimed at the same object, one performing one part and the other performing another for the attainment of the same objective; and that their acts, though

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[33] *Pentecostes, Jr. v. People*, 631 Phil. 500 (2010); *Siton v. Court of Appeals*, 281 Phil. 536 (1991).

[34] *People v. Bohol*, 594 Phil. 219 (2008); *People v. Agudez*, 472 Phil. 761 (2004); *People v. Caballero*, 448 Phil. 514 (2003); *People v. Salario*, 121 Phil. 1257 (1965).

apparently independent, were in fact concerted and cooperative, indicating closeness of personal association, concerted action and concurrence of sentiments.[35]

Here, the Lacsons were convincingly presented to have acted in unison in attacking the Santoses with steel pipes. The conduct of the Lacsons, before, during, and after the commission of the crime, showed that they possessed a joint and concerted purpose to assault the Santoses after chasing, hurling a beer bottle at them, and witnessing the heated discussion between some of their family members and Arnold, which escalated to a full-on attack. The Santoses had no means of defense, lacking the strength in numbers of the Lacsons who possessed steel pipes as weapons which caused injuries to their heads and different parts of their bodies. Thus, the act of one becomes the act of all and the Lacsons must be held accountable for their actions.

In sum, We affirm the conviction of Eduardo for the crime of Less Serious Physical Injuries in Criminal Case Nos. 22292 to 22295 and he is sentenced to suffer the straight penalty of imprisonment of six (6) months of *arresto mayor* for each count, and ordered to pay the victims, jointly and severally with other co-accused, the amounts of ₱13,363.00 as actual damages for hospital expenses, and ₱50,000.00 as legal expenses. Also, to conform with prevailing jurisprudence,[36] We award moral damages in the amount of ₱5,000.00 for each count.

WHEREFORE, the petition is **DENIED**. The Decision dated 12 September 2018 and the Resolution dated 18 December 2018 of the Court of Appeals in CA-G.R. CR No. 40456 are **AFFIRMED**. Petitioner Eduardo Lacson *y* Manalo is found **GUILTY** beyond reasonable doubt of four (4) counts of the crime of Less Serious Physical Injuries, defined and penalized under Article 265 of the Revised Penal Code, and he is sentenced to suffer the straight penalty of imprisonment of six (6) months of *arresto mayor* for each count, and ordered to

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[35] *People v. Agudez,* id.

[36] See *Peralta v. People*, G.R. No. 246992, 14 August 2019.

pay the victims jointly and severally with his co-accused: (1) actual damages of ₱13,363.00 for hospital expenses; (2) legal expenses of ₱50,000.00; and (3) moral damages of ₱5,000.00 for each count, with legal interest at the rate of six percent (6%) interest per *annum*, from the date of finality of this Decision until full payment for each count.

SO ORDERED.

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

Baltazar-Padilla, J., on leave.

SECOND DIVISION

[G.R. No. 246419. September 16, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **EDUARDO UKAY *y* MONTON a.k.a. "Tata," TEODULO[*] UKAY *y* MONTON a.k.a. "Jun-Jun," GUILLERMO DIANON a.k.a. "Momong," and OCA UKAY *y* MONTON,** *Accused,* **EDUARDO UKAY *y* MONTON a.k.a. "Tata," TEODULO UKAY *y* MONTON a.k.a. "Jun-jun," and GUILLERMO DIANON a.k.a. "Momong,"** *Accused-Appellants*.

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; APPEAL; AN APPEAL OF A CRIMINAL CASE THROWS THE ENTIRE CASE UP FOR REVIEW.—** It is a hornbook rule that an appeal of a criminal case throws the entire case up for review. It, therefore, 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.—** To successfully prosecute the crime of Murder, x x x the following elements must be established: (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.

3. **REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; INFORMATION; IN ORDER FOR THE INFORMATION ALLEGING THE EXISTENCE OF TREACHERY TO BE SUFFICIENT, IT MUST HAVE FACTUAL AVERMENTS ON HOW THE PERSON CHARGED HAD DELIBERATELY EMPLOYED MEANS, METHODS OR FORMS IN THE EXECUTION OF THE ACT THAT TENDED DIRECTLY AND SPECIFICALLY TO INSURE ITS EXECUTION WITHOUT RISK TO THE ACCUSED ARISING FROM THE DEFENSE**

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[*] Also referred to as "Teodolo/Teoduolo" in some parts of the *rollo*.

THAT THE VICTIM MIGHT MAKE.— An Information, to be sufficient, must contain all the elements required by the Rules on Criminal Procedure. In the crime of Murder, the qualifying circumstance raising the killing to the category of murder must be specifically alleged in the Information. x x x A review of jurisprudence reveals that the ruling in [*People vs.*] *Dasmariñas* was subsequently reiterated in *People v. Delector*. However, there is a separate line of decisions in which an allegation in the Information that the killing was attended "with treachery" is sufficient to inform the accused that he was being charged with Murder instead of simply Homicide like the cases of *People v. Batin*, *People v. Lab-eo*, *People v. Opuran* and *People v. Bajar*. The Court, in *People v. Solar* (*Solar*), finally clarified and resolved this issue. In this case, the Court recognized that there are two (2) different views on how the qualifying circumstance of treachery should be alleged. On one hand is the view that it is sufficient that the Information alleges that the act be committed "with treachery." The second view requires that the acts constituting treachery - or the acts which directly and specially insured the execution of the crime, without risk to the offending party arising from the defense which the offended party might make - should be specifically alleged and described in the Information. Furthermore, the Court, in *Solar*, held, finally, that in order for the Information alleging the existence of treachery to be sufficient, it must have factual averments on how the person charged had deliberately employed means, methods or forms in the execution of the act that tended directly and specially to insure its execution without risk to the accused arising from the defense that the victim might make. The Information must so state such means, methods or forms in a manner that would enable a person of common understanding to know what offense was intended to be charged. x x x The Court also found opportunity in *Solar* to finally lay down the x x x guidelines for the guidance of the Bench and the Bar to follow x x x.

4. ID.; ID.; ID.; ID.; THE RIGHT TO QUESTION THE DEFECTS IN AN INFORMATION IS NOT ABSOLUTE AND DEFECTS IN THE INFORMATION WITH REGARD TO ITS FORM MAY BE WAIVED BY THE ACCUSED IF HE FAILS TO AVAIL ANY OF THE REMEDIES PROVIDED UNDER PROCEDURAL RULES.— In the case at bar, while

it is conceded that the Informations against accused-appellants are defective insofar as they merely alleged the existence of the qualifying circumstance of treachery without providing for factual averments which constitute such circumstance, it is nonetheless submitted that accused-appellants are deemed to have waived such defects, considering their failure to avail of the proper procedural remedies. x x x The Court, in *Solar*, noted that the right to question the defects in an Information is not absolute and defects in the Information with regard to its form may be waived by the accused if he fails to avail any of the remedies provided under procedural rules, either by: (a) filing a motion to quash for failure of the Information to conform substantially to the prescribed form; or (b) filing a motion for bill of particulars. x x x In the present case, the accused-appellants did not question the supposed insufficiency of the Information filed against them through either a motion to quash or a motion for bill of particulars. In fact, they voluntarily entered their plea during the arraignment and proceeded with the trial. Thus, they are deemed to have understood the acts imputed against them and waived any of the waivable defects in the Informations, including the supposed lack of particularity in the description of the attendant circumstances.

5. CRIMINAL LAW; AGGRAVATING CIRCUMSTANCES; TREACHERY; AN ATTACK THAT IS SUDDEN CANNOT BE EQUATED TO TREACHERY WHEN THERE IS A PROVOCATION THAT TRIGGERS IT.— We are not convinced that treachery, as a qualifying circumstance to sustain a conviction of Murder and Frustrated Murder, was proven by the prosecution. In *Cirera v. People*, the Court highlighted that unexpectedness of the attack does not always equate to treachery x x x. In the case at bar, it is crystal clear from the testimonies of Jessie and Warren that prior to the stabbing, there was already a commotion that was happening involving the accused-appellants, Oca, Anthony and Jessie. Warren suddenly came in the middle of a heated argument involving his brother and tried to pacify the situation. Thereafter, when they turned their backs to leave, Warren was stabbed by Oca. While the attack was sudden, such act cannot be equated to treachery because there was a provocation that triggers it. The manner of attack might not have been motivated by a determination to ensure success in committing the crime. What was more likely the case, based

on the testimonies, was that the accused-appellants' action was an impulsive reaction to being pacified by Warren, the commotion in general involving the group and Warren's attempt to summon Jessie home. Thus, in the absence of clear proof of the existence of treachery, the crime proven beyond reasonable doubt is only Homicide and Frustrated Homicide and, correspondingly, the penalty should be reduced. Consequently, the accused-appellants could not be properly convicted of Murder, but only of Homicide and Frustrated Homicide, which is defined and penalized under Article 249 of the RPC x x x.

6. ID.; CIVIL LIABILITY; WHEN ACTUAL DAMAGES PROVEN BY RECEIPTS DURING THE TRIAL AMOUNT TO LESS THAN THE SUM ALLOWED BY THE COURT AS TEMPERATE DAMAGES, THE AWARD OF TEMPERATE DAMAGES IS JUSTIFIED IN LIEU OF ACTUAL DAMAGES WHICH IS OF A LESSER AMOUNT, BUT IF THE AMOUNT OF ACTUAL DAMAGES PROVEN EXCEEDS, THEN TEMPERATE DAMAGES MAY NO LONGER BE AWARDED AND ACTUAL DAMAGES BASED ON RECEIPTS PRESENTED DURING TRIAL SHOULD INSTEAD BE GRANTED.— As regards the award of actual damages in the amount of ₱48,466.31, the same must be modified. It is settled that "when actual damages proven by receipts during the trial amount to less than the sum allowed by the Court as temperate damages, the [award] of temperate damages is justified in lieu of actual damages which is of a lesser amount. Conversely, if the amount of actual damages proven exceeds, then temperate damages may no longer be awarded; actual damages based on receipts presented during trial should instead be granted," as in this case. Thus, we delete the award of ₱48,466.31 as actual damages; in lieu thereof, we grant temperate damages in the amount of ₱50,000.00.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellants.

D E C I S I O N

DELOS SANTOS, *J.*:

This is a Notice of Appeal in accordance with Section 2, Rule 125 in relation to Section 3, Rule 56 of the Rules of Court filed by accused- appellants Eduardo Ukay *y* Monton @ "Tata" (Eduardo), Teodulo Ukay *y* Monton @ "Jun-jun" (Teodulo), and Guillermo Dianon @ "Momong" (Guillermo; collectively, accused-appellants) assailing the Decision[1] of the Court of Appeals (CA), Cagayan de Oro City in CA-G.R. CR-HC No. 01203-MIN rendered on November 23, 2018, which affirmed with modification the Decision[2] of the Regional Trial Court (RTC) of Davao City, Branch 11 dated March 11, 2013 finding Eduardo in Crim. Case No. 61,566-07 guilty beyond reasonable doubt of the crime of Frustrated Murder and likewise finding Eduardo, Teodulo, and Guillermo in Crim. Case No. 61,568-07 guilty beyond reasonable doubt of the crime of Murder.

The Facts

In Crim. Case No. 61,566-07, Eduardo and Oca Ukay (Oca) were charged in an Information with Frustrated Murder under the first paragraph of Article 248, in relation to Article 6 of the Revised Penal Code (RPC) and allegedly committed as follows:

> That on or about June 12, 2007, in the City of Davao, and within the jurisdiction of this Honorable Court, the above-mentioned accused, armed with knives, with intent to kill, with treachery, willfully, unlawfully and feloniously conspired and confederated together in attacking, assaulting and stabbing one Jessie C. Gerolaga, thereby inflicting upon the latter the injuries, the nature and extent of which would have caused the death of said victim, thus performing all the acts of execution which would have produced the felony of murder

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[1] Penned by Associate Justice Edgardo A. Camello, with Associate Justices Ruben Reynaldo G. Roxas and Evalyn M. Arellano-Morales, concurring; CA *rollo*, pp. 137-150.

[2] Penned by Judge Virginia Hofileña-Europa; id. at 100-107.

as a consequence, but which nevertheless did not produce it by reason of causes independent of the said perpetrator's will, that is, by the timely and able medical assistance rendered to the victim which prevented his death.

CONTRARY TO LAW.[3]

Moreover, in Crim. Case No. 61,568-07, Eduardo, Teodulo, Guillermo, and Oca were charged with Murder under the first paragraph of Article 248 of the RPC and allegedly committed as follows:

That on or about June 12, 2007, in the City of Davao, and within the jurisdiction of this Honorable Court, the above-mentioned accused, conspiring and confederating together, armed with knives, with intent to kill, with treachery and taking advantage of superior strength, willfully, unlawfully and feloniously attacked, assaulted and stabbed one Anthony Aloba, thereby inflicting upon the latter fatal injuries which cause his death.

CONTRARY TO LAW.[4]

On arraignment, Eduardo, Teodulo, and Guillermo separately and individually pleaded not guilty to the charges.[5] Accused Oca, on the other hand, was separately charged in Crim. Case No. 61,567-09.[6]

Version of the Prosecution

On June 9, 2007, Jessie Gerolaga (Jessie) was at his Aunt's house in Emily Homes, Cabantian, Davao City. Thereat, at around 10:00 in the evening of that day, Jessie was having a drinking spree with his cousin Anthony Aloba (Anthony). After a while, both men decided to head on to a convenience store just outside the house of their Aunt. When they arrived, they saw the group of accused-appellants namely, Eduardo, Teodulo, and Guillermo, together with Oca.

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[3] Id. at 100-101.

[4] Id. at 101.

[5] *Rollo*, p. 5.

[6] Id.

At the store, Anthony saw Guillermo arguing with the latter's wife, both were shouting at each other. To this, Anthony told Guillermo to be quiet. However, Guillermo punched Anthony and Eduardo, Teodulo, and Oca joined in trying to help Anthony when Warren Gerolaga (Warren), the brother of Jessie, arrived and tried to pacify and break the fight. Thereafter, Warren was able to grab Jessie and convinced the latter to just go home. Jessie obliged and together with Warren, they turned their backs from the group of accused-appellants and Oca on their way home. Unknown to Jessie and Warren, Oca and Eduardo were carrying knives with them. Thus, when Jessie and Warren had their backs turned, Oca suddenly stabbed Warren and he was hit on the shoulder. Jessie saw this and turned around to face Oca. Jessie tried to hit Oca, but the latter was able to slash Jessie's abdomen where the latter's intestines came out. Jessie tried to run, but Eduardo was able to catch him and stabbed him in the armpit. Jessie ran towards the opposite direction when he realized that his intestines were protruding from his stomach. He sat down on the ground from a distance and looked back at where the assailants were.

There, Jessie saw Oca and Eduardo stabbing Anthony while Teodulo and Guillermo were hitting Anthony with a stone. Anthony then fell to the ground. Thereafter, Warren came to Jessie to help and both were immediately brought to the Davao Medical Center. Anthony was left behind, but was later brought to the same hospital, but was declared dead on arrival.

Jessie and Warren survived the stabbing incidents. With regard to Jessie, the stabbed wound he sustained would have killed him had he not been given the proper medical attention.

Version of the Defense

In the evening of June 9, 2007, Eduardo, Teodulo, Guillermo, Oca, Cristituto Enanopria and their companions had a drinking spree at a store near Oca's house.

Guillermo's wife arrived and bellowed at him for spending his salary on drinking. Anthony, Jessie and one alias "Payat" passed by them. Anthony asked Guillermo what the problem

was. Guillermo's wife said that it was about Guillermo's salary. Anthony unexpectedly held Guillermo by the collar. Jessie threw a stone at Guillermo while "Payat" held him. Guillermo fell into the canal.

While Guillermo was being mauled, Boyet Arroyo (Arroyo) suddenly arrived and hit him with a piece of wood. Guillermo was able to run away and hide behind a banana plant. Arroyo also boxed Eduardo. The latter was luckily able to run away to his boarding house.

Meanwhile, Teodulo called police assistance. When the police mobile arrived, he accompanied them to the place of the incident. With permission from the police, he went home.

The next day, Eduardo, upon the advice of the *purok* leader, reported the incident to the police station. He was, however, arrested and detained, as he was allegedly involved in the incident.

Teodulo, for his part, was invited to go to the police station. But upon arrival, he was also arrested and detained.

The RTC's Ruling

In a Decision[7] dated March 11, 2013, the RTC ruled that Eduardo, Teodulo, and Guillermo stand charged with Murder for the death of Anthony. Jessie positively testified that the group of Eduardo ganged up on Anthony. He testified that Eduardo and Oca took turns in stabbing Anthony. He also narrated that Guillermo hit Anthony with a stone, while Teodulo mauled and kicked Anthony. The concerted efforts on the part of Eduardo, Teodulo, Oca, and Guillermo, killed Anthony.

Hence, the RTC found, in Crim. Case No. 61,566-07, Eduardo guilty beyond reasonable doubt of the crime of Frustrated Murder and was sentenced with an indeterminate penalty of 10 years and 1 day of *prision mayor* as minimum to 12 years and 1 day of *reclusion temporal* as maximum.

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[7] CA *rollo*, pp. 100-107.

In Crim. Case No. 61,568-07, the RTC found Eduardo, Teodulo, and Guillermo guilty beyond reasonable doubt of the crime of Murder and were sentenced to suffer the penalty of *reclusion perpetua*.

They were likewise sentenced to pay the heirs of Anthony the sum of ₱50,000.00 as reasonable actual damages and the further sum of ₱50,000.00 as civil indemnity for the death of Anthony.

The CA's Ruling

In a Decision[8] dated November 23, 2018, the CA denied the appeal and affirmed with modification as to the amount of damages awarded in the Decision in Crim. Case Nos. 61,566-07 and 61,568-07 dated March 11, 2013 of the RTC of Davao City, Branch 11.

The CA did not find any compelling reason to reverse or modify the factual findings of the trial court. The testimonies of Jessie and Warren were given a high degree of respect and were not disturbed on appeal absent a clear showing that the trial court had overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance which could reverse a judgment of conviction.

Moreover, the CA ruled that the trial court did not err in finding that the injury sustained by Jessie and the killing of Anthony was attended with treachery. It has been held that when the assailant consciously employed means of execution that gave the person attacked no opportunity to defend himself, much less retaliate which tended directly and specially to insure his plan to kill the victim, the crime is qualified to Murder, in the case of Crim. Case No. 61,566-07, Frustrated Murder. The testimonies of Warren and Jessie show that the attack to them came without warning and was deliberate and unexpected, affording the hapless, unarmed, and unsuspecting victims no chance to resist or to escape. The CA is convinced of the treacherous nature of the assault.

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[8] Id. at 137-150.

Furthermore, the CA also held that the two (2) cases were attended by conspiracy. In Crim. Case No. 61,566-07, the CA found that the concerted acts of Eduardo and Oca to kill Jessie were plainly evident. On the other hand, in Crim. Case No. 61,568-07, the CA held that the acts of Eduardo, Teodulo, and Guillermo were knitted seamlessly together in a web of a single criminal design to hurt and kill Anthony. The Court, in *Balauitan v. People*,[9] has ruled that where the acts of the accused, collectively and individually, clearly demonstrate the existence of a common design toward the accomplishment of the same unlawful purpose, conspiracy is evident.

The CA also upheld the finding of the trial court on the presence of the circumstance of taking advantage of superior strength. Eduardo and Oca were armed with knives together with the other two accused-appellants — Guillermo, who armed himself with a stone, and Teodulo. The CA is convinced that the four assailants used excessive force in mauling and stabbing Anthony who was then unarmed.

In compliance with the current jurisprudence, the CA modified the award of damages. The accused-appellants were adjudged to pay the heirs of Anthony ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and an additional ₱75,000.00 as exemplary damages for the crime of Murder. The actual damages incurred as proven by official receipts presented and offered by the prosecution is ₱48,466.31.

In Crim. Case No. 61,566-07, Eduardo was also adjudged to pay Jessie ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and an additional ₱50,000.00 as exemplary damages for the crime of Frustrated Murder. No actual damages has been offered, thus, the award of temperate damages in the amount of ₱25,000.00 is proper.

Accused-appellants filed a Notice of Appeal[10] dated December 28, 2018.

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[9] 795 Phil. 468 (2016).

[10] *Rollo*, pp. 17-18.

On October 14, 2019, the accused-appellants filed a Supplemental Brief with a prayer of acquittal, insisting that the attendant circumstance of treachery cannot be considered against them, as the same was not averred in the Information.

The Court's Ruling

The appeal lacks merit, but the Court holds that the conviction of the accused-appellants for Murder and Frustrated Murder cannot be upheld. They are properly liable only for Homicide and Frustrated Homicide.

It is a hornbook rule that an appeal of a criminal case throws the entire case up for review. It, therefore, 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.[11]

Accused-appellants were charged with Frustrated Murder and Murder qualified with treachery. To successfully prosecute the crime of Murder, Article 248 of the RPC states:

> ART. 248. *Murder* — Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusion temporal* in its maximum period 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.

Jurisprudence dictates that the following elements must be established: (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 of infanticide.[12]

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[11] *Candelaria v. People*, 749 Phil. 517, 530 (2014), citing *People v. Balacano*, 391 Phil. 509, 525-526 (2000).

[12] *People v. Kalipayan*, 824 Phil. 173, 183 (2018).

Information alleging treachery, when sufficient

An Information, to be sufficient, must contain all the elements required by the Rules on Criminal Procedure. In the crime of Murder, the qualifying circumstance raising the killing to the category of murder must be specifically alleged in the Information.[13]

Accused-appellants, in their Supplemental Brief, argue that treachery could not be considered in this case because the averments of treachery in the Informations were grossly inadequate. The Informations read as follows:

In Criminal Case No. 61,566-07

[T]he above-mentioned accused x x x, armed with knives, with intent to kill, with treachery, willfully, unlawfully and feloniously conspired and confederated together in attacking, assaulting and stabbing one Jessie C. Gerolaga, thereby inflicting upon the latter the injuries, the nature and extent of which would have caused the death of said victim, thus performing all the acts of execution which would have produced the felony of murder as a consequence, but which nevertheless did not produce it by reason of causes independent of the said perpetrator's will, that is, by the timely and able medical assistance rendered to the victim which prevented his death.[14]

In Criminal Case No. 61,568-07

[T]he above-mentioned accused x x x, conspiring and confederating together, armed with knives, with intent to kill, with treachery and taking advantage of superior strength, willfully, unlawfully and feloniously attacked, assaulted and stabbed one Anthony Aloba, thereby inflicting upon the latter fatal injuries which caused his death.[15]

Accused-appellants cited *People v. Dasmariñas* (*Dasmariñas*),[16] where the Court ruled that:

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[13] *People v. Aquino*, 829 Phil. 477, 487 (2018).

[14] *Rollo*, pp. 4-5.

[15] Id. at 5.

[16] 819 Phil. 357, 360 (2017).

> The failure of the [I]nformation supposedly charging murder to aver the factual basis for the attendant circumstance of treachery forbids the appreciation of the circumstance as qualifying the killing; hence, the accused can only be found guilty of homicide. To merely state in the [I]nformation that treachery was attendant is not enough because the usage of such term is not a factual averment but a conclusion of law.

In *Dasmariñas*, the Court did not convict the accused of Murder, but only of Homicide because:

> The [I]nformation did not make any factual averment on how Dasmariñas had deliberately employed means, methods or forms in the execution of the act - setting forth such means, methods or forms in a manner that would enable a person of common understanding to know what offense was intended to be charged - that tended directly and specially to insure its execution without risk to the accused arising from the defense that the victim might make. As earlier indicated, to merely state in the [I]nformation that treachery was attendant is not enough because the usage of such term is not a factual averment but a conclusion of law.[17]

Similarly, in the case at bar, treachery is the circumstance used to qualify the two (2) cases to Frustrated Murder and Murder. Accused-appellants argue that there is no sufficient averment in the Informations as to how the accused committed the killing with treachery. They maintain that the phrase "armed with knives" which is present in both Informations, is not an averment of treachery, but a mere declaration of the weapon used by the appellants. Neither is the phrase "attacked, assaulted, and stabbed" an averment indicating treachery.

Thus, accused-appellants *posit* that the insufficiency of the factual averment of treachery and their consequent conviction of Murder and Frustrated Murder, qualified by treachery, demonstrate a violation of their constitutional right to be informed of the nature and cause of the accusation against them.

A review of jurisprudence reveals that the ruling in *Dasmariñas* was subsequently reiterated in *People v. Delector*.[18]

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[17] Id. at 376-377.

[18] 819 Phil. 310 (2017).

However, there is a separate line of decisions in which an allegation in the Information that the killing was attended "with treachery" is sufficient to inform the accused that he was being charged with Murder instead of simply Homicide like the cases of *People v. Batin*,[19] *People v. Lab-eo*,[20] *People v. Opuran*[21] and *People v. Bajar*.[22]

The Court, in *People v. Solar* (*Solar*),[23] finally clarified and resolved this issue. In this case, the Court recognized that there are two (2) different views on how the qualifying circumstance of treachery should be alleged.

> On one hand is the view that it is sufficient that the Information alleges that the act be committed "with treachery." The second view requires that the acts constituting treachery - or the acts which directly and specially insured the execution of the crime, without risk to the offending party arising from the defense which the offended party might make – should be specifically alleged and described in the Information.[24]

Furthermore, the Court, in *Solar*, held, finally, that in order for the Information alleging the existence of treachery to be sufficient, it must have factual averments on how the person charged had deliberately employed means, methods or forms in the execution of the act that tended directly and specially to insure its execution without risk to the accused arising from the defense that the victim might make. The Information must so state such means, methods or forms in a manner that would enable a person of common understanding to know what offense was intended to be charged. The Court ruled that:

> It is thus fundamental that every element of which the offense is composed must be alleged in the Information. No Information for a

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[19] 564 Phil. 249 (2007).

[20] 424 Phil. 482 (2002).

[21] 469 Phil. 698 (2004).

[22] 460 Phil. 683 (2003).

[23] *People v. Solar*, G.R. No. 225595, August 6, 2019.

[24] Id.

crime will be sufficient if it does not accurately and clearly allege the elements of the crime charged. The test in determining whether the Information validly charges an offense is whether the material facts alleged in the complaint or Information will establish the essential elements of the offense charged as defined in the law. In this examination, matters *aliunde* are not considered. To repeat, the purpose of the law in requiring this is to enable the accused to suitably prepare his defense, as he is presumed to have no independent knowledge of the facts that constitute the offense.[25]

The Court also found opportunity in *Solar* to finally lay down the following guidelines for the guidance of the Bench and the Bar to follow:

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 [on] Criminal Procedure, or a motion for a bill of particulars under the parameters set by said Rules.

   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.

2. Prosecutors must ensure compliance with Section [8(a)], Rule 112 of the Revised Rules on Criminal Procedure that mandates

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[25] Id.

the attachment to the Information the resolution finding probable cause against the accused. Trial courts must ensure that the accused is furnished a copy of this Decision prior to the arraignment.

3. Cases which have attained finality prior to the promulgation of this Decision will remain final by virtue of the principle of conclusiveness of judgment.

4. For cases which are still pending before the trial court, the prosecution, when still able, may file a motion to amend the Information pursuant to the prevailing Rules in order to properly allege the aggravating or qualifying circumstance pursuant to this Decision.

5. For cases in which a judgment or decision has already been rendered by the trial court and is still pending appeal, the case shall be judged by the appellate court depending on whether the accused has already waived his right to question the defective statement of the aggravating or qualifying circumstance in the Information, (*i.e.*, whether he previously filed either a motion to quash under Section 3(e), Rule 117, or a motion for a bill of particulars) pursuant to this Decision.[26] (Citation omitted)

In the case at bar, while it is conceded that the Informations against accused-appellants are defective insofar as they merely alleged the existence of the qualifying circumstance of treachery without providing for factual averments which constitute such circumstance, it is nonetheless submitted that accused-appellants are deemed to have waived such defects, considering their failure to avail of the proper procedural remedies.

Defects in the Information may be waived

The Court, in *Solar*, noted that the right to question the defects in an Information is not absolute and defects in the Information with regard to its form may be waived by the accused if he fails to avail any of the remedies provided under procedural rules, either by: (a) filing a motion to quash for failure of the Information to conform substantially to the prescribed form; or (b) filing a motion for bill of particulars.

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[26] Id.

In *People v. Razonable*,[27] the Court held that if an Information is defective, such that it fails to sufficiently inform the accused of the nature and cause of the accusation against him, then it is the accused's duty to enforce his right through the procedural rules created by the Court for its proper enforcement. The Court explained:

> The rationale of the rule, which is to inform the accused of the nature and cause of the accusation against him, should guide our decision. To claim this substantive right protected by no less than the Bill of Rights, the accused is [duty-bound] to follow our procedural rules which were laid down to assure an orderly administration of justice. **Firstly, it behooved the accused to raise the issue of a defective [I]nformation, on the ground that it does not conform substantially to the prescribed form, in a motion to quash said [I]nformation or a motion for bill of particulars. An accused who fails to take this seasonable step will be deemed to have waived the defect in said [I]nformation. The only defects in an [I]nformation that are not deemed waived are where no offense is charged, lack of jurisdiction of the offense charged, extinction of the offense or penalty and double jeopardy.** Corollarily, we have ruled that objections as to matters of form or substance in the [I]nformation cannot be made for the first time on appeal. In the case at bar, appellant did not raise either in a motion to quash or a motion for bill of particulars the defect in the Information regarding the indefiniteness of the allegation on the date of the commission of the offense.[28] (Emphasis and underscoring supplied)

In the present case, the accused-appellants did not question the supposed insufficiency of the Information filed against them through either a motion to quash or a motion for bill of particulars. In fact, they voluntarily entered their plea during the arraignment and proceeded with the trial. Thus, they are deemed to have understood the acts imputed against them and waived any of the waivable defects in the Informations, including the supposed lack of particularity in the description of the attendant circumstances.

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[27] 386 Phil. 771 (2000).

[28] Id. at 780.

To reiterate one of the guidelines by the Court enunciated in *Solar*, the Court rules that the failure of the accused-appellants to file either a motion to quash or a motion for bill of particulars to correct the Informations constitutes a waiver of their right to question the defective statements of the aggravating or qualifying circumstance in the Informations, and consequently, the same may be appreciated against them if proven during trial.

In the case of *People v. Lopez*,[29] the Court held 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.

Now, the only issue that remains is whether or not the presence of treachery was sufficiently proven in this case.

Treachery, when exists

Anent the attendance of the qualifying circumstance of treachery, both the CA and the RTC ruled that treachery was present in the instant case. In its Decision, the CA rendered the following finding, to wit:

> These testimonies show that the attack came without warning and was deliberate and unexpected, affording the hapless, unarmed and unsuspecting Warren and Jessie no chance to resist or to escape. We are convinced of the treacherous nature of the assault. It has been held that when the assailant consciously employed means of execution that gave the person attacked no opportunity to defend himself, much less retaliate which tended directly and specially to insure his plan to kill the victim, the crime is qualified to murder, in the case of Criminal Case [N]o. 61,566-07, frustrated murder.[30]

We disagree.

We are not convinced that treachery, as a qualifying circumstance to sustain a conviction of Murder and Frustrated Murder, was proven by the prosecution.

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[29] 400 Phil. 288 (2000).

[30] *Rollo*, p. 13.

In *Cirera v. People*,[31] the Court highlighted that unexpectedness of the attack does not always equate to treachery:

> A finding of the existence of treachery should be based on "clear and convincing evidence." Such evidence must be as conclusive as the fact of killing itself. Its existence "cannot be presumed." As with the finding of guilt of the accused, "[a]ny doubt as to [its] existence . . . [should] be resolved in favor of the accused."
>
> The unexpectedness of an attack cannot be the sole basis of a finding of treachery even if the attack was intended to kill another as long as the victim's position was merely accidental. The means adopted must have been a result of a determination to ensure success in committing the crime.
>
> In this case, no evidence was presented to show that petitioner consciously adopted or reflected on the means, method, or form of attack to secure his unfair advantage.
>
> The attack might "have been done on impulse [or] as a reaction to an actual or imagined provocation offered by the victim." In this case, petitioner was not only dismissed by Austria when he approached him for money. There was also an altercation between him and Naval. The provocation might have been enough to entice petitioner to action and attack private complainants.
>
> Therefore, the manner of attack might not have been motivated by a determination to ensure success in committing the crime. What was more likely the case, based on private complainants' testimonies, was that petitioner's action was an impulsive reaction to being dismissed by Austria, his altercation with Naval, and Naval's attempt to summon Austria home.
>
> Generally, this type of provocation negates the existence of treachery. This is the type of provocation that does not lend itself to premeditation. The provocation in this case is of the kind which triggers impulsive reactions left unchecked by the accused and caused him to commit the crime. There was no evidence of a modicum of premeditation indicating the possibility of choice and planning fundamental to achieve the elements of treachery.

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[31] 739 Phil. 25, 45-46 (2014).

In the case at bar, it is crystal clear from the testimonies of Jessie and Warren that prior to the stabbing, there was already a commotion that was happening involving the accused-appellants, Oca, Anthony and Jessie. Warren suddenly came in the middle of a heated argument involving his brother and tried to pacify the situation. Thereafter, when they turned their backs to leave, Warren was stabbed by Oca.

While the attack was sudden, such act cannot be equated to treachery because there was a provocation that triggers it. The manner of attack might not have been motivated by a determination to ensure success in committing the crime. What was more likely the case, based on the testimonies, was that the accused-appellants' action was an impulsive reaction to being pacified by Warren, the commotion in general involving the group and Warren's attempt to summon Jessie home.

Thus, in the absence of clear proof of the existence of treachery, the crime proven beyond reasonable doubt is only Homicide and Frustrated Homicide and, correspondingly, the penalty should be reduced.

Consequently, the accused-appellants could not be properly convicted of Murder, but only of Homicide and Frustrated Homicide, which is defined and penalized under Article 249 of the RPC, to wit:

> ART. 249. *Homicide*. — Any person who, not falling within the provisions of Article 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by [*reclusion temporal*].

The Penalty

Under Article 249 of the RPC, the penalty imposed for the crime of Homicide is *reclusion temporal*. Considering that no aggravating circumstances attended the commission of the crime, the penalty shall be imposed in its medium period. Applying the Indeterminate Sentence Law, the maximum penalty shall be selected from the range of the medium period of *reclusion*

temporal, with the minimum penalty selected from the range of *prision mayor*. Thus, we impose the penalty of imprisonment for a period of 8 years and 1 day of *prision mayor* as minimum to 14 years, 8 months and 1 day of *reclusion temporal* as maximum.[32]

Article 250 of the RPC provides that a penalty lower by one degree than that which should be imposed for Homicide may be imposed upon a person guilty of Frustrated Homicide.

The imposable penalty for Homicide is *reclusion temporal*. Article 50 of the RPC provides that the penalty to be imposed upon principals of a frustrated crime shall be the penalty next lower in degree than that prescribed by law for the consummated crimes. Thus, for frustrated homicide, the imposable penalty is one degree lower than that imposed in homicide[33] or *prision mayor*. There being no modifying circumstance, the maximum imposable penalty is within the range of *prision mayor* in its medium period or eight (8) years and one (1) day to 10 years. Applying the Indeterminate Sentence Law, the minimum term of the penalty is *prision correccional* in any of its periods. Thus, as modified, accused-appellant Eduardo is hereby sentenced to suffer the indeterminate penalty of two (2) years, four (4) months and one (1) day of *prision correccional* as minimum to eight (8) years and one (1) day of *prision mayor* as maximum.

The Civil Liability

In compliance with the current jurisprudence,[34] the Court modifies the award of damages. Accused-appellants were

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[32] *People v. Aquino*, supra note 13, at 490.

[33] REVISED PENAL CODE, Art. 250 – *Penalty for Frustrated Parricide, Murder or Homicide*. — The courts, in view of the facts of the case, may impose upon the person guilty of the frustrated crime of parricide, murder or homicide, defined and penalized in the preceding articles, a penalty lower by one degree than that which should be imposed under the provisions of [Art.] 50.

[34] *People v. Jugueta*, 783 Phil. 806 (2016).

adjudged to pay the heirs of Anthony ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and an additional ₱50,000.00 as exemplary damages. As regards the award of actual damages in the amount of ₱48,466.31, the same must be modified. It is settled that "when actual damages proven by receipts during the trial amount to less than the sum allowed by the Court as temperate damages, the awards of temperate damages is justified in lieu of actual damages which is of a lesser amount. Conversely, if the amount of actual damages proven exceeds, then temperate damages may no longer be awarded; actual damages based on receipts presented during trial should instead be granted,"[35] as in this case. Thus, we delete the award of ₱48,466.31 as actual damages; in lieu thereof, we grant temperate damages in the amount of ₱50,000.00.

In Crim. Case No. 61,566-07, Eduardo was also adjudged to pay Jessie ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages, and an additional ₱30,000.00 as exemplary damages for the crime of Frustrated Homicide. However, the award of temperate damages in the amount of ₱20,000.00 is deleted.

In addition, the amounts awarded as civil liability shall earn interest of 6% per annum reckoned from the finality of this Decision until full payment by the accused.

WHEREFORE, premises considered, the Decision of the Court of Appeals, Cagayan de Oro City in CA-G.R. CR-HC No. 01203-MIN rendered on November 23, 2018, which affirmed with modification the Decision of the Regional Trial Court of Davao City, Branch 11 dated March 11, 2013 is **SET ASIDE**. The Court finds accused-appellants Eduardo Ukay *y* Monton a.k.a. "Tata," Teodulo Ukay *y* Monton a.k.a. "Jun-jun," and Guillermo Dianon a.k.a. "Momong" in Crim. Case No. 61,568-07 **GUILTY** beyond reasonable doubt of the crime of **HOMICIDE** and are hereby sentenced to a prison term of eight (8) years and one (1) day of *prision mayor* as minimum, to 14 years, eight (8) months and one (1) day of *reclusion temporal*

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[35] *People v. Racal*, 817 Phil. 665, 685 (2017).

as maximum. Moreover, the accused-appellants are **ORDERED** to indemnify the heirs of Anthony Aloba ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, an additional ₱50,000.00 as exemplary damages, and ₱50,000.00 as temperate damages. Furthermore, the Court, likewise, finds accused-appellant Eduardo Ukay *y* Monton a.k.a. "Tata" in Crim. Case No. 61,566-07 **GUILTY** beyond reasonable doubt of the crime of **FRUSTRATED HOMICIDE** and is hereby sentenced to a prison term of two (2) years, four (4) months and one (1) day of *prision correccional* as minimum to eight (8) years and one (1) day of *prision mayor* as maximum. He is also **ORDERED** to pay Jessie Gerolaga ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages, and an additional ₱30,000.00 as exemplary damages for the crime of Frustrated Homicide.

All monetary awards for damages shall earn interest at the legal rate of 6% per annum from the date of finality of this Decision until fully paid.

SO ORDERED.

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

Baltazar-Padilla, J., on leave.

FIRST DIVISION

[G.R. No. 246550. September 16, 2020]

RAMIL CHA *y* AZORES @ OBET, *Petitioner*, *v.* **PEOPLE OF THE PHILIPPINES,** *Respondent*.

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEAL; IF THE PENALTY IMPOSED IS LIFE IMPRISONMENT, THE APPEAL SHALL BE MADE BY A MERE NOTICE OF APPEAL; CASE AT BAR.— At the outset, the Court notes the procedural error committed by petitioner in elevating the case before the Court through a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court. While, as a rule, appeals in criminal cases are brought to the Court by filing such kind of petition, Section 13(c), Rule 124 of the Rules of Court provides that if the penalty imposed is life imprisonment, the appeal shall be made by a mere notice of appeal.

Be that as it may, in the interest of substantial justice, the Court deems it prudent to treat the instant petition as an ordinary appeal to resolve the substantive issues at hand.

2. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS THEREOF; THE IDENTITY OF THE DANGEROUS DRUG MUST BE ESTABLISHED WITH MORAL CERTAINTY.— In order to secure the conviction of an accused charged with Illegal Sale of Dangerous Drugs, the prosecution must prove: (a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment. The prosecution must not only adduce proof that the transaction or sale actually took place, but must also present the seized dangerous drugs as evidence in court.

Jurisprudence states that it is essential that the State establish with moral certainty the identity of the prohibited drug,

considering that the dangerous drug itself forms an integral part of the *corpus delicti* of said offenses.

3. ID.; ID.; ID.; CHAIN OF CUSTODY RULE; PHYSICAL INVENTORY AND PHOTOGRAPHING OF SEIZED ITEMS; "IMMEDIATELY AFTER SEIZURE AND CONFISCATION,"EXPLAINED.— Section 21(1) of R.A. No. 9165 provides the procedure for the custody and disposition of confiscated, seized, or surrendered dangerous drugs. This provision specifically requires the apprehending officers to *immediately* conduct a physical inventory and to photograph the seized items in the presence of the following: (a) the accused or the person from whom the items were confiscated, or his representative or counsel; (b) a representative from the media; (c) a representative from the DOJ; and (d) any elected public official. They should also sign the inventory and be furnished a copy thereof.

The term "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. It is only when such situation is not practicable that the Implementing Rules and Regulations of R.A. No. 9165 allow the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team.

4. ID.; ID.; ID.; ID.; ID.; THE FAILURE OF THE APPREHENDING TEAM TO STRICTLY COMPLY WITH THE CHAIN OF CUSTODY RULE DOES NOT *IPSO FACTO* RENDER THE SEIZURE AND CUSTODY OVER THE ITEMS VOID.— While the Court has clarified that under varied field conditions, strict compliance with the requirements of Section 21 of R.A. No. 9165 may not always be possible; and the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 does not *ipso facto* render the seizure and custody over the items void, this has ***always*** been with the caveat that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. The prosecution failed in this regard.

5. ID.; ID.; ID.; ID.; ID.; THE EXISTENCE OF A COMMOTION AND THE FACT THAT THE PLACE IS DIMLY LIT AND HOSTILE ARE NOT JUSTIFIABLE REASONS FOR FAILING TO CONDUCT THE INVENTORY AT THE PLACE OF SEIZURE; CASE AT BAR.—[T]he sachet of *marijuana* was not marked immediately at the place of arrest. Both the RTC and the CA gave credence to the prosecution witnesses' reasoning that there was a commotion perpetrated by petitioner's relatives and the place of the incident was dimly lit, and spectators were drawn to the sight, which prompted them to conduct the inventory at the *barangay* hall, which was only a walking distance away.

We do not agree. We find the justification offered by the prosecution to be flimsy and hollow. The police officers could have easily controlled the commotion caused by petitioner's relatives, namely, his wife and sister, and the people surrounding the officers. Noteworthy is the fact that they are composed of **six officers who are armed**.

. . .

Also, the fact that the place is dimly lit can hardly be a justification to deviate from the rules. A buy-bust operation is a planned activity, therefore, the officers should have foreseen the fact that the place is dimly lit and the officers could have easily addressed the situation by bringing adequate lighting equipment.

Further, we find the excuse that the place is hostile because there were few NPAs in the area, **according to the confidential informant**, to be hearsay, self-serving, unsubstantiated, and unworthy of consideration. Assuming the same to be true, the buy-bust team could have prepared for the situation since this information was already given by their confidential informant beforehand.

6. ID.; ID.; ID.; ID.; IN THE ABSENCE OF INSULATING WITNESSES AT THE TIME AND PLACE OF THE ARREST, THERE IS DOUBT IN THE INTEGRITY AND EVIDENTIARY VALUE OF THE *CORPUS DELICTI*; CASE AT BAR.— [The] records are bereft of mention that the insulating witnesses were present at the time and place of the arrest. While they were attendant during the marking and inventory at the *barangay* hall, we find this to be insufficient

compliance with the rules laid down by Section 21, Article II of R.A. No. 9165.

The practice of police officers of not bringing to the intended place of arrest the three witnesses, when they could easily do so – and "calling them in" to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished – does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.

Absent the insulating presence of the representative from the media and the DOJ, and any elected public official during the seizure and marking of the sachets of *shabu*, the evils of switching, "planting" or contamination of the evidence again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the sachets of *shabu* that were evidence herein of the *corpus delicti*. This adversely affected the trustworthiness of the incrimination of the accused. The insulating presence of such witnesses would have preserved an unbroken chain of custody.

Based on the foregoing, we find that there is doubt in the integrity and evidentiary value of the *corpus delicti*. Consequently, the accused must be acquitted.

APPEARANCES OF COUNSEL

Armando San Antonio for petitioner.
The Office of the Solicitor General for respondent.

D E C I S I O N

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

Before us is a Petition for Review on *Certiorari* assailing the Decision[1] dated March 25, 2019 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09971, which affirmed the Joint

[1] Penned by Associate Justice Eduardo B. Peralta, Jr., with Associate Justices Ramon R. Garcia and Gabriel T. Robeniol, concurring; *rollo*, pp. 43-56.

Judgment dated June 29, 2017 of the Regional Trial Court (RTC), Branch 76, Malolos City, Bulacan in Criminal Case No. 2585-M-2010, finding petitioner Ramil Cha *y* Azores (petitioner) guilty beyond reasonable doubt for the offense of selling a sachet of *marijuana* in violation of Section 5, Article II of Republic Act (R.A.) No. 9165.

Factual Antecedents

Petitioner was charged with Violation of Sections 5 and 11, Article II of R.A. No. 9165 before the RTC. The petitioner was subsequently acquitted of the charge of violation of Section 11 of R.A. No. 9165 in Criminal Case No. 2586-M-2010.[2] The Information charging petitioner of Violation of Section 5 of R.A. No. 9165 in Criminal Case No. 2585-M-2010 reads:

> That on or about the 26th day of July, 2010, in the [M]unicipality of Balagtas, Province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law and legal justification, did then and there willfully, unlawfully and feloniously sell, trade, deliver, give away, dispatch in transit and transport dangerous drug consisting of one (1) heat-sealed transparent plastic sachet containing dried [*marijuana*] fruiting tops weighing 1.724 grams.
>
> Contrary to law.[3]

Arraigned with the assistance of counsel, petitioner entered a plea of "Not Guilty" to both charges.[4]

During the pre-trial hearing, the following stipulation of facts were entered into by the parties: (1) the identity of the accused as the person charged in the two sets of Information; (2) the jurisdiction of the court to try the cases; (3) the qualification and competency of Forensic Chemist/Police Senior Inspector Gina Camposano-Ledesma (P/SI Camposano-Ledesma) as an expert witness; and (4) the validity of the laboratory examination

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[2] Id. at 133.

[3] Id. at 57.

[4] Id. at 44.

that said forensic chemist conducted, subject to the condition that said accused was not the source of the confiscated items and that the names of the said accused as appearing in the documentary evidence as the alleged source of the confiscated items are disputed as said witness has no personal knowledge as to the recovery of the said items. By reason of these stipulations, the further presentation to the witness stand of P/SI Camposano-Ledesma was dispensed with.[5]

Version of the Prosecution

The prosecution alleged that on July 26, 2010, Senior Inspector 2 Alodia Tumbaga (SI2 Tumbaga) of the Philippine Drug Enforcement Agency (PDEA) received word from a confidential informant that an individual known as "Obet," who turned out to be herein petitioner, was engaged in illegal drug trade in *Barangay* San Juan, Balagtas, Bulacan.

After receiving the information, SI2 Tumbaga, formed and led an Anti-Narcotics operation with Investigation Officer 1 Froilan Bitong (IO1 Bitong) as *poseur*-buyer, and IO1 Norman Daez (IO1 Daez), as immediate back-up. The rest of the team members were assigned as perimeter defense. Prior to the operation, the team prepared documents such as the Pre-Operation Report and Authority to Operate with Control Number 07-10-00054.

Briefing was conducted. Thereafter, the team proceeded to MacArthur Highway, *Barangay* San Juan, Balagtas, Bulacan to meet the informant using their service vehicle, an L-300 Mitsubishi van. Another briefing was conducted inside the van, together with the informant, to discuss strategies for the buy-bust operation before proceeding to petitioner's house. IO1 Bitong was given a ₱100-bill with serial number FS061520 as buy-bust money, which was marked "FVB" at the front lower left portion thereof.

The PDEA headed to the target site with the help of the informant. Upon arrival thereat, the informant and IO1 Bitong

[5] Id. at 123.

walked towards the residence of petitioner and knocked at the gate while the rest of the team positioned themselves within viewing distance for monitoring. Petitioner went out of the gate and the informant introduced IO1 Bitong as the buyer of *marijuana*.

At this point, IO1 Bitong told the informant to buy cigarette so that he and petitioner will be left alone. IO1 Bitong told petitioner that he wanted to purchase *marijuana* worth ₱100.00. Petitioner demanded for the payment, but IO1 Bitong asked petitioner if he could see the item first. Petitioner pulled out from his right pocket one heat-sealed transparent plastic sachet containing dried leaves suspected to be *marijuana* and handed it to IO1 Bitong. In turn, IO1 Bitong handed to petitioner the marked money. After the transaction, IO1 Bitong gave the pre-arranged signal by sending a missed call to IO1 Daez.

In response to the pre-arranged signal, IO1 Daez rushed to the scene, and aided IO1 Bitong in effecting the arrest of the petitioner who was apprised of his constitutional rights. A body search conducted on petitioner resulted in the recovery of the marked money, 13 plastic sachets of *marijuana* and 4 plastic sachets of *shabu*.

A commotion was caused by petitioner's relatives and people gathered around them. Because of these, compounded by the poorly lit crime scene, the team leader decided to conduct the inventory at the *barangay* hall. The PDEA operatives then brought the petitioner to the *barangay* hall, together with the seized items.

On the way, IO1 Bitong maintained possession of the contraband, subject of the sale and IO1 Daez took custody of the items retrieved from the petitioner until he turned them over to IO1 Bitong at the *barangay* hall. There, the items were inventoried and marked in the presence of petitioner and signed by representatives from the Department of Justice (DOJ) and the media, and a *barangay* official. In the course of the inventory, photographs were taken to document the event. In the *barangay* hall, SI2 Tumbaga prepared the Request for

Laboratory Examination on the specimens and Request for Drug Test, while a Joint Affidavit of *Poseur*-Buyer/Arresting Officer was executed by IO1 Bitong and IO1 Daez in connection with the arrest of the accused.[6]

Then they proceeded to the crime laboratory office wherein IO1 Bitong personally submitted the evidence for examination. It was received by the Bulacan Provincial Crime Laboratory, Malolos City, Bulacan. Thereafter, they proceeded to their station. The findings of the laboratory examination as shown in Chemistry Report No. D-076-2010 is that the sold and seized sachets were indeed dangerous drugs. IO1 Bitong also identified the documents, such as the Chemistry Report No. D-076-2010, Pre-operation Report, the Authority to Operate, as well as the joint sworn statement which they executed in relation to these cases.[7]

Version of the Defense

The defense, for its part, offered denial and frame-up. According to petitioner, he was at home having dinner with his live-in partner and their children, when the policemen forced their way into his house during the incident in question. They handcuffed him and searched the premises, but found no contraband.[8]

The PDEA operatives then brought petitioner to the *barangay* hall where he was made to point out the drugs as if the items where his while pictures were being taken. He, however, denied ownership of the items. Thereafter, he was taken to Camp Alejo, Malolos City, Bulacan for drug testing.[9]

In a Joint Judgment dated June 29, 2017, the RTC found petitioner guilty beyond reasonable doubt of the offense of illegal sale of dangerous drugs, but acquitted him on the charge of illegal possession of *shabu* and *marijuana*, to wit:

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[6] Id. at 44-47.

[7] Id. at 125.

[8] Id. at 47.

[9] Id.

WHEREFORE, for having established the guilt of the accused beyond reasonable doubt, JUDGMENT is hereby rendered in CRIMINAL CASE NO. 2585-M-2010 CONVICTING accused RAMIL CHA y AZORES @ OBET for his offense of selling a sachet of [*marijuana*] which is classified as a dangerous drug in violation of Section 5, Article II, R.A. 9165, and is hereby sentenced to LIFE IMPRISONMENT and to pay a FINE of FIVE HUNDRED THOUSAND PESOS (PhP500,000.00).

However, the said accused is ACQUITTED in Criminal Case No. 2586-M-2010 for failure of the prosecution to prove his guilt beyond reasonable doubt.

As to the evidence subject matter of these cases which are listed in the Chemistry Report No. D-113-2010, are hereby confiscated in favor of the government. The Branch Clerk of Court is directed to dispose the said specimens in accordance with the existing rules and regulations.

Furnish copies of this Joint Judgment to the public prosecutor, defense counsel, accused, and to the Provincial Jail Warden of Bulacan who is hereby directed to immediately commit the accused to the National Penitentiary located at the National Bilibid Prisons in Muntinlupa City per Circular No. 42-93 since the accused is considered as a national prisoner. In connection therewith, issue the corresponding [*mittimus*].

SO ORDERED.[10]

Petitioner filed a Motion for Reconsideration which was denied in the Order dated September 13, 2017.[11]

On appeal, petitioner lamented that the prosecution failed to prove the elements of selling prohibited drugs. Petitioner raised inconsistencies in the testimonies of the prosecution witnesses and the failure of the PDEA officers to comply with the chain of custody rule. The CA denied the appeal in its Decision dated March 25, 2019.[12]

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[10] Id. at 132-133.

[11] Id. at 48.

[12] Id. at 55.

Petitioner then filed the instant petition. Petitioner ultimately hinges his defense on the issue on the failure of the buy-bust team to comply with the chain of custody rule. Petitioner claims that during his apprehension and immediately after the alleged seizure and confiscation and marking of the items, no representative from the DOJ, elective official and media were present. The markings, inventory and photographing were not done in the place of the incident, and the prosecution witnesses failed to prove that it is not practicable or can be excused.[13]

The Court's Ruling

At the outset, the Court notes the procedural error committed by petitioner in elevating the case before the Court through a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court. While, as a rule, appeals in criminal cases are brought to the Court by filing such kind of petition, Section 13 (c), Rule 124 of the Rules of Court provides that if the penalty imposed is life imprisonment, the appeal shall be made by a mere notice of appeal.[14]

Be that as it may, in the interest of substantial justice, the Court deems it prudent to treat the instant petition as an ordinary appeal to resolve the substantive issues at hand.

Petitioner submits that that there was non-compliance with the chain of custody rule and the procedure in the seizure and custody of drugs. Specifically, petitioner questions the fact that the marking and inventory of the seized drugs were not done at the place of confiscation. Petitioner further argues that the prosecution did not present proof on how the items were turned over to the chemist and its condition at the time it was delivered to the last person who touched the same.

We find merit in the instant petition.

In order to secure the conviction of an accused charged with Illegal Sale of Dangerous Drugs, the prosecution must prove:

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[13] Id. at 26.

[14] *Matabilas v. People*, G.R. No. 243615, November 11, 2019.

(a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment.[15] The prosecution must not only adduce proof that the transaction or sale actually took place, but must also present the seized dangerous drugs as evidence in court.[16]

Jurisprudence states that it is essential that the State establish with moral certainty the identity of the prohibited drug, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of said offenses. It is the prosecution's burden to show beyond reasonable doubt an unbroken chain of custody over the seized items and account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[17]

This requirement is not a mere procedural matter which can be simply brushed aside by simple allegation of substantial compliance or presumption of regularity in the conduct of an official duty.[18]

Section 21 (1) of R.A. No. 9165 provides the procedure for the custody and disposition of confiscated, seized, or surrendered dangerous drugs. This provision specifically requires the apprehending officers to *immediately* conduct a physical inventory and to photograph the seized items in the presence of the following: (a) the accused or the person from whom the items were confiscated, or his representative or counsel; (b) a representative from the media; (c) a representative from the DOJ; and (d) any elected public official. They should also sign the inventory and be furnished a copy thereof.[19]

The term "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were

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[15] *People v. Dela Torre*, G.R. No. 238519, June 26, 2019.

[16] *People v. Soria*, No. 229049, June 6, 2019.

[17] *People v. Lozano*, G.R. No. 227700, August 28, 2019.

[18] Id.

[19] *People v. Maralit*, G.R. No. 232381, August 1, 2018.

intended by the law to be made immediately after, or at the place of apprehension. It is only when such situation is not practicable that the Implementing Rules and Regulations of R.A. No. 9165 allow the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team.[20]

The Court finds that there is insufficient compliance with the chain of custody under Section 21, Article II of R.A. No. 9165 and there is doubt as to the integrity and evidential value of the seized drugs.

In the case at bar, the Court finds that the failure of the enforcers to mark the seized items immediately after, or at the place of apprehension, is not justified. As admitted by the prosecution witnesses, the marking and inventory of the seized items were done in the *barangay* hall and not at the place of arrest.

While the Court has clarified that under varied field conditions, strict compliance with the requirements of Section 21 of R.A. No. 9165 may not always be possible; and the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 does not *ipso facto* render the seizure and custody over the items void, this has ***always*** been with the caveat that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.[21] The prosecution failed in this regard.

IO1 Bitong testified:

Q: Who were the members of the team that was made or formed?
A: Our team leader is SI2 Alodia Tumbaga, IO1 Norman Daez and IO1 Froilan Bitong, I cannot recall anymore the others.

Q: How many were you?
A: Five (5) to six (6) members, [s]ir.[22]

x x x x

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[20] *People v. Alcantara*, G.R. No. 231361, July 3, 2019.

[21] *People v. De Castro*, G.R. No. 243386, September 2, 2019.

[22] TSN, October 10, 2011; *rollo*, p. 62.

Q: Where were you when you marked [the object of the buy bust]?
A: At the barangay hall of San Juan, Balagtas.

x x x x

Q: Tell us the distance of the barangay hall of San Juan, to that place of the incident?
A: About 60 to 70 meters away, [s]ir.

Q: That is just near?
A: I would say it is near, Sir.

Q: So, you could go there on foot?
A: Yes, [s]ir.

Q: Tell us Mr. witness why you did not immediately mark them at the place of the incident and you brought it to the barangay hall?
A: Our team leader decided to mark the specimen in the barangay hall because relatives of Obet started to be unruly.

Q: Were you able to enter the house of alias Obet?
A: No, [s]ir, only at the front, [s]ir.

Q: Were you able to find out who was residing in that house?
A: The wife and sister were also outside.

Q: They were the one who are talking to that were made to be a commotion? [*sic*]
A: Yes,[s]ir.[23]

x x x x

Q: We respectfully request additional marking for this Inventory as Exhibit "I-1." How about the signatures of these Oliver Umpacan, Boy Cruz and Danilo Reyes, who are these persons?
A: Oliver Umpacan is the DOJ representative, Boy Cruz [is the] representative of Media and Danilo Reyes is the barangay [councilor] of San Juan, Balagtas, Bulacan.

Q: Were you able to gather all these people in the barangay hall?
A: Yes, [s]ir, we called thru telephone Oliver Umpacan and Boy Cruz.

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[23] Id. at 72-73.

Q: What time was this inventory prepared?
A: More or less we made the arrest at 8:15 and then afterwards, we went to the barangay hall already.[24]

x x x x

IO1 Daez also testified:

Q: [As] you've mentioned, [M]r. witness, that you [*sic*] were about 6 persons who went to the place of the incident, is that correct?
A: Yes, ma'[a]m.

Atty. Galang:

Q: And all of you were armed because you know for a fact that you will conduct a [buy-bust] operation, is that correct?
A: Yes, ma'am.

Q: And now, [M]r. witness, would you likewise agree with me that as PDEA operative[,] you are knowledgeable that you must [place] the markings on the plastic sachets at the place of the incident?
A: Yes, ma'am.

Q: And allegedly your reason why you did not place the marking on the plastic sachets was because of apparent commotion at the place of the incident, is that correct?
A: Yes, ma'am.

Q: And likewise, [M]r. witness, am I correct to say that as drug operative[,] you knew for a fact that when you go to a place you should be ready for any kind of commotion?
A: Yes, ma'am.

Q: And would you likewise agree with me, [M]r. witness, that aside from your mere allegations that there was [a] commotion[,] you don't have proof to show that there was such an incident, is that correct?
A: Yes, ma'am.[25]

x x x x

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[24] Id. at 76.

[25] TSN, March 4, 2014; rollo, pp. 97-98.

[RE-DIRECT] EXAMINATION

Q: Mr. witness, you said that there was a commotion and that was the very reason why the markings [were] not done at the scene of the incident?
A: [A] lot of people were surrounding us and beside the fact that the place was hostile and dimly [lit,] we were not equipped with lights to make the area lighted, [s]ir.

Q: Now, you mentioned that the place was hostile, what made you say that the place was hostile, [M]r. witness?
A: That was according to the confidential informant, sir.

Q: Now, according to your confidential informant the area was hostile, would you please describe how hostile was that place based from the information that you gathered from your confidential informant, [M]r. witness?
A: According to the confidential informant there were few NPA in the said area, sir.

x x x x

Court:
Q: What is that area, [M]r. witness?
Witness:
A: San Juan, Balagtas, Bulacan, Your Honor.

Fiscal Santiago:

Q: That was the very reason why no marking was done at the place of the incident, [M]r. witness?
A: Yes, sir.[26]

Based on the foregoing, we noted the following deviations from the mandatory requirements laid down by Section 21, Article II of R.A. No. 9165.

First, the sachet of *marijuana* was not marked immediately at the place of arrest. Both the RTC and the CA gave credence to the prosecution witnesses' reasoning that there was a commotion perpetrated by petitioner's relatives and the place of the incident was dimly lit, and spectators were drawn to the

[26] Id. at 99-100.

sight, which prompted them to conduct the inventory at the *barangay* hall, which was only a walking distance away.[27]

We do not agree. We find the justification offered by the prosecution to be flimsy and hollow. The police officers could have easily controlled the commotion caused by petitioner's relatives, namely, his wife and sister, and the people surrounding the officers. Noteworthy is the fact that they are composed of **six officers who are armed**.

Notably, in *People v. Cornel*,[28] the Court ruled that the buy-bust team's excuse of the existence of a commotion was not a justifiable reason for failing to conduct the inventory at the place of seizure. The Court there ruled that seven armed members of the buy-bust team could have easily contained any commotion, thus, they should have been able to conduct the marking and inventory at the place of seizure.[29]

Also, the fact that the place is dimly lit can hardly be a justification to deviate from the rules. A buy-bust operation is a planned activity, therefore, the officers should have foreseen the fact that the place is dimly lit and the officers could have easily addressed the situation by bringing adequate lighting equipment.

Further, we find the excuse that the place is hostile because there were few NPAs in the area, **according to the confidential informant**, to be hearsay, self-serving, unsubstantiated, and unworthy of consideration. Assuming the same to be true, the buy-bust team could have prepared for the situation since this information was already given by their confidential informant beforehand.

Second, records are bereft of mention that the insulating witnesses were present at the time and place of the arrest. While they were attendant during the marking and inventory at

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[27] *Rollo*, pp. 51 and 131.

[28] 829 Phil. 645 (2018).

[29] Id. at 657.

the *barangay* hall, we find this to be insufficient compliance with the rules laid down by Section 21, Article II of R.A. No. 9165.

The practice of police officers of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and "calling them in" to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.[30]

Absent the insulating presence of the representative from the media and the DOJ, and any elected public official during the seizure and marking of the sachets of *shabu*, the evils of switching, "planting" or contamination of the evidence again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the sachets of *shabu* that were evidence herein of the *corpus delicti*. This adversely affected the trustworthiness of the incrimination of the accused. The insulating presence of such witnesses would have preserved an unbroken chain of custody.[31]

Based on the foregoing, we find that there is doubt in the integrity and evidentiary value of the *corpus delicti*. Consequently, the accused must be acquitted.

WHEREFORE, the petition is **GRANTED**. The Decision dated March 25, 2019 of the Court of Appeals in CA G.R. CR-HC No. 09971, which affirmed the Joint Judgment dated June 29, 2017 of the Regional Trial Court (RTC) Branch 76, Malolos City, Bulacan in Criminal Case No. 2585-M-2010 is hereby **REVERSED AND SET ASIDE**.

Accordingly, petitioner Ramil Cha y Azores is **ACQUITTED** of the crimes charged on the ground of reasonable doubt. The Director of the Bureau of Corrections is **ORDERED** to cause

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[30] *People v. De Castro,* supra note 20.

[31] *People v. Alcantara,* supra note 19.

his immediate release, unless he is being lawfully held in custody for any other reason.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 201580. September 21, 2020]

ALCID C. BALBARINO (now deceased), substituted by his surviving siblings ALBERT, ANALIZA, AND ALLAN, ALL SURNAMED BALBARINO, *Petitioners, v.* **PACIFIC OCEAN MANNING, INC., and WORLDWIDE CREW, INC.,** *Respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL MATTERS, NOT PROPER SUBJECT OF AN APPEAL; EXCEPTIONS THERETO, APPLICABLE TO APPEALS INVOLVING LABOR CASES.— It must be noted at the outset that Alcid's entitlement to compensation is a factual issue. As a general rule, factual matters are not the proper subject of an appeal by *certiorari*, as it is not this Court's function to analyze or weigh the evidence which has been considered in the proceedings below.

Nevertheless, a review of the factual findings is justified under the following circumstances: . . .

The exceptions similarly apply in petitions for review filed before this Court involving labor cases, among others.

The conflicting findings between the NCMB and the CA warrant a re-evaluation of the facts in the instant case.

2. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC); DISABILITY BENEFITS; WORK-RELATED ILLNESS, DEFINED; GRANT OF MEDICAL ATTENTION AND TREATMENT, SICKNESS ALLOWANCE, AND DISABILITY BENEFITS FOR WORK-RELATED ILLNESS SUFFERED DURING EMPLOYMENT IS PREMISED ON SEAFARER'S COMPLIANCE WITH THE REQUIREMENTS UNDER THE POEA-SEC.— Based on the foregoing [Section 20-B of the 2000 POEA-SEC], should

the seafarer suffer a work-related illness during his employment, the employer shall be liable to provide medical attention and treatment, grant a sickness allowance equivalent to the seafarer's basic wage, and award a disability benefit in case of permanent total or partial disability. The grant of these benefits is premised on the seafarer's compliance with the requisites provided under the POEA-SEC, coupled with proof that the illness is in fact work-related.

Notably, the POEA-SEC defines a work-related illness as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied."

3. ID.; ID.; ID.; ID.; ALTHOUGH AN OCCUPATIONAL ILLNESS NOT LISTED IN THE CONTRACT IS DISPUTABLY PRESUMED TO BE WORK-RELATED, THE SEAFARER MUST STILL PROVE THAT THERE EXISTS A PROBABILITY THAT HIS WORKING CONDITIONS CAUSED OR AGGRAVATED HIS ILLNESS.— [S]ection 20 (B)(4) fills in the lacuna, adding that any illness which is not listed in Section 32 is disputably presumed to be work-related. For the presumption to apply, it must be shown that: (i) the illness is work-related; and (ii) the work-related illness existed during the term of the seafarer's employment contract.

In *Skipper United Pacific, Inc. and/or Ikarian Moon Shipping, Co., Ltd. v. Estelito S. Lagne*, this Court clarified that despite the disputable presumption, the seafarer must still prove a causal link between his working conditions and his illness. In doing so, reasonable proof or a probability that his work caused, or at least increased the risk of contracting his illness shall suffice . . . .

. . .

It is all too apparent, therefore, that although the POEA-SEC provides a disputable presumption of work-relatedness, the seafarer must still establish a reasonable nexus between his employment and illness. At the very least, he must prove through substantial evidence that there exists a probability that his working conditions caused or aggravated his illness. Of course, the employer shall not sit idly while the seafarer

endeavors to prove causation. Rather, the employer must overcome the disputable presumption of work-relatedness. Failing therein, the seafarer's illness will be deemed work-related, thereby entitling him to receive compensation.

4. ID.; ID.; ID.; A SEAFARER IS ENTITLED TO FULL DISABILITY BENEFITS IF IT WAS SHOWN THAT HIS WORKING CONDITIONS WHILE ON-BOARD THE VESSEL CONTRIBUTED AND AGGRAVATED HIS ILLNESS.— In the performance of his duties as an able seaman, Alcid was exposed to various harmful and injurious chemicals, such as fumes, gasoline, ethylene, propylene, butane, methane, naphthalene, and dust while on-board the M/V Corral Nettuno, an oil/chemical tanker.

. . .

It bears noting that Dr. Peneyra identified medical studies which revealed that men exposed to chemicals such as thylene and ethylene oxide developed sarcoma. Alcid's line of work, which involved constant and prolonged exposure to similar harmful carcinogenic chemicals, exacerbated by the stress and fatigue of work on-board, triggered and aggravated his illness.

. . .

Undoubtedly, it does not demand a stretch of the imagination to reasonably presume that the conditions Alcid were exposed to during the fulfillment of his duties as an able seaman aboard the MN Corral Nettuno contributed to the development or aggravation of his illness. Accordingly, he is entitled to full disability benefits under Section 20 (B) (6) of the POEA-SEC, amounting to US$60,000.00.

5. ID.; ID.; ID.; THE REQUIREMENT OF REFERRAL TO A THIRD PHYSICIAN DOES NOT APPLY TO DISPUTES PERTAINING TO WORK-RELATEDNESS OF THE ILLNESS.— [R]espondents may not fault Alcid for failing to obtain the opinion of a third doctor.

This Court clarified in *Leonis Navigation Co., Inc., et al. v. Obrero, et al.,* that the provision requiring referral to a third physician does not apply to disputes pertaining to the work-relatedness of the disease . . . .

Besides even if respondents insist on the opinion of a third physician, fault does not lie on Alcid. The records reveal that he actually expressed his willingness to have his condition referred to a third physician. However, the respondents failed to act on his request.

APPEARANCES OF COUNSEL

Valmores & Valmores Law Offices for petitioners.
Del Rosario & Del Rosario Law Offices for respondents.

D E C I S I O N

GAERLAN, *J.*:

The Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC) enumerates the liabilities of the employer in case the seafarer suffers a work-related illness or injury on-board the ocean-going vessel. It ensures a proper balance between two things — the proper compensation of a seafarer, and the protection of the employer against any unjustified payment.

This resolves the Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court filed by petitioners Albert, Analiza, and Allan, all surnamed Balbarino, on behalf of Alcid C. Balbarino (Alcid), praying for the reversal of the September 22, 2011 Decision[2] and April 19, 2012 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 116751. The CA reversed the October 8, 2010 Decision[4] of the Panel of Voluntary Arbitrators of the National Conciliation and Mediation Board

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[1] *Rollo*, pp. 8-39.

[2] Id. at 262-279; penned by Associate Justice Ramon A. Cruz, with Associate Justices Jose C. Reyes, Jr. (now a retired Member of this Court) and Antonio L. Villamor, concurring.

[3] Id. at 312-316.

[4] Id. at 180-204.

(NCMB) which awarded disability benefits, sickness allowance, reimbursement for medical expenses and attorney's fees in favor of Alcid.

The Antecedents

On August 26, 2008, Alcid was re-hired by respondent Worldwide Crew, Inc. (Worldwide), through its local manning agent co-respondent Pacific Ocean Manning[5] as an able seaman on board the vessel M/V Coral Nettuno, a chemical/gas tanker. This was Alcid's fifth contract with respondents.

Under the terms of Alcid's POEA-approved Contract of Employment, the duration of his term shall last for nine months, with a monthly salary of US$563.00.[6] His employment contract had an overriding Collective Bargaining Agreement (CBA) between Associated Marine Officers' and Seamen's Union of the Philippines (AMOSUP) and Worldwide.[7]

On October 1, 2008, Alcid was declared fit to work by the company-designated physician[8] and was deployed on-board the M/V Corral Nettuno.

On January 11, 2009, Alcid noticed a mass on his right thigh and soft swelling of about 7 cm in diameter and 2 cm thick on the right side of his forehead. He was referred to the surgical emergency ward of AZ Klina hospital. The physicians suggested the removal of the tumor, which was postponed due to the imminent departure of the vessel.[9]

On February 2, 2009, a team of doctors in Belgium removed Alcid's tumor. He likewise underwent a CT scan which showed a clear bone defect of the skull. Imaging suggested a primary tumor or a metastasis of a remote tumor.[10] Further examinations

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[5] Id. at 321.

[6] Id. at 11-12.

[7] Id. at 263.

[8] Id. at 12.

[9] Id. at 13-14.

[10] Id. at 14.

showed multiple lung metastases, and swelling on his leg, which was suspected to be the primary tumor.[11]

After a combined examination of the biopsies on the forehead tumor and the mass in the leg, Alcid was diagnosed to be suffering from alveolar soft part sarcoma. He underwent further treatments and examinations on various dates in March 2009.[12]

On April 14, 2009, Alcid was repatriated and admitted at St. Luke's Hospital. He underwent various laboratory examinations including a CT scan on his whole chest and abdomen, as well as a bone scan.[13] The test results showed multiple pulmonary nodules as well as bone metastasis to his skull.[14]

On April 27, 2009, Dr. Natalio G. Alegre II (Dr. Alegre), company-designated physician, issued a Medical Report confirming that the biopsied mass on Alcid's right thigh showed soft tissue alveolar sarcoma. Dr. Alegre expounded that soft tissue alveolar sarcoma is "a highly vascular tumor that is muscular in origin. It represents less than 1% of soft tissue sarcomas of adults, and more frequently affect[s] females x x x. Metastases or spread are frequent occurring mainly in the lungs, bones and brain."[15] The cause of said illness is "genetic with translocation of x-genes in the G2 phase. It is a chromosomal abnormality and is therefore not work related."[16]

Respondents provided Alcid medical attention until May 11, 2009. Unfortunately, Alcid never recovered from his illness.[17]

On June 4, 2009, Alcid consulted an independent oncologist Dr. Jhade Lotus Peneyra (Dr. Peneyra). In her Medical Certificate,

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[11] Id. at 322.

[12] Id. at 184-185.

[13] Id. at 14.

[14] Id.

[15] Id. at 263.

[16] Id. at 264.

[17] Id. at 8.

Dr. Peneyra confirmed that Alcid was suffering from alveolar soft part sarcoma with brain, lung and bone metastases. She related medical studies revealing that exposure to chemicals such as ethylene oxide have lead to a possible risk of developing malignant tumors in the breast, pancreas, stomach and hematolymphoid organs,[18] and that for Alcid, "there is limited evidence in humans for the carcinogenecity of ethylene oxide."[19]

Likewise, on September 17, 2009, Alcid consulted with Internist and Cardiologist Dr. Efren R. Vicaldo (Dr. Vicaldo), who diagnosed the former as suffering from alveolar soft part sarcoma with distant metastasis. Dr. Vicaldo gave a disability rating of Grade I (120%).[20] He declared Alcid unfit to resume work as a seaman in any capacity and regarded his work as aggravated/related to the disease.[21] He further noted that having this rare malignancy significantly shortens Alcid's life expectancy, who is no longer expected to land a gainful employment.[22]

On the basis thereof, Alcid sought the payment of disability benefits, sickness allowance and reimbursement of his medical expenses. However, respondents rejected his claims.

On June 15, 2009, Alcid initiated a grievance before the AMOSUP pursuant to the terms of the CBA. However, the parties failed to reach an amicable settlement during the mandatory conferences.[23]

Subsequently, Alcid filed a Notice to Arbitrate before the NCMB. On October 26, 2009, the parties executed a Submission Agreement.

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[18] Id. at 87.

[19] Id.

[20] Id. at 88.

[21] Id. at 89.

[22] Id.

[23] Id. at 266.

Unfortunately, on October 3, 2010, Alcid succumbed to his illness.[24]

Ruling of the NCMB

In a Decision[25] dated October 8, 2010, the NCMB awarded Alcid disability benefit under the CBA, sickness allowance, and reimbursement for medical expenses, with attorney's fees.

The NCMB held that sarcoma is disputably presumed to be work-related.[26] In Alcid's work as an able seaman, he was constantly exposed to various injurious and harmful chemicals. His work was strenuous and he had to contend with the harsh environment at the sea. The NCMB excused Alcid from the obligation of proving direct causation between his working conditions and his illness, acknowledging that the exact origin of sarcoma is unknown and that under the present state of science, the evidence to prove causation is "unavailable and impossible to comply with."[27] Hence, Alcid's "obligation to present such an impossible evidence must therefore, be deemed void."[28] This notwithstanding, Alcid is entitled to compensation on account of the provisions on social justice.[29]

The NCMB further noted that Alcid's condition constitutes a total and permanent disability. He was unable to work for more than 120 days and his disability went beyond 240 days.[30] Accordingly, the NCMB awarded permanent disability benefits under the CBA,[31] and sickness allowance equivalent to US$2,252.00 (120 days or four months of Alcid's basic monthly salary of US$563.00).[32] The NCMB further ordered

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[24] Id. at 8.

[25] Id. at 180-204.

[26] Id. at 196.

[27] Id. at 202.

[28] Id.

[29] Id.

[30] Id. at 200.

[31] Id. at 199-200.

[32] Id. at 202.

the reimbursement of ₱255,733.87, which represents the additional medical expenses Alcid incurred.[33]

Finally, the NCMB awarded attorney's fees equivalent to 10% of the total monetary award considering that Alcid was compelled to hire the services of counsel to protect his rights and interests.[34]

The dispositive portion of the NCMB ruling reads:

> **WHEREFORE**, premises considered, a decision is hereby rendered, **ORDERING** herein respondents Pacific Ocean Manning, Inc., and/or Worldwide Crew, In., to jointly and solidarily pay complainant Alcid C. Balbarino, the amount of EIGHTY-NINE THOUSAND ONE HUNDRED U.S. DOLLARS (US$89,100.00), as disability benefits; TWO THOUSAND TWO HUNDRED FIFTY-TWO US DOLLARS (US$2,252.00) as sickness allowance; and PhP255,733.87 (divided by forty-three [PhP43.00 per US Dollar] or FIVE THOUSAND NINE HUNDRED FORTY-SEVEN and 29/100 U.S. DOLLARS (US$5,947.2993)) as reimbursement for medical expenses; or a sub-total amount of USD$97,299.2993, plus ten percent (10%) thereof as attorney's fees, or in the total amount of ONE HUNDRED SEVEN THOUSAND TWENTY-NINE and 23/100 U.S. DOLLARS (US$107,029.23), or its Peso equivalent converted at the prevailing rate of exchange at the time of actual payment.
>
> All other claims of the complainant are hereby **DISMISSED** for lack of merit.
>
> Likewise, respondents' counter-claims for damages and attorney's fees are **DENIED** for utter lack of merit.
>
> **SO ORDERED**.[35] (Emphasis in the original)

Aggrieved, respondents filed a Petition for Review under Rule 43 of the Rules of Court with the CA.

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[33] Id.

[34] Id. at 202-203.

[35] Id. at 204.

Ruling of the CA

On September 22, 2011, the CA rendered the assailed Decision[36] reversing the NCMB's judgment. The CA held that Alcid's illness is not work-related,[37] thus, he is not entitled to disability benefits under the POEA-SEC or the CBA, sickness allowance and reimbursement of medical expenses.[38] Alveolar soft part sarcoma is not included among the occupational diseases in the POEA-SEC. Although it is disputably presumed to be work-related, Alcid failed to prove through substantial evidence that his condition was caused by, or aggravated by the nature of his work as an able seaman.[39]

In contrast, the company-designated physician confirmed that Alcid's condition is genetic and therefore, could not have been work-related.[40] This medical assessment effectively rebuts the disputable presumption. Under Section 20 (B) (3) of the POEA-SEC and Articles 26.2 and 26.4 of the CBA, the disability rating shall be determined by the company-designated physician.[41] If the physician appointed by the seafarer disagrees with the findings of the company-designated physician, then the opinion of a third doctor shall serve as the final decision between them.[42] Alcid failed to comply with said procedure. Accordingly, the findings of the company-designated physician are entitled to more weight.[43] Added thereto, Alcid's chosen physicians merely conducted a cursory physical examination on him, whereas, the company-designated physician evaluated and closely monitored his condition over a period of time.[44]

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[36] Id. at 262-279; penned by Associate Justice Ramon A. Cruz, with Associate Justices Jose C. Reyes, Jr. (now a retired Member of this Court) and Antonio L. Villamor, concurring.

[37] Id. at 270.

[38] Id. at 278.

[39] Id. at 271.

[40] Id.

[41] Id. at 272.

[42] Id. at 273.

[43] Id.

[44] Id.

Moreover, the CA opined that the NCMB erred in awarding disability benefits under Section 26.1 of the CBA. To be entitled thereto, the injury or illness must have been caused by an accident, which is not applicable to Alcid's case.[45]

Finally, Alcid is not entitled to attorney's fees since the respondents did not act with bad faith in denying his claim for disability compensation and benefits.[46]

The decretal portion of the CA ruling states:

> **WHEREFORE**, premises considered, the appeal under consideration is **GRANTED** and the assailed Decision dated October 8, 2010 of the Office of the Panel of Voluntary Arbitrators of the NCMB is hereby **REVERSED and SET ASIDE**.
>
> **SO ORDERED**.[47] (Emphasis in the original)

Undeterred, petitioners filed the instant Petition for Review on *Certiorari*[48] under Rule 45 of the Rules of Court.

Issue

The pivotal issue raised in the instant case is whether or not Alcid is entitled to (i) disability benefits under the CBA or the POEA-SEC; (ii) sickness allowance; (iii) reimbursement of medical expenses; and (iv) attorney's fees.

Petitioners maintain that Alcid is entitled to disability benefits under the CBA, sickness allowance and reimbursement of his medical expenses. During his employment, he was exposed to carcinogens such as benzene, hydrocarbons, chemicals, crude oil, gasoline, lubricants and other harmful cleaning solutions. He likewise suffered from extreme weather conditions involving intense heat and freezing cold. His long period of exposure,

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[45] Id. at 277.

[46] Id. at 278.

[47] Id. at 279.

[48] Id. at 8-39.

which spanned over five terms, contributed to the development or aggravation of his illness.[49]

Moreover, petitioners claim that the CA erred in giving more credence to the findings of the company-designated physician, who is not an expert in the field of cancer.[50] On the other hand, Alcid's chosen physician, Dr. Peneyra, is an oncologist. In her Medical Abstract, she cited studies which showed that employees exposed to certain gases and chemicals developed sarcomas.[51]

Furthermore, petitioners aver that Alcid should not have been faulted for the failure to obtain the opinion of a third doctor. He manifested his willingness to submit himself for examination by a third doctor,[52] which the respondents ignored.[53]

Alternatively, petitioners urge that if the CBA provision on disability does not apply, Alcid is at least entitled to full disability benefits under the POEA-SEC in the amount of US$60,000.00.[54] After his repatriation, he was no longer able to work due to his illness. In fact, he even died because of it.[55] The inability of the seafarer to perform his customary work for more than 120 days constitutes total and permanent disability.[56]

Finally, Alcid is entitled to attorney's fees, as he was compelled to litigate to defend his rights and interests.[57]

On the other hand, the respondents counter that Alcid's illness is not work-related. First, it is not included in the list of

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[49] Id. at 27.

[50] Id. at 23.

[51] Id. at 24.

[52] Id. at 33.

[53] Id.

[54] Id. at 35.

[55] Id.

[56] Id.

[57] Id. at 37-38.

occupational diseases under the POEA-SEC.[58] Second, Alcid failed to prove a causal connection between his work and his illness.[59] The NCMB erred in excusing Alcid from the obligation of proving causation.[60] Third, the company-designated physician confirmed that Alcid's disease was caused by a genetic chromosomal abnormality.[61] Although contradicted by Alcid's doctors, their opinions are unworthy of credence as they did not conduct an extensive examination on Alcid.

Respondents aver that Alcid is not entitled to the maximum disability benefit under the CBA, which only covers permanent disabilities resulting from accidents.[62] Neither is he entitled to the full sickness allowance of US$2,252.00, as he had already been paid US$1,388.73.[63] At best, respondents may only be held liable for US$863.27.[64]

Respondents clarify that their obligation to provide medical care and treatment accrues only insofar as Alcid suffered from a work-related illness. Likewise, said obligation lasts until the company-designated physician has assessed the level of disability or has confirmed the absence of a work-relation.[65] Hence, their duty to provide medical treatment ceased as soon as the illness was declared to have no causal connection with the nature of his job.[66] Moreover, under the CBA, the respondents' obligation for medical care and treatment lasts for 130 days after initial hospitalization. Respondents shouldered Alcid's medical costs from January 11, 2009 until May 11, 2009.[67]

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[58] Id. at 320.

[59] Id. at 329.

[60] Id. at 332.

[61] Id. at 330.

[62] Id. at 336.

[63] Id. at 337.

[64] Id. at 338-339.

[65] Id. at 339.

[66] Id.

[67] Id. at 340.

Finally, respondents claim that they are not liable for attorney's fees considering that their denial of Alcid's claim was valid and made in good faith.[68]

Ruling of the Court

The petition is impressed with merit.

Parameters of Judicial Review under Rule 45 and the Exceptions Thereto

It must be noted at the outset that Alcid's entitlement to compensation is a factual issue. As a general rule, factual matters are not the proper subject of an appeal by *certiorari*,[69] as it is not this Court's function to analyze or weigh the evidence which has been considered in the proceedings below.[70]

Nevertheless, a review of the factual findings is justified under the following circumstances:

> (i) when the findings are grounded entirely on speculations, surmises or conjectures; (ii) when the inference made is manifestly mistaken, absurd or impossible; (iii) when there is grave abuse of discretion; (iv) when the judgment is based on a misapprehension of facts; (v) when the findings of fact are conflicting; (vi) when in making its findings[,] the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (vii) when the findings are contrary to that of the trial court; (viii) when the findings are conclusions without citation of specific evidence on which they are based; (ix) 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; (x) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; [or] (xi) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[71]

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[68] Id.

[69] *Miro v. Vda. De Erederos, et al.*, 721 Phil. 772, 784 (2013).

[70] Id. at 785.

[71] *De Leon v. Maunlad Trans, Inc., et al.*, 805 Phil. 531, 538-539 (2017).

The exceptions similarly apply in petitions for review filed before this Court involving labor cases, among others.[72]

The conflicting findings between the NCMB and the CA warrant a re-evaluation of the facts in the instant case.

Rules regarding compensation for work-related illnesses

Remarkably, the POEA-SEC was designed primarily for the protection and benefit of Filipino seafarers in the pursuit of their employment on board ocean-going vessels. To carry out its beneficent terms, the provisions must be construed and applied fairly, reasonably and liberally in favor of seafarers.[73]

Under Section 20-B of the 2000 POEA-SEC, the employer assumes the following liabilities in case the seafarer suffers a work-related illness or injury during the term of his contract:

SECTION 20. COMPENSATION AND BENEFITS

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 areas follows:

1. The employer shall continue to pay the seafarer his wages during the time he is on board the vessel;

2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to be repatriated. **However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he**

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[72] *Pascual v. Burgos, et al.*, 776 Phil. 167 (2016).

[73] *Magsaysay Maritime Services, et al. v. Laurel*, 707 Phil. 210, 230 (2013), citing *Philippine Transmarine Carriers, Inc. v. NLRC*, 405 Phil. 487, 495 (2001), citing *Wallem Maritime Services, Inc. v. NLRC*, 376 Phil. 738, 749 (1999).

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. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to **sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days**.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

4. Those illnesses not listed in Section 32 of this Contract are disputably presumed as work related.

5. Upon sign-off of the seafarer from the vessel for medical treatment, the employer shall bear the full cost of repatriation in the event the seafarer is declared (1) fit for repatriation; or (2) fit to work but the employer is unable to find employment for the seafarer on board his former vessel or another vessel of the employer despite earnest efforts.

6. In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of his Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.[74] (Emphasis supplied)

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[74] *The Late Alberto Javier, et al. v. Philippine Transmarine Carriers, Inc., et al.*, 738 Phil. 374, 385-386 (2014).

Based on the foregoing, should the seafarer suffer a work-related illness during his employment, the employer shall be liable to provide medical attention and treatment, grant a sickness allowance equivalent to the seafarer's basic wage, and award a disability benefit in case of permanent total or partial disability. The grant of these benefits is premised on the seafarer's compliance with the requisites provided under the POEA-SEC, coupled with proof that the illness is in fact work-related.

Notably, the POEA-SEC defines a work-related illness as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied."[75] Relatedly, Section 20 (B) (4) fills in the lacuna, adding that any illness which is not listed in Section 32 is disputably presumed to be work-related. For the presumption to apply, it must be shown that: (i) the illness is work-related; and (ii) the work-related illness existed during the term of the seafarer's employment contract.[76]

In *Skipper United Pacific, Inc. and/or Ikarian Moon Shipping, Co., Ltd. v. Estelito S. Lagne*,[77] this Court clarified that despite the disputable presumption, the seafarer must still prove a causal link between his working conditions and his illness. In doing so, reasonable proof or a probability that his work caused, or at least increased the risk of contracting his illness shall suffice:

> For illnesses not mentioned under Section 32, the POEA-SEC creates a disputable presumption in favor of the seafarer that these illnesses are work-related. However, notwithstanding the presumption, We have held that on due process grounds, the claimant-seafarer must still prove by substantial evidence that his work conditions caused or, at least, increased the risk of contracting the

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[75] *Skipper United Pacific, Inc. and/or Ikarian Moon Shipping, Co., Ltd. v. Estelito S. Lagne*, G.R. No. 217036, August 20, 2018, citing *De Leon v. Maunlad Trans., Inc.*, supra note 71 at 539-540.

[76] Id., citing *Leonis Navigation Co., Inc., et al. v. Obrero, et al.*, 802 Phil. 341, 347 (2016); citing *Tagle v. Anglo-Eastern Crew Management, Phils., Inc., et al.*, 738 Phil. 871, 888 (2014).

[77] Id.

disease. This is because awards of compensation cannot rest entirely on bare assertions and presumptions. In order to establish compensability of a non-occupational disease, reasonable proof of work-connection is sufficient — direct causal relation is not required. Thus, probability, not the ultimate degree of certainty, is the test of proof in compensation proceedings.[78] (Citations omitted)

A similar ruling was rendered in *Heirs of the Late Manolo N. Licuanan, represented by his wife Virginia S. Licuanan v. Singa Ship Management, Inc., et al.*,[79] where it was elaborated that "[i]t is not required that the employment be the sole factor in the growth, development or acceleration of the illness to entitle the claimant to the benefits incident thereto. It is enough that the employment had contributed, even in a small measure, to the development of the disease."[80]

Moreover, in *Grieg Philippines, Inc., et al. v. Gonzales*;[81] and *Lorna B. Diono v. ND Shipping Agency and Allied Services, Inc., Carribean Town and Barge (Pan Ama) Ltd.*,[82] it was stressed that the seafarer only needs to show a reasonable linkage between his work and the contracted illness that would lead a rational mind to conclude that his occupation contributed to, or aggravated his disease.[83]

In other cases, this Court likewise noted additional factors that prove a causal link between the employment and the illness of the seafarer. In *Skipper United*,[84] the development and the progression of the seafarer's disease during the employment contract were regarded as additional proof of causation.[85]

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[78] Id.

[79] G.R. No. 238261-G.R. No. 238567, June 26, 2019.

[80] Id., citing *De Jesus v. NLRC*, 557 Phil. 260, 266 (2007).

[81] 814 Phil. 965 (2017).

[82] G.R. No. 231096, August 15, 2018.

[83] *Grieg Philippines, Inc., et al. v. Gonzales*, supra at 966.

[84] Supra note 75.

[85] Id.

Furthermore, in *Aldrine B. Ilustricimo v. NYK-FIL Ship Management, Inc., et al.*;[86] and *Jebsen Maritime, Inc., Van Oord Shipmanagement B.V and/or Estanislao Santiago v. Timoteo Gavina*,[87] the seafarer's length of service in the same vessel was viewed as a contributing element that exacerbated the seafarer's condition.

Additionally, stress, fatigue, and the harsh conditions at sea were considered as contributing factors that aggravated the seafarer's ailment. As held in *De Leon v. Maunlad Trans., Inc., et al.*:[88]

> Working on any vessel, whether it be a cruise ship or not, can still expose any employee to harsh conditions. In this case, aside from the usual conditions experienced by seafarers, such as the harsh conditions of the sea, long hours of work, stress brought about by being away from their families, petitioner, a team head waiter, also performed the duties of a 'fire watch' and assigned to welding works, all of which contributed to petitioner's stress, fatigue and extreme exhaustion. To presume, therefore, that employees of a cruise ship do not experience the usual perils encountered by those working on a different vessel is utterly wrong.[89]

In *Canuel, et al. v. Magsaysay Maritime Corporation, et al.*,[90] the Court acknowledged that the seafarer's exposure to the harsh sea weather, chemical irritants, and dust on board contributed to his cancer.[91]

It bears noting that in *David v. OSG Shipmanagement Manila, Inc., et al.*,[92] a case that is similar to the one at hand, this Court awarded disability benefits in favor of the seafarer who proved that his functions as a third officer aggravated his sarcoma:

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[86] G.R. No. 237487, June 27, 2018.

[87] G.R. No. 199052, June 26, 2019.

[88] Supra note 71.

[89] Id. at 542.

[90] 745 Phil. 252 (2014).

[91] Id. at 272.

[92] 695 Phil. 906 (2012).

David showed that part of his duties as a Third Officer of the crude tanker M/T Raphael involved 'overseeing the loading, stowage, securing and unloading of cargoes.' As a necessary corollary, David was frequently exposed to the crude oil that M/T Raphael was carrying. The chemical components of crude oil include, among others, sulphur, vanadium and arsenic compounds. Hydrogen sulphide and carbon monoxide may also be encountered, while benzene is a naturally occurring chemical in crude oil. **It has been regarded that these hazardous chemicals can possibly contribute to the formation of cancerous masses**.

In this case, David was diagnosed with MFH (now known as undifferentiated pleomorphic sarcoma [UPS]), which is a class of soft-tissue sarcoma or an illness that account for approximately 1% of the known malignant tumors. As stated by Dr. Peña of the MMC, who was consulted by the company-designated physician, the etiology of soft tissue sarcomas are multifactorial. However, some factors are associated with a higher risk. These factors include exposure to chemical carcinogens like some of the chemical components of crude oil. **Clearly, David has provided more than a reasonable nexus between the nature of his job and the disease that manifested itself on the sixth month of his last contract with respondents. It is not necessary that the nature of the employment be the sole and only reason for the illness suffered by the seafarer. It is sufficient that there is a reasonable linkage between the disease suffered by the employee and his work to lead a rational mind to conclude that his work may have contributed to the establishment or, at the very least, aggravation of any pre-existing condition he might have had**.

This reasonable connection has not been convincingly refuted by respondents. On the contrary, respondents do not deny the functions performed by David on board M/T Raphael or the cargo transported by the tanker in which he was assigned. At best, respondents have cited contrary researches suggesting that the chemicals in crude oil do not induce the kind of disease contracted by David — a soft tissue sarcoma, which can supposedly occur to anybody regardless of the nature of their employment.[93] (Citations omitted and emphasis supplied)

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[93] Id. at 917-919.

It is all too apparent, therefore, that although the POEA-SEC provides a disputable presumption of work-relatedness, the seafarer must still establish a reasonable nexus between his employment and illness. At the very least, he must prove through substantial evidence that there exists a probability that his working conditions caused or aggravated his illness. Of course, the employer shall not sit idly while the seafarer endeavors to prove causation. Rather, the employer must overcome the disputable presumption of work-relatedness. Failing therein, the seafarer's illness will be deemed work-related, thereby entitling him to receive compensation.

Alcid sufficiently established a reasonable nexus between his working conditions as an able seaman and his development of alveolar soft part sarcoma

In the performance of his duties as an able seaman, Alcid was exposed to various harmful and injurious chemicals, such as fumes, gasoline, ethylene, propylene, butane, methane, naphthalene, and dust while on-board the M/V Corral Nettuno, an oil/chemical tanker.

Likewise, he performed strenuous tasks on a daily basis, such as lifting, carrying and moving heavy materials and equipment. He frequently rendered overtime work which added to his stress and fatigue. He also contended with the adverse conditions at sea, and the extreme temperatures which shifted from sweltering heat to intense cold. These daily occurrences made his life on board the vessel physically and mentally taxing. He experienced these stressful conditions over a span of five employment contracts since 2001.

It bears noting that Dr. Peneyra identified medical studies which revealed that men exposed to chemicals such as thylene and ethylene oxide developed sarcoma.[94] Alcid's line of work, which involved constant and prolonged exposure to similar

[94] *Rollo,* p. 87.

harmful carcinogenic chemicals, exacerbated by the stress and fatigue of work on-board, triggered and aggravated his illness.

The respondents failed to submit counter-evidence to refute Dr. Peneyra's medical findings. Instead, they adamantly insisted that Alcid's illness was caused by a genetic chromosomal abnormality as stated by Dr. Alegre. Respondents likewise attacked Dr. Peneyra's competence to assess Alcid, and faulted Alcid for not submitting himself for examination to a third physician.

The respondents' arguments fail to persuade.

The length of time that Dr. Peneyra treated Alcid is irrelevant in disproving the probability that the latter's disease was aggravated by his work. This Court notes that Dr. Alegre and Dr. Peneyra rendered a similar diagnosis — both confirmed that Alcid was afflicted with alveolar soft part sarcoma. The only disparity in their assessments is the causal relation of the illness and Alcid's working conditions. On the one hand, Dr. Alegre immediately dismissed the possibility of work connection, tersely concluding, sans any substantiation, that the disease is caused by a genetic chromosomal abnormality. On the other hand, Dr. Peneyra filled in this gap, by elaborating that even though the illness may have been caused by a chromosomal abnormality, there have been medical findings which showed a correlation between exposure to harmful chemicals and the development of sarcoma, thereby proving that Alcid's work conditions aggravated his illness.

Suffice to say, in *Licayan v. Seacrest Maritime Management, Inc., et al.*,[95] ***the employer failed to dispute the presumption of work-relatedness and simply relied on the company-designated physician's outright disavowal of work-connection, which was unsupported by any substantial basis***. Similar to the instant case, the medical report ***"was too sweeping and inadequate to support a conclusion."***[96] ***Likewise, Dr. Alegre***

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[95] 773 Phil. 648 (2015).

[96] Id. at 660.

failed to consider the varied factors to which the seafarer was exposed to while on board the vessel.[97] ***In contrast, Dr. Peneyra's report was more comprehensive and holistic, as she considered Alcid's genetic predisposition, working conditions on-board the vessel, and related these to established medical studies***.

Next, respondents may not fault Alcid for failing to obtain the opinion of a third doctor.

This Court clarified in *Leonis Navigation Co., Inc., et al. v. Obrero, et al.*,[98] that the provision requiring referral to a third physician does not apply to disputes pertaining to the work-relatedness of the disease:

> As a final point, we deem it necessary to distinguish the present case from *Philippine Hammonia Ship Agency, Inc. v. Dumadag* in order to avoid confusion in the application of the POEA-SEC. In that case, we held that under Section 20(8)(3) of the POEA-SEC, referral to a third physician in case of contrasting medical opinions (between the company-designated physician and the seafarer-appointed physician) is a mandatory procedure that must be expressly requested by the seafarer: As a consequence of the provision, the company can insist on its disability rating even against a contrary opinion by another physician, unless the seafarer signifies his intent to submit the disputed assessment to a third physician. **We clarify, however, that Section 20(B)(3) refers only to the declaration of fitness to work or the degree of disability. *It does not cover the determination of whether the disability is work-related***. There is nothing in the POEA-SEC which mandates that the opinion of the company-designated physician regarding work-relation should prevail or that the determination of such relation be submitted to a third physician.
>
> It bears emphasis that, in the present case, it is not disputed that Obrero's illness is permanent in nature. **The only issue here is work-relatedness. The non-referral to a third physician is therefore inconsequential**. x x x[99] (Emphasis supplied)

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[97] Id.

[98] 794 Phil. 481 (2016).

[99] Id. at 494-495.

Besides, even if respondents insist on the opinion of a third physician, fault does not lie on Alcid. The records reveal that he actually expressed his willingness to have his condition referred to a third physician. However, the respondents failed to act on his request.[100] As ruled in *Bahia Shipping Services, Inc. v. Constantino*;[101] *Formerly INC Shipmanagement, Incorporated v. Rosales*;[102] *and Aldrine B. Ilustricimo v. NYK-FIL Ship Mgm't., Inc./Int'l. Cruise Services, Ltd.*:[103]

> x x x [W]hen the seafarer challenges the company doctor's assessment through the assessment made by his own doctor, the seafarer shall so signify and the company thereafter carries the burden of activating the third doctor provision." x x x[104]
>
> x x x x
>
> The POEA-SEC does not require a specific period within which the parties may seek the opinion of a third doctor, and they may do so even during the mandatory conference before the labor tribunals. Accordingly, upon being notified of [the seafarer's] intent to dispute the company doctors' findings, whether prior or during the mandatory conference, the burden to refer the case to a third doctor has shifted to the [employers]. This, they failed to do so, and [the seafarer] cannot be faulted for the non-referral. Consequently, the company-designated doctors' assessment is not binding.[105]

Undoubtedly, it does not demand a stretch of the imagination to reasonably presume that the conditions Alcid were exposed to during the fulfillment of his duties as an able seaman aboard the M/V Corral Nettuno contributed to the development or aggravation of his illness. Accordingly, he is entitled to full disability benefits under Section 20 (B) (6) of the POEA-SEC, amounting to US$60,000.00.

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[100] *Rollo*, pp. 32-33.

[101] 738 Phil. 564 (2014).

[102] 744 Phil. 774 (2014).

[103] Supra note 86.

[104] Id.

[105] Id.

Alcid is not entitled to the disability benefit under the CBA

Although Alcid's illness is work-related, he is not entitled to the full disability benefit of US$89,100.00 under his CBA with the respondents.

Article 26.1 of the CBA states:

> Article 26.1. If the seafarer suffers permanent disability while in service on board the ship, or while traveling to or from the ship, as a result of an accident, regardless of fault, but excluding injuries and consequent disability caused by his willful act, and provided that his ability to work as a seafarer is consequently reduced, he shall be entitled to compensation in addition to his sick pay according to the provisions hereof.[106]

It is clear from the foregoing provision that the disability benefit may only be awarded if the seafarer suffers a permanent disability as a result of an accident.

The NCMB misinterpreted the provision when it opined that the qualifying phrase "*as a result of an accident*" applies only to the preceding phrase "*or while traveling to or from the ship*." It erroneously concluded that as long as the seafarer suffers a permanent disability, he may claim compensation under the CBA even if the disability was not caused by an accident.[107]

This Court agrees with the CA's interpretation of Article 26.1. To be clear, said provision pertains to two possible scenarios, namely: (i) the seafarer suffers a permanent disability *while in service on board the ship* as a result of an accident; or (ii) the seafarer suffers a permanent disability *while traveling to or from the ship* as a result of an accident. Certainly, the use of a comma between the scenarios implies a disassociation or independence. Thus, the qualifier "*as a result of an accident*" applies to both scenarios, not solely to its preceding phrase.

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[106] *Rollo*, p. 62.

[107] Id. at 199-200.

Accordingly, the evident intention of the parties is to provide compensation only in case of an accident during the seafarer's employment. Considering that Alcid's permanent disability was caused by an illness, not an accident, he is not entitled to compensation under the CBA.

Alcid is entitled to a sickness allowance and the reimbursement of his medical expenses, subject to a proper recomputation

To reiterate, Section 20 (B) of the 2000 POEA-SEC requires the employer to shoulder the seafarer's medical treatment after repatriation,[108] and to pay sickness allowance,[109] and disability benefit.[110]

In *The Late Alberto B. Javier, et al. v. Philippine Transmarine Carriers, Inc., et al.*,[111] the Court explained the rationale behind each benefit and stressed that they constitute separate and distinct liabilities:

> In reading these provisions, the Court observes the evident intent of the POEA-SEC to **treat these liabilities of the employer separately and distinctly from one another by treating the different items of liability under separate paragraphs**. These individual paragraphs, in turn, show the bases of each liability that are unique from the others. This formulation is in keeping with the POEA's mandate under Executive Order No. 247 to 'secure the best terms and conditions of employment of Filipino contract workers and ensure compliance therewith' and to 'promote and protect the well-being of Filipino workers overseas.'
>
> Accordingly, Section 20-B (2), paragraph 2, of the POEA-SEC imposes on the employer the liability to provide, at its cost, for the medical treatment of the repatriated seafarer for the illness or injury that he suffered on board the vessel until the seafarer is declared

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[108] POEA-SEC, Section 20 (B) (2).

[109] Id., Section 20 (B) (3).

[110] Id., Section 20 (B) (6).

[111] Supra note 74.

fit to work or the degree of his disability is finally determined by the company-designated physician. This liability for medical expenses is conditioned upon the seafarer's compliance with his own obligation to report to the company-designated physician within three (3) days from his arrival in the country for diagnosis and treatment. The medical treatment is aimed at the speedy recovery of the seafarer and the restoration of his previous healthy working condition.

Since the seafarer is repatriated to the country to undergo treatment, his inability to perform his sea duties would normally result in depriving him of compensation income. To address this contingency, Section 20-B (3), paragraph 1, of the POEA-SEC imposes on the employer the obligation to provide the seafarer with sickness allowance that is equivalent to his basic wage until the seafarer is declared fit to work or the degree of his permanent disability is determined by the company-designated physician. The period for the declaration should be made within the period of 120 days or 240 days, as the case may be.

Once a finding of permanent (total or partial) disability is made either within the 120-day period or the 240-day period, Section 20-B (6) of the POEA-SEC requires the employer to pay the seafarer disability benefits for his permanent total or partial disability caused by the work-related illness or injury. In practical terms, a finding of permanent disability means a permanent reduction of the earning power of a seafarer to perform future sea or on board duties; permanent disability benefits look to the future as a means to alleviate the seafarer's financial condition based on the level of injury or illness he incurred or contracted.

The separate treatment of, and the distinct considerations in, these three kinds of liabilities under the POEA-SEC can only mean that the POEA-SEC intended to make the employer liable for each of these three kinds of liabilities. In other words, employers must: (1) pay the seafarer sickness allowance equivalent to his basic wage in addition to the medical treatment that they must provide the seafarer with at their cost; and (2) compensate the seafarer for his permanent total or partial disability as finally determined by the company-designated physician. Significantly, too, while Section 20 of the POEA-SEC did not expressly state that the employer's liabilities are cumulative in nature — so as to hold the employer liable for the sickness allowance, medical expenses and disability benefits — it does not also state that the

compensation and benefits are alternative or that the grant of one bars the grant of the others.[112] (Emphasis supplied and citations omitted)

Consequently, in addition to a full disability benefit of US$60,000.00 under Section 20 (B) (6) of the POEA-SEC, Alcid is likewise entitled to a sickness allowance of US$2,252.00, which represents his basic salary of US$563.00 multiplied by four months (or 120 days), pursuant to Section 20 (B) (3) of the POEA-SEC.

However, this Court takes note of the respondents' statement in their Comment that they have paid a sickness allowance of US$1,388.73, as evidenced by their Check Disbursement Vouchers.[113] Petitioners did not refute this. On this score, said amount shall be deducted from the sickness allowance of US$2,252.00, and respondents shall only be held liable for the balance of US$863.27.[114]

Anent the liability for reimbursement of medical expenses, Section 20 (B) (2) of the POEA-SEC obliges the employer to cover the seafarer's medical expenses until the latter is declared fit to work or the degree of his permanent disability is determined by the company-designated physician.

Likewise, under the CBA, the respondents' obligation for medical care shall only last for 130 days reckoned from the first day of the seafarer's hospitalization, *viz.*:

23.4. If the seafarer is unfit as a result of sickness or injury and is repatriated to his place of engagement he shall be entitled to medical attention (including hospitalization) at the Owner's expense.

23.4.1. In the case of sickness, for up to 130 days after initial hospitalization, subject to the submission to the Owner of satisfactory medical certificates.[115]

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[112] Id. at 386-388.

[113] *Rollo*, p. 337.

[114] Id. at 338-339.

[115] Id. at 61.

It is clear from the foregoing provisions that Section 20 (B) (2) of the POEA-SEC, as well as Sections 23.4 and 23.4.1 of the CBA provide a specific period wherein the employer shoulders the costs of the seafarer's medical treatment. Both sections speak of medical treatment after the seafarer's repatriation.

Based on the records, Alcid was repatriated and was confined at St. Luke's hospital on April 14, 2009.[116] Meanwhile, Dr. Alegre issued his Medical Report denying any work-connection between Alcid's employment and his illness on April 27, 2009. The respondents continued to shoulder Alcid's medical treatments until May 11, 2009.[117]

Based on the POEA-SEC, the respondents' obligation to shoulder Alcid's medical expenses ended on April 27, 2009, when Dr. Alegre issued his report. However, the CBA effectively extended this period to "130 days after initial hospitalization."[118]

Respondents claim that they provided medical care and treatment from January 11, 2009 until May 11, 2009, and thus, complied beyond what was mandated by the POEA-SEC and the CBA.[119] However, it bears stressing that the reckoning point shall not be January 11, 2009, which is when Alcid received medical treatment at a foreign port. Rather, it is clear from Section 23.4 that the provision regarding "medical attention at the Owner's expense" pertains to those incurred after repatriation.[120]

Accordingly, the reckoning point shall be on April 14, 2009, when Alcid was admitted at St. Luke's hospital.[121] By the respondents' own admission, they shouldered the medical costs

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[116] Id. at 75.

[117] Id. at 340.

[118] Id. at 61.

[119] Id. at 340.

[120] Id. at 61.

[121] Id. at 75.

only until May 11, 2009, which is less than the mandated 130 days.

Nevertheless, Alcid may not claim reimbursement for the medical expenses he incurred from June 1, 2009 until September 22, 2009.[122] Again, under the CBA, respondents may only be held liable for those expenses incurred 130 days after April 14, 2009, or only until August 22, 2009. Based on the list of expenses[123] Alcid submitted, this only amounted to around ₱48,255.57. **Thus, the amount of ₱255,733.87 awarded by the NCMB as reimbursement for medical expenses is utterly baseless and clearly excessive. The NCMB is thus ordered to recompute the amount due as reimbursement, in accordance with this Court's disposition and subject to the presentation of official receipts**.

Finally, an award of attorney's fees equivalent to 10% of the total monetary award is warranted considering that Alcid was compelled to litigate to satisfy his claim for disability benefits.[124]

All told, the seafarers are the country's unsung heroes who brave the perils of the sea, endure desolation away from their families, and exert arduous labor. At times, these conditions take a toll on their health. The payment of the proper amount of compensation serves as a recompense for their sacrifices. Nonetheless, this does not justify an indiscriminate grant of awards, over and above what the POEA-SEC and/or the CBA mandate. At the end of the day, the POEA-SEC not only protects the seafarer by awarding fair compensation, but the employer as well, by setting a cap on his/her liabilities.

WHEREFORE, the petition is **GRANTED**. The September 22, 2011 Decision and April 19, 2012 Resolution of the Court

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[122] Id. at 90.

[123] Id. at 90.

[124] *De Leon v. Maunlad Trans., Inc., et al.*, supra note 71 at 543; CIVIL CODE, Article 2208 (2).

of Appeals in CA-G.R. SP No. 116751 are **REVERSED and SET ASIDE**.

Petitioners who are heirs of Alcid C. Balbarino are entitled to the following monetary awards: (i) US$60,000.00 as permanent disability; (ii) US$863.27 as sickness allowance; (iii) reimbursement of medical expenses (after proper computation); and (iv) attorney's fees equivalent to ten percent of the total monetary award. The amounts quoted in US Dollars shall be paid in their equivalent Philippine currency at the time of payment.

The total amount due shall earn a legal interest of six percent (6%) *per annum* from the finality of this Decision until full satisfaction.[125]

The case is remanded to the National Conciliation and Mediation Board for a re-computation of Alcid Balbarino's total monetary award in accordance with this Court's disposition, and for the return to respondents Pacific Ocean Manning, Inc. and Worldwide Crew, Inc. of the amount in excess of what they had deposited before the NCMB, if so warranted.

SO ORDERED.

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

Zalameda, J., on official leave.

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[125] *Nacar v. Gallery Frames, et al.*, 716 Phil. 267, 281-283 (2013).

SECOND DIVISION

[G.R. No. 231485. September 21, 2020]

WATERCRAFT VENTURES CORPORATION, represented by its Vice President, ROSARIO E. RAÑOA, *Petitioner*, *v.* **ALFRED RAYMOND WOLFE,** *Respondent*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW MAY BE RAISED; EXCEPTION.— As a general rule, only pure questions of law may be raised in a petition for review on *certiorari*. However, considering the divergent findings and conclusions arrived at by the RTC and the CA, the Court is constrained to depart from the general rule and finds it necessary to evaluate anew the evidence adduced by the parties in the case.

2. ID.; EVIDENCE; WEIGHT AND SUFFICIENCY; CIVIL CASES REQUIRE PREPONDERANCE OF EVIDENCE.— It is settled that a person who asserts a fact has the burden of proving it as the "necessity of proving lies with the person who sues." Additionally, in civil cases, the party who has the burden of proof must support one's case by preponderance of evidence or evidence more convincing to the court or more convincing when compared to that proffered in its opposition. Simply, preponderance of evidence is the "greater weight of the evidence" or "greater weight of the credible evidence." x x x Definitely, mere allegation is not evidence. Petitioner must rely on the strength of its own evidence, not on the weakness of respondent's defense. The extent of the relief that may be granted to petitioner must be that which it has alleged and established by preponderance of evidence.

3. CIVIL PROCEDURE; DAMAGES; INTEREST RATE; IMPOSITION OF 6% INTEREST RATE PER ANNUM FOR OBLIGATION BREACHED NOT CONSTITUTING FORBEARANCE OF MONEY.— The Court, agrees that the imposition of interest rate of 6%, instead of 12% *per annum*, on the amount due is warranted. On this, the Court finds relevant our pronouncement in the-recent case of *Ignacio v. Ragasa (Ignacio)* x x x 2. When an obligation, not constituting a loan

or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the direction of the court at the rate of 6% per annum. x x x [T]he the imposition of 6% interest *per annum* is proper considering that the present case does not involve a forbearance of money, there being lack of acquiescence on the part of respondent for petitioner's temporary use of the commission and advances he made in its favor.

4. ID.; ID.; NO BASIS TO AWARD MORAL DAMAGES; EXEMPLARY DAMAGES AND ATTORNEY'S FEES FOR HARASSMENT SUIT NOT SUBSTANTIATED.— [Respondent] claimed that the main case for collection of sum of money was a harassment suit filed against him. Considering that he failed to substantiate such allegation, then there is no basis for the award of moral damages in his favor. Moreover, let it be underscored that exemplary damages is awarded "*in addition to* moral, temperate, liquidated, or compensatory damages." Given that respondent is found not to be entitled to moral damages, then the grant of exemplary damages must also be deleted for lack of basis. At the same time, the grant of attorney's fees is deleted since the body of the CA decision did not explain the reason for it and merely indicated it in the dispositive portion of the assailed Decision.

APPEARANCES OF COUNSEL

Jaromay Laurente and Associates Law Office for petititoner.
Fortun Narvasa & Salazar for respondent.

R E S O L U T I O N

INTING, *J.*:

This resolves the Petition for Review on *Certiorari*[1] assailing the Decision[2] dated August 31, 2016 of the Court of Appeals

[1] *Rollo,* pp. 3-36.

[2] *Id.* at 43-68; penned by Associate Justice Carmelita Salandanan Manahan with Associate Justices Japar B. Dimaampao and Franchito N. Diamante, concurring.

(CA) in CA-G.R. CV No. 101702 which reversed and set aside the Partial Judgment[3] dated February 7, 2012 of Branch 170, Regional Trial Court (RTC), Malabon City in Civil Case No. 4584-MN for collection of sum of money with damages with an application for the issuance of a writ of preliminary attachment. Likewise assailed is the CA Resolution[4] dated March 16, 2017 denying the motion for reconsideration.

The Antecedents

In its Complaint[5] for Collection of Sum of Money with Damages with an Application for the Issuance of a Writ of Preliminary Attachment, Watercraft Ventures Corporation (petitioner), as represented by its Vice President, Rosario E. Rañoa, stated that it is a corporation engaged in the business of building, repairing, storing, and maintaining yachts and other pleasure crafts at the Subic Bay Freeport Zone. Petitioner claimed that relative to its operation and maintenance of facilities, it charged a boat storage fee of US$272.00 per month with interest rate of 4% per month for unpaid charges.[6]

According to petitioner, in June 1997, it hired Alfred Raymond Wolfe (respondent) as Shipyard Manager. Respondent thereafter placed his sailboat, the Knotty Gull (subject sailboat), within its storage facilities for safekeeping. Petitioner insisted that even if he was an employee, respondent was not exempted from paying the boat storage fees, and the latter was aware of it. However, despite having used the facilities throughout his employment, respondent never paid storage fees.[7]

In November 2000, the parties executed an exclusive central listing agreement whereby petitioner was granted the exclusive

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[3] *Id*. at 125-138; penned by Presiding Judge Zaldy B. Docena.

[4] *Id*. at 70-76.

[5] *Id*. at 77-86.

[6] *Id*. at 78-79.

[7] *Id.* at 79.

right to sell the subject sailboat within a period of six months from the execution of the agreement on 10% commission.[8]

On April 7, 2002, petitioner terminated respondent.

On May 2, 2002, respondent received Invoice Nos. 5739 to 5744 indicating his liability for storage fees and items from 1998 until April 2002 in the total amount of ₱818,934.71.[9]

On May 7, 2002, respondent received a Statement of Account "Payable to [respondent] as of April 7, 2002."[10]

On June 29, 2002, respondent executed a Boat Pull Out Clearance[11] which indicated the amount of US$16,324.82 purportedly representing unpaid boat storage fees from June 1997 to June 2002. By reason of the Boat Pull Out Clearance and without paying the storage fees, then Shipyard Manager, Franz Urbanek (respondent's successor) permitted respondent to pull out the subject sailboat. Petitioner, however, insisted that the act of the shipyard manager was contrary to its rules and regulations. Petitioner added that despite several demands, respondent failed to pay the storage fees. As of April 2, 2005, the supposed outstanding obligation of respondent amounted to ₱3,231,589.25 already.

In his Answer with Compulsory Counterclaim,[12] respondent countered that petitioner employed him as Service and Repair Yard Manager, not a Shipyard Manager. He refuted that he owed petitioner storage fees explaining that in February 1998, the subject sailboat was purchased pursuant to a three-way partnership agreement between him, petitioner's then General Manager and Executive Vice President, Barry Bailey (Bailey), and its then President, Ricky Sandoval (Sandoval). It was agreed upon that no storage fees shall be charged for placing the subject

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[8] *Id.* at 126.

[9] See Statement of Account dated April 16, 2005, *id.* at 90.

[10] *Id*. at 168.

[11] *Id*. at 157.

[12] *Id*. at 92-108.

sailboat inside petitioner's premises, and that it would be repaired as training or "fill-in project" for the staff of petitioner whose training was under the supervision of respondent.

Respondent, nevertheless, admitted that although it was originally agreed that Bailey and Sandoval were to contribute to the acquisition of the subject sailboat, he solely funded for its purchase and remodeling. He insisted that he paid petitioner all the expenses incurred for the repair of the sailboat. He also received regular invoices for the expenses, but none of which showed assessment on storage fees. He further stated that later, upon agreement with Bailey and Sandoval, petitioner was appointed as agent in the above-mentioned exclusive central listing agreement for the sale of the sailboat. Even with the agreement, petitioner did not charge respondent of storage fees.[13]

In addition, respondent averred that after repair and while the subject sailboat had not yet been sold, petitioner used it in its towing operations and for which the latter had earned income. This is another reason why the sailboat had not been assessed of any boat storage fees.[14]

Ultimately, respondent prayed for the dismissal of the case. As part of his compulsory counterclaim, he prayed that petitioner be ordered to pay him ₱409,534.94 representing the commissions and advances he made for the benefit of petitioner, actual damages for the expenses he incurred by reason of the case, moral and exemplary damages, attorney's fees, and costs.

In the interim, the RTC issued a writ of attachment over the properties of respondent. The writ of attachment was eventually annulled and set aside by the Court in G.R. No. 181721[15] and Entry of Judgment[16] was issued on August 15, 2016.

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[13] *Id.* at 99-100.

[14] *Id*. at 100.

[15] *Watercraft Venture Corporation v. Wolfe*, 769 Phil. 394 (2015).

[16] *Rollo*, p. 258.

Ruling of the RTC

On February 7, 2012, the RTC rendered a Partial Judgment[17] dated February 7, 2012 in the complaint for sum of money with damages. It ordered respondent to pay petitioner his outstanding balance amounting to ₱807,480.00 for the storage of the subject sailboat from May 1998 to April 30, 2002 with legal interest rate of 6% *per annum* computed from the date of the decision; and a 12% interest shall be imposed, in lieu of the 6%, on the amount upon the finality of the decision until its full payment. It also ordered respondent to pay petitioner ₱100,000.00 as attorney's fees.[18]

The RTC gave credence to respondent's Boat Pull Out Clearance with annotation that "an outstanding balance of US$16,324.82 is under negotiation." It also declared that the absence of written contract for the payment of storage fees did not exculpate respondent from paying petitioner for the use of its facilities.

The RTC ratiocinated that it may be true that respondent was not regularly assessed of monthly storage fees for the entire time he worked for petitioner yet it would not be incorrect to assess him for the first time after four years or after the termination of his employment.

Acting on the parties' respective motions for reconsideration, the RTC issued an Order[19] dated August 22, 2012 modifying the partial judgment and ruling that petitioner was entitled to 2% and 4% monthly penalty charge on the storage fees.

Thereafter, the RTC denied[20] respondent's Motion for Reconsideration.[21] Both parties then filed their respective appeals with the CA.

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[17] *Id.* at 125-138.

[18] *Id*. at 138.

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

[20] See Order dated November 21, 2012, *id*. at 218.

[21] *Id*. at 201-206.

Ruling of the CA

On August 31, 2016, the CA reversed and set aside[22] the RTC's partial judgment. It ordered petitioner to pay respondent: (a) $12,197.32 (in Philippine currency at the rate prevailing at the time of payment) representing unpaid commissions, and advances with interest rate of 12% *per annum* from the time his employment was terminated up to June 30, 2013 and 6% *per annum* from July 1, 2013 until fully paid; (b) moral damages in the amount of ₱200,000.00; (c) exemplary damages in the amount of ₱200,000.00; and (d) attorney's fees in the amount of ₱100,000.00.[23]

The CA gave no weight to petitioner's claim that it was its policy to charge fees to every boat docked in its shipyard. It also faulted petitioner from failing to promptly demand the payment of storage fees and emphasized that it was only at the last day of respondent's work that he was informed that he must pay for storage fees. It added that even granting that petitioner can demand legally the payment of storage fees, the statement of account dated April 7, 2002 proved that respondent already paid US$16,324.82 being claimed by petitioner.[24]

The CA held that petitioner cannot, in turn, renege from its obligation to pay respondent US$12,197.32 pursuant to the net payable under the statement of account dated April 7, 2002.[25] The amount due represented the commissions and advances that respondent made in favor of petitioner.

Finally, the CA awarded moral and exemplary damages on account of the illegally issued writ of attachment against respondent.

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[22] See Decision dated August 31, 2016 of the Court of Appeals (CA), *id.* at 43-68.

[23] *Id.* at 67.

[24] *Id.* at 53.

[25] *Id.* at 55.

With the denial[26] of its Motion for Reconsideration, petitioner filed the present petition raising the following issues.

Issues

WHETHER THIS CASE FALLS WITHIN THE EXCEPTION TO THE RULE THAT A PETITION FILED IN ACCORDANCE WITH RULE 45 OF THE RULES OF COURT MAY ONLY RAISE PURE QUESTIONS OF LAW

WHETHER THE COURT OF APPEALS MAY GRANT RESPONDENT A RELIEF NOT PRAYED FOR IN HIS *ANSWER WITH COMPULSORY COUNTERCLAIMS*

WHETHER THE COURT OF APPEALS WAS CORRECT IN FINDING PETITIONER LIABLE FOR A SUPPOSED OBLIGATION BASED UPON A DOCUMENT DENIED BY RESPONDENT

WHETHER THE COURT OF APPEALS WAS CORRECT IN REFUSING TO RECOGNIZE THE RESPONDENT'S OBLIGATION BASED UPON A DOCUMENT WHICH WAS THE VERY BASIS OF ITS FINDING OF LIABILITY IN FAVOR OF THE RESPONDENT

WHETHER THE RATE OF 12% INTEREST IS APPLICABLE TO THE SUPPOSED LIABILITY OF THE PETITIONER BASED UPON A JUDGMENT WHICH HAS NOT YET BECOME FINAL AND EXECUTORY

WHETHER THE DISCHARGE OF THE WRIT OF PRELIMINARY ATTACHMENT AUTOMATICALLY RENDERED PETITIONER LIABLE FOR DAMAGES DESPITE RESPONDENT'S FAILURE TO APPLY THEREFOR AND THE LACK OF ANY HEARING CONDUCTED FOR THE PURPOSE

WHETHER RESPONDENT HAS THE BURDEN OF PROVING THAT HE IS EXEMPTED FROM PAYING STORAGE AND BERTHING FEES TO PETITIONER

WHETHER THE RESPONDENT SHOULD BE LIABLE UPON AN OBLIGATION EVIDENCED BY A DOCUMENT HE NEVER DENIED DESPITE SUFFICIENT OPPORTUNITY TO DO SO

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[26] See Resolution dated March 16, 2017 of the CA, *id.* at 70-76.

WHETHER THE LEGAL INTEREST OF 12% PER ANNUM IS APPLICABLE TO RESPONDENT'S OBLIGATION FROM THE TIME OF DEMAND

WHETHER RESPONDENT IS LIABLE FOR DAMAGES IN FAVOR OF THE PETITIONER[27]

Our Ruling

The petition is partly meritorious.

As a general rule, only pure questions of law may be raised in a petition for review on *certiorari*. However, considering the divergent findings and conclusions arrived at by the RTC and the CA, the Court is constrained to depart from the general rule and finds it necessary to evaluate anew the evidence adduced by the parties in the case.[28]

It is also settled that a person who asserts a fact has the burden of proving it as the "necessity of proving lies with the person who sues."[29] Additionally, in civil cases, the party who has the burden of proof must support one's case by preponderance of evidence or evidence more convincing to the court or more convincing when compared to that proffered in its opposition. Simply, preponderance of evidence is the "greater weight of the evidence" or "greater weight of the credible evidence."[30]

Here, the Court finds that petitioner failed to discharge its burden such that the CA properly denied its claim for payment of storage fees.

As correctly observed by the CA, petitioner did not present proof of any agreement between the parties as regards the storage fees for the subject sailboat. Notably, there was also no showing that petitioner indeed has the policy to charge every boat docked in its shipyard for storage facilities.

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[27] *Id.* at 15-16.

[28] *MOF Company, Inc. v. Shin Yang Brokerage Corp.*, 623 Phil. 424, 433 (2009).

[29] *Id.* at 426.

[30] *See Sps. Ramos v. Obispo, et al.*, 705 Phil. 221 (2013).

At the same time, petitioner submitted no evidence supporting its allegation that it made several demands on respondent to pay storage fees. In fact, petitioner only demanded payment when it gave respondent invoices on May 2, 2002 indicating his supposed liability from 1998 until April 2002. To the Court's mind, the demand to pay was only an afterthought on the part of petitioner given that the entire time that the sailboat was in its facilities it neither informed respondent of any storage fees nor demanded payment for it. In other words, aside from the absence of an agreement for the payment of fees, there was also no demand to pay, other than that made subsequent to respondent's termination from work or more than four years from the time the sailboat was docked in the storage facilities.

Definitely, mere allegation is not evidence. Petitioner must rely on the strength of its own evidence, not on the weakness of respondent's defense. The extent of the relief that may be granted to petitioner must be that which it has alleged and established by preponderance of evidence. However, petitioner miserably failed to substantiate its entitlement to storage fees.

Furthermore, petitioner's own evidence belied its assertions. The Court agrees with the CA that the statement of account "Payable to [Respondent] as of April 7, 2002" issued by petitioner speaks for itself that it was petitioner which owed money to respondent.

The Court stresses that contrary to petitioner's allegation, respondent prayed in his Counterclaim[31] that petitioner be ordered to pay him commissions and advances he made in its favor. While there may have been discrepancies in the amounts indicated in the Counterclaim and that awarded by the CA, still it cannot be denied that respondent asked for payment of petitioner's unsettled obligations. The statement of account, which is the very document submitted by petitioner, proved that it still has an existing duty to pay respondent.

Based on the foregoing, petitioner has the burden to prove that it already settled its obligation to respondent. After all,

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[31] *Rollo*, pp. 101-103, 106.

once an indebtedness is proved by evidence, the burden to establish with legal certainty that payment is made rests on the debtor.[32] Nonetheless, petitioner failed to show that it already paid respondent; thus, the CA correctly ordered petitioner to pay the latter.

The Court, nevertheless, agrees with petitioner that the imposition of interest rate of 6%, instead of 12% *per annum*, on the amount due is warranted. On this, the Court find relevant our pronouncement in the recent case of *Ignacio v. Ragasa*[33] *(Ignacio)*, to wit:

> We, however, agree with the petitioners that the interest rate should be at the prevailing rate of six percent (6%) *per annum*, and not twelve percent (12%) *per annum*. In *Nacar v. Gallery Frames, et al.* We modified the guidelines laid down in the case of *Eastern Shipping Lines, Inc. v. Court of Appeals* to embody BSP-MB Circular No. 799, as follows:
>
> I. When an obligation, regardless of its source, *i.e.*, law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.
>
> II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:
>
> 1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 6% per annum to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

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[32] See *KT Construction Supply, Inc. v. Philippine Savings Bank*, 811 Phil. 626, 633 (2017), citing *Bognot v. RRI Lending Corporation*, 736 Phil. 357, 367 (2014).

[33] G.R. No. 227896, January 29, 2020.

> 2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages, except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extra-judicially (Art. 1169, Civil Code), but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.
>
> 3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 6% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

And, in addition to the above, judgments that have become final and executory prior to July 1, 2013, shall not be disturbed and shall continue to be implemented applying the rate of interest fixed therein.

It should be noted, however, that the rate of six percent (6%) *per annum* could only be applied prospectively and not retroactively. Consequently, the twelve percent (12%) *per annum* legal interest shall apply only until June 30, 2013. Starting July 1, 2013, the rate of six percent (6%) *per annum* shall be the prevailing rate of interest when applicable. Thus, the need to determine whether the obligation involved herein is a loan and forbearance of money nonetheless exists.

The term "forbearance," within the context of usury law, has been described as a contractual obligation of a lender or creditor to refrain, during a given period of time, from requiring the borrower or debtor to repay the loan or debt then due and payable.

Forbearance of money, goods or credits, therefore, refers to arrangements other than loan agreements, where a person acquiesces

to the temporary use of his money, goods or credits pending the happening of certain events or fulfilment of certain conditions. Consequently, if those conditions are breached, said person is entitled not only to the return of the principal amount paid, but also to compensation for the use of his money which would be the same rate of legal interest applicable to a loan since the use or deprivation of funds therein is similar to a loan.

This case, however, does not involve an acquiescence to the temporary use of a party's money but the performance of a brokerage service.

Thus, the matter of interest award arising from the dispute in this case falls under the paragraph II, subparagraph 2, of the above-quoted modified guidelines, which necessitates the imposition of interest at the rate of 6%, instead of the 12% imposed by the courts below.[34]

Similar to *Ignacio*, the imposition of 6% interest *per annum* is proper considering that the present case does not involve a forbearance of money, there being lack of acquiescence on the part of respondent for petitioner's temporary use of the commission and advances he made in its favor.

Moreover, there is merit in petitioner's argument that respondent is not entitled to damages.

To emphasize, the CA awarded moral and exemplary damages on account of the Court's ruling in G.R. No. 181721 which found the issuance of the writ of attachment against respondent's properties invalid. Nevertheless, the counterclaim of respondent for payment of moral and exemplary damages was *not* based on the preliminary attachment, but because of the filing of the complaint in the main case.[35] In other words, respondent did not interpose here any action to recover damages from the wrongful issuance of the preliminary attachment against his properties, but rather, he claimed that the main case for collection of sum of money was a harassment suit filed against him.

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[34] *Id.* Citations omitted.

[35] *See Rollo*, p. 105.

Considering that he failed to substantiate such allegation, then there is no basis for the award of moral damages in his favor.

Moreover, let it be underscored that exemplary damages is awarded "*in addition to* moral, temperate, liquidated, or compensatory damages." Given that respondent is found not to be entitled to moral damages, then the grant of exemplary damages must also be deleted for lack of basis.[36] At the same time, the grant of attorney's fees is deleted since the body of the CA decision did not explain the reason for it and merely indicated it in the dispositive portion of the assailed Decision.[37]

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated August 31, 2016 of the Court of Appeals in CA-G.R. CV No. 101702 is **AFFIRMED WITH MODIFICATION** in that petitioner Watercraft Ventures Corporation is ordered to pay respondent Alfred Raymond Wolfe US$12,197.32 (in Philippine currency at the rate prevailing at the time of payment) with interest rate of 6% *per annum* from the finality of the Resolution until fully paid. The award of moral and exemplary damages as well as attorney's fees is **DELETED**.

SO ORDERED.

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

Baltazar-Padilla, J., on leave.

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[36] *Sps. Timado v. Rural Bank of San Jose, Inc., et al.,* 789 Phil. 453, 459 (2016).

[37] *Id.* at 460, citing *Alcatel Philippines, Inc. v. I.M. Bongar & Co., Inc., et al.,* 674 Phil. 529, 533 (2011).

THIRD DIVISION

[G.R. No. 233085. September 21, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff and Appellee, v.* **ARMANDO ARCHIVIDO *y* ABENGOZA,** *Accused-Appellant.*

SYLLABUS

1. **CRIMINAL LAW; MURDER; ELEMENTS.—** [T]he elements of murder are: (i) that a person was killed; (ii) that the accused killed him or her; (iii) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (iv) that the killing is not parricide or infanticide.

2. **ID.; QUALIFYING CIRCUMSTANCES; EACH OF THE QUALIFYING CIRCUMSTANCES MUST BE ALLEGED IN THE INFORMATION AND MUST BE PROVEN AS CLEARLY AS THE CRIME ITSELF.—** It is an elementary rule in criminal law that each of the qualifying circumstances must, be alleged in the Information and must be proven as clearly as the crime itself. In the absence of a qualifying circumstance, the crime committed is homicide, not murder.

3. **ID.; AGGRAVATING CIRCUMSTANCES; TREACHERY; THE ESSENCE OF TREACHERY IS THAT THE ATTACK COMES WITHOUT A WARNING AND IN A SWIFT, DELIBERATE, AND UNEXPECTED MANNER, AFFORDING THE HAPLESS, UNARMED, AND UNSUSPECTING VICTIM NO CHANCE TO RESIST OR ESCAPE THE SUDDEN BLOW.—** In the case at bar, Armando was indicted for murder qualified by treachery and evident premeditation. Parenthetically, there is treachery or *alevosia* when the offender commits any of the crimes against persons, employing means, methods or forms to ensure its execution, without risk to himself/herself arising from the defense which the offended party might make. "The essence of treachery is that the attack comes without a warning and in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape the sudden blow." In Criminal Case No. 13933 for murder, Armando attacked

Lilia in a sudden, unexpected and rapid motion. x x x She had no inkling that an attack was forthcoming and was completely unaware of the imminent peril. The deliberate swiftness of the attack significantly diminished the risk to Armando that may be caused by Lilia's retaliation. Thus, there can be no denying that Armando's attack against Lilia reeks of treachery. x x x Finally, the fact that the accused suffered no injuries, evidences treachery. Here, Lilia died due to severe blood loss caused by the severity of her wounds, whereas Armando was practically unscathed.

4. ID.; ID.; ID.; CANNOT BE APPRECIATED IF THE OBVIOUS DANGER THE VICTIM FACES IS NOT SUDDEN, UNEXPECTED, OR UNFORESEEN.— [I]n Criminal Case No. 13937 for frustrated murder against Ruben x x x, [t]he facts show that after Lilia and Ruben turned their backs against Armando and proceeded on their way, Ruben suddenly heard a loud thud, which prompted him to turn around. Then, he saw Armando attacking Lilia. He immediately rushed to Lilia's aid and tried to stop Armando. Ruben's x x x testimony shows that although the assault against Lilia was sudden and unexpected, Ruben's case was different. He turned around, saw the onslaught, and was forewarned of the impending danger. He was aware that in saving Lilia, he would likewise be vulnerable to an attack by Armando. x x x Accordingly, it becomes all too apparent that the attack against Ruben was in no way treacherous, inasmuch as the obvious danger he faced was not sudden, unexpected, or unforeseen. **Hence, Armando may only be held liable for frustrated homicide in Criminal Case No. 13937.**

5. ID.; FRUSTRATED HOMICIDE; IN FRUSTRATED HOMICIDE, THE MAIN ELEMENT IS THE ACCUSED'S INTENT TO TAKE HIS VICTIM'S LIFE AND THE PROSECUTION HAS TO PROVE THIS CLEARLY AND CONVINCINGLY TO EXCLUDE EVERY POSSIBLE DOUBT REGARDING HOMICIDAL INTENT.— There is no doubt that the attack against Ruben was a frustrated felony. In *Serrano v. People*, the Court characterized a frustrated crime as one where the perpetrator performed all the acts of execution which should produce the felony as a consequence, but was not accomplished due to some cause independent of the assailant's will. Particularly, in frustrated homicide, "the main element is the accused's intent to take his victim's life. The

prosecution has to prove this clearly and convincingly to exclude every possible doubt regarding homicidal intent." The crucial points to consider are the means employed by the offender, as well as the nature, location and number of wound/s inflicted. These must be supported by independent proof showing that the injuries were sufficient to cause the victim's death without timely medical intervention. Notably, the medical certificate states that Ruben suffered six wounds that caused severe bleeding and would have been fatal if not for the immediate medical attention he received.

6. ID.; AGGRAVATING CIRCUMSTANCES; EVIDENT PREMEDITATION; REQUISITES; 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.— [T]here was no evident premeditation in the attacks against Lilia and Ruben. Fundamentally, "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." The premeditation to kill must be plain and notorious, and thereafter proven by evidence of outward acts showing such intent to kill. "It is imperative to prove that the accused underwent a process of cold and deep meditation, and a tenacious persistence in the accomplishment of the criminal act." In *People v. Grabador, Jr., et al.,* the Court enumerated the requisites to establish evident premeditation: Accordingly, in order to establish the existence of evident premeditation, the following requisites must be proven during the trial: (i) the time when the offender determined to commit the crime, (ii) an act manifestly indicating that he clung to his determination, and (iii) a sufficient lapse of time between the determination and execution, to allow him to reflect upon the consequences of his act, and to allow his conscience to overcome the resolution of his will.

7. ID.; ID.; ID.; MERE EXPRESSIONS OF HATRED ARE NOT EVIDENCE OF A PREDETERMINED PLAN TO KILL.— The prosecution failed to identify the time when Armando

decided to kill Lilia and Ruben. Without this crucial data, it is impossible to conclude that there was indeed a sufficient period of time that passed between Armando's determination to kill and his actual execution, that allowed him to reflect on his plans. Armando's threats to kill Ruben and Lilia, and the ongoing dispute between them are not sufficient proof of a plan to kill. At best, his threats could only be regarded as an expression of hatred.

8. ID.; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS.— [W]hen the accused invokes self-defense, in effect, he or she admits to the commission of the acts for which he or she was charged, albeit under circumstances that, if proven, would exculpate him or her. Consequently, the burden of proving that the act was justified, shifts upon him or her. The accused must prove through clear and convincing evidence that there was (i) unlawful aggression on the part of the victim; (ii) reasonable necessity of the means employed to prevent or repel such aggression; and (iii) lack of sufficient provocation on the accused's part.

9. ID.; ID.; ID.; UNLAWFUL AGGRESSION; ELEMENTS; MUST BE ESTABLISHED FOR EVERY PLEA OF COMPLETE AND INCOMPLETE SELF-DEFENSE.— [U]nlawful aggression is a condition *sine qua* non for upholding self-defense. For every plea of complete and incomplete self-defense, the accused must establish the concurrence of the three elements of unlawful aggression, namely: "(i) there must have been a physical or material attack or assault; (ii) the attack or assault must be actual, or, at least, imminent; and (iii) the attack or assault must be unlawful." It must be proven that the aggression caused by the victim put the accused's life in real and grave peril.

10. ID.; MITIGATING CIRCUMSTANCES; VOLUNTARY SURRENDER; REQUISITES.— Voluntary surrender is regarded as a mitigating circumstance provided that the following requisites obtain: "(i) the accused has not been actually arrested; (ii) the accused surrenders himself to a person in authority or the latter's agent; and (iii) the surrender is voluntary." "The essence of voluntary surrender is spontaneity and the intent of the accused to submit himself to the authorities either because he acknowledged his guilt or he wished to save the authorities

the trouble and expense that may be incurred for his search and capture."

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

GAERLAN, *J.*:

This resolves the appeal[1] filed by accused-appellant Armando Archivido *y* Abengoza (Armando), praying for the reversal of the December 16, 2016 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07306, which in turn affirmed the October 10, 2012 Joint Decision[3] of the Regional Trial Court (RTC), Branch 39, Daet, Camarines Norte convicting him of murder and frustrated murder.

The Antecedents

Armando was charged in two separate Informations for the crime of murder and frustrated murder, committed as follows:

Criminal Case No. 13933

That on or about 10:00 in the morning of July 31, 2009 at Brgy. San Pascual, Municipality of Basud, Province of Camarines Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, evident premeditation, treachery and superior strength, did, then and there willfully, unlawfully and feloniously, while armed with a bladed weapon, repeatedly hack LILIA ARCHIVIDO y DECEREZ, in blatant disregard of the respect due to her on account of her sex, thereby inflicting upon her fatal

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[1] *Rollo,* pp. 22-23.

[2] Id. at 2-19; penned by Associate Justice Ramon A. Cruz, with Associate Justices Marlene Gonzales-Sison and Maria Elisa Sempio Diy, concurring.

[3] CA *rollo,* pp. 71-76; penned by Judge Winston Racoma.

wounds which caused her untimely death, to the damage and prejudice of the heirs of the victim.

Criminal Case No. 13937

That on or about 10:00 in the morning of July 31, 2009 at Brgy. San Pascual, Municipality of Basud, Province of Camarines Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, evident premeditation, treachery and superior strength, did, then and there willfully, unlawfully and feloniously, while armed with a bladed weapon, repeatedly hack RUBEN ARCHIVIDO y AVENGOZA, thereby, inflicting upon him fatal wound, thus the accused preformed all the acts of execution which would produce the crime of MURDER, as a consequence, but which nevertheless did not produce it by reason of causes independent of the will of the accused, but due to the timely and able medical assistance rendered to the private complainant which prevented his death, to his damage and prejudice.[4]

Armando admitted the charges, but interposed self-defense. After the pre-trial, a reverse trial ensued.[5] The prosecution established the following version of facts:

Armando and Ruben Archivido (Ruben) are brothers. Their parents owned an eight-hectare parcel of land in San Pascual, Basud, Camarines Norte. Sometime in 1979, the lot was subdivided and each brother was given 2.68 hectares each. However, in 1989, Armando demanded a bigger share. Ruben and their mother Lydia Archivido (Lydia) refused to accede to his demand. Armando was infuriated.[6]

The dispute between the brothers dragged for a number of years. On July 2, 2009, the fight escalated and Armando threatened to kill Ruben and his wife Lilia Archivido (Lilia). The incident was recorded in the barangay blotter.[7]

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[4] Id. at 71-72.

[5] Id. at 72.

[6] Id.

[7] Id.

At around 10:00 a.m. of July 31, 2009, while Ruben and Lilia were on their way home after cultivating their land at San Pascual, they chanced upon Armando who was on his way to the mountains. Armando intentionally bumped Lilia, which resulted in an argument. Ruben intervened and urged Armando and Lilia to just move on. They agreed. However, immediately after Ruben and Lilia turned their backs, Armando suddenly hacked Lilia from behind. Upon hearing a thud, Ruben turned around and saw Armando hacking Lilia with his *bolo*. Lilia retaliated but was no match for Armando. She was severely injured and fell on the ground.[8]

Ruben rushed to his wife's aid. While he was removing his raincoat and unloading the cassava he was carrying, Armando suddenly started hacking him, inflicting injuries on his face, shoulders and arms. Then, Armando left to wash his *bolo*.[9]

Ruben left Lilia's side to seek help from people in the barrio. On his way, he met Edgar Ponaya (Edgar), who went to the barangay and reported the matter.[10] Thereafter, Edgar took Ruben to the Camarines Norte Provincial Hospital, where he was treated by Dr. Edmundo Dizon (Dr. Dizon). Dr. Dizon noted that Ruben had six hacking wounds, which caused severe bleeding and would have been fatal if not for immediate medical attention. Ruben was confined for 16 days.[11]

Unfortunately, Lilia succumbed to her injuries. When the barangay officials arrived at the crime scene, they discovered Lilia's lifeless body.[12]

Dr. Jose Magana, Municipal Health Officer of Daet, Camarines Norte conducted a Post-Mortem Examination on Lilia. He noted several hacking wounds on her right leg and left leg, and declared

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[8] Id.

[9] Id. at 104.

[10] Id.

[11] Id. at 73.

[12] Id. at 104.

that the cause of death was hemorrhagic shock caused by the wounds.[13]

On the other hand, Armando interposed self-defense. He related that he met Lilia and Ruben while he was on his way to the mountain. Lilia threatened him to refrain from testifying in a case that was being filed against her by Glenda Sablawan. He retorted that Lilia should not tell him what to do. When he turned his back to leave, he was suddenly struck with a *bolo*.[14]

Then, Ruben and Lilia moved towards him with their arms raised and clutching their *bolos*. While he was about to draw his *bolo*, Ruben hit him on his right arm. Ruben tried to hack him several times but he was able to parry the attacks and fight back. Then, Ruben pleaded for him to stop, so he left. He proceeded to the barangay hall of San Pascual to surrender. However, there was no barangay official present. He asked a certain Eduardo to accompany him to the Basud Police Station. On their way, they ran into barangay tanod Morada, who brought him to the police station.[15]

While at the police station, he had the incident recorded in the police blotter. Thereafter, he was taken to the hospital for treatment.[16] Dr. Antonio Dee (Dr. Dee) attended to his wounds. Dr. Dee noted that his injuries were superficial and may not lead to death. He returned to the police station after being discharged from the hospital.[17]

Ruling of the RTC

On October 10, 2012, the RTC rendered a Joint Decision[18] finding Armando guilty beyond reasonable doubt of murder and frustrated murder. The RTC held that the prosecution proved

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[13] Id. at 73.

[14] Id. at 72.

[15] Id. at 55.

[16] Id. at 56.

[17] Id. at 73.

[18] Id. at 71-76.

all the essential elements of the crimes charged. The RTC rejected Armando's plea of self-defense as well as his claim of voluntary surrender.

The dispositive portion of the RTC ruling reads:

WHEREFORE, foregoing premises considered, accused ARMANDO ARCHIVIDO y ABENGOZA is hereby found GUILTY beyond reasonable doubt of the crime of MURDER in Criminal Case No. 13933. He is hereby sentenced to suffer the penalty of *RECLUSION PERPETUA*. He is hereby ordered to indemnify the heirs of Lilia L. Archivido the following:

1. PhP75,000.00 as civil indemnity;
2. PhP50,000.00 as moral damages; and
3. PhP30,000.00 as exemplary damages

In Criminal Case No. 13937, accused ARMANDO ARCHIVIDO y ABENGOZA is hereby found GUILTY beyond reasonable doubt of the crime of FRUSTRATED MURDER. He is hereby sentenced to suffer the penalty of EIGHT (8) YEARS and ONE DAY of PRISION MAYOR as MINIMUM, to SEVENTEEN (17) YEARS and FOUR (4) MONTHS of RECLUSION TEMPORAL, as MAXIMUM.

SO ORDERED.[19]

Aggrieved, Armando filed a Notice of Appeal.[20]

Ruling of the CA

On December 16, 2016, the CA rendered the assailed Decision affirming the RTC ruling with modification as to the penalty and damages.

In affirming Armando's guilt for murder and frustrated murder, the CA held that the prosecution sufficiently proved that the attacks against Lilia and Ruben were attended with treachery. The spouses were blindsided and completely caught off-guard. Lilia was hacked after she had turned her back against Armando.[21]

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[19] Id. at 76.

[20] Id. at 29.

[21] Id. at 11.

Armando deliberately and consciously adopted this manner of attack to eliminate any possible risk to himself.[22]

However, the CA opined that the prosecution failed to prove the qualifying circumstance of evident premeditation. There was no showing that Armando deliberately and carefully planned his attack against Ruben and Lilia, and that a considerable amount of time lapsed for him to reflect upon the consequences of his act. All that was proved was that he suddenly hacked Lilia and Ruben at the moment they turned their backs.[23]

Moreover, the CA rejected Armando's claim of self-defense, both complete and incomplete. According to the CA, Armando failed to prove that the spouses mounted unlawful aggression against him.[24] Similarly, his claim that the spouses ganged up on him was belied by the physical evidence.[25]

Finally, the CA found that Armando was entitled to the mitigating circumstance of voluntary surrender. He immediately went to the barangay hall after the incident to surrender, and he even proceeded to the police station when there were no persons in the barangay hall.[26]

The dispositive portion of the CA ruling reads:

WHEREFORE, in view of the foregoing, the Appeal is **DISMISSED**. The Joint Decision dated October 10, 2012 of the Regional Trial Court of Daet, Camarines Norte, Branch 39 is hereby **AFFIRMED** with **MODIFICATIONS** insofar as the penalties and monetary awards are concerned, *viz.*:

In Criminal Case No. 13933, Accused Armando Archivido *y* Abengoza is hereby found guilty beyond reasonable doubt of the crime of Murder. He is hereby sentenced to suffer the penalty of

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[22] Id. at 12.

[23] Id. at 13.

[24] Id. at 14.

[25] Id. at 15.

[26] Id. at 16.

reclusion perpetua and is ordered to pay the heirs of Lilia Archivido the following amounts:

1. PhP75,000.00 as civil indemnity;
2. PhP75,000.00 as moral damages; and
3. PhP75,000.00 as exemplary damages.

In Criminal Case No. 13937, Accused Armando Archivido *y* Abengoza is hereby found guilty beyond reasonable doubt of the crime of Frustrated Murder. He is hereby sentenced to suffer the penalty of 8 years and 1 day of *prision mayor*, as minimum, to (14) years of *reclusion temporal*, as maximum, and is ordered to pay Ruben Archivido the following amounts:

1. PhP50,000.00 as civil indemnity;
2. PhP50,000.00 as moral damages; and
3. PhP50,000.00 as exemplary damages.

An interest at the rate of six percent (6%) per annum shall be imposed on all the damages awarded, reckoned from the date of the finality of judgment until fully paid.

SO ORDERED.[27] (Emphasis in the original)

Dissatisfied with the ruling, Armando filed a Notice of Appeal.[28]

Issues

Both parties filed separate Manifestations[29] indicating that they are adopting the Briefs they submitted before the CA in lieu of their Supplemental Briefs.

Seeking exoneration from the charges, Armando pleads self-defense. He claims that Lilia and Ruben attacked him first by hacking the back of his head. Although the wound was later declared to be superficial, at the time of the attack, he honestly believed that his life was in danger, thereby prompting him to retaliate.[30] The means he employed were reasonably necessary

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[27] Id. at 18-19.

[28] Id. at 22-23.

[29] Id. at 30-31; 35-36.

[30] Id. at 59-60.

to parry the assault. Moreover, he did not cause any sufficient provocation. He merely refused to accede to Lilia's request for him not to testify against her.[31] He further claims that the threats he allegedly uttered against Lilia and Ruben occurred more than one month prior to the incident. No other threats were reported since then.[32]

Alternatively, Armando argues that should he be found guilty, he may only be convicted of homicide and frustrated homicide.[33] The prosecution failed to establish the qualifying circumstances of treachery and evident premeditation. He avers that the prosecution's narration of events is unbelievable. If he truly wanted to attack Ruben and Lilia without any danger to himself, then he would have attacked Ruben first, the latter being the stronger opponent, and attack a more delicate part of the body — the head, neck or abdomen.[34] Neither was the prosecution able to prove that the assault was deliberately and consciously adopted.

Finally, Armando claims that he is entitled to the mitigating circumstance of voluntary surrender.[35] He went to the barangay hall immediately after the incident in order to surrender. However, since no one was present thereat, he proceeded to the Basud Police Station.[36]

On the other hand, the People, through the Office of the Solicitor General (OSG), counters that Armando failed to prove his plea of complete and incomplete self-defense. His defense was based on his "lone and doubtful testimony" which pales in comparison to the statements of the prosecution witnesses.[37]

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[31] Id. at 60.

[32] Id.

[33] Id. at 67.

[34] Id. at 62-63.

[35] Id. at 66.

[36] Id.

[37] Id. at 106.

Likewise, his claim that Ruben and Lilia ganged up on him is unbelievable, and is belied by the physical evidence.[38]

Similarly, the OSG maintains that the attack was attended with treachery and evident premeditation. Armando hacked the spouses as soon as they turned their backs against him.[39] This proves that Armando employed means to ensure the success of his attack with the least harm to himself.[40] Evident premeditation existed considering the Armando had an ongoing dispute with the spouses and even made a threat to kill them. Armando fulfilled his threat by killing Lilia and injuring Ruben.[41]

Ruling of the Court

Armando is Guilty Beyond Reasonable Doubt of Murder and Frustrated Homicide

Article 248 of the Revised Penal Code (RPC) defines the crime of murder as the unlawful killing of a person, which is not parricide or infanticide, committed with any of the following qualifying circumstances, to wit:

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.
2. in consideration of a price, reward or promise.
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a street car or locomotive, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin.
4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a

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[38] Id. at 107.

[39] Id.

[40] Id. at 109.

[41] Id. at 109-110.

volcano, destructive cyclone, epidemic, or any other public calamity.

5. With evident premeditation.

6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.[42] (Emphasis and underscoring supplied)

Essentially, the elements of murder are: (i) that a person was killed; (ii) that the accused killed him or her; (iii) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (iv) that the killing is not parricide or infanticide.[43]

It is an elementary rule in criminal law that each of the qualifying circumstances must be alleged in the Information[44] and must be proven as clearly as the crime itself.[45] In the absence of a qualifying circumstance, the crime committed is homicide, not murder.[46]

In the case at bar, Armando was indicted for murder qualified by treachery and evident premeditation. Parenthetically, there is treachery or *alevosia* when the offender commits any of the crimes against persons, employing means, methods or forms to ensure its execution, without risk to himself/herself arising from the defense which the offended party might make.[47] "The essence of treachery is that the attack comes without a warning and in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape the sudden blow."[48]

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[42] REVISED PENAL CODE, Art. 248, as amended.

[43] *People v. Gaborne*, 791 Phil. 581, 592 (2016).

[44] *People v. Wilson Lab-eo*, 424 Phil. 482, 488 (2002).

[45] *People v. Dadivo*, 434 Phil. 684, 688-689 (2002).

[46] *People v. Bugarin*, 807 Phil. 588, 598-599 (2017), citing *People v. Placer*, 719 Phil. 268, 280 (2013).

[47] Id.

[48] Id. at 600-601.

In Criminal Case No. 13933 for murder, Armando attacked Lilia in a sudden, unexpected and rapid motion. Although Armando and Lilia had a prior argument, Lilia believed that the matter was already settled. Hence, she and Ruben turned their backs against Armando and started walking home. However, in a swift move, and taking advantage of his position, Armando hacked Lilia from behind. The onslaught was so sudden and swift that Lilia had no chance to mount a defense. She had no inkling that an attack was forthcoming and was completely unaware of the imminent peril. The deliberate swiftness of the attack significantly diminished the risk to Armando that may be caused by Lilia's retaliation. Thus, there can be no denying that Armando's attack against Lilia reeks of treachery.[49]

Remarkably, in *People v. Kalipayan*,[50] the Court held that an attack against a victim whose back was turned against the aggressor is treacherous. This manner of attack is a sign of the accused's conscious choice to employ the specific means and methods to kill the victim. It cannot be regarded as a sudden emotional response.[51]

Similarly, in *People v. Saure*,[52] the Court affirmed the presence of treachery even though there was a prior altercation between the accused and the victim:

> Treachery is evidently present in the instant case as the accused-appellant, stealthily and without warning, rushed towards the victim from behind and stabbed him in the chest. The victim, who was then seated, was not aware of any impending danger. **Although there had been prior verbal altercation, the victim had reasons to believe that the matter has already been settled after Alinsub's intervention**.[53] (Emphasis supplied)

Likewise, in *People v. PO3 Feliciano*,[54] a prior verbal tussle between the accused and the victim did not eliminate treachery.

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[49] *People v. Las Piñas, et al.*, 739 Phil. 502, 525 (2014).

[50] 824 Phil. 173 (2018).

[51] Id. at 186-187.

[52] 428 Phil. 916 (2002).

[53] Id. at 932-933.

[54] 418 Phil. 88 (2001).

The victim had no reason to believe that he was in danger, considering that the accused left after the squabble.[55]

In the same vein, in *People v. Beltran*,[56] *People v. Jabian*,[57] *People v. Alpapara, et al.*,[58] *People v. Forca, et al.*,[59] and *People v. Montemayor*,[60] treachery was appreciated considering that the assault took place after the altercation had ceased. Said altercation was no longer regarded as a warning of the oncoming onslaught. In *People v. Vallespin*,[61] the Court clarified that a prior altercation negates treachery only insofar as it forewarned the victim about the impending danger.[62]

Furthermore in *People v. Coscos*,[63] the Court likewise considered the nature of the fight, noting that "it was not intense to provoke a shooting," and could not have served as a potent warning.[64] Applied to the case at bar, the testimonies of both the defense and the prosecution reveal that the altercation was too shallow to have served as a sufficient warning of a life-threatening peril. Armando related that the altercation originated from his refusal to accede to Lilia's request for him not to testify against her. Meanwhile, Ruben claimed that the quarrel erupted because Armando bumped into Lilia when their paths crossed. In both instances, the reasons behind the squabble were too shallow and juvenile to have warned Lilia that her life was in serious danger.

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[55] Id. at 107.

[56] 534 Phil. 850 (2006).

[57] 408 Phil. 465 (2001).

[58] 619 Phil. 797 (2009).

[59] 388 Phil. 1079 (2000).

[60] 452 Phil. 283 (2003).

[61] 439 Phil. 816 (2002).

[62] Id. at 827-828.

[63] 424 Phil. 886 (2002).

[64] Id. at 902-903.

Concededly, the Court is aware of its pronouncements in the cases of *People v. Antonio*,[65] *People v. Placer*,[66] and *People v. Cayabyab*,[67] where it held that treachery cannot be appreciated in cases where a prior altercation preceded the attack. It bears stressing that in those cases, the fight between the accused and the victim was ongoing, such that the victim was aware of the imminent danger. In contrast, in the instant case, the squabble between Armando and Lilia had ended. Lilia believed that the matter was settled, and thus, proceeded to leave. Armando grabbed this opportunity and surreptitiously attacked Lilia.

Finally, the fact that the accused suffered no injuries, evidences treachery.[68] Here, Lilia died due to severe blood loss caused by the severity of her wounds, whereas Armando was practically unscathed.

However, the same circumstances do not obtain in Criminal Case No. 13937 for frustrated murder against Ruben.

The facts show that after Lilia and Ruben turned their backs against Armando and proceeded on their way, Ruben suddenly heard a loud thud, which prompted him to turn around. Then, he saw Armando attacking Lilia. He immediately rushed to Lilia's aid and tried to stop Armando. Ruben's narration is enlightening:

PROSECUTOR APUYA:

Q: And when you met Armando with your wife walking ahead of you, what happened next?
A: Armando bumped my wife, they had an argument.

Q: How far were you then from them while they were arguing?
A: Around two (2) arms length, ma'am.

Q: And what did you do when you saw that they were arguing?
A: I told my wife not to argue with him because she will get nothing.

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[65] 390 Phil. 989 (2000).

[66] Supra note 46.

[67] 340 Phil. 498 (1997).

[68] *People v. Racal*, 817 Phil. 665, 677-678 (2017).

Q: And what was your wife's response, if any?
A: I likewise told Armando to proceed to where he was going and the two (2) of us, me and my wife turn[ed] our back[s].

Q: Were you walking side by side when you turned your back at Armando?
A: Yes, ma'am.

Q: And what happened after that?
A: While our back was turned against him, I heard a thud, and when I turned around I saw that my wife was hacked by Armando hitting her — (witness pointing to his left ankle)

Q: And upon seeing that Armando hacked your wife what did you do?
A: When I was removing the cassava from my back he suddenly hack[ed] me hitting my two (2) hands.

Q: Why is it that you were hit on your arms what are you doing?
A: After I was about to remove my things at the back he started to hack me so I was not able to do anything but parried [sic] his hack.

Q: How many times did he hack you, Mr. witness?
A: Six (6) ma'am. (Witness pointing to different parts of his body.)[69]

The foregoing testimony shows that although the assault against Lilia was sudden and unexpected, Ruben's case was different. He turned around, saw the onslaught, and was forewarned of the impending danger. He was aware that in saving Lilia, he would likewise be vulnerable to an attack by Armando.

Significantly, in *People v. Se*,[70] the Court stressed that once it appears that the victim was forewarned of the danger he was in, and instead of fleeing from it, met it and was killed as a result, then the qualifying circumstance of treachery cannot be appreciated. Treachery presupposes a sudden, unexpected, and unforeseen attack on the victim.[71]

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[69] *Rollo*, pp. 11-12.

[70] 469 Phil. 763, 771 (2004).

[71] Id. at 771.

Similarly, in *People v. Casas*,[72] the Court held that there can be no treachery if the victim knew of the impending danger to his life, and was fully aware of the peril he may be faced with:

> Under these circumstances, it is the Court's observation that Joel was fully aware of the danger posed in assisting Eligio. He knew that Casas was armed with a knife and had just used the same on Eligio. Joel elected to intervene, and even armed himself with a bamboo pole. Accordingly, it is rather obvious that Joel was aware of the danger to his life. x x x Thus, insofar as the incidents in Crim. Case No. 136842 go, the Court downgrades the conviction to the crime of Homicide. x x x[73]

In *People v. Mantes*,[74] the Court articulated that "there is no treachery where the victim was aware of the danger to his life; when he chose to be courageous instead of cautious."[75] Essentially, in assessing whether treachery attended the commission of the offense, any doubt must be resolved in favor of the accused.[76]

Accordingly, it becomes all too apparent that the attack against Ruben was in no way treacherous, inasmuch as the obvious danger he faced was not sudden, unexpected, or unforeseen. **Hence, Armando may only be held liable for frustrated homicide in Criminal Case No. 13937**.

There is no doubt that the attack against Ruben was a frustrated felony. In *Serrano v. People*,[77] the Court characterized a frustrated crime as one where the perpetrator performed all the acts of execution which should produce the felony as a consequence,

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[72] 755 Phil. 210 (2015).

[73] Id. at 221-222.

[74] 420 Phil. 751 (2001).

[75] Id. at 760.

[76] *People v. Escarlos*, 457 Phil. 580, 599 (2003), citing *People v. Doctolero Sr.*, 415 Phil. 632 (2001).

[77] 637 Phil. 319 (2010).

but was not accomplished due to some cause independent of the assailant's will.[78]

Particularly, in frustrated homicide, "the main element is the accused's intent to take his victim's life. The prosecution has to prove this clearly and convincingly to exclude every possible doubt regarding homicidal intent."[79] The crucial points to consider are the means employed by the offender, as well as the nature, location and number of wound/s inflicted.[80] These must be supported by independent proof showing that the injuries were sufficient to cause the victim's death without timely medical intervention.[81]

Notably, the medical certificate states that Ruben suffered six wounds that caused severe bleeding and would have been fatal if not for the immediate medical attention he received.[82]

The Prosecution Failed to Prove Evident Premeditation

The CA correctly ruled that there was no evident premeditation in the attacks against Lilia and Ruben. Fundamentally, "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."[83] The premeditation to kill must be plain and notorious, and thereafter proven by evidence of outward acts showing such intent to kill.[84] "It is imperative to prove that the accused underwent a

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[78] Id. at 335, citing *Palaganas v. People*, 533 Phil. 169, 192 (2006).

[79] *Abella v. People*, 719 Phil. 53, 66 (2013), citing *Colinares v. People*, 678 Phil. 482, 494 (2011), citing *People v. Pagador*, 409 Phil. 338, 351 (2001); *Rivera v. People*, 515 Phil. 824, 832 (2006).

[80] Id.

[81] *Serrano v. People*, supra note 77 at 336.

[82] *Rollo*, p. 5.

[83] *People v. Isla*, 699 Phil. 250, 270 (2012), citing *People v. Garcia*, 467 Phil. 1102, 1107 (2004).

[84] *People v. Davido*, 434 Phil. 684, 688-689 (2002).

process of cold and deep meditation, and a tenacious persistence in the accomplishment of the criminal act."[85]

In *People v. Grabador, Jr., et al.*,[86] the Court enumerated the requisites to establish evident premeditation:

> Accordingly, in order to establish the existence of evident premeditation, the following requisites must be proven during the trial: (i) the time when the offender determined to commit the crime, (ii) an act manifestly indicating that he clung to his determination, and (iii) a sufficient lapse of time between the determination and execution, to allow him to reflect upon the consequences of his act, and to allow his conscience to overcome the resolution of his will. Evident premeditation cannot be presumed in the absence of evidence showing when and how the accused planned, and prepared for the crime, and that a sufficient amount of time had lapsed between his determination and execution. It bears stressing that absent any clear and positive evidence, mere presumptions and inferences of evident premeditation, no matter how logical and probable, shall be deemed insufficient.[87] (Citations omitted)

The prosecution failed to identify the time when Armando decided to kill Lilia and Ruben. Without this crucial data, it is impossible to conclude that there was indeed a sufficient period of time that passed between Armando's determination to kill and his actual execution, that allowed him to reflect on his plans. Armando's threats to kill Ruben and Lilia, and the ongoing dispute between them are not sufficient proof of a plan to kill. At best, his threats could only be regarded as an expression of hatred.

The Court clarified in *People v. Padama, Jr., et al.*[88] and *People v. Narit*[89] that mere expressions of anger are not evidence of a predetermined plan to kill." As elaborated in *Narit*:[90]

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[85] *People v. Grabador, Jr., et al.*, G.R. No. 227504, June 13, 2018, citing *People v. Macaspac*, G.R. No. 198954, February 22, 2017, citing *People v. Gonzales*, 76 Phil. 473, 479 (1946), citing *United States v. Cunanan*, 37 Phil. 777 (1918).

[86] *People v. Grabador, Jr., et al.*, id.

[87] Id.

[88] 374 Phil. 511 (1999).

[89] 274 Phil. 613 (1991), citing *People v. Alde*, 64 SCRA 224; *U.S. v. Banagale*, 24 Phil. 69 (1913).

[90] Id. at 631.

An intimation or expression of hatred does not necessarily imply a resolution to commit a crime and a determination to carry it out. A criminal intent cannot be presumed from hatred or ill-will, unless the expression of the latter is accompanied or thereafter followed by outward acts clearly and manifestly showing such intent. Evident premeditation must be based on external acts17 and must be evident, not merely suspected, indicating deliberate planning. Otherwise stated, there must be a demonstration by outward acts of a criminal intent that is notorious and manifest. Or, as stated in *People vs. Mendova*, 100 Phil. 811, "it is not enough that premeditation be suspected or surmised, but the criminal intent must be evidenced by notorious outward acts evincing determination to commit the crime."[91]

Armando's Claim of Self-Defense (Complete and Incomplete) is Sorely Wanting

Interestingly, when the accused invokes self-defense, in effect, he or she admits to the commission of the acts for which he or she was charged, albeit under circumstances that, if proven, would exculpate him or her.[92] Consequently, the burden of proving that the act was justified, shifts upon him or her.[93] The accused must prove through clear and convincing evidence that there was (i) unlawful aggression on the part of the victim; (ii) reasonable necessity of the means employed to prevent or repel such aggression; and (iii) lack of sufficient provocation on the accused's part.[94]

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[91] Id.

[92] *Velasquez, et al. v. People*, 807 Phil. 438, 449 (2017).

[93] *Dela Cruz v. People, et al.*, 747 Phil. 376, 384-385 (2014), citing *Jacobo v. Court of Appeals*, 337 Phil. 7, 18 (1997).

[94] *Guevarra, et al. v. People*, 726 Phil. 183, 194 (2014), citing *People v. Silvano*, 403 Phil. 598, 606 (2001); and *People v. Plaza*, 403 Phil. 347, 357 (2001).

It bears noting that unlawful aggression is a condition *sine qua non* for upholding self-defense.[95] For every plea of complete and incomplete self-defense, the accused must establish the concurrence of the three elements of unlawful aggression, namely: "(i) there must have been a physical or material attack or assault; (ii) the attack or assault must be actual, or, at least, imminent; and (iii) the attack or assault must be unlawful."[96] It must be proven that the aggression caused by the victim put the accused's life in real and grave peril.[97]

Armando's claim of self-defense is unbelievable. His tale that Lilia and Ruben ganged up on him and attacked him first is self-serving, uncorroborated, and belied by the medical records. Lilia's autopsy indicates that she died due to massive bleeding caused by the wounds inflicted by Armando. Also, Ruben suffered six hacking wounds that resulted to severe blood loss and may have caused his untimely demise, if not for the prompt medical attention he received. On the other hand, Armando emerged out of the alleged fight practically unscathed. His wounds were described as "superficial" and "not fatal."[98]

At any rate, even assuming *arguendo* that Lilia initiated the attack as Armando insists, suffice to say, in the case of *People v. Dulin*,[99] the Court declared that the fact that the victim was the initial aggressor does not *ipso facto* prove unlawful aggression. Although the victim may have initiated the attack, he ceased to be the aggressor as soon as he was dispossessed of the weapon. Any subsequent act on the part of the accused is no longer self-defense, but retaliation.[100]

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[95] *Miranda v. People*, G.R. No. 234528, January 23, 2019, *People v. Dulin*, 752 Phil. 24, 36 (2015).

[96] Id.

[97] Id.

[98] *Rollo*, p. 7.

[99] Supra note 94, citing *People v. Gamez*, 720 Phil. 561 (2013).

[100] Id. at 38, id. at 571-572.

In the instant case, Armando attacked Lilia and Ruben after they had peacefully parted ways. Certainly, at this point, Armando was no longer motivated by a legitimate impulse to defend himself, but was animated with an evil desire to harm Lilia and Ruben.

Moreover, guided by the ruling in *Velasquez, et al. v. People*,[101] even assuming that Lilia and Ruben were the initial aggressors, the assault inflicted by Armando was glaringly in excess of what would have sufficed to neutralize the spouses.[102]

Armando is Entitled to the Mitigating Circumstance of Voluntary Surrender

Voluntary surrender is regarded as a mitigating circumstance provided that the following requisites obtain: "(i) the accused has not been actually arrested; (ii) the accused surrenders himself to a person in authority or the latter's agent; and (iii) the surrender is voluntary."[103] "The essence of voluntary surrender is spontaneity and the intent of the accused to submit himself to the authorities either because he acknowledged his guilt or he wished to save the authorities the trouble and expense that may be incurred for his search and capture."[104]

After the attack, Armando voluntarily went to the barangay hall to surrender to the proper authorities to save them the trouble and expense for his search and capture.[105] However, since there was no one present there, he proceeded to the police station. On his way, he met Tanod Morada. He offered no resistance and surrendered to be taken to the police station.

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[101] Supra note 91.

[102] Id. at 453.

[103] *People v. Placer*, supra note 46, citing Article 13, paragraph 7, Revised Penal Code; see also *People v. Ignacio*, 719 Phil. 268, 281 (2013); *People v. Antonio*, 390 Phil. 989, 1013 (2000).

[104] Almojuela v. People, 734 Phil. 636, 650 (2014), citing De Vera v. De Vera, 602 Phil. 877, 886-887 (2009).

[105] CA *rollo*, p. 66.

Added to this, SPO1 Arnold Lamadrid confirmed that after Armando had been discharged from the hospital, he voluntarily returned to the police station.[106] Certainly, these acts evince a sincere desire to surrender to the proper authorities.

The Penalty and Pecuniary Liability for Criminal Case No. 13933 for Murder

Article 248 of the RPC, as amended by Republic Act No. 7659, prescribes the penalty of *reclusion perpetua* to death for the crime of murder. Apart from treachery, which is already deemed a qualifying circumstance, the prosecution failed to prove the existence of any other aggravating circumstance which attended the murder of Lilia. Furthermore, Armando is entitled to the lone mitigating circumstance of voluntary surrender.

Article 63 (3) of the RPC applies when the law prescribes a penalty composed of two indivisible penalties and states that, "[w]hen the commission of the act is attended by some mitigating circumstance and there is no aggravating circumstance, the lesser penalty shall be applied." Thus, the CA correctly imposed a penalty of *reclusion perpetua* in Criminal Case No. 13933.

Anent the damages, the CA correctly awarded (i) ₱75,000.00 as civil indemnity; (ii) ₱75,000.00 as moral damages; and (iii) ₱75,000.00 as exemplary damages, pursuant to the Court's ruling in *People v. Jugueta*.[107] The amounts shall be subject to a legal interest of six percent (6%) *per annum* from the finality of this Court's ruling until full satisfaction.

The Penalty and Pecuniary Liability for Criminal Case No. 13937 for Frustrated Homicide

Article 50 of the RPC states that "[t]he penalty next lower in degree than that prescribed by law for the consummated felony shall be imposed upon the principal in a frustrated felony."

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[106] Id. at 56.

[107] *People v. Jugueta*, 783 Phil. 806 (2016), citing *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

In line with this, Article 249 of the RPC provides that the imposable penalty for homicide is *reclusion temporal*. However, considering that the crime committed is merely frustrated homicide, then, the imposable penalty shall be the penalty next lower in degree than *reclusion temporal*, which is *prision mayor*.

In addition, in view of the presence of the mitigating circumstance of voluntary surrender, the maximum penalty shall be taken from the minimum period of *prision mayor*, which ranges from six (6) years and one (1) day to eight (8) years.

Next, applying the Indeterminate Sentence Law, the minimum penalty shall be taken from any of the periods of the penalty next lower in degree than *prision mayor*, which is anywhere within the range of six (6) months and one (1) day to six (6) years of *prision correccional*.

In view of the foregoing, the Court imposes an indeterminate sentence of four (4) years and two (2) months of *prision correccional* as minimum to eight (8) years of *prision mayor* as maximum.

Furthermore, pursuant to *People v. Jugueta*,[108] in frustrated homicide, the accused shall be liable to pay ₱30,000.00 as civil indemnity, and ₱30,000.00 as moral damages.[109] As ruled, there shall be no award of exemplary damages unless an aggravating circumstance was proven during the trial,[110] which does not obtain in the instant case. The amounts due shall earn a legal interest of six percent (6%) *per annum* from the finality of the Court's ruling until full satisfaction.[111]

WHEREFORE, the Court **AFFIRMS with MODIFICATION** the December 16, 2019 Decision of the Court of Appeals in CA-G.R. CR-HC No. 07306, as follows:

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[108] Id.

[109] Id.

[110] Id.

[111] Id.

(1) In Criminal Case No. 13933, Armando Archivido *y* Abengoza is found **GUILTY** beyond reasonable doubt of murder and is sentenced to suffer a penalty of *reclusion perpetua*. He is ordered to pay the heirs of Lilia Archivido (i) ₱75,000.00 as civil indemnity; (ii) ₱75,000.00 as moral damages; and (iii) ₱75,000.00 as exemplary damages; and

(2) In Criminal Case No. 13937, Armando Archivido *y* Abengoza is declared **GUILTY** beyond reasonable doubt of frustrated homicide and is sentenced to suffer a penalty of four (4) years and two (2) months of *prision correccional* as minimum to eight (8) years of *prision mayor* as maximum. He is ordered to pay the victim Ruben Archivido (i) ₱30,000.00 as civil indemnity, and (ii) ₱30,000.00 as moral damages.

All monetary awards shall be subject to an interest of six percent (6%) *per annum* reckoned from the finality of this Decision until full satisfaction.

SO ORDERED.

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

Zalameda, J., on official leave.

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Elements of — The three (3) elements of plunder: (1) that the offender is a public officer who acts by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates, or other persons; (2) that he amassed, accumulated or acquired ill-gotten wealth through a combination or series of the following overt or criminal acts: a. through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury; b. by receiving, directly or indirectly, any commission, gift, share, percentage, kickback or any other form of pecuniary benefits from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer; c. by the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities of Government-owned or controlled corporations or their subsidiaries; d. by obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking; e. by establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or f. by taking advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines; and, (3) that the aggregate amount or total value of the ill-gotten wealth amassed, accumulated or acquired is at least ₱50,000,000.00. (Republic *v.* Sandiganbayan (Special Second Division), *et al.*, G.R. Nos. 207340 and 207349, Sept. 16, 2020) p. 96

ANTI-MONEY LAUNDERING ACT (AMLA) (R.A. NO. 9160)

Facilitating money laundering — Section 4[b] is necessarily included in the offense of money laundering, Section

ANTI-VIOLENCE AGAINST WOMEN AND THEIR CHILDREN ACT OF 2004 (R.A. NO. 9262)

class—even those who are no longer considered children under Section 3(h) of the law; courts have the discretion to designate family members who will be included in protection orders, as long as it is in line with the remedy's purpose: to safeguard the victim from further harm, minimize disruptions in her daily life, and let her independently regain control over her life. (*Id.*)

Psychological violence — Although not expressly mentioned, coercive control is recognized as a form of psychological violence under Republic Act No. 9262; psychological violence is defined under Section 3(a)(C) as: SECTION 3. Definition of Terms. – As used in this Act, C. "Psychological violence" refers to acts or omissions causing or likely to cause mental or emotional suffering of the victim such as but not limited to intimidation, harassment, stalking, damage to property, public ridicule or humiliation, repeated verbal abuse and mental infidelity; as a form of psychological violence, coercive control pertains to a "pattern of behavior meant to dominate a partner through different tactics such as physical and sexual violence, threats, emotional insults, and economic deprivation." (Estacio *v.* Estacio, G.R. No. 211851, Sept. 16, 2020) p. 157

Purpose and objective — Republic Act No. 9262 is a social legislation enacted as a measure to address domestic violence; it acknowledges that in situations where abuse happens at home, women are the likely victims; this is largely due to the unequal power relationship between men and women, and the widespread gender bias and prejudice against women which have historically prevented their full advancement, forcing them into subordination to men; the law specifically protects women from violence committed in the context of an intimate relationship, which can be physical violence, sexual violence, psychological violence, or economic abuse; this also includes those committed against the woman's child. (Estacio *v.* Estacio, G.R. No. 211851, Sept. 16, 2020) p. 157

ATTORNEYS

Attorney-client relationship — A client is bound by the mistakes of his counsel, even in the realm of procedural technique, except when the reckless or gross negligence of the counsel deprives the client of due process of law. (Palma, *et al. v.* Petron Corporation, G.R. No. 231826, Sept. 16, 2020) p. 357

— Professional employment or lawyer-client relationship exists notwithstanding the absence of retainer agreement between them and non-payment of fees; to constitute professional employment, it is not essential that the client should have employed the attorney professionally on any previous occasion; if a person, in respect to his business affairs or troubles of any kind, consults with his attorney in his professional capacity with the view to obtaining professional advice or assistance, and the attorney voluntarily permits or acquiesces in such consultation, then the professional employment must be regarded as established. (Tan-Te Seng *v.* Pangan, A.C. No. 12830 [Formerly CBD Case No. 15-4821], Sept. 16, 2020) p. 42

Code of Professional Responsibility — A lawyer violates the Code of Professional Responsibility (CPR) when he charged a client with a crime using the documents entrusted to him by the latter in confidence; Rule 138, Sec. 20 (e) mandates the lawyer to maintain inviolate the confidence, and at every peril to himself, to preserve his client's secrets. (Tan-Te Seng *v.* Pangan, A.C. No. 12830 [Formerly CBD Case No. 15-4821], Sept. 16, 2020) p. 42

Conduct of — Using offensive language against a party in a pleading exposes the lawyer to administrative liability; membership in the Bar imposes upon lawyer's certain obligations; mandated to maintain the dignity of the legal profession, they must conduct themselves honorably and fairly; any violation of these standards exposes them to administrative liability. (Tan-Te Seng *v.* Pangan,

Prohibition to acquire property subject matter of litigation — The Civil Code, in relation to the Canons of Professional Ethics, prohibit the purchase by lawyers of any interest in the subject matter of the litigation in which they participated by reason of their profession; the rationale behind this prohibition is founded on public policy, which disallows such transactions in view of the fiduciary relationship involved, *i.e.*, the relation of trust and confidence and the peculiar control exercised by these persons; the prohibition seeks to prevent the undue advantage that an attorney, by virtue of his office, may take through the credulity and ignorance of his client. (Ricardo, Jr. *v.* Go, A.C. No. 12280, Sept. 16, 2020) p. 22

— Where the property was not involved in any litigation that respondent was handling when he acquired the same, the prohibition does not apply. (*Id.*)

BILL OF RIGHTS

Right against unreasonable searches and seizures — A search warrant is deemed to have described the place to be searched with sufficient particularity when the premises have been identified as being occupied by the accused; the rule is that a description of the place to be searched is sufficient if the officer with the warrant can, with reasonable effort, ascertain and identify the place intended and distinguish it from other places in the community; any designation or description known to the locality that points out the place to the exclusion of all others, and on inquiry, leads the officers unerringly to it, satisfies the constitutional requirement; a search warrant is deemed to have described the place to be searched with sufficient particularity when the premises have been identified as being occupied by the accused. (People *v.* Magayon, G.R. No. 238873, Sept. 16, 2020) p. 579

Right to speedy disposition of cases — "Justice delayed is justice denied'' is a time-honored and oft-repeated legal maxim which requires the expeditious resolution of disputes, more so in criminal cases where an accused is constitutionally guaranteed the right to a speedy disposition

— Section 21 of its implementing rules requires that the physical inventory and photograph of the drugs should be done immediately after their seizure and confiscation in the presence of no less than three (3) witnesses, namely: (a) a representative from the media; (b) a representative from the Department of Justice (DOJ); and (c) any elected public official who shall be required to sign copies of the inventory and given copy thereof. (People *v*. Baterina, G.R. No. 236259, Sept. 16, 2020) p. 468

— The essential links that must be proven by the prosecution in order to establish an unbroken chain of custody over the drugs seized in a buy-bust situation: first, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court. (People *v*. Buesa, G.R. No. 237850, Sept. 16, 2020) p. 558

— The existence of a commotion and the fact that the place is dimly lit and hostile are not justifiable reasons for failing to conduct the inventory at the place of seizure. (Cha *v*. People, G.R. No. 246550, Sept. 16, 2020) p. 829

— The failure of the apprehending team to strictly comply with the chain of custody rule does not *ipso facto* render the seizure and custody over the items void. (*Id.*)

— The physical inventory and photograph of the seized illegal drug may be done at the police station when the place of arrest is a dangerous and accident-prone area. (People *v*. Buesa, G.R. No. 237850, Sept. 16, 2020) p. 558

— The presence of the witnesses during the seizure and marking of the drug is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. (People *v*. Haya, G.R. No. 230718, Sept. 16, 2020) p. 335

shall be required to sign the copies of the inventory and be given a copy thereof. (People *v*. Haya, G.R. No. 230718, Sept. 16, 2020) p. 335

— Witnesses required to be present at the conduct of physical inventory and photograph of the drugs after seizure and confiscation. (People *v*. Buesa, G.R. No. 237850, Sept. 16, 2020) p. 558

Illegal possession of dangerous drugs — The elements of illegal possession of dangerous drugs under Section 11, Article II of R.A. No. 9165 are: (1) possession by the accused of an item or object identified to be a prohibited drug; (2) the possession is not authorized by law; and (3) the free and conscious possession of the drug by the accused; possession under the law includes not only actual possession but also constructive possession; actual possession exists when the drug is in the immediate physical possession or control of the accused; on the other hand, constructive possession exists when the drug is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found; exclusive possession or control is not necessary; the accused cannot avoid conviction if his control and dominion over the place where the contraband is located were shared with another. (People *v*. Magayon, G.R. No. 238873, Sept. 16, 2020) p. 579

— The following must be proven before an accused can be convicted: (1) the accused was in possession of dangerous drugs; (2) such possession was not authorized by law; and (3) the accused was freely and consciously aware of being in possession of dangerous drugs. (People *v*. Buesa, G.R. No. 237850, Sept. 16, 2020) p. 558

Illegal sale of dangerous or prohibited drugs — In order to be convicted of the said violation, the following must concur: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor; in illegal sale of dangerous drugs, it is necessary that the sale

— An illegally terminated employee is entitled to reinstatement and to full backwages but if actual reinstatement is no longer possible, the employee becomes entitled to separation pay in lieu of reinstatement; based on jurisprudence, reinstatement is not feasible: (1) in cases where the dismissed employee's position is no longer available; (2) the continued relationship between the employer and the employee is no longer viable due to the strained relations between them; and (c) when the dismissed employee opted not to be reinstated, or the payment of separation benefits would be for the best interest of the parties involved; in these instances, separation pay is the alternative remedy to reinstatement in addition to the award of backwages; the payment of separation pay and reinstatement are exclusive remedies. (Verizon Communications Philippines, Inc. *v.* Margin, G.R. No. 216599, Sept. 16, 2020) p. 203

— Failure of the employer to discharge its burden of proving that an employee's dismissal from service is for a just or authorized cause shall result in a finding that the dismissal is unjustified. (*Id.*)

— There are instances when dismissed employees may not be granted backwages despite the finding of illegal dismissal on account of the fact that the dismissal of the employee would be too harsh of a penalty and that the employer is in good faith in terminating the employment; in some instances, the Court has carved out exceptions where the reinstatement of an employee was ordered without an award of backwages: (1) the fact that dismissal of the employee would be too harsh of a penalty; and (2) that the employer was in good faith in terminating the employment. (*Id.*)

— To effect a valid dismissal, the law requires that there be just and valid cause which is supported by evidence, and there must be a reasonable proportionality between the offense and the penalty; an employer's power to discipline his employees must not be exercised in an arbitrary manner as to erode the constitutional guarantee

— The burden of proving that the termination of an employee was for a just or authorized cause lies with the employer; if the employer fails to meet this burden, the conclusion would be that the dismissal was unjustified and therefore, illegal; to discharge this burden, the employer must present substantial evidence, which is that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion, and not based on mere surmises or conjectures. (Bicol Isarog Transport System, Inc. *v.* Relucio, G.R. No. 234725, Sept. 16, 2020) p. 390

— To effect a valid dismissal on the ground of a just cause, the employer must substantially comply with the following standards of due process: (a) a first written notice — containing the specific cause or grounds for termination under Article 297 of the Labor Code, and company policies, if any; detailed narration of the facts and circumstances that will serve as basis for the charge; and a directive to submit a written explanation within a reasonable period; (b) after serving the first notice, the employer should afford the employee ample opportunity to be heard and to defend himself; and (c) after determining that termination of employment is justified, the employer shall serve the employee a written notice of termination indicating that all circumstance involving the charge against the employee have been considered; and the grounds have been established to justify the severance of his employment. (*Id.*)

— Under Article 297 of the Labor Code, 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; (b) gross and habitual neglect by the employee of his duties; (c) fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative (d) commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and (e) other causes analogous to the foregoing. (*Id.*)

or stealth; and (c) that the action was filed within one year from the time the owners or legal possessors learned of their deprivation of the physical possession of the property. (Esperal *v.* Trompeta-Esperal, *et al*., G.R. No. 229076, Sept. 16, 2020) p. 304

— Well-settled is the rule that the sole issue for resolution in ejectment case relates to the physical or material possession of the property involved, independent of the claim of ownership by any of the parties. (*Id.*)

INFORMATION

Defects of — The right to question the defects in an Information is not absolute and defects in the Information with regard to its form may be waived by the accused if he fails to avail any of the remedies provided under procedural rules, either by: (a) filing a motion to quash for failure of the Information to conform substantially to the prescribed form; or (b) filing a motion for bill of particulars. (People *v.* Ukay *a.k.a*."Tata," G.R. No. 246419, Sept. 16, 2020) p. 806

Sufficiency — In order for the information alleging the existence of treachery to be sufficient, it must have factual averments on how the person charged had deliberately employed means, methods or forms in the execution of the act that tended directly and specifically to insure its execution without risk to the accused arising from the defense that the victim might make. (People *v.* Ukay *a.k.a*. "Tata," G.R. No. 246419, Sept. 16, 2020) p. 806

INTERESTS

Legal interest — The guidelines in computing for the legal interest to an award of actual and compensatory damages are as follows: 1. when the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing; furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded; in the absence of stipulation, the rate of interest shall be 6% per annum (formerly

as follows: The annulment may be based only on the grounds of extrinsic fraud and lack of jurisdiction; extrinsic fraud shall not be a valid ground if it was availed of, or could have been availed of, in a motion for new trial or petition for relief; annulment of judgment is an equitable principle not because it allows a party-litigant another opportunity to reopen a judgment that has long lapsed into finality but because it enables him to be discharged from the burden of being bound to a judgment that is an absolute nullity to begin with. (*Id.*)

— Before a party can resort to an action for annulment, it is a condition *sine qua non* that one must have failed to move for a new trial, or appeal from, or file a petition for relief against the questioned issuances or take other appropriate remedies thereon, through no fault attributable to him; if he failed to avail himself of those cited remedies without sufficient justification, he cannot resort to an action for annulment provided in Rule 47; otherwise, he would benefit from his own inaction or negligence. (*Id.*)

Conflict between the body and dispositive portion — As a rule, when there is a conflict between the dispositive portion or fallo of a decision and the opinion of the court contained in the text or body of the judgment, the former prevails over the latter. (Norsk Hydro (Philippines), Inc., *et al. v.* Premiere Development Bank, *et al.*, G.R. No. 226771, Sept. 16, 2020) p. 256

Immutability of judgment — It is well-settled that once a judgment attains finality, it becomes immutable and unalterable; it may not be changed, altered, or modified in any way even if the modification were for the purpose of correcting an erroneous conclusion of fact or law; any right, fact, or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies, whether or not the claim, demand, purpose, or subject matter of the two actions is the same.

LABOR RELATIONS

are performing activities which are directly related to the principal business of such employer. (*Id.*)

— Proof of substantial capital does not make an entity immune to a finding of labor-only contracting when there is a showing that control over the employees reside in the principal, and not in the contractor. (*Id.*)

— Section 5 of Department Order No. 18-02 provides that if at least one of the following conditions are present, then an entity would be considered a labor-only contractor: (i) The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; or (ii) the contractor does not exercise the right to control over the performance of the work of the contractual employee. (*Id.*)

— The employees of the supposed contractor who perform functions necessary and directly related to the principal's main business are employees of the supposed principal. (*Id.*)

— The existence of an employer-employee relationship or labor-only contracting is a question of fact because it entails an assessment of the probative value of the evidence presented in the lower courts. (*Id.*)

— The totality of the facts and the surrounding circumstances of the case must be considered in determining the issue of labor-only contracting. (Manila Cordage Company–Employees Labor Union–Organized Labor Union in Line Industries and Agriculture (MCC-ELU-OLALIA), *et al. v.* Manila Cordage Company (MCC), *et al.*, G.R. Nos. 242495-96, Sept. 16, 2020) p. 764

— There is no principal and contractor, as there is only the employer's representative who gathers and supplies people for the employer. (*Id.*)

bank; the issuing bank redeems the draft and pays cash to the seller if it finds that the documents submitted by the seller conform with what the letter of credit requires; the bank then obtains possession of the documents upon paying the seller; the transaction is completed when the buyer reimburses the issuing bank and acquires the documents entitling him to the goods; under this arrangement, the seller gets paid only if he delivers the documents of title over the goods, while the buyer acquires the said documents and control over the goods only after reimbursing the bank. (*Id.*)

— What characterizes letters of credit, as distinguished from other accessory contracts, is the engagement of the issuing bank to pay the seller once the draft and the required shipping documents are presented to it; in turn, this arrangement assures the seller of prompt payment, independent of any breach of the main sales contract; by this so-called "independence principle," the bank determines compliance with the letter of credit only by examining the shipping documents presented; it is precluded from determining whether the main contract is actually accomplished or not; there would at least be three (3) parties: (a) the buyer, who procures the letter of credit and obliges himself to reimburse the issuing bank upon receipt of the documents of title; (b) the bank issuing the letter of credit, which undertakes to pay the seller upon receipt of the draft and proper documents of titles and to surrender the documents to the buyer upon reimbursement; and, (c) the seller, who in compliance with the contract of sale ships the goods to the buyer and delivers the documents of title and draft to the issuing bank to recover payment. (*Id.*)

LOANS

Compensatory interest — A compensatory interest of two percent (2%) per month based on the total amount due from the time of default until full payment as well as ten percent (10%) as attorney's fees on the total amount due, likewise not excessive or unconscionable and in

Monetary interest — Interest lower than 3% a month is not excessive. (Panacan Lumber Co., *et al. v.* Solidbank Corp., (now Metropolitan Bank & Trust Company), G.R. No. 226272, Sept. 16, 2020) p. 227

— This Court had settled that the payment of monetary interest shall only be due only if: 1) there was an express stipulation for the payment of interest, and; 2) the agreement for such payment was reduced into writing; it is not enough that the payment of interest shall be stipulated and reduced into writing, for the purpose of imposing compounded interest, but should also state the manner in which such interest should be earned. (Norsk Hydro (Philippines), Inc., *et al. v.* Premiere Development Bank, *et al.*, G.R. No. 226771, Sept. 16, 2020) p. 256

MITIGATING CIRCUMSTANCES

Voluntary surrender — Regarded as a mitigating circumstance provided that the following requisites obtain: (i) the accused has not been actually arrested; (ii) the accused surrenders himself to a person in authority or the latter's agent; and (iii) the surrender is voluntary; the essence of voluntary surrender is spontaneity and the intent of the accused to submit himself to the authorities either because he acknowledged his guilt or he wished to save the authorities the trouble and expense that may be incurred for his search and capture. (People *v.* Archivido, G.R. No. 233085, Sept. 21, 2020) p. 892

MORTGAGES

Blanket mortgage or dragnet clause — As a rule, a mortgage liability is limited to the amount mentioned in the contract, unless there is intent to secure future and other indebtedness specifically described in the mortgage contract; alternatively, while a real estate mortgage may exceptionally secure future loans or advancements, these future debts must be specifically described in the mortgage contract; an obligation is not secured by a mortgage unless it comes fairly within the terms of the mortgage

crime itself. (People *v*. Archivido, G.R. No. 233085, Sept. 21, 2020) p. 892

Elements of — The elements of murder are: (i) that a person was killed; (ii) that the accused killed him or her; (iii) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (iv) that the killing is not parricide or infanticide. (People *v*. Archivido, G.R. No. 233085, Sept. 21, 2020) p. 892

(People *v*. Ukay *a.k.a*."Tata," G.R. No. 246419, Sept. 16, 2020) p. 806

NOTARY PUBLIC

Duties — A notary public must perform all acts necessary to ascertain the entities of the persons who appear before him prior to the notarization of the document. (Leonor *v*. Ayon-Ayon, *et al.*, A.C. No. 12624 [Formerly CBD Case No. 15-15-4508], Sept. 16, 2020)

Liability of — It is settled that by performing notarial acts without the necessary commission from the court a lawyer violates not only his oath to obey the laws, particularly the Rules on Notarial Practice, but also Canons 1 and 7 of the Code of Professional Responsibility, which proscribes all lawyers from engaging in unlawful, dishonest, immoral or deceitful conduct and directs them to uphold the integrity and dignity of the legal profession at all times. (Lim, *et al. v*. Tabiliran, Jr., A.C. No. 10793, Sept. 16, 2020) p. 9

— The Court has ruled that a notary public who fails to discharge his duties as such is meted out the following penalties: (1) revocation of notarial commission; (2) disqualification from being commissioned as notary public; and (3) suspension from the practice of law — the terms of which vary based on the circumstances of each case; in line with existing jurisprudence, and considering the circumstances and the extent of respondent's wilful malfeasance, the Court finds that the penalties of permanent disqualification from being commissioned as

2000 PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC)

Compensation and benefits for injury or illness — Section 20, paragraph E of the POEA-SEC clearly provides that a seafarer who knowingly conceals a pre-existing illness or condition in the Pre-Employment Medical Examination (PEME) shall be liable for misrepresentation and shall be disqualified from any compensation and benefits; it even makes such concealment a just cause for termination. (Trans-Global Maritime Agency, Inc. and/or Goodwood Ship Management, Pte., Ltd., and/or Robert F. Estaniel *v.* Utanes, G.R. No. 236498. Sept. 16, 2020) p. 544

Death benefits — The requirement of referral to a third physician does not apply to disputes pertaining to work-relatedness of the illness. (Balbarino (now deceased), substituted by his surviving siblings Albert, *et al. v.* Pacific Ocean Manning, Inc., *et al.*, G.R. No. 201580, Sept. 21, 2020) p. 847

Permanent or total disability benefits — A seafarer is entitled to full disability benefits if it was shown that his working conditions while on-board the vessel contributed and aggravated his illness. (Balbarino (now deceased), substituted by his surviving siblings Albert, *et al. v.* Pacific Ocean Manning, Inc., *et al.*, G.R. No. 201580, Sept. 21, 2020) p. 847

— A seafarer is not entitled to total and permanent disability benefits when he fails to discharge his burden to prove the risks involved in his work, that his illness is contracted as a result of his exposure to the risks within the period of exposure and under such other facts necessary to contract it, and that he is not notoriously negligent. (Trans-Global Maritime Agency, Inc. and/or Goodwood Ship Management, Pte., Ltd., and/or Robert F. Estaniel *v.* Utanes, G.R. No. 236498. Sept. 16, 2020) p. 544

— Although an occupational illness not listed in the contract is disputably presumed to be work-related, the seafarer

— The seafarer's willful concealment of pre-existing illness or condition in his pre-employment medical examination disqualifies him from claiming disability benefits. (*Id.*)

PHYSICAL INJURIES

Less Serious Physical Injuries — Any person who shall inflict upon another physical injuries not described in the preceding articles, but which shall incapacitate the offended party for labor for ten days or more, or shall require medical assistance for the same period, shall be guilty of less serious physical injuries and shall suffer the penalty of *arresto mayor*. (Lacson *v*. People, G.R. No. 243805, Sept. 16, 2020) p. 789

Physical injuries inflicted in a tumultuous affray — When in a tumultuous affray as referred to in the preceding article, only serious physical injuries are inflicted upon the participants thereof and the person responsible thereof cannot be identified, all those who appear to have used violence upon the person of the offended party shall suffer the penalty next lower in degree than that provided for the physical injuries so inflicted; when the physical injuries inflicted are of a less serious nature and the person responsible therefor cannot be identified, all those who appear to have used any violence upon the person of the offended party shall be punished by *arresto mayor* from five to fifteen days. (Lacson *v*. People, G.R. No. 243805, Sept. 16, 2020) p. 789

PLEADINGS

Filing and service of — Registry receipt without the affidavit of the person who mailed the pleading is insufficient; we stress that if the service is done by registered mail, proof of service shall consist of the affidavit of the person effecting the mailing and the registry receipt, both of which must be appended to the paper being served; absent one or the other, or worse both, there is no proof of service. (Mariano *v.* G.V. Florida Transport and/or Virgilio Florida, Jr., G.R. No. 240882, Sept. 16, 2020) p. 686

unlimited right to withhold the same from the owner, especially when the former had violated the terms of the said agreement; payment of rent is an indispensable obligation that a lessee should fulfill in order for a lease agreement to continue to subsist. (Alcantara, *et al. v.* Dumacon-Hassan, *et al.*, G.R. No. 241701, Sept. 16, 2020) pp. 722-723

— Possession of a property can be acquired not only by material occupation but also by the fact that a thing is subject to the action of one's will or by the proper acts and legal formalities established for acquiring such right; thus, possession can be acquired by juridical acts, such as donations, succession, execution, and registration of public instruments, inscription of possessory information titles and the like. (*Id.*)

PROPERTY REGISTRATION DECREE (P.D. NO. 1529)

Acquisitive possession — The Court need not proceed to examine the evidence of possession or occupation for the land, not being proven to be alienable or disposable, is incapable of private acquisition; nonetheless, it is worthwhile to reiterate the rules regarding evidence of acquisitive possession; first, possession and occupation of the public land subject of application presupposes its precise identification; this requirement is jurisdictional for it is not only the location of the land, but also its classification, which determine jurisdiction; it is likewise a substantive requirement for the burden is upon the applicant to demonstrate that the land has been carved out from the public domain and that he/she occupied the same; exclusive possession requires a defined limit of the object of possession; second, peaceful possession and occupation of said land presupposes lack of other claimants. (Republic *v.* Heirs of the Late Leopoldo de Grano, *et al.*, G.R. No. 193358, Sept. 16, 2020) p. 77

Registration of title — Registration of title to private property acquired through acquisitive prescription applies to public land, subject to evidence that at the commencement of possession, said public land had been classified as alienable

Sweetheart theory — It is settled that a victim under 12 years old or is demented does not and cannot have a will of her own on account of her tender years or dementia; thus, a child or a demented person's consent is immaterial because of her presumed incapacity to discern good from evil; as such, regardless of the willingness of a victim under 12 years old to engage in any sexual activity, the Revised Penal Code punishes statutory rape and statutory acts of lasciviousness; on the other hand, considering teenage psychology and predisposition in this day and age, we cannot completely rule out the capacity of a child between 12 years old and below 18 years of age to give sexual consent; although the Sweetheart Theory is unacceptable in violations of R.A. 7610 since a child exploited in prostitution or subjected to other sexual abuse cannot validly give consent to sexual intercourse with another person; evidence must be strictly scrutinized to determine the presence of sexual consent; the emotional maturity and predisposition of a juvenile, whose age is close to the threshold age of 12, may significantly differ from a child aged between 15-18 who may be expected to be more mature and to act with consciousness of the consequences of sexual intercourse. (Bangayan *v.* People, G.R. No. 235610, Sept. 16, 2020) p. 405

STATUTORY CONSTRUCTION

Penal laws — Taking into consideration the statutory construction rules that penal laws should be strictly construed against the state and liberally in favor of the accused, and that every law should be construed in such a way that it will harmonize with existing laws on the same subject matter, we reconcile the apparent gap in the law by concluding that the qualifying circumstance cited in Section 5(b) of R.A. 7610, which punishes sexual intercourse or lascivious conduct not only with a child exploited in prostitution but also with a child subjected to other sexual abuse, leave room for a child between 12 and 17 years of age to give consent to the sexual act; an individual who engages in sexual intercourse with a child, at least 12 and under 18 years of age, and not

manufactured products which are either actually exported to foreign countries, in which case, no VAT shall form part of the export price; or actually sold to buyers from the customs territory, in which case, the regular VAT shall be paid by the buyers. (Commissioner of Internal Revenue *v.* Filminera Resources Corporation, G.R. No. 236325, Sept. 16, 2020) p. 515

— Sales do not qualify for zero-rating in the absence of a BOI certification that the goods were actually exported and consumed in a foreign country. (*Id.*)

— The BIR similarly applied the cross-border doctrine to sales made by VAT-registered suppliers to BOI-registered enterprises whose products are 100% exported; the following conditions are met: (1) the buyer is a BOI-registered manufacturer/producer; (2) the buyer's products are 100% exported; and (3) the BOI certified that the buyer exported 100% of its products; for this purpose, the BOI Certification is vital for the seller-taxpayer to avail of the benefits of zero-rating; the certification is evidence that the buyer exported its entire products and shall serve as authority for the seller to claim for refund or tax credit. (*Id.*)

— The tax treatment of export sales is based on the Cross-Border Doctrine and Destination Principle of the Philippine VAT system; under the Destination Principle, goods and services are taxed only in the country where these are consumed; in this regard, the Cross-Border Doctrine mandates that no VAT shall be imposed to form part of the cost of goods destined for consumption outside the territorial border of the taxing authority; hence, actual export of goods and services from the Philippines to a foreign country must be free of VAT. (*Id.*)

Export sales — Defined in Executive Order No. 226 as the Philippine port; sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter.

(People *v.* Ukay *a.k.a.*"Tata," G.R. No. 246419, Sept. 16, 2020) p. 806

— There is no treachery when the assault is preceded by a heated exchange of words between the accused and the victim or when the victim is aware of the hostility of the assailant towards the former. (People *v.* XXX, *et al.*, G.R. No. 242474, Sept. 16, 2020) p. 738

Elements — In determining whether the killing was committed with treachery, two conditions must be present, namely: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and (2) the said means or method of execution was deliberately or consciously adopted. (People *v.* XXX, *et al.*, G.R. No. 242474, Sept. 16, 2020) p. 738

Essence — The essence of treachery is that the attack comes without a warning and in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape the sudden blow. (People *v.* Archivido, G.R. No. 233085, Sept. 21, 2020) p. 892

UNLAWFUL DETAINER

Action for — As long as the allegations demonstrate a cause of action for unlawful detainer, the court acquires jurisdiction over the subject matter; the basic rule is that jurisdiction of the court over a case is determined by the allegations in the complaint; a complaint for an action for unlawful detainer is sufficient if the following allegations are present: a) initially, possession of property by the defendant was by contract with or by tolerance of the plaintiff; b) eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession; c) thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and d) within one year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint

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II. FOREIGN CASES