PHILIPPINE REPORTS

VOL. 886

SEPTEMBER 22 - 30, 2020

VOLUME 886

REPORTS ON CASES

DECIDED BY THE

SUPREME COURT

OF THE

PHILIPPINES

FOR THE PERIOD

SEPTEMBER 22 - 30, 2020

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2023

ANNALIZA S. TY-CAPACITE
DEPUTY CLERK OF COURT AND REPORTER

FLOYD JONATHAN LIGOT TELAN
SC ASSISTANT CHIEF OF OFFICE

MA. VICTORIA JAVIER-IGNACIO
COURT ATTORNEY VI & CHIEF, LAW REPORTS DIVISION

JOSE ANTONIO CANCINO BELLO
COURT ATTORNEY VI & CHIEF, RECORDS DIVISION

LEUWELYN TECSON-LAT
COURT ATTORNEY V

ROSALYN ORDINARIO GUMANGAN
COURT ATTORNEY V

FLORDELIZA DELA CRUZ-EVANGELISTA
COURT ATTORNEY V

FREDERICK INTE ANCIANO
COURT ATTORNEY IV

MA. CHRISTINA GUZMAN CASTILLO
COURT ATTORNEY IV & CHIEF, EDITORIAL DIVISION

LORELEI SANTOS BAUTISTA
COURT ATTORNEY IV

ROUSE STEPHEN G. CEBREROS
COURT ATTORNEY IV

SARAH FAYE Q. BABOR
COURT ATTORNEY IV

GERARD PALIZA SARINO
COURT ATTORNEY II

SUPREME COURT OF THE PHILIPPINES
(as of May 2023)

HON. ALEXANDER G. GESMUNDO, Chief Justice
HON. MARVIC MARIO VICTOR F. LEONEN, Senior Associate Justice
HON. ALFREDO BENJAMIN S. CAGUIOA, Associate Justice
HON. RAMON PAUL L. HERNANDO, Associate Justice
HON. AMY C. LAZARO-JAVIER, Associate Justice
HON. HENRI JEAN PAUL B. INTING, Associate Justice
HON. RODIL V. ZALAMEDA, Associate Justice
HON. MARIO V. LOPEZ, Associate Justice
HON. SAMUEL H. GAERLAN, Associate Justice
HON. RICARDO R. ROSARIO, Associate Justice
HON. JHOSEP Y. LOPEZ, Associate Justice
HON. JAPAR B. DIMAAMPAO, Associate Justice
HON. JOSE MIDAS P. MARQUEZ, Associate Justice
HON. ANTONIO T. KHO, JR., Associate Justice
HON. MARIA FILOMENA D. SINGH, Associate Justice

ATTY. MARIFE LOMIBAO-CUEVAS, Clerk of Court En Banc

SUPREME COURT OF THE PHILIPPINES
(as of September 2020)

HON. DIOSDADO M. PERALTA, Chief Justice
HON. ESTELA M. PERLAS-BERNABE, Senior Associate Justice
HON. MARVIC MARIO VICTOR F. LEONEN, Associate Justice
HON. ALFREDO BENJAMIN S. CAGUIOA, Associate Justice
HON. ALEXANDER G. GESMUNDO, Associate Justice
HON. RAMON PAUL L. HERNANDO, Associate Justice
HON. ROSMARI D. CARANDANG, Associate Justice
HON. AMY C. LAZARO-JAVIER, Associate Justice
HON. HENRI JEAN PAUL B. INTING, Associate Justice
HON. RODIL V. ZALAMEDA, Associate Justice
HON. MARIO V. LOPEZ, Associate Justice
HON. EDGARDO L. DE LOS SANTOS, Associate Justice
HON. SAMUEL H. GAERLAN, Associate Justice
HON. PRISCILLA BALTAZAR-PADILLA, Associate Justice

ATTY. EDGAR O. ARICHETA, Clerk of Court En Banc
ATTY. ANNA-LI R. PAPA-GOMBIO, Deputy Clerk of Court En Banc

FIRST DIVISION

Chairperson

Hon. Diosdado M. Peralta

Members

Hon. Alfredo Benjamin S. Caguioa
Hon. Amy C. Lazaro-Javier
Hon. Mario V. Lopez

Division Clerk of Court

Atty. Librada C. Buena

SECOND DIVISION

Chairperson

Hon. Estela M. Perlas-Bernabe

Members

Hon. Ramon Paul L. Hernando
Hon. Henri Jean Paul B. Inting
Hon. Edgardo L. Delos Santos
Hon. Priscilla Baltazar-Padilla

Division Clerk of Court

Atty. Ma. Lourdes C. Perfecto

THIRD DIVISION

Chairperson

Hon. Marvic Mario Victor F. Leonen

Members

Hon. Alexander G. Gesmundo
Hon. Rosmari D. Carandang
Hon. Rodil V. Zalameda
Hon. Samuel H. Gaerlan

Division Clerk of Court

Atty. Misael Domingo C. Battung III

PHILIPPINE REPORTS
CONTENTS

PHILIPPINE REPORTS

Page

Page

Page

Page

Page

REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.M. No. RTJ-20-2597. September 22, 2020]
(Formerly OCA I.P.I. No. 10-3510-RTJ)

ANONYMOUS COMPLAINT AGAINST JUDGE EDMUNDO P. PINTAC AND MS. LORELEI T. SUMAGUE, STENOGRAPHER, BOTH OF THE REGIONAL TRIAL COURT, BRANCH 15, OZAMIZ CITY

[A.M. No. P-20-4091. September 22, 2020]
(Formerly OCA I.P.I. No. 10-3559-P)

EXECUTIVE JUDGE EDMUNDO P. PINTAC *v.* **ROLANDO O. RUIZ, PROCESS SERVER, REGIONAL TRIAL COURT, BRANCH 15, OZAMIZ CITY**

[A.M. No. RTJ-20-2598. September 22, 2020]
(Formerly OCA I.P.I. No. 11-3600-RTJ)

ROLANDO O. RUIZ, PROCESS SERVER, REGIONAL TRIAL COURT, BRANCH 15, OZAMIZ CITY *v.* **JUDGE EDMUNDO P. PINTAC, EXECUTIVE JUDGE AND PRESIDING JUDGE, SAME COURT**

[A.M. No. RTJ-20-2599. September 22, 2020]
(Formerly OCA I.P.I. No. 11-3633-RTJ)

ROLANDO O. RUIZ *v.* EXECUTIVE JUDGE EDMUNDO P. PINTAC, REGIONAL TRIAL COURT, BRANCH 15, OZAMIZ CITY

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; THOSE CONNECTED WITH THE DISPENSATION OF JUSTICE, FROM THE HIGHEST OFFICIAL TO THE LOWLIEST CLERK, CARRY A HEAVY BURDEN OF RESPONSIBILITY; THUS, ALL COURT PERSONNEL ARE MANDATED TO ADHERE TO THE STRICTEST STANDARDS OF HONESTY, INTEGRITY, MORALITY, AND DECENCY. — The Court has repeatedly stressed that no position demands greater moral righteousness and uprightness from its holder than a judicial office. Those connected with the dispensation of justice, from the highest official to the lowliest clerk, carry a heavy burden of responsibility. The image of a court of justice is mirrored in the conduct, official or otherwise, of its personnel. Indeed, all court personnel are mandated to adhere to the strictest standards of honesty, integrity, morality, and decency. In order to preserve the good name and integrity of the courts of justice, they must exemplify the highest sense of honesty and integrity.

2. ID.; ID.; ID.; FOR ADMINISTRATIVE PROCEEDINGS, ONLY SUBSTANTIAL EVIDENCE IS REQUIRED, AND THE STANDARD OF SUBSTANTIAL EVIDENCE IS SATISFIED WHEN THERE IS REASONABLE GROUND TO BELIEVE THAT RESPONDENT IS RESPONSIBLE FOR THE MISCONDUCT COMPLAINED OF, EVEN IF SUCH EVIDENCE MIGHT NOT BE OVERWHELMING OR EVEN PREPONDERANT. — [F]or administrative proceedings such as the consolidated administrative cases here, only substantial evidence is required. Substantial evidence is defined as that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion. The standard of substantial evidence is satisfied when there is reasonable ground to believe

that respondent is responsible for the misconduct complained of, even if such evidence might not be overwhelming or even preponderant.

3. ID.; ID.; ID.; PROCESS SERVER; CHARGE OF MISCONDUCT; GRAVE MISCONDUCT, WHICH IS CONSIDERED AS A GRAVE OFFENSE WITH A CORRESPONDING PENALTY OF DISMISSAL FROM THE SERVICE, IS A SERIOUS TRANSGRESSION OF SOME ESTABLISHED AND DEFINITE RULE OF ACTION, SUCH AS UNLAWFUL BEHAVIOR OR GROSS NEGLIGENCE BY THE PUBLIC OFFICER OR EMPLOYEE, THAT TENDS TO THREATEN THE VERY EXISTENCE OF THE SYSTEM OF ADMINISTRATION OF JUSTICE AN OFFICIAL OR EMPLOYEE SERVES. — [R]uiz was charged with **Gross Misconduct**. In ***Ramos v. Limeta***, the Court defined Grave Misconduct as a serious transgression of some established and definite rule of action, such as unlawful behavior or gross negligence by the public officer or employee, that tends to threaten the very existence of the system of administration of justice an official or employee serves. It may manifest itself in corruption, or in other similar acts, done with the clear intent to violate the law or in flagrant disregard of established rules. It is considered as a grave offense under the Civil Service Law, with the corresponding penalty of dismissal from the service, forfeiture of retirement benefits, except accrued leave credits, and perpetual disqualification from re-employment in the government service. Here, the Court agrees with the finding of the OCA that based on the evidence on record Ruiz is administratively liable for Gross Misconduct.

4. ID.; ID.; ID.; ID.; A PROCESS SERVER WHO DEMANDED AND RECEIVED MONEY FROM LITIGANTS WHO HAVE PENDING CASES BEFORE THE COURT IS ADMINISTRATIVELY LIABLE FOR GROSS MISCONDUCT. — Apart from the testimony of Judge Pintac, Regina, the wife of accused Glorioso in Criminal Cases Nos. II-12769 and II-12770, entitled *People v. Glorioso Flores, et al.*, categorically testified that she was lured by Ruiz to give money purportedly in exchange for a favorable resolution of her husband's case that was pending before the court of Judge Pintac. Ruiz deceived her into believing that their exchanges were all at the instance and authority of Judge Pintac. More,

Regina testified that all of her transactions were done directly with Ruiz, either personally or through text messages. In fact, Ruiz admitted that he demanded and personally received money from Regina and other litigants whose cases were pending before the court of Judge Pintac. Ruiz's only defense was that he simply acted upon the behest of Judge Pintac. Evidently, Ruiz failed to support such allegation with competent evidence. x x x. Significantly, ***Reyes v. Fangonil*** involved a similar case of Grave Misconduct by a process server, *viz.*: **In this case, the respondent is a process server whose duty is vital to the administration of justice, and one's primary task is to serve court notices. A process server is not authorized to collect or receive any amount of money from any party-litigant, or in this case, the accused.** x x x. **The act of collecting or receiving money from a litigant constitutes grave misconduct in office. Thus, this kind of gross misconduct by those charged with administering and rendering justice erodes the respect for law and the courts**.

5. ID.; ID.; ID.; ID.; CHARGE OF DISHONESTY; DISHONESTY, LIKE BAD FAITH, DOES NOT CONNOTE MERE BAD JUDGMENT OR NEGLIGENCE, BUT INVOLVES A QUESTION OF INTENTION, WHICH CAN BE ASCERTAINED BY TAKING INTO CONSIDERATION NOT ONLY OF THE FACTS AND CIRCUMSTANCES WHICH GAVE RISE TO THE ACT COMMITTED BY THE PERSON ACCUSED OF DISHONESTY BUT ALSO OF HIS OR HER STATE OF MIND AT THE TIME THE OFFENSE WAS COMMITTED, THE TIME HE OR SHE MIGHT HAVE HAD AT HIS OR HER DISPOSAL FOR THE PURPOSE OF MEDITATING ON THE CONSEQUENCES OF HIS OR HER ACT, AND THE DEGREE OF REASONING HE OR SHE COULD HAVE HAD AT THAT MOMENT. — In relation to the charge of **Dishonesty** against Ruiz in the second case, the Court agrees with the finding of the OCA that no substantial evidence exists to hold Ruiz liable therefor. Dishonesty is defined as intentionally making a false statement on any material fact. It implies untrustworthiness, lack of integrity, lack of honesty, probity, or integrity in principle, and lack of fairness and straightforwardness in one's dealings. Dishonesty, like bad faith, does not connote mere bad judgment or negligence. It involves 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 respondent but also of his or her state of mind at the time the offense was committed, the time he or she might have had at his or her disposal for the purpose of meditating on the consequences of his or her act, and the degree of reasoning he or she could have had at that moment. Here, there is no showing that Ruiz committed the act of dishonesty imputed on him in the performance of his official duties as process server.

6. LEGAL ETHICS; JUDGES; CHARGE OF SERIOUS OR GROSS MISCONDUCT; ELEMENTS OF SERIOUS OR GROSS MISCONDUCT; NOT PRESENT; TO WARRANT A DISMISSAL FROM THE SERVICE FOR GROSS MISCONDUCT, THERE MUST BE RELIABLE EVIDENCE SHOWING THAT THE JUDICIAL ACTS COMPLAINED OF WERE CORRUPT OR INSPIRED BY AN INTENTION TO VIOLATE THE LAW. — With respect to the charge of **Gross Misconduct** in the fourth case and **Violation of Republic Act No. 3019** in the third case, Ruiz asserted that Judge Pintac was guilty of these offenses because he demanded and received money from litigants with pending cases before his court, specifically from Regina. Ruiz averred that the same was done through him. Ruiz likewise contended he received gifts from these litigants. x x x. The Court affirms the finding of the OCA that there was no sufficient evidence proving Judge Pintac authorized and consented to the illegal acts of Ruiz. Evidently, the case records are bereft of any proof that Judge Pintac personally and actually demanded and received money, food, gifts, and the like from litigants who had pending cases before his court, particularly Regina. Too, upon discovery of the illegal activities of Ruiz, Judge Pintac properly discharged his duty under Section 3, Canon 2 of the New Code of Judicial Conduct by immediately filing a case against Ruiz. x x x. Serious or Gross Misconduct refers to such conduct which affects a public officer's performance of his or her duties as such officer and not only that which affects his or her character as a private individual. For the same to warrant a dismissal from the service, there must be reliable evidence showing that the judicial acts complained of were corrupt or inspired by an intention to violate the law. It must (1) be serious, important, weighty, momentary, and not trifling; (2) imply wrongful intention and not mere error

of judgment; and (3) have a direct relation to and be connected with the performance of his or her duties. All these elements are wanting in this case.

7. ID.; ID.; CHARGE OF IMMORALITY; IMMORALITY INCLUDES NOT ONLY SEXUAL MATTERS BUT ALSO CONDUCT INCONSISTENT WITH RECTITUDE, OR INDICATIVE OF CORRUPTION, INDECENCY, DEPRAVITY, AND DISSOLUTENESS; IT IS WILLFUL, FLAGRANT OR SHAMELESS CONDUCT SHOWING MORAL INDIFFERENCE TO OPINIONS OF RESPECTABLE MEMBERS OF THE COMMUNITY, AND AN INCONSIDERATE ATTITUDE TOWARD GOOD ORDER AND PUBLIC WELFARE; CHARGE OF IMMORALITY, NOT PROVED. — [J]udge Pintac was charged with **Gross Immorality** along with Sumague. More, Judge Pintac was accused of **Immorality** in the third case. These charges of Immorality were notably grounded on the alleged affair between Judge Pintac and Sumague. But records do not bear the requisite quantum of substantial evidence to prove the administrative liability of Judge Pintac and Sumague for Gross Immorality/Immorality. The Court agrees with the finding of the OCA that it was not substantially proven that Judge Pintac and Sumague had an illicit affair. Markedly, there was no competent, nay, credible evidence presented at all to prove that Judge Pintac and Sumague acted or lived together in a scandalous and disgraceful manner. Immorality includes not only sexual matters but also "conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, and dissoluteness; or is willful, flagrant or shameless conduct showing moral indifference to opinions of respectable members of the community, and an inconsiderate attitude toward good order and public welfare." Here, other than the uncorroborated testimony of Ruiz as to the alleged acts of intimacy between Judge Pintac and Sumague done in his presence, there was no other credible witness or evidence presented to prove such illicit relationship. This is contrary to the claim of Ruiz and the anonymous complaint that the supposed illicit relations between Judge Pintac and Sumague was a matter of public knowledge in Ozamiz City.

8. ID.; ID.; CHARGE OF INAPPROPRIATE CONDUCT FOR NON-INHIBITION FROM A CASE FILED BY HIS COURT

PERSONNEL, DISMISSED IN VIEW OF THE DEATH OF THE RESPONDENT JUDGE; RESPONDENT JUDGE'S LIABILITY SHOULD BE CONSIDERED PERSONAL AND EXTINGUISHED UPON HIS DEATH, AND ITS EFFECTS SHOULD NOT BE SUFFERED BY HIS HEIRS, FOR TO DO SO WOULD INDIRECTLY IMPOSE A HARSH PENALTY UPON INNOCENT INDIVIDUALS. — [O]n Judge Pintac's failure to inhibit from the case for declaration of nullity of marriage filed by his court personnel, he averred that he heard and decided the case in the performance of his duty and solely based his judgment on his own honest and unbiased assessment of the facts. The Court agrees with the conclusion of the OCA that by hearing and granting the petition filed by his own staff, Judge Pintac had shed off the appearance of impartiality as a judicial officer. The Court takes judicial notice though of the fact that Judge Pintac passed away on October 8, 2018. Notably, in the very recent case of ***Re: Investigation Report on the Alleged Extortion Activities of Presiding Judge Godofredo B. Abul, JR, Branch 4, Regional Trial Court, Butuan City, Agusan Del Norte***, the Court held that **respondent's mistakes should not unduly punish his heirs**, especially if they had no part in or knowledge about the alleged extortions. **Respondent's liability should be considered personal and extinguished upon his death**. Similarly, **it should not extend beyond his death, and its effects should not be suffered by his heirs, for to do so would indirectly impose a harsh penalty upon innocent individuals**. The Court emphasized that the heirs of respondent already have to accept the sudden death of a loved one. Such is already more than enough for any family to bear. The non-dismissal of respondent's administrative case and forfeiture of all of his death and survivorship benefits would just unnecessarily add to the grief of his bereaved family. Thus, the Court, faced with the opportunity to reconsider its prior ruling, dismissed the complaint against therein respondent with finality. We apply the same rule here. Given Judge Pintac's untimely demise and for equitable and humanitarian considerations, it is not necessary to impose a fine equivalent to his one (1) month salary, as recommended by the OCA. The Court, thus, dismisses the charge against Judge Pintac relating to his non-inhibition from the case filed by his court personnel.

APPEARANCES OF COUNSEL

Rutillo B. Pasok for Rolando O. Ruiz.

D E C I S I O N

***PER CURIAM*:**

Antecedents

By anonymous Letter-Complaint dated May 25, 2009 addressed to then Chief Justice Reynato S. Puno, a concerned citizen of Ozamiz City accused Judge Edmundo P. Pintac, Regional Trial Court (RTC), Branch 15 for Ozamiz City, of having an illicit relationship with his court stenographer, Lorelei T. Sumague. It was docketed **OCA IPI No. 10-3510-RTJ, entitled *Anonymous Complaint against Judge Edmundo P. Pintac and Ms. Lorelei T. Sumague, Stenographer, both Regional Trial Court, Branch 15, Ozamiz City*** (first case).

On November 22, 2010, the Office of the Court Administrator (OCA) received an Affidavit-Complaint dated November 17, 2010 from Judge Pintac accusing Process Server Rolando O. Ruiz, RTC, Branch 15 for Ozamiz City, of Gross Misconduct and Dishonesty prejudicial to the public service. It was docketed **OCA IPI No. 10-3559-P, entitled *Executive Judge Edmundo P. Pintac v. Rolando O. Ruiz, Process Server, Regional Trial Court, Branch 15, Ozamiz City*** (second case).

The Comment filed by Ruiz in the second case was treated as a complaint against Judge Pintac. The same was docketed **OCA IPI No. 11-3633-RTJ, entitled *Rolando O. Ruiz v. Executive Judge Edmundo P. Pintac, Regional Trial Court, Branch 15, Ozamiz City*** (fourth case). Thereafter, the second and fourth cases were consolidated and raffled to Justice Carmelita Salandanan-Manahan, Associate Justice of the Court of Appeals-Mindanao Station.

Meantime, on January 28, 2011, the OCA received a Letter dated January 27, 2011 from Ruiz addressed to the OCA forwarding a copy of his verified complaint against Judge Pintac.

Attached to the letter was Ruiz's Affidavit dated January 27, 2011 stating, among others, that it be treated as a formal complaint against Judge Pintac. Ruiz's complaint was the same complaint subject of the fourth case. This was docketed as **OCA IPI No. 11-3600-RTJ, entitled *Rolando O. Ruiz, Process Server, Regional Trial Court, Branch 15, Ozamiz City v. Judge Edmundo P. Pintac, Executive Judge and Presiding Judge, Same Court*** (third case).

On June 21, 2011, the OCA recommended the consolidation of the four (4) administrative cases considering the intimately related issues involved. By Resolution dated August 10, 2011, the Court consolidated the four (4) administrative cases. The records of the first and third cases were also forwarded to Justice Manahan.

On June 4, 2012, Justice Manahan transferred to the Court of Appeals-Visayas Station. Thus, the consolidated administrative cases were re-raffled to Justice Rafael Antonio M. Santos.

Judge Pintac testified that he was the Executive Judge of the RTC for Ozamiz City and the Presiding Judge of Branch 15 of the same court. He was also designated to hear and decide Criminal Cases Nos. II-12769 and II-12770, entitled *People v. Glorioso Flores, et al.*, for Murder and Multiple Frustrated Murder, respectively, pending before Branch 2, RTC for Iligan City. During the hearings of these criminal cases, he would bring along Ruiz with him. He, however, subsequently discovered that Ruiz used his name to demand and receive money from Regina T. Flores, the wife of accused Glorioso. The money was allegedly given by Regina to obtain a favorable resolution of her husband's case. He neither authorized nor ordered Ruiz to solicit, demand, and receive, for and on his behalf, any amount from Regina or from any other person, much less, to use his name to solicit money from litigants. Prior to this discovery, he had no knowledge of the illegal and unlawful activities of Ruiz. When he confronted Ruiz, the latter readily admitted his unlawful activities. Ruiz asked for forgiveness, offered to resign, and submitted a resignation letter. Ruiz, however, later withdrew his resignation letter.

Judge Pintac further attested that, during the July 8, 2012 hearing of Criminal Case No. RTC-5242, entitled *People of the Philippines v. Richard Catane y Palomar*, Ruiz falsely manifested in open court that Catane, therein accused, was unable to attend the hearing because of his medical condition, when in truth, Catane had already died a few days earlier or on July 1, 2010. When Ruiz learned about the death of Catane, Ruiz immediately altered the date of the Return of Service of the notice of hearing from July 6, 2010 to June 30, 2010 to make it appear that he effected the service of the notice on Catane on June 30, 2010, when Catane was still alive.

Regarding his alleged illicit affair with Sumague, Judge Pintac vehemently denied the same. He claimed that Ruiz must have paired him with Sumague because, among his female staff, she was then separated in fact from her husband.

To support his accusations, Judge Pintac submitted the following: (1) Affidavit dated November 12, 2011 of Regina; (2) copies of the Resignation Letter dated November 3, 2010 of Ruiz; and (3) Letter dated November 4, 2010 of Ruiz.

Regina testified that she was the wife of Glorioso, the accused in Criminal Cases Nos. II-12769 and II-12770, entitled *People v. Glorioso Flores, et al.* Ruiz called her niece, Teresa Desierto, who was his friend, and informed Teresa that Judge Pintac needed money and wanted to borrow ₱15,000 from her. On November 6, 2009, during the hearing of her husband's criminal cases and as instructed by Ruiz, she inserted ₱15,000 and another ₱2,000 between the pages of a magazine to purportedly defray the transportation and lunch expenses of Judge Pintac. She unobtrusively left the magazine in one (1) corner of the lobby of the Hall of Justice. She then saw Ruiz retrieve the same. Ruiz asked her for more money on several occasions thereafter. When her husband filed a motion to grant bail for his temporary release, Ruiz informed her that she had to pay ₱60,000 immediately in order to obtain a favorable action on the motion.

For his part, Ruiz claimed that he was Judge Pintac's confidant and secret keeper. Judge Pintac only filed the complaint against

him, thinking he (Ruiz) divulged Judge Pintac's corrupt practices to other court personnel.

Ruiz contended that he knew all the wrongdoings, misfeasance, and immorality of Judge Pintac. There were countless occasions when Judge Pintac authorized him to receive goods from litigants with pending cases before his court. More, he witnessed several times the amorous relationship between Judge Pintac and Sumague. Sumague slept in the boarding house of Judge Pintac and he even witnessed them kissing each other not only in the boarding house but also in the court chambers. Sumague was Judge Pintac's mistress and concubine and the same was a matter of public knowledge in Ozamiz City.

Ruiz likewise alleged that despite Sumague being a court personnel in his *sala*, Judge Pintac heard the petition for nullity of marriage filed by Sumague, and thereafter, hastily granted the same in a three (3)-page decision. Judge Pintac subsequently denied the motion for reconsideration filed by the Office of the Solicitor General because of his illicit relations with Sumague.

As for his interaction with Regina, Ruiz claimed he was only following the instructions of Judge Pintac. Everything he did was under the direction and command of Judge Pintac. It was Judge Pintac who wanted money from Regina and her husband, not him.

Ruiz further averred that, on November 3, 2010, Judge Pintac told him he wanted to talk to him and his wife, Emilda E. Ruiz. Thus, he and his wife went to see Judge Pintac in his chambers. There, they were shocked when Judge Pintac suddenly became very angry while reading text messages from his cellphone. Apparently, someone had forwarded to Judge Pintac the exchange of text messages between him (Ruiz) and Regina. Before he could explain himself, Judge Pintac told him that he only had two (2) options: (1) resign and look for another job; or (2) face various cases he will file against him. Thereafter, he tried to contact Regina but was unable to reach her. He wanted to ask Regina how Judge Pintac was able to get hold of their text messages.

Anxious of facing several cases if he did not resign, he prepared a resignation letter and asked his wife to go to the house of Judge Pintac to personally deliver it. Emilda knelt before Judge Pintac and pleaded not to let him resign. When Judge Pintac ignored her plea, Emilda was constrained to give Judge Pintac his resignation letter. Nevertheless, he (Ruiz) withdrew his resignation letter because he felt humiliated and hurt when he learned that right after his wife submitted his resignation letter to Judge Pintac, notices stating that he was no longer employed with Branch 15 were posted in the premises of the Hall of Justice. When he returned to work, he received a memorandum from Judge Pintac detailing him at the maintenance section.

In relation to Judge Pintac's allegation that he made a false statement in open court in Criminal Case No. RTC-5242, entitled *People of the Philippines v. Richard Catane y Palomar*, he vehemently denied the same. The transcripts of stenographic notes (TSN) of the criminal proceedings showed that the utterances imputed on him were actually made by Atty. Cagaanan, Catane's counsel. Further, to prove that he did not alter the date of the Return of Service of the notice of hearing, he submitted the Affidavit dated November 19, 2010 of Erlinda P. Catane, Catane's mother, attesting that he in fact served the notice of hearing on Catane on June 30, 2010.

To support his averments, Ruiz submitted his wife's Affidavit dated December 7, 2010 confirming his narrative.

As for Sumague, she testified that she was caught by surprise when she learned about the anonymous complaint. She was a single mother of three (3) children. Her marriage to her ex-husband was already annulled per final and executory judgment. Due to her busy schedule as a court stenographer, it was impossible for her to be in another place, not her home, after office hours. She did not have any illicit relations with Judge Pintac. She never slept in any other house without her children, much less, at the boarding house of Judge Pintac. She could not afford to stay away from her children, aged fourteen (14), twelve (12), and eleven (11), one (1) of them being even a special child with Down's Syndrome.

Judge Pintac was married and if ever she would fall in love again, she would choose a man who is single. Ruiz and his wife were merely making up stories to suit their ill motives.

Report and Recommendation of Justice Santos

By Report and Recommendation dated October 15, 2014, Justice Santos recommended that:

a. Respondent Ruiz be found liable for *Gross Misconduct* in **A.M. OCA IPI No. 10-3559-P**;

b. The complaint for *Dishonesty* against Process Server Ruiz in **A.M. OCA IPI No. 10-3559-P** be DISMISSED for lack of merit[;]

c. The complaint for *Gross Misconduct* in **A.M. OCA IPI No. 11-3633-RTJ,** *Oppression and Grave Abuse of Authority* and for *Violation of R.A. No. 3019* in **A.M. OCA IPI No. 11-3600-RTJ** against Judge Pintac be DISMISSED for lack of sufficient evidence;

d. The complaints for *Gross Immorality* in **OCA IPI No. 10-3510-RTJ** and *Immorality* in **OCA IPI No. 11-3600-RTJ** against Judge Pintac be DISMISSED for lack of sufficient evidence;

e. Judge Pintac should be admonished to observe appropriate conduct toward his female court personnel consistent with the norms of respect and decency. He should further be adjudged liable for committing inappropriate conduct in not inhibiting in a case filed by his court personnel and proceeding to hear and decide the same, and be meted with a penalty of a FINE equivalent to One Month Salary with stern warning that a repetition of the same or similar act shall be dealt with more severely[; and]

f. The complaint for *Gross Immorality* against Stenographer Lorelei T. Sumague in **OCA IPI No. 10-3510-RTJ** be DISMISSED for lack of sufficient evidence.

Memorandum of the OCA

In its Memorandum dated February 23, 2016, the OCA adopted in full the findings and recommendation of Justice Santos.

Ruling

The Court adopts with modification the findings and recommendation of the OCA in its Memorandum dated February 23, 2016.

The Court has repeatedly stressed that no position demands greater moral righteousness and uprightness from its holder than a judicial office. Those connected with the dispensation of justice, from the highest official to the lowliest clerk, carry a heavy burden of responsibility.[1] The image of a court of justice is mirrored in the conduct, official or otherwise, of its personnel. Indeed, all court personnel are mandated to adhere to the strictest standards of honesty, integrity, morality, and decency. In order to preserve the good name and integrity of the courts of justice, they must exemplify the highest sense of honesty and integrity.[2]

Notably, for administrative proceedings such as the consolidated administrative cases here, only substantial evidence is required. Substantial evidence is defined as that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion. The standard of substantial evidence is satisfied when there is reasonable ground to believe that respondent is responsible for the misconduct complained of, even if such evidence might not be overwhelming or even preponderant.[3]

In the second case, Ruiz was charged with **Gross Misconduct**. In ***Ramos v. Limeta***,[4] the Court defined Grave Misconduct as a serious transgression of some established and definite rule of action, such as unlawful behavior or gross negligence by the public officer or employee, that tends to threaten

---

[1] *Office of the Court Administrator v. Nacuray*, 521 Phil. 32, 38 (2006).

[2] *Floria v. Sunga*, 420 Phil. 637, 650 (2001).

[3] *Jallorina v. Taneo-Regner*, 686 Phil. 285, 291 (2012).

[4] 650 Phil. 243, 248-249 (2010).

the very existence of the system of administration of justice an official or employee serves. It may manifest itself in corruption, or in other similar acts, done with the clear intent to violate the law or in flagrant disregard of established rules. It is considered as a grave offense under the Civil Service Law, with the corresponding penalty of dismissal from the service, forfeiture of retirement benefits, except accrued leave credits, and perpetual disqualification from re-employment in the government service. Here, the Court agrees with the finding of the OCA that based on the evidence on record Ruiz is administratively liable for Gross Misconduct.

Apart from the testimony of Judge Pintac, Regina, the wife of accused Glorioso in Criminal Cases Nos. II-12769 and II-12770, entitled *People v. Glorioso Flores, et al.,* categorically testified that she was lured by Ruiz to give money purportedly in exchange for a favorable resolution of her husband's case that was pending before the court of Judge Pintac. Ruiz deceived her into believing that their exchanges were all at the instance and authority of Judge Pintac. More, Regina testified that all of her transactions were done directly with Ruiz, either personally or through text messages. In fact, Ruiz admitted that he demanded and personally received money from Regina and other litigants whose cases were pending before the court of Judge Pintac. Ruiz's only defense was that he simply acted upon the behest of Judge Pintac. Evidently, Ruiz failed to support such allegation with competent evidence. Aside from his testimony, the only witness who testified in his favor was his wife, Emilda, who had no personal knowledge of the purported instructions given by Judge Pintac. Besides, given the circumstances of the case, Emilda is clearly a biased witness. She even admitted kneeling before Judge Pintac in order to save her husband from losing his job.

Significantly, ***Reyes v. Fangonil***[5] involved a similar case of Grave Misconduct by a process server, *viz.*:

---

[5] 710 Phil. 138, 142-143 (2013).

In this case, the respondent is a process server whose duty is vital to the administration of justice, and one's primary task is to serve court notices. A process server is not authorized to collect or receive any amount of money from any party-litigant, or in this case, the accused.

The fact that Fangonil accepted money from a litigant is evident in this case. Sungduan's letters and Tamingo's testimony showed Fangonil's corrupt practice in soliciting money in exchange for a favorable verdict. She had the impression that Fangonil was acting as an agent of the judge handling her case. This explained why she wrote directly to the judge after her conviction instead of addressing Fangonil. Moreover, the judge was shocked to hear from a litigant whom he had just convicted. The mention of Edwin Fangonil's name initiated the investigation of the anomalies occurring in Judge Reyes' court.

As such, the pieces of evidence from the investigation were substantial, the quantum of evidence required in administrative cases. A reasonable mind will conclude that Fangonil accepted cash from accused individuals and got away with the act for every acquittal from the judge. Unfortunately, his last victim, Agnes Sungduan, was convicted, and that exposed his illicit acts.

The act of collecting or receiving money from a litigant constitutes grave misconduct in office. Thus, this kind of gross misconduct by those charged with administering and rendering justice erodes the respect for law and the courts. (Emphasis supplied)

In relation to the charge of **Dishonesty** against Ruiz in the second case, the Court agrees with the finding of the OCA that no substantial evidence exists to hold Ruiz liable therefor. Dishonesty is defined as intentionally making a false statement on any material fact.[6] It implies untrustworthiness, lack of integrity, lack of honesty, probity, or integrity in principle, and lack of fairness and straightforwardness in one's dealings.[7]

---

[6] *Villordon v. Avila*, 692 Phil. 388, 396 (2012); citing *Judge Aldecoa-Delorino v. Remigio-Versoza*, 616 Phil. 812 (2009).

[7] *Re: Deceitful Conduct of Ignacio S. del Rosario, Cash Clerk III, Records and Miscellaneous Matter Section, Checks Disbursement Division, FMO-OCA*, 672 Phil. 383, 388-389 (2011).

Dishonesty, like bad faith, does not connote mere bad judgment or negligence. It involves 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 respondent but also of his or her state of mind at the time the offense was committed, the time he or she might have had at his or her disposal for the purpose of meditating on the consequences of his or her act, and the degree of reasoning he or she could have had at that moment.

Here, there is no showing that Ruiz committed the act of dishonesty imputed on him in the performance of his official duties as process server. The TSN taken during the July 8, 2010 hearing shows it was Atty. Cagaanan, Catane's counsel, who manifested in open court that Catane could not walk, nay, appear in court, albeit in truth, Catane was already dead at that time. Further, through the affidavit of Erlinda, Catane's mother, Ruiz was able to sufficiently prove that he indeed served the notice of hearing on Catane on June 30, 2010, when Catane was still alive.

With respect to the charge of **Gross Misconduct** in the fourth case and **Violation of Republic Act No. 3019** in the third case, Ruiz asserted that Judge Pintac was guilty of these offenses because he demanded and received money from litigants with pending cases before his court, specifically from Regina. Ruiz averred that the same was done through him. Ruiz likewise contended he received gifts from these litigants.

Notably, Ruiz raised these accusations immediately after Judge Pintac charged him with the similar offense of Gross Misconduct for demanding and receiving money from litigants who had pending cases before his court.

The Court affirms the finding of the OCA that there was no sufficient evidence proving Judge Pintac authorized and consented to the illegal acts of Ruiz. Evidently, the case records are bereft of any proof that Judge Pintac personally and actually demanded and received money, food, gifts, and the like from litigants who

had pending cases before his court, particularly Regina. Too, upon discovery of the illegal activities of Ruiz, Judge Pintac properly discharged his duty under Section 3, Canon 2 of the New Code of Judicial Conduct[8] by immediately filing a case against Ruiz. The provision reads:

> SECTION 3. Judges should take or initiate appropriate **disciplinary measures against lawyers or court personnel for unprofessional conduct** of which the judge may have become aware. (Emphasis supplied)

Records show that the money demanded by Ruiz from Regina was received by him and not by Judge Pintac. Notably, Ruiz himself admitted this. He likewise divulged that he received presents from litigants who had pending cases before the court of Judge Pintac.

In contrast, except for the bare allegations of Ruiz and his wife, no credible and competent evidence was presented to prove the charges against Judge Pintac. On the contrary, Judge Pintac was able to sufficiently refute the allegations levelled against him. Aside from the admission made by Ruiz, Regina testified that it was indeed Ruiz who demanded and received money from her.

Serious or Gross Misconduct refers to such conduct which affects a public officer's performance of his or her duties as such officer and not only that which affects his or her character as a private individual. For the same to warrant a dismissal from the service, there must be reliable evidence showing that the judicial acts complained of were corrupt or inspired by an intention to violate the law. It must (1) be serious, important, weighty, momentary, and not trifling; (2) imply wrongful intention and not mere error of judgment; and (3) have a direct relation to and be connected with the performance of his or her duties.[9] All these elements are wanting in this case.

---

[8] A.M. No. 03-05-01-SC, April 27, 2004.

[9] *Virata v. Supnet*, 441 Phil. 251, 259-260 (2002).

Moving on to the charge of **Oppression** and **Grave Abuse of Discretion** in the third case, Ruiz stated that when Judge Pintac confronted him about his exchange of text messages with Regina, Judge Pintac angrily threatened to file several charges against him if he did not resign. More, Ruiz claimed to have been humiliated and hurt when Judge Pintac caused notices to be posted within the premises of the Hall of Justice informing all and sundry that he was no longer employed with Branch 15.

Given what transpired in this case, the Court agrees with the finding of the OCA that Judge Pintac's actions were brought about by his emotional outrage after discovering the illegal activities of Ruiz. Without question, demanding and receiving money from Regina caused damage to his reputation. It appears, however, that Judge Pintac later on realized the consequences of his conduct and accepted the letter of Ruiz withdrawing his previously tendered resignation letter. Thereafter, Judge Pintac detailed Ruiz to the maintenance action. Judge Pintac then filed administrative charges against Ruiz to instill discipline and proper decorum among court personnel.

In the first case, Judge Pintac was charged with **Gross Immorality** along with Sumague. More, Judge Pintac was accused of **Immorality** in the third case. These charges of Immorality were notably grounded on the alleged affair between Judge Pintac and Sumague. But records do not bear the requisite quantum of substantial evidence to prove the administrative liability of Judge Pintac and Sumague for Gross Immorality/ Immorality.

The Court agrees with the finding of the OCA that it was not substantially proven that Judge Pintac and Sumague had an illicit affair. Markedly, there was no competent, nay, credible evidence presented at all to prove that Judge Pintac and Sumague acted or lived together in a scandalous and disgraceful manner.

Immorality includes not only sexual matters but also "conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, and dissoluteness; or is willful, flagrant or shameless conduct showing moral indifference to opinions of respectable

members of the community, and an inconsiderate attitude toward good order and public welfare."[10]

Here, other than the uncorroborated testimony of Ruiz as to the alleged acts of intimacy between Judge Pintac and Sumague done in his presence, there was no other credible witness or evidence presented to prove such illicit relationship. This is contrary to the claim of Ruiz and the anonymous complaint that the supposed illicit relations between Judge Pintac and Sumague was a matter of public knowledge in Ozamiz City.

Surely, the bare allegations of Ruiz and his wife on the supposed illicit affair between Judge Pintac and Sumague utterly lack credence. They had an axe to grind against Judge Pintac for initiating an administrative complaint against Ruiz for Gross Misconduct and Dishonesty. In fact, the charges against Judge Pintac were only in the form of counter-charges filed right after he had already initiated the cases against Ruiz.

In ***Valdez, Jr. v. Gabales***,[11] the Court dismissed the complaint for Immorality against a judge who allegedly had an illicit relationship with a married court employee because it was mainly based on rumors, *thus*:

> In his report dated 27 October 2004, Justice Tijam recommended the dismissal of the complaint for lack of merit, ruminating as follows:
>
> In administrative proceedings, the complainant has the burden of proving, by substantial evidence, the allegations in the complaint. The basic rule that mere allegation is not evidence cannot be disregarded. This is particularly true in the instant case.
>
> Anent the charge of immorality, a reading of paragraph 3 of the Complaint revealed that there was no categorical statement or substantial evidence to sustain said accusation. All that the Complainant alleged was that the respondent Judge has a "*scandalous affair*" with one Zenaida Miñoza without any statement of any specific

---

[10] *Adlawan v. Capilitan*, 693 Phil. 351, 354 (2012); citing *Regir v. Regir*, 612 Phil. 771 (2009).

[11] 507 Phil. 227, 233-234 (2005).

acts committed or words uttered by respondent judge that may prove said allegation of impropriety. In fact, there was no showing that Complainant had any personal knowledge of the alleged illicit relationship. Indeed, during his cross-examination, Complainant admitted filing the instant Complaint on the basis of the rumors he heard linking the Respondent Judge to Miñoza.

Failing to substantiate his accusation, Complainant relied on the Affidavit and testimony of Anayatin which, nonetheless, failed to corroborate Complainant's allegation of immorality. **Actually, what Anayatin testified to was her knowledge of the rumors of the alleged scandalous relationship between Respondent Judge and Miñoza and not her personal knowledge of any fact that would prove the alleged immoral relationship. Rumors do not constitute substantial evidence**. (Emphasis supplied)

On this score, while the Court agrees with the ruling of the OCA that Judge Pintac is not liable for Gross Immorality/ Immorality, the Court disagrees with the recommendation of the OCA that Judge Pintac be admonished to observe appropriate conduct toward his female court personnel consistent with the norms of respect and decency. To reiterate, the case records are bereft of any proof to support the allegations that Judge Pintac and Sumague had an illicit affair and engaged in notorious and scandalous behavior.

Finally, on Judge Pintac's failure to inhibit from the case for declaration of nullity of marriage filed by his court personnel, he averred that he heard and decided the case in the performance of his duty and solely based his judgment on his own honest and unbiased assessment of the facts. The Court agrees with the conclusion of the OCA that by hearing and granting the petition filed by his own staff, Judge Pintac had shed off the appearance of impartiality as a judicial officer.

The Court takes judicial notice though of the fact that Judge Pintac passed away on October 8, 2018.

Notably, in the very recent case of ***Re: Investigation Report on the Alleged Extortion Activities of Presiding Judge Godofredo B. Abul, JR, Branch 4, Regional Trial Court,***

Butuan City, Agusan Del Norte,[12] the Court held that **respondent's mistakes should not unduly punish his heirs**, especially if they had no part in or knowledge about the alleged extortions. **Respondent's liability should be considered personal and extinguished upon his death**. Similarly, **it should not extend beyond his death, and its effects should not be suffered by his heirs, for to do so would indirectly impose a harsh penalty upon innocent individuals**. The Court emphasized that the heirs of respondent already have to accept the sudden death of a loved one. Such is already more than enough for any family to bear. The non-dismissal of respondent's administrative case and forfeiture of all of his death and survivorship benefits would just unnecessarily add to the grief of his bereaved family. Thus, the Court, faced with the opportunity to reconsider its prior ruling, dismissed the complaint against therein respondent with finality.

We apply the same rule here. Given Judge Pintac's untimely demise and for equitable and humanitarian considerations, it is not necessary to impose a fine equivalent to his one (1) month salary, as recommended by the OCA. The Court, thus, dismisses the charge against Judge Pintac relating to his non-inhibition from the case filed by his court personnel.

WHEREFORE, the Court rules, as follows:

1) In **OCA IPI No. 10-3559-P**, respondent Process Server Rolando O. Ruiz of Regional Trial Court, Branch 15 for Ozamiz City is found **GUILTY** of **GROSS MISCONDUCT**. He is **DISMISSED** from the service. The Court **ORDERS** the **FORFEITURE** of his retirement benefits, except his accrued leave credits. He is **PERPETUALLY BANNED** from re-employment in any branch or instrumentality of the government, including any government-owned or controlled corporations. On the other hand, the administrative

---

[12] A.M. No. RTJ-17-2486 [Formerly A.M. No. 17-02-45-RTC], September 8, 2020.

complaint for **DISHONESTY** against Process Server Rolando O. Ruiz is **DISMISSED** for lack of merit.

2) In **OCA IPI No. 11-3633-RTJ,** the administrative complaint for **GROSS MISCONDUCT** against Judge Edmundo P. Pintac of Regional Trial Court, Branch 15 for Ozamiz City is **DISMISSED** for lack of substantial evidence.

3) In **OCA IPI No. 11-3600-RTJ,** the administrative complaint for **IMMORALITY**, **OPPRESSION AND GRAVE ABUSE OF AUTHORITY**, and **VIOLATION OF REPUBLIC ACT NO. 3019** against Judge Edmundo P. Pintac, Regional Trial Court, Branch 15 for Ozamiz City is **DISMISSED** for lack of merit.

4) In **OCA IPI No. 10-3510-RTJ,** the administrative complaint for **GROSS IMMORALITY** against Judge Edmundo P. Pintac and Stenographer Lorelei T. Sumague, both of Regional Trial Court, Branch 15 for Ozamiz City, is **DISMISSED** for lack of merit.

5) As for the charge of inappropriate conduct against Judge Pintac for not inhibiting from a case for declaration of nullity of marriage filed by his court personnel, which case he proceeded to hear and resolve on the merits, the same may no longer be penalized, hence, is likewise **DISMISSED** in view of the death of Judge Pintac.

SO ORDERED.

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

Zalameda and *Baltazar-Padilla, JJ.*, on official leave.

EN BANC

[G.R. No. 205490. September 22, 2020]

POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION represented by Mr. EMMANUEL R. LEDESMA, JR., in his capacity as President and Chief Executive Officer, and the concerned and affected OFFICERS and EMPLOYEES OF PSALM, *Petitioners*, *v.* **COMMISSION ON AUDIT,** *Respondent*.

[G.R. No. 218177. September 22, 2020]

POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION represented by Ms. MARIA LOURDES S. ALZONA, in her capacity as Officer-in-Charge, Office of the President and CEO, and the concerned and affected OFFICERS and EMPLOYEES OF PSALM, *Petitioners*, *v.* **COMMISSION ON AUDIT,** *Respondent*.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; MOTION FOR RECONSIDERATION; A MOTION FOR RECONSIDERATION IS A CONDITION *SINE QUA NON* TO THE FILING THEREOF; ONE EXCEPTION IS WHERE THE QUESTIONS RAISED THEREIN HAVE BEEN DULY RAISED AND AMPLY PASSED UPON BY THE LOWER TRIBUNALS.— *Sps. Davis v. Sps Davis* enunciated:

> While it is true that a motion for reconsideration is a condition *sine qua non* for the filing of a Petition for *Certiorari*, the purpose of which is to grant an opportunity for the court to correct any actual or perceived error attributed to it by re-examination of the legal and factual circumstances of the case, it is not, however, an ironclad rule as it admits well-defined exceptions. One of these exceptions is **where the questions raised in the *certiorari* proceeding have been**

duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court.

Thus, while a motion for reconsideration is a condition *sine qua non* to the filing of a petition for *certiorari*, the same may be dispensed with where the questions raised in the *certiorari* proceeding have been duly raised and amply passed upon by the lower tribunals, as in this case.

2. POLITICAL LAW; ADMINISTRATIVE ORDER NO. 402 (AO 402), SERIES OF 1998 (ESTABLISHMENT OF A MEDICAL CHECK-UP PROGRAM FOR GOVERNMENT PERSONNEL); THE GRANT OF MEDICAL BENEFITS MAY BE INCREASED DEPENDING ON THE AVAILABILITY OF FUNDS; CASE AT BAR.— Section 1 of AO [No.] 402 ordains the establishment of an *annual medical check-up program* only. "Medical check-up" contemplates a procedure which a person goes through to find out his or her state of health, whether he or she is inflicted or is at risk of being inflicted with ailment or ailments as the case may be. This is precisely why AO 402 ordains a health program specifically including the following diagnostic procedures, *i.e.*, physical examination, chest x-ray, routine urinalysis and fecalysis, complete blood count, and electrocardiogram. The COA-CP correctly held that this standard ought to be strictly followed by every GOCC not only in the initial grant of medical benefits but also in any subsequent increase thereof upon availability of funds. . . .

While it is true that Section 3 allows the GOCCs to increase the initial grant of medical benefits to these employees, the increase depends on *availability of funds*. As for the 2008 MAB, however, petitioners have not refuted the finding of the COA-CP that PSALM's 2008 Corporate Operating Budget from which the 2008 MAB was sourced had an approved allocation of ₱3,350,000.00 only, way below the total ₱5,702,517.00 disbursement for the expanded benefits under Board Resolution No. 07-67.

3. ID.; ID.; STATUTORY CONSTRUCTION; PRINCIPLE OF *EJUSDEM GENERIS*; AUGMENTED BENEFITS MUST CONFORM TO THE PRINCIPLE OF *EJUSDEM GENERIS*; AESTHETIC OR ENHANCEMENT PROCEDURES DEPART FROM THE PRINCIPLE OF *EJUSDEM GENERIS*.— While the COA-CP concedes that the initial medical assistance benefits

extended to the employees of the GOCCs may be augmented under Section 3 of AO 402, these augmented benefits must conform with the principle of *ejusdem generis*: "where a general word or phrase follows an enumeration of particular and specific words of the same class or where the latter follow the former, the general word or phrase is to be construed to include, or to be restricted to persons, things or cases akin to, resembling, or of the same kind or class as those specifically mentioned."

The purpose is to give effect to both the particular and general words, by treating the particular words as indicating the class and the general words as including all that is embraced in said class, although not specifically named by the particular words. For if the lawmaking body intended the general terms to be used in their unrestricted sense, it would have not made an enumeration of particular subjects but would have used only general terms.

4. ID.; ID.; ID.; PRINCIPLE OF *EXCLUSIO UNIOS EST EXCLUSIO ALTERIUS*; FAMILIES OR DEPENDENTS OF QUALIFIED GOVERNMENT EMPLOYEES ARE NOT INCLUDED IN THE MEDICAL CHECK UP PROGRAM; CASE AT BAR.— The health program which AO 402 espouses is **intended exclusively for government employees.** . . .

The families or dependents of qualified government employees concerned are not included. What is not included is deemed excluded. *Exclusio unios est exclusio alterius.*

But as worded, Board Resolution No. 07-67 extended the medical assistance benefits not only to PSALM's plantilla officers but to their so called qualified dependents as well. . . .

Verily, therefore, the grant here of the expanded medical assistance benefits did not only exceed the benefits authorized under AO 402, but also the intended beneficiaries. The inclusion of these beneficiaries, too, is devoid of legal basis.

5. ID.; STATUTORY CONSTRUCTION; DOCTRINE OF OPERATIVE FACT; THIS DOCTRINE DOES NOT APPLY TO BOARD RESOLUTIONS OF GOCCs, AS THEY ARE NOT LAWS, EXECUTIVE ACTS, OR LIKE ISSUANCES WHICH HAVE THE EFFECT OF LAW.— Petitioners further invoke the doctrine of operative fact *vis-à-vis* Board Resolution Nos. 07-67 and 2008-1124-004 when they authorized the expanded medical assistance benefits.

The doctrine of operative fact nullifies the effects of an unconstitutional law, executive act, or similar issuances by recognizing that the existence of a statute prior to a determination of unconstitutionality is an operative fact and may have consequences that cannot always be ignored. It applies as a matter of equity and fair play when a declaration of unconstitutionality will impose an undue burden on those who have relied on the invalid law, act, or the like.

The doctrine of operative fact, however, ***does not apply*** to Board Resolution Nos. 07-67 and 2008-1124-004. They are not laws, executive acts or like issuances which have the effect of law. The COA-CP did not pass upon the validity of these board resolutions for it is devoid of such authority in the first place. What COA-CP did was affirm the disallowance on audit of the disbursements and payments in question for being devoid of legal basis.

6. ID.; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; APPROVING OFFICERS AND RECIPIENT EMPLOYEES ARE LIABLE TO RETURN THE DISALLOWED AMOUNTS; CASE AT BAR.— [T]he Court summarized the rules regarding the liability of the certifying and approving officers and recipient employees, thus:

> E. *The Rules on Return* In view of the foregoing discussion, the Court pronounces: 1. If a Notice of Disallowance is set aside by the Court, no return shall be required from any of the persons held liable therein. 2. If a Notice of Disallowance is upheld, the rules on return are as follows: (a) Approving and certifying officers who acted in good faith, in regular performance of official functions, and with the diligence of a good father of the family are not civilly liable to return consistent with Section 38 of the Administrative Code. (b) Approving and certifying officers who are clearly shown to have acted in bad faith, malice, or gross negligence are, pursuant to Section 43 of the Administrative Code of 1987, solidarily liable to return only the net disallowed amount which, as discussed herein, excludes amounts excused under the following Sections 2c and 2d. (c) Recipients – whether approving or certifying officers or mere passive recipients – are liable to return the disallowed amounts respectively received by them,

> unless they are able to show that the amounts they received were genuinely given in consideration of services rendered. (d) The Court may likewise excuse the return of recipients based on undue prejudice, social justice considerations, and other *bona fide* exceptions as it may determine on a case to case basis.

Applying the law and ***Madera*** here, we hold that the members and officers of the PSALM Board of Directors who authorized the payment of the disallowed amounts and the employees who received the same are liable to return them.

7. ID.; ID.; ID.; THE CIVIL LIABILITY OF PUBLIC OFFICERS FOR ACTS DONE IN THE PERFORMANCE OF THEIR OFFICIAL DUTY ARISES ONLY UPON A CLEAR SHOWING THAT THEY PERFORMED SUCH DUTY WITH BAD FAITH, MALICE, OR GROSS NEGLIGENCE; CASE AT BAR.— Section 38, Chapter 9, Book I, of the Administrative Code expressly states that the civil liability of a public officer for acts done in the performance of his or her official duty arises only upon a clear showing that he or she performed such duty with bad faith, malice, or gross negligence. This is because of the presumption that official duty is regularly performed.

Malice or bad faith implies a conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity. Gross neglect of duty or gross negligence, on the other hand, refers to negligence characterized by the want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to give to their own property. It denotes a flagrant and culpable refusal or unwillingness of a person to perform a duty. In cases involving public officials, gross negligence occurs when a breach of duty is flagrant and palpable.

Here, it cannot be said that petitioning members and officers of the Board acted with malice and bad faith in approving the grant of the benefits later disallowed. As they claimed, they all acted in the honest belief that the same were due them and the PSALM employees under AO 402. There is also nothing on record to lead us to conclude that they, indeed, granted the excess benefits with a dishonest purpose.

Nevertheless, we hold that the approving and certifying officers are guilty of gross negligence.

To reiterate, the provisions of AO 402 are clear and unequivocal. Its singular intention is to grant free annual medical check-up program to government employees. It does not imply in any way the grant of other health benefits outside the free annual medical check-up. It also clearly limited its scope to the government employees themselves. Nowhere in the provisions of the law were the benefits extended to the dependents of the government employees. The members and officers of the Board of Directors, however, carelessly expanded the coverage of the benefits without thought about and without harmonizing the same with the provisions of AO 402. Worse, they expanded the benefits not only once, but twice - in 2008 and in 2009.

8. ID.; ID.; ID.; LIABILITY OF AUTHORIZING OFFICERS; WITH THEIR GROSS NEGLIGENCE, THE APPROVING OFFICERS ARE JOINTLY AND SEVERALLY LIABLE FOR THE DISALLOWED AMOUNTS.— [I]n ***Madera,*** the Court adopted Justice Leonen's proposed badges for the determination of whether an authorizing officer exercised the diligence of a good father of a family, to wit:

> x x x (1) **Certificates of Availability of Funds** pursuant to Section 40 of the Administrative Code, (2) In-house or Department of Justice legal opinion, (3) that there is no precedent allowing a similar case in jurisprudence, (4) that it is traditionally practiced within the agency and **no prior disallowance has been issued,** [or] (5) with regard the question of law, that there is a reasonable textual interpretation on its legality.
>
> . . .
>
> . . . Standing alone, the prior disallowance of the grant under the 2008 MAB may not suffice to negate the presumption of regularity in favor of petitioners, but taken with the other badges, indubitably conveys the presence of gross negligence.

Indeed, the factors, as heretofore discussed, clearly support the finding that the members and officers of the Board of Directors who approved and authorized the grant of the expanded benefits are liable to return the disallowed amounts. Pursuant to Section 43, Chapter V, Book VI of the 1987

Administrative Code and ***Madera,*** their liability is joint and several for the disallowed amounts received by the individual employees.

9. ID.; ID.; ID.; LIABILITY OF RECIPIENT EMPLOYEES; CIVIL LAW; PAYMENT; PRINCIPLE OF *SOLUTIO INDEBITI;* AS A RULE, RECIPIENT EMPLOYEES MUST BE HELD LIABLE TO RETURN DISALLOWED PAYMENTS ON GROUND OF *SOLUTIO INDEBITI* OR UNJUST ENRICHMENT AS A RESULT OF THE MISTAKE IN PAYMENT; NONE OF THE EXCEPTIONS ARE PRESENT IN THE CASE AT BAR.— As clarified in ***Madera,*** the general rule is that recipient employees must be held liable to return disallowed payments on ground of *solutio indebiti* or unjust enrichment as a result of the mistake in payment. Under the principle of *solutio indebiti*, if something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.

Madera, however, decrees as well that restitution may be excused in the following instances:

> xxx the jurisprudential standard for the exception to apply is that the amounts received by the payees constitute disallowed benefits that were genuinely **given in consideration of services rendered** (or to be rendered)" negating the application of unjust enrichment and the *solutio indebiti* principle. As examples, Justice Bernabe explains that these disallowed benefits may be in the nature of **performance incentives, productivity pay, or merit increases** that have not been authorized by the Department of Budget and Management as an exception to the rule on standardized salaries. In addition to this proposed exception standard, Justice Bernabe states that the Court may also determine in the proper case *bona fide* exceptions, depending on the purpose and nature of the amount disallowed. These proposals are well-taken.
>
> Moreover, the Court may also determine in a proper case other circumstances that warrant excusing the return despite the application of *solutio indebiti,* such as when **undue prejudice** will result from requiring payees to return or where **social justice or humanitarian considerations are** attendant.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for PSALM.
The Solicitor General for respondent.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Cases

In **G.R. No. 205490,**[1] petitioners Power Sector Assets and Liabilities Management Corporation (PSALM) represented by its President and Chief Executive Officer (CEO) Emmanuel R. Ledesma, Jr., and the concerned officers and employees of PSALM question the Commission on Audit-Commission Proper (COA-CP) Decision No. 2012-270[2] dated December 28, 2012, affirming the disallowance of the 2009 MAB granted to PSALM officers and employees in the amount of ₱5,586,999.60.

In **G.R. No. 218177**,[3] the same petitioners, albeit this time PSALM is represented by Officer-in-Charge Maria Lourdes S. Alzona, assail the following dispositions of the COA-CP:

(1) Decision No. 2014-036[4] dated March 5, 2014, affirming the disallowance of the 2008 Medical Assistance Benefit (MAB) granted to PSALM officers and employees in the amount of ₱5,702,517.42; and

(2) Resolution[5] dated January 26, 2015, denying petitioners' motion for reconsideration.

---

[1] *Rollo* (G.R. No. 205490), pp. 3-32.

[2] Rendered by Chairperson Ma. Gracia M. Pulido Tan, Commissioner Heidi I. Mendoza, and Commissioner Juanito G. Espino, Jr., *id.* at 39-46.

[3] *Id.* (G.R. No. 218177) at 3-40.

[4] Rendered by Chairperson Ma. Gracia M. Pulido Tan and Commissioner Heidi I. Mendoza, *id.* at 52-57.

[5] *Id.* at 59.

Antecedents

Civil Service Commission (CSC) Memorandum Circular No. 33, series of 1997 entitled Policy on Working Conditions at the Workplace, states:

x x x x x x x x x

Pursuant to Resolution No. 97-4684 dated December 18, 1997, the CSC promulgates and adopts the following policies:

1. All government offices shall provide the following:

   a) Health Program for Government Employees

   Health program for employees shall include any or all the following:

   1. hospitalization services

   2. annual mental, medical-physical examinations

   x x x x x x x x x

On the other hand, Administrative Order No. 402 (AO 402), series of 1998 entitled Establishment of a Medical Check-Up Program for Government Personnel provides:

ESTABLISHMENT OF A MEDICAL CHECK-UP PROGRAM FOR GOVERNMENT PERSONNEL

WHEREAS, pursuant to Section 5 of P.D. No. 1597, s. 1978 (Further Rationalizing the System of Compensation and Position Classification in the National Government), which continues to be applicable in accordance with R.A. No. 6758, s. 1989 (Prescribing a Revised Compensation and Position Classification System in the Government), all government employees may be granted allowances, honoraria and other fringe benefits;

WHEREAS, keeping a healthy workforce is among the primary concerns of the government considering that the physical well-being of its employees has a significant impact on the efficiency and effectiveness of public service delivery; and,

WHEREAS, the Civil Service Commission also issued Memorandum Circular No. 33 (s. 1997) which provides that all government agencies and Government-Owned and/or -Controlled Corporations (GOCCs)

shall provide, among others, a health program for their employees which includes free annual mental and medical-physical examinations.

NOW, THEREFORE, I, FIDEL V. RAMOS, President of the Republic of the Philippines, by virtue of the powers vested in me by law, do hereby order:

SECTION 1. Establishment of the Annual Medical Check-up Program. An annual medical check-up for government officials and employees is hereby authorized to be established starting this year, in the meantime that this benefit is not yet integrated under the National Health Insurance Program being administered by the Philippine Health Insurance Corporation (PHIC).

SEC. 2. Coverage. The medical check-up program shall be granted to all permanent and temporary personnel of national government agencies who have been in the service for at least one year as of the effectivity of this Order. Excluded from the coverage, however, are officials and employees who are already recipients of a similar benefit or any supplementary medical allowance over and above the Medicare benefits.

GOCCs, which do not offer a free medical check-up or any supplementary medical allowance over and above the Medicare benefits shall also establish a similar program for their employees.

Local Government Units are also encouraged to establish a similar program for their personnel.

SEC. 3. Benefit Package. Initial benefits for employees who are below 40 years of age shall include the following: Physical examination, Chest X-ray, Complete Blood Count (CBC), Urinalysis and Stool Examination. Meanwhile, employees whose age is 40 years and above shall be entitled to the following: Physical examination, Chest X-ray, Complete Blood Count (CBC), Urinalysis, Stool Examination and ECG. Benefits may be increased upon the availability of funds.

x x x x x x x x x

In accordance with these directives, PSALM Board of Directors approved Board Resolution No. 06-46 dated August 2, 2006, *viz.*:

WHEREAS, PSALM Management presented to the Board, for approval and confirmation, its proposed Health Maintenance Program

for PSALM officials and employees, including those employed under contracts of service.

WHEREAS, elaborating on the proposed health program, PSALM Management informed the Board that government regulations prohibit the acquisition of HMOs for government employees. However, Administrative Order No. 402 dated 02 June 1998 and DOH/DBM/PHRC Joint Circular No. 01 dated 09 September 1998 (IRR for AO No. 402) authorized the establishment of an annual physical checkup for all government employees. On the basis of these two government issuances, the proposed PSALM Health Program was designed to address health concerns of PSALM employees and prevent hospitalization.

WHEREAS, the objectives of the PSALM Health Program are (a) to identify and address ailments at an early stage or prevent their occurrence, (b) to sustain a healthy workforce, and (c) to perform and deliver PSALM's time-bound mandates efficiently and effectively.

WHEREAS, the comprehensive annual physical examination shall consist of the following:

- Physical Examination
- Chest X-Ray
- Routine Urinalysis and Fecalysis
- Complete Blood Count (CBC)
- Electrocardiogram (ECG)
- Pap Smear for female employees
- Blood Chemistry
- Dental Examination

WHEREAS, a healthcare measure aimed to prevent diseases before its onset in the organization is the addition of immunization for Influenza (flu) and Hepatitis B to the usual annual physical examination package.

WHEREAS, with a total of 226 Plantilla and Contractual employees, the estimated expense is PhP500,000.00 for the Physical Examination and Immunization components of the Program. This also includes the amount needed to purchase the medicines needed for emergency use and which will be kept by the Personnel Services Department.

PSALM shall source the necessary funds from Personnel Services.

WHEREAS, PSALM Management thus requested the Board's approval and confirmation of the Health Maintenance Program for PSALM officials and employees.

WHEREAS, after due deliberation, there being no objection, the Board found the recommendation of PSALM Management in order.

NOW, THEREFORE, BE IT RESOLVED, AS IT IS HEREBY RESOLVED that, the Board hereby approves and confirms the Hea(l)th Maintenance Program for PSALM officials and employees as recommended by PSALM Management.

APPROVED and CONFIRMED this 2nd day of August 2006.[6]

One (1) year later, PSALM Board of Directors approved the grant of additional medical benefits per Board Resolution No. 07-67 dated October 31, 2007, authorizing the continuation of the aforesaid health program but with additional components, *i.e.*, purchase of emergency over-the-counter drugs and prescription drugs, dental and optometric medications, and reimbursement of expenses on emergency and special cases, thus:[7]

WHEREAS, the PSALM Board, through Resolution No. 06-46 dated 02 August 2006, approved and confirmed the establishment of PSALM's Health Maintenance Program pursuant to Administrative Order (A.O.) No. 402 dated 02 June 1998, and DOH-DBM-PHIC Joint Circular No. 1 dated 09 September 1998.

WHEREAS, A.O. No. 402 provides that all government agencies and GOCCs shall provide, among others, a health program for their employees. This includes free annual mental and medical-physical examinations. This is allowed for all permanent and temporary personnel who have been in the service for at least one year. Initial benefits shall include Physical Examination, Chest X-Ray, Complete Blood Count, Urinalysis, Stool Examination, and Electrocardiogram.

The benefits may be increased upon availability of funds, and expenses for the medical check-up for GOCCs shall be chargeable against the corporate funds.

WHEREAS, PSALM's Health Maintenance Program aims to identify and address ailments at an early stage or prevent their

---

[6] *Id.* at 69-70.

[7] *Id.* at 9.

occurrence with the end of sustaining a healthy workforce for the efficient and effective delivery of PSALM's time-bound mandates.

The program includes the following activities:

- Annual Physical Examination
- Administration of immunization vaccines
- Purchase of emergency over-the-counter drugs
- Medical assistance for permanent employees to be availed through purchase of prescription drugs, including dental and optometric medications, or reimbursement of expenses on emergency and special cases or situations
- Establishment of a mini-clinic and mini-gym
- Sports and exercise programs

WHEREAS, since the implementation of the original Health Maintenance Program in 2006, PSALM has successfully conducted Annual Physical Examination and Vaccination Activities for Influenza, Hepatitis "B", Pneumonia and Typhoid Fever.

PSALM now also maintains a well stored first-aid cabinet, complete with Over-the-Counter medicines for emergency use.

WHEREAS, in order to institutionalize PSALM's Health Maintenance Program, PSALM Management requested the Board's approval, upon the favorable endorsement of the Board Review Committee (BRC), for: (1) the continued implementation of the Program in year 2007 and onwards; and (2) the implementation of the other component of the Program — the medical assistance to employees through purchase of prescription drugs, including dental and optometric medications, or allow the employees to reimburse such expenses on emergency and special cases or situations, subject to the guidelines to be issued by PSALM.

WHEREAS, elaborating on the purchase of prescription drugs, it was explained that only Plantilla personnel and their qualified dependents shall be entitled. The maximum availment for each personnel covered shall not exceed PhP25,000.00 for each year. This entitlement is non-cumulative and strictly non-convertible to cash.

With 226 approved Plantilla positions, an expense of Php5,650,000.00 per year is estimated. Funds intended for this Program shall be sourced from Other Maintenance and Operating Expenses (Account Code 969) of PSALM's Corporate Operating Budget.

WHEREAS, after due deliberation, there being no objection, the Board found the request of PSALM Management, as endorsed by the BRC, in order.

NOW, THEREFORE, BE IT RESOLVED, AS IT IS HEREBY RESOLVED to approve and confirm the continuous implementation of the wellness activities under PSALM's Health Maintenance Program, including the implementation of the purchase of prescription drugs, in accordance with the terms of this Resolution.

APPROVED and CONFIRMED this 31st day of October 2007.[8]

In yet another Board Resolution No. 2008-1124-004 dated November 24, 2008, PSALM Board of Directors further expanded the health program to include the Members of the Board of Directors and Board Review Committee themselves and their respective alternates, and to increase the alloted funds for the health program, *viz.*:[9]

WHEREAS, the PSALM Board, through Resolution No. 07-67 dated 31 October 2007, approved and confirmed the implementation of **medical assistance to plantilla employees through reimbursement of the purchase price of prescription drugs, including dental and optometric medications,** or **reimbursement of such expenses in emergency and special cases situations**;

WHEREAS, in 2007, 149 employees availed of the Php25,000.00 medical assistance, or a total of Php3,696,890.61, covering various medical claims on **prescribed, over-the-counter and maintenance drugs, optical and dental procedures**;

WHEREAS, as of 30 September 2008, the PSALM management has processed the medical claims of 141 employees amounting to Php2,898,206.38;

WHEREAS, upon the recommendation of PSALM Management the following were endorsed to the Board for approval:

1. Approval and confirmation of the amendment of the coverage of the medical program to include payment of consultation fees and diagnostic, laboratory and other medical examination

---

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

[9] *Id.* at 9-10.

services necessary in the detection and prevention of diseases;

2. Approval and confirmation of the increase of entitlement from Twenty Five Thousand Pesos (Php25,000.00) to Thirty Five Thousand Pesos (Php35,000.00) to cover payment of expenses for out-patient diagnostic procedures and consultation fees, as well as to supplement the significant price adjustments on medicines and other medical services;

3. Approval and confirmation of the Php10,000.00 supplemental coverage per employee, or a total of One Million Six Hundred Thousand Pesos (Php1,600,000.00), the Maintenance and Other Operating Expenses [Account Code 969] of PSALM's Corporate Operating Budget and will be subject to the usual accounting and auditing rules and regulations;

4. Approval and confirmation of the ceiling imposed on the amount of entitlement of each personnel covered by the Program, not exceeding Php35,000.00 per year, which shall be non-cumulative and strictly non-convertible to cash;

5. Approval and confirmation of the policy that implementation of the Program shall be subject to the guidelines that will be issued by the President & CEO for the purpose.

WHEREAS, after review of pertinent documents and due consultation, the Board Review Committee found the recommendations of PSALM Management, in order, and resolved to endorse the same to the Board, subject to the following qualifications:

a. That the one-year residency period currently required to qualify for the program shall be reduced to a 6-month period to be counted from the date of hiring;

b. That Members of the Board, the Board Review Committee, and their respective alternates, shall be included in the program; and

c. That all plantilla positions, whether filled or not, shall be included in the computation of the annual budget allocated for the Medical Assistance Program.

NOW, THEREFORE, BE IT RESOLVED, AS IT IS HEREBY RESOLVED that, as requested by PSALM Management and endorsed by the Board Review Committee, the Board hereby:

1. Amends the coverage of the medical program to include payment of consultation fees and diagnostics, laboratory and other medical examination services necessary in the detection and prevention of diseases;

2. Approves and confirms the inclusion of the Members of the Board, the Board Review Committee and their respective alternates in the Medical Assistance Program;

3. Directs that the one-year residency period currently required to qualify for the program shall be reduced to a 6-month period to be counted from the date of hiring;

4. Approves and confirms the increase of entitlement from Twenty Five Thousand Pesos (Php25,000.00) to Thirty Five Thousand Pesos (Php35,000.00) to cover payment of expenses for out-patient diagnostic procedures and consultation fees, as well as to supplement the significant price adjustments on medicines and other medical services;

5. Approves and confirms the Php10,000.00 supplemental coverage per employee, or a total of One Million Six Hundred Thousand Pesos (Php1,600,000.00), to be charged against the Maintenance and Other Operating Expenses [Account Code 969] of PSALM's Corporate Operating Budget and will be subject to the usual accounting and auditing rules and regulations;

6. Approves and confirms the ceiling imposed on the amount of entitlement of each personnel covered by the Program, not exceeding Php35,000.00 per year, which shall be non-cumulative and strictly non-convertible to cash;

7. Directs that all plantilla positions, whether filled or not, shall be included in the computation of the annual budget allocated for the Medical Assistance Program;

8. Approves and confirms the policy that implementation of the Program shall be subject to the guidelines that will be issued by the President & CEO for the purpose; and

9. Authorizes PSALM's President and CEO to sign and execute any and all documents to effect the foregoing resolution.

APPROVED and CONFIRMED this 24th day of November 2008.[10]

On January 22, 2009, State Auditor IV Gina Maria P. Molina issued her Audit Observation Memorandum No. 2008-06 stating that the medical assistance benefits included in PSALM's expanded 2008 MAB lacked legal and factual bases. In response, PSALM explained that the 2008 MAB was actually based on AO 402 and CSC Memorandum Circular No. 33. State Auditor Molina nonetheless proceeded to issue Notice of Disallowance (ND) No. 2008-002 (2008) dated April 23, 2009 in the total amount of ₱5,702,517.42.[11] PSALM sought a reconsideration but the same was returned to PSALM without action.[12]

On November 5, 2009, PSALM appealed to the COA-Office of the Cluster Director, Corporate Government Sector (CGS) — Cluster B.

Meanwhile, PSALM allegedly requested authority from the Office of the President for the retroactive grant of the following benefits to its officers and employees: 1) corporate performance-based incentive; and 2) medical assistance through purchase of prescription drugs and reimbursement of expenses for emergency and special cases. According to PSALM, the Office of the President granted this request.[13]

On March 12, 2010, State Auditor Molina issued a similar notice of disallowance under ND No. 10-001-(2009) on the 2009 MAB.[14]

On September 10, 2010, PSALM appeal anew to the COA-Office of the Cluster Director, CGS – Cluster B pertaining to the aforesaid ND No. 10-001-(2009).

---

[10] *Id.* at 85-87.

[11] *Id.* at 10 and 110.

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

[13] *Id.* (G.R. No. 205490) at 9.

[14] *Id.* at 40.

Ruling of the COA-Office of the Cluster Director Corporate Government Sector (CGS) – Cluster B

By Decision No. 2011-003[15] dated April 1, 2011 and Decision No. 2011-005[16] dated June 2, 2011, COA-Cluster Director IV Divina M. Alagon affirmed the disallowance of the 2008 and 2009 expanded MABs in the amount of ₱5,702,517.42 and ₱5,586,999.60, respectively.

In both cases, COA-Cluster Director IV Alagon brought to fore that AO 402 only provided for the grant of annual medical check up for government employees. It specifically stated that the benefit was only for offices which had no existing program yet for free medical check up or supplementary medical allowance to its officers and employees over and above the Medicare benefits. The use of the disjunctive "or" meant the office may avail of one (1) benefit only, either a free medical check-up or supplementary medical allowance to its employees. An office may not avail of both benefits.

Records revealed, however, that PSALM already entered into a Memorandum of Agreement with Hi-Precision Diagnostic Center, Inc. for an annual physical examination for its employees, including eighteen (18) physical and laboratory examinations. Thus, the additional grant for the purchase of prescription drugs and reimbursement expenses on emergency and special cases was in excess of what the law allowed.[17]

True, *the last paragraph of Section 3, AO 402 authorizes the increase of benefits upon availability of funds, but the same must be construed to mean additional benefits parallel to the medical services already enumerated therein* pursuant to the principle of *ejusdem generis, i.e.*, medical services pertaining only to physical examination and laboratory or diagnostic examinations. As it was, the bulk of the amounts paid to the

---

[15] *Id.* (G.R. No. 218177) at 153-160.

[16] *Id.* (G.R. No. 205490) at 117-124.

[17] *Id.* (G.R. No. 218177) at 156; *id.* (G.R. No. 205490) at 121-122.

officers and employees here referred not to these kinds of medical services but to items not parallel thereto such as the purchase of vitamins, dermatological services like acne surgery and facial treatments, and dental services like braces and retainers.[18]

More, AO 402 provided for medical services to government employees only. As shown by the receipts on record, these medical services were also given *ultra vires* to the employees' dependents.[19]

Further, Section 3, AO 402 allowed an increase of benefits only upon availability of funds. Records showed that PSALM's 2008 Corporate Operating Budget (COB) had an approved budget of ₱3,350,000.00 only. But the 2008 MAB which was sourced from this budget amounted to ₱5,702,517.42.[20] Too, the CSC did not even approve the 2008 MAB as a negotiated item in the Collective Negotiation Agreement (CNA). Notably, the CSC approved only the inclusion of annual medical/physical examination in the CNA affecting PSALM and its officers and employees.[21] In any case, most of the medical expenses granted in the PSALM's expanded Health Program were already covered by the Philippine Insurance Health Corporation (PhilHealth).[22]

Lastly, the supposed confidential document containing PSALM's authority to grant retroactive medical benefits to its officers and employees did not bear the President's signature. More important, Director Marianito M. Dimaandal from the Malacañan Records Office (MRO) certified that the so-called "confidential document" was "*not among the records available on file or in the possession of*" the MRO.[23]

---

[18] *Id.* (G.R. No. 218177) at 156; *id.* (G.R. No. 205490) at 122.

[19] *Id.* (G.R. No. 205490) at 122.

[20] *Id.* (G.R. No. 218177) at 157.

[21] *Id.* (G.R. No. 218177) at 157; *id.* (G.R. No. 205490) at 123.

[22] *Id.* (G.R. No. 218177) at 157.

[23] *Id.* (G.R. No. 218177) at 160; *id.* (G.R. No. 205490) at 123.

The Ruling of the COA-Commission Proper (COA-CP)

On petitioners' further appeal, the COA-CP, too, affirmed the disallowance of the 2008 MAB under its assailed Decision No. 2014-036[24] dated March 5, 2014. By Resolution[25] dated January 26, 2015, it denied PSALM's subsequent motion for reconsideration.

As for the 2009 MAB, the COA-CP affirmed its disallowance per Decision No. 2012-270[26] dated December 28, 2012. PSALM no longer sought its reconsideration.

In both cases, the COA-CP emphasized that the notices of disallowance only pertained to the additional aspects of the Health Program, *i.e.*, purchase of prescription drugs, reimbursement of expenses for emergency or special cases, and the expenses for the employees' dependents.[27]

Also, whether the President of the Philippines approved PSALM's grant of additional benefits did not alter the fact that the expanded benefits had no basis in law.[28]

The Present Petition

Petitioners' Arguments

Petitioners now urge the Court to nullify the dispositions of the COA-CP affirming the disallowance of medical assistance paid to PSALM officers and employees under the 2008 and 2009 MABs. Petitioners essentially assert:

(a) The expanded MAB was authorized by both AO 402 and CSC Memorandum Circular No. 33.[29]

---

[24] *Id.* (G.R. No. 218177) at 52-57.

[25] *Id.* at 59.

[26] *Id.* (G.R. No. 205490) at 39-46.

[27] *Id.* at 42.

[28] *Id.* at 45.

[29] *Id.* (G.R. No. 218177) at 16; *id.* (G.R. No. 205490) at 14.

(b) Section 3 of AO 402 speaks of "*initial benefits*" for government employees,[30] which benefits "*may be increased upon availability of funds.*"[31] Hence, the expanded MABs are well within this proviso.

(c) The COA-CP's strict interpretation of AO 402 is a retrogressive appreciation of government issuances intended to protect and promote the rights and welfare of workers. It is contrary to the spirit, intent, and purpose of AO 402. Where the provision of the general welfare laws may be reasonably interpreted in two (2) different ways, one prejudicial and the other favorable to labor, the balance must be tilted in favor of labor. When liberally construed, the grant of supplementary medical allowance or medical benefits is left to the sound discretion of the agency's governing Board of Directors, which is in a better position to determine the benefits that would best address the health concerns of its employees, the allowable medical procedure and treatment, and the persons entitled thereto – all with the end purpose of maintaining the employees' work efficiency and effectiveness. In short, PSALM or any other government owned or controlled corporation is not strictly limited to the benefits enumerated under Section 3 of AO 402.[32]

(d) On December 30, 2009, no less than the President of the Philippines approved its request for the retroactive grant of the expanded MAB to its employees. This approval carries the force and effect of law, hence, must be accorded respect and recognition by other government agencies and instrumentalities. In any event, Board Resolution Nos. 07-67 and 2008-1124-004 were approved by PSALM's Board of Directors which included members of the President's Cabinet, *i.e.*, Secretary of Finance and Secretary of the Department of Budget and Management, who are the President's *alter egos*.[33]

---

[30] *Id.* (G.R. No. 218177) at 19.

[31] *Id.* (G.R. No. 205490) at 14.

[32] *Id.* (G.R. No. 218177) at 24; *id.* (G.R. No. 205490) at 15-19.

[33] *Id.* (G.R. No. 218177) at 19-28; *id.* (G.R. No. 205490) at 23-25.

(e) PSALM officials and employees who, respectively, authorized the grant of, and received, the expanded MABs all acted in the honest belief that the same were due them in accordance with AO 402. Hence, they should not be made to return the amounts in question.[34]

(f) The doctrine of operative fact applies here. The board resolutions granting the MABs were valid prior to their being adjudged as illegal.[35]

The COA-CP's Counter-arguments

The COA-CP, through former Solicitor General Florin T. Hilbay, Assistant Solicitor General Herman R. Cimafranca, Assistant Solicitor General Rex Bernardo L. Pascual, State Solicitor Shiela Marie S. Sulit-Andaya, and Associate Solicitor Johvie M. Valenton, ripostes:

(1) AO 402 is a limited benefit confined to a medical check-up program and does not include an expanded health services plan. Section 2 refers to the institutionalization of a medical check-up program while Section 3 limits the medical care benefits to strictly diagnostic procedures. Following the principle of *ejusdem generis*, the additional benefits to be given to the beneficiaries should be parallel to those enumerated by the law itself.[36]

(2) AO 402 provides for "*medical check-up program for government personnel*." The title itself limits its scope to: (a) medical check-up; and (b) government personnel. The disallowed 2008 and 2009 expanded MABs refer to purchases of prescription drugs and reimbursement of expenses for emergency and special cases such as optical treatment, facial treatment and acne surgery, and dental treatment like braces and retainers. These benefits were even extended to the

---

[34] *Id.* (G.R. No. 218177) at 28-32; *id.* (G.R. No. 205490) at 25-27.

[35] *Id.* (G.R. No. 218177) at 32-34.

[36] *Id.* (G.R. No. 218177) at 261-261 and 264-265; *id.* (G.R. No. 205490) at 197-202.

dependents of PSALM employees, *i.e.*, spouses, ascendants, and descendants. These persons are clearly outside the scope of AO 402.[37]

(3) AO 402 is clear and unambigous, hence, there is no need for its interpretation, only application. A more liberal interpretation would lead to an anomalous situation where unauthorized benefits would be paid out of public funds. As stated, AO 402 only contemplates a limited health care benefit and nothing more.[38]

(4) The 2008 and 2009 MABs had no legal basis as they were not authorized under AO 402. Even assuming the President of the Philippines had approved PSALM's request to grant the expanded MABs to its employees and officers, the grant was still illegal. Besides, the alleged approval did not even bear the President's signature.[39]

(5) Good faith cannot excuse, nay, justify the payment of medical benefits in violation of AO 402 itself.[40]

Issues

1. Did the COA-CP act with grave abuse of discretion amounting to lack or excess of jurisdiction when it affirmed the disallowance of the 2008 and 2009 expanded Medical Assistance Benefits (MABs) paid to PSALM officers, employees, and their dependents?

2. Are the PSALM officers who authorized the MABs and the employees who received them liable to return the disallowed amount?

---

[37] *Id.* (G.R. No. 218177) at 262-265; *id.* (G.R. No. 205490) at 203-204.

[38] *Id.* (G.R. No. 218177) at 265.

[39] *Id.* (G.R. No. 218177) at 266-267; *id.* (G.R. No. 205490) at 205-207.

[40] *Id.* (G.R. No. 218177) at 267-269; *id.* (G.R. No. 205490) at 207-208.

Ruling

At the threshold, the Court notes that PSALM did not move for reconsideration of the assailed COA-CP Decision No. 2012-270 dated December 28, 2012 pertaining to the disallowance of the 2009 expanded MAB. PSALM asserts that there is a need for urgent resolution of the case considering that the aforesaid COA-CP decision is immediately executory. Too, the issues raised and resolved by the COA-CP on appeal were exactly the same as those raised and resolved by COA-Cluster Director Alagon on the first level appeal.

Sps. Davis v. Sps. Davis[41] enunciated:

> While it is true that a motion for reconsideration is a condition *sine qua non* for the filing of a Petition for *Certiorari*, the purpose of which is to grant an opportunity for the court to correct any actual or perceived error attributed to it by re-examination of the legal and factual circumstances of the case, it is not, however, an ironclad rule as it admits well-defined exceptions. One of these exceptions is **where the questions raised in the *certiorari* proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court.**

Thus, while a motion for reconsideration is a condition *sine qua non* to the filing of a petition for *certiorari*, the same may be dispensed with where the questions raised in the *certiorari* proceeding have been duly raised and amply passed upon by the lower tribunals, as in this case.

We now resolve on the merits.

First Issue

The 2008 and 2009 expanded MABs per Board Resolution Nos. 07-67 and 2008-1124-004 are devoid of legal basis

Subject ND Nos. 2008-002-(2008) and 10-001-(2009) refer to the 2008 and 2009 MABs granted by the PSALM Board of

---

[41] 827 Phil. 502, 508 (2018).

Directors under Board Resolution Nos. 07-67[42] dated October 31, 2007 and 2008-1124-004[43] dated November 24, 2008, respectively.

These board resolutions expanded the original medical assistance benefits provided under Board Resolution No. 06-46 which granted purely diagnostic procedures, *i.e.*, physical examination, chest x-ray, routine urinalysis and fecalysis, complete blood count, electrocardiogram, pap smear, blood chemistry, and dental examination. As it was, the expanded medical assistance benefits under Board Resolution Nos. 07-67 and 2008-1124-004 now include the *purchase of emergency over the counter drugs, purchase of prescription drugs, dental and optometric medications, reimbursement of expenses on emergency and special cases*,[44] and *reimbursement of diagnostic and consultation payment*. They also include as beneficiaries the employees' *dependents* (spouses, descendants, and ascendants) and members of the Board of Directors, Board Review Committee, and their respective alternates in the Health Program's coverage.[45]

In the implementation of the 2008 and 2009 MABs, PSALM, among others, approved the reimbursements for *dermatological services like acne surgery and facial treatments*, and *dental services like braces and retainers*.[46]

PSALM claims that although these additional benefits are not diagnostic in nature, they are authorized under Section 3 of AO 402 which allows "*not only the grant of "initial" benefits but also an increase thereof upon availability of funds.*"

The argument does not persuade.

---

[42] *Id.* (G.R. No. 218177) at 77-78; *id.* (G.R. No. 205490) at 51-52.

[43] *Id.* (G.R. No. 218177) at 85-87; *id.* (G.R. No. 205490) at 54-56.

[44] *Id.* (G.R. No. 218177) at 9.

[45] *Id.* (G.R. No. 218177) at 9-10.

[46] *Id.* (G.R. No. 218177) at 158; *id.* (G.R. No. 205490) at 123.

Section 1 of AO 402 ordains the establishment of an *annual medical check-up program* only. "Medical check-up" contemplates a procedure which a person goes through to find out his or her state of health, whether he or she is inflicted or is at risk of being inflicted with ailment or ailments as the case may be. This is precisely why AO 402 ordains a health program specifically including the following diagnostic procedures, *i.e.*, physical examination, chest x-ray, routine urinalysis and fecalysis, complete blood count, and electrocardiogram. The COA-CP correctly held that this standard ought to be strictly followed by every GOCC not only in the initial grant of medical benefits but also in any subsequent increase thereof upon availability of funds, thus:

> It is very clear that the medical benefit extended under A.O. 402 is **a limited benefit confined to a medical check-up program** consisting of procedures that are **strictly diagnostic**. **Nothing** in A.O. 402 refers to a **prescription drug benefit, a right to reimbursement for hospitalization**, or indeed for **any procedure or regimen that treats rather than diagnoses** an illness. Thus, when Section 2 of A.O. No. 402 says that a GOCC "shall also establish a similar program for their employees," it is clear that the "similar program" refers strictly to a "medical check-up" program, since the A.O. unequivocally establishes nothing more.[47] (Emphasis supplied)

While it is true that Section 3 allows the GOCCs to increase the initial grant of medical benefits to these employees, the increase depends on *availability of funds*. As for the 2008 MAB, however, petitioners have not refuted the finding of the COA-CP that PSALM's 2008 Corporate Operating Budget from which the 2008 MAB was sourced had an approved allocation of ₱3,350,000.00 only, way below the total ₱5,702,517.00 disbursement for the expanded benefits under Board Resolution No. 07-67.[48]

---

[47] *Id.* (G.R. No. 205490) at 42.

[48] *Id.* (G.R. No. 218177) at 157.

In any event, we refer back to the expanded medical assistance benefits granted to PSALM employees in 2008 and 2009 which went beyond the diagnostic procedures specified by AO 402 and PSALM Board Resolution No. 06-46. They even include the purchase of over the counter drugs, prescription drugs, payment of consultation fees, reimbursement of expenses in emergency and special cases and situations, optometric procedures, dental procedures like retainers and braces, and dermatological laser treatments. Notably, petitioners themselves cannot point to any specific provisions of AO 402 or even Resolution Nos. 07-67 and 2008-1124-004 which supposedly grant these benefits. As in fact, there is none. On this score, we quote with concurrence the COA-CP's relevant disquisition:

> x x x But considering that A.O. 402 strictly refers to a "medical check up program" and not a more expanded health services plan, any increased benefits allowed upon the availability of funds must also pertain to diagnostic procedures similar to those enumerated in Section 3. If the interpretation of Petitioners were to be sustained, a cash-flushed GOCC would be free at will to expand benefits. x x x[49]

While the COA-CP concedes that the initial medical assistance benefits extended to the employees of the GOCCs may be augmented under Section 3 of AO 402, these augmented benefits must conform with the principle of *ejusdem generis*: "where a general word or phrase follows an enumeration of particular and specific words of the same class or where the latter follow the former, the general word or phrase is to be construed to include, or to be restricted to persons, things or cases akin to, resembling, or of the same kind or class as those specifically mentioned."[50]

The purpose is to give effect to both the particular and general words, by treating the particular words as indicating the class and the general words as including all that is embraced in said

---

[49] *Id.* (G.R. No. 205490) at 43.

[50] *Alta Vista Golf and Country Club v. The City of Cebu, et al.*, 778 Phil. 685, 704 (2016).

class, although not specifically named by the particular words. For if the lawmaking body intended the general terms to be used in their unrestricted sense, it would have not made an enumeration of particular subjects but would have used only general terms.[51]

In this light, the COA-CP argues that the purchase of over the counter drugs, prescription drugs, payment of consultation fees, reimbursement of expenses on emergency and special cases and situations, optometric procedures, dental procedures like retainers and braces, and dermatological laser treatments under the 2008 and 2009 MABs **sharply depart** from the principle of *ejusdem generis* pertaining to the category of diagnostic procedures granted under Board Resolution Nos. 07-67 and 2008-1124-004.

Surely, optometric procedures, dental procedures like retainers and braces, and dermatological laser treatments are **non-diagnostic *but more of aesthetic or enhancement procedures***.

The COA-CP, therefore, correctly affirmed the disallowance of these benefits for lack of legal basis.

The persons covered by Medical Check-Up Program under AO 402

The health program which AO 402 espouses is **intended exclusively for government employees**. The Whereas Clause of AO 402 bears this intent:

WHEREAS, pursuant to Section 5 of P.D. No. 1597, s. 1978 (Further Rationalizing the System of Compensation and Position Classification in the National Government), which continues to be applicable in accordance with R.A. No. 6758, s. 1989 (Prescribing a Revised Compensation and Position Classification System in the Government), **all government employees may be granted allowances, honoraria and other fringe benefits**;

---

[51] *Id.* at 705, citing *National Power Corporation v. Judge Angas*, 284-A Phil. 39, 46.

WHEREAS, keeping a healthy workforce is among the primary concerns of the government **considering that the physical well-being of its employees** has a significant impact on the efficiency and effectiveness of public service delivery; (Emphasis supplied)

The families or dependents of qualified government employees concerned are not included. What is not included is deemed excluded. *Exclusio unios est exclusio alterius*.

But as worded, Board Resolution No. 07-67 extended the medical assistance benefits not only to PSALM's plantilla officers but to their so called qualified dependents as well, thus:

WHEREAS, elaborating on the purchase of prescription drugs, it was explained that only Plantilla personnel **and their qualified dependents** shall be entitled. The maximum availment for each personnel covered shall not exceed PhP25,000.00 for each year. This entitlement is non-cumulative and strictly non-convertible to cash. (Emphasis supplied)

Verily, therefore, the grant here of the expanded medical assistance benefits did not only exceed the benefits authorized under AO 402, but also the intended beneficiaries. The inclusion of these beneficiaries, too, is devoid of legal basis.

Petitioners' other arguments

Petitioners next argue that former President Gloria Macapagal-Arroyo approved their request for the retroactive grant of the additional benefits borne in the expanded MABs. For this purpose, it submitted to the COA-CP an alleged confidential document from the Malacañan Palace purportedly bearing former President Arroyo's approval. According to petitioners, with the President's approval, no less, PSALM's authority to grant the expanded benefits in question may no longer be assailed. Other government agencies must allegedly respect the President's approval.

The argument must fail.

For one, both COA-Cluster Director Alagon and the COA-CP noted that the so-called confidential document ***did not bear*** President Arroyo's signature. It only reflected the word

"*approved*" without the President's signature affixed thereto. In fine, the so-called confidential document is a mere scrap of paper.

For another, per COA-CP's verification, the so-called confidential document is ***not on file*** with the Malacañan Records Office (MRO).[52] Petitioners have not spoken a word about this finding. In any case, we agree with the COA-CP that it is not the President's signature, but AO 402 which dictates whether the 2008 and 2009 expanded MABs were legally authorized.

Petitioners further invoke the doctrine of operative fact *vis-à-vis* Board Resolution Nos. 07-67 and 2008-1124-004 when they authorized the expanded medical assistance benefits.

The doctrine of operative fact nullifies the effects of an unconstitutional law, executive act, or similar issuances by recognizing that the existence of a statute prior to a determination of unconstitutionality is an operative fact and may have consequences that cannot always be ignored. It applies as a matter of equity and fair play when a declaration of unconstitutionality will impose an undue burden on those who have relied on the invalid law, act, or the like.[53]

The doctrine of operative fact, however, ***does not apply*** to Board Resolution Nos. 07-67 and 2008-1124-004. They are not laws, executive acts or like issuances which have the effect of law. The COA-CP did not pass upon the validity of these board resolutions for it is devoid of such authority in the first place. What COA-CP did was affirm the disallowance on audit of the disbursements and payments in question for being devoid of legal basis.

---

[52] *Id.* (G.R. No. 218177) at 56; *id.* (G.R. No. 205490) at 123.

[53] *Film Development Council of the Philippines v. Colon Heritage Realty Corporation*, G.R. No. 203754, June 16, 2015.

Second Issue
Persons liable to return subject amounts

The following statutory provisions identify the persons liable to return the disallowed amounts, *viz.*:

1. Section 43, Chapter V, Book VI of the 1987 Administrative Code:

Section 43. *Liability for Illegal Expenditures*. – Every expenditure or obligation authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of said provisions shall be illegal and every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable to the Government for the full amount so paid or received.

x x x x x x x x x

2. Sections 38 and 39, Chapter 9, Book I, of the 1987 Administrative Code:

Section 38. *Liability of Superior Officers*. –

(1) A public officer shall not be civilly liable for acts done in the performance of his official duties, unless there is a clear showing of bad faith, malice or gross negligence.

(2) Any public officer who, without just cause, neglects to perform a duty within a period fixed by law or regulation, or within a reasonable period if none is fixed, shall be liable for damages to the private party concerned without prejudice to such other liability as may be prescribed by law.

(3) A head of a department or a superior officer shall not be civilly liable for the wrongful acts, omissions of duty, negligence, or misfeasance of his subordinates, unless he has actually authorized by written order the specific act or misconduct complained of.

Section 39. *Liability of Subordinate Officers*. – No subordinate officer or employee shall be civilly liable for acts done by him in good faith in the performance of his duties. However, he shall be liable for willful or negligent acts done by him which are contrary to law, morals,

public policy and good customs even if he acted under orders or instructions of his superiors.

3. Section 52, Chapter 9, Title I-B, Book V of the 1987 Administrative Code:

Section 52. *General Liability for Unlawful Expenditures*. — Expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor.

4. Sections 102 and 103, Ordaining and Instituting a Government Auditing Code of the Philippines:

Section 102. *Primary and secondary responsibility.*

1. The head of any agency of the government is immediately and primarily responsible for all government funds and property pertaining to his agency.

2. Persons entrusted with the possession or custody of the funds or property under the agency head shall be immediately responsible to him, without prejudice to the liability of either party to the government.

Section 103. *General liability for unlawful expenditures*. – Expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor.

5. Section 49 of Presidential Decree 1177 (PD 1177) or the Budget Reform Decree of 1977:

Section 49. *Liability for Illegal Expenditure*. – Every expenditure or obligation authorized or incurred in violation of the provisions of this Decree or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of said provisions shall be illegal and every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable to the Government for the full amount so paid or received.

x x x x x x x x x

6. Section 19 of the Manual of Certificate of Settlement and Balances:

19.1 The liability of public officers and other persons for audit disallowances shall be determined on the basis of: (a) the nature of the disallowance; (b) the duties, responsibilities or obligations of the officers/persons concerned; (c) the extent of their participation or involvement in the disallowed transaction; and (d) the amount of losses or damages suffered by the government thereby. The following are illustrative examples:

> 19.1.1 Public officers who are custodians of government funds and/or properties shall be liable for their failure to ensure that such funds and properties are safely guarded against loss or damage; that they are expended, utilized, disposed of or transferred in accordance with law and regulations, and on the basis of prescribed documents and necessary records.
>
> 19.1.2 Public officers who certify to the necessity, legality and availability of funds/budgetary allotments, adequacy of documents, etc. involving the expenditure of funds or uses of government property shall be liable according to their respective certifications.
>
> 19.1.3 Public officers who approve or authorize transactions involving the expenditure of government funds and uses of government properties shall be liable for all losses arising out of their negligence or failure to exercise the diligence of a good father of a family.

In the very recent case of ***Madera, et al. v. COA***,[54] the Court *En Banc*, speaking with one voice through the brilliant *ponencia* of Justice Alfredo Benjamin S. Caguioa, discussed in detail the respective liabilities of certifying and approving officers and the recipient employees in case of expenditure disallowance, *viz.*:

x x x the civil liability under Sections 38 and 39 of the Administrative Code of 1987, including the treatment of their liability as solidary under Section 43, arises only upon a showing that the approving or certifying officers performed their official duties with bad faith, malice

---

[54] G.R. No. 244128, September 15, 2020.

or gross negligence. For errant approving and certifying officers, the law justifies holding them solidarily liable for amounts they may or may not have received considering that the payees would not have received the disallowed amounts if it were not for the officers' irregular discharge of their duties, x x x This treatment contrasts with that of individual payees who x x x can only be liable to return the full amount they were paid, or they received pursuant to the principles of *solutio indebiti* and unjust enrichment.

x x x x x x x x x

x x x the Court adopts Associate Justice Marvic M.V.F. Leonen's (Justice Leonen) proposed circumstances or badges for the determination of whether an authorizing officer exercised the diligence of a good father of a family:

> x x x For one to be absolved of liability the following requisites [may be considered]: (1) Certificates of Availability of Funds pursuant to Section 40 of the Administrative Code, (2) In-house or Department of Justice legal opinion, (3) that there is no precedent allowing a similar case in jurisprudence, (4) that it is traditionally practiced within the agency and no prior disallowance has been issued, [or] (5) with regard the question of law, that there is a reasonable textual interpretation on its legality.

Thus, to the extent that these badges of good faith and diligence are applicable to both approving and certifying officers, these should be considered before holding these officers, whose participation in the disallowed transaction was in the performance of their official duties, liable. The presence of any of these factors in a case may tend to uphold the presumption of good faith in the performance of official functions accorded to the officers involved, which must always be examined relative to the circumstances attending therein.

x x x x x x x x x

x x x the evolution of the "good faith rule" that excused the passive recipients in good faith from return began in *Blaquera* (1998) and *NEA* (2002), where the good faith of both officers and payees were determinative of their liability to return the disallowed benefits – the good faith of all parties resulted in excusing the return altogether in *Blaquera*, and the bad faith of officers resulted in the return by all recipients in *NEA*. The rule morphed in *Casal* (2006) to distinguish

the liability of the payees and the approving and/or certifying officers for the return of the disallowed amounts. In *MIAA* (2012) and *TESDA* (2014), the rule was further nuanced to determine the extent of what must be returned by the approving and/or certifying officers as the government absorbs what has been paid to payees in good faith. This was the state of jurisprudence then which led to the ruling in *Silang* (2015) which followed the rule in *Casal* that payees, as passive recipients, should not be held liable to refund what they had unwittingly received in good faith, while relying on the cases of *Lumayna* and *Querubin*.

The history of the rule as shown evinces that the original formulation of the "good faith rule" excusing the return by payees based on good faith was ***not intended*** to be ***at the expense of*** approving and/or certifying officers. The application of this judge made rule of excusing the payees and then placing upon the officers the responsibility to refund amounts they did not personally receive, commits an inadvertent injustice.

x x x x x x x x x

The COA similarly applies the principle of *solutio indebiti* to require the return from payees regardless of good faith. x x x

x x x x x x x x x

x x x Notably, in situations where officers are covered by Section 38 of the Administrative Code either by presumption or by proof of having acted in good faith, in the regular performance of their official duties, and with the diligence of a good father of a family, payees remain liable for the disallowed amount unless the Court excuses the return. For the same reason, any amounts allowed to be retained by payees shall reduce the solidary liability of officers found to have acted in bad faith, malice, and gross negligence. In this regard, Justice Bernabe coins the term "net disallowed amount" to refer to the total disallowed amount minus the amounts excused to be returned by the payees. Likewise, Justice Leonen is of the same view that the officers held liable have a solidary obligation only to the extent of what should be refunded and this does not include the amounts received by those absolved of liability. In short, the net disallowed amount shall be solidarily shared by the approving/authorizing officers who were clearly shown to have acted in bad faith, with malice, or were grossly negligent.

Consistent with the foregoing, the Court shares the keen observation of Associate Justice Henri Jean Paul B. Inting that payees generally have no participation in the grant and disbursement of employee benefits, but their liability to return is based on *solutio indebiti* as a result of the mistake in payment. Save for collective negotiation agreement incentives carved out in the sense that employees are not considered passive recipients on account of their participation in the negotiated incentives x x x payees are generally held in good faith for lack of participation, with participation limited to "accep[ting] the same with gratitude, confident that they richly deserve such benefits."

x x x x x x x x x

To recount, x x x, retention by passive payees of disallowed amounts received in good faith has been justified on payee's "lack of participation in the disbursement." However, this justification is unwarranted because a payee's mere receipt of funds not being part of the performance of his official functions still equates to him unduly benefiting from the disallowed transaction; this gives rise to his liability to return.

x x x x x x x x x

x x x To a certain extent, therefore, payees always do have an indirect "involvement" and "participation" in the transaction where the benefits they received are disallowed because the accounting recognition of the release of funds and their mere receipt thereof results in the debit against government funds in the agency's account and a credit in the payee's favor. Notably, when the COA includes payees as persons liable in an ND, the nature of their participation is stated as "received payment."

x x x x x x x x x

In the ultimate analysis, the Court, through these new precedents, has returned to the basic premise that the responsibility to return is a civil obligation to which fundamental civil law principles, such as unjust enrichment and *solutio indebiti* apply regardless of the good faith of passive recipients. **This, as well, is the foundation of the rules of return that the Court now promulgates**.

In the same case, the Court summarized the rules regarding the liability of the certifying and approving officers and recipient employees, thus:

E. The Rules on Return

In view of the foregoing discussion, the Court pronounces:

1. If a Notice of Disallowance is set aside by the Court, no return shall be required from any of the persons held liable therein.

2. If a Notice of Disallowance is upheld, the rules on return are as follows:

(a) Approving and certifying officers who acted in good faith, in regular performance of official functions, and with the diligence of a good father of the family are not civilly liable to return consistent with Section 38 of the Administrative Code.

(b) Approving and certifying officers who are clearly shown to have acted in bad faith, malice, or gross negligence are, pursuant to Section 43 of the Administrative Code of 1987, solidarily liable to return only the net disallowed amount which, as discussed herein, excludes amounts excused under the following Sections 2c and 2d.

(c) Recipients – whether approving or certifying officers or mere passive recipients – are liable to return the disallowed amounts respectively received by them, unless they are able to show that the amounts they received were genuinely given in consideration of services rendered.

(d) The Court may likewise excuse the return of recipients based on undue prejudice, social justice considerations, and other *bona fide* exceptions as it may determine on a case to case basis.

Applying the law and ***Madera*** here, we hold that the members and officers of the PSALM Board of Directors who authorized the payment of the disallowed amounts and the employees who received the same are liable to return them.

i. Liability of certifying and approving officers

Section 38, Chapter 9, Book I, of the Administrative Code expressly states that the civil liability of a public officer for acts done in the performance of his or her official duty arises only upon a clear showing that he or she performed such duty

with bad faith, malice, or gross negligence. This is because of the presumption that official duty is regularly performed.

Malice or bad faith implies a conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity.[55] Gross neglect of duty or gross negligence, on the other hand, refers to negligence characterized by the want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to give to their own property. It denotes a flagrant and culpable refusal or unwillingness of a person to perform a duty. In cases involving public officials, gross negligence occurs when a breach of duty is flagrant and palpable.[56]

Here, it cannot be said that petitioning members and officers of the Board acted with malice and bad faith in approving the grant of the benefits later disallowed. As they claimed, they all acted in the honest belief that the same were due them and the PSALM employees under AO 402. There is also nothing on record to lead us to conclude that they, indeed, granted the excess benefits with a dishonest purpose.

Nevertheless, we hold that the approving and certifying officers are guilty of gross negligence.

To reiterate, the provisions of AO 402 are clear and unequivocal. Its singular intention is to grant free annual medical check-up program to government employees. It does not imply in any way the grant of other health benefits outside the free annual medical check-up. It also clearly limited its scope to the government employees themselves. Nowhere in the provisions of the law were the benefits extended to the dependents of the government employees. The members and officers of the Board

---

[55] *California Clothing, Inc., et al. v. Quiñones*, 720 Phil. 373, 381 (2013).

[56] *Office of the Ombudsman v. De Leon*, 705 Phil. 26, 37-38 (2013); also see *GSIS v. Manalo*, 795 Phil. 832, 857-858 (2016).

of Directors, however, carelessly expanded the coverage of the benefits without thought about and without harmonizing the same with the provisions of AO 402. Worse, they expanded the benefits not only once, but twice – in 2008 and in 2009.

More, in ***Madera***, the Court adopted Justice Leonen's proposed badges for the determination of whether an authorizing officer exercised the diligence of a good father of a family, to wit:

> x x x (1) **Certificates of Availability of Funds** pursuant to Section 40 of the Administrative Code, (2) In-house or Department of Justice legal opinion, (3) that there is no precedent allowing a similar case in jurisprudence, (4) that it is traditionally practiced within the agency and **no prior disallowance has been issued**, [or] (5) with regard the question of law, that there is a reasonable textual interpretation on its legality. (Emphasis supplied)

Here, COA-Cluster Director IV Alagon aptly observed that PSALM's 2008 Corporate Operating Budget for 2008 from which the MAB was sourced was only ₱3,350,000.00. As it was, however, the 2008 MAB amounted to ₱5,702,517.42,[57] clearly in excess of the available funds. But it did not deter the members and officers of the Board of Directors from continuing to grant the expanded benefits.

More, on January 22, 2009, prior to the full implementation of the 2009 expanded MAB, State Auditor Molina already served PSALM her Audit Observation Memorandum No. 2008-06 stating that the expanded benefits included in the 2008 MAB lacked legal and factual bases. Thereafter, State Auditor Molina issued ND No. 2008-002 (2008) dated April 23, 2009.[58] From that point onward, the concerned members and officers of the Board of Directors should have already desisted from granting the expanded benefits under the 2009 MAB. Standing alone, the prior disallowance of the grant under the 2008 MAB may not suffice to negate the presumption of regularity in favor of

---

[57] *Id.* (G.R. No. 218177) at 157.

[58] *Id.* (G.R. No. 218177) at 10 and 110.

petitioners, but taken with the other badges, indubitably conveys the presence of gross negligence.

Indeed, the factors, as heretofore discussed, clearly support the finding that the members and officers of the Board of Directors who approved and authorized the grant of the expanded benefits are liable to return the disallowed amounts. Pursuant to Section 43, Chapter V, Book VI of the 1987 Administrative Code and ***Madera***, their liability is joint and several for the disallowed amounts received by the individual employees.

ii. Liability of the recipient employees

As clarified in ***Madera***, the general rule is that recipient employees must be held liable to return disallowed payments on ground of *solutio indebiti* or unjust enrichment as a result of the mistake in payment. Under the principle of *solutio indebiti*, if something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.

Madera, however, decrees as well that restitution may be excused in the following instances:

> x x x the jurisprudential standard for the exception to apply is that the amounts received by the payees constitute disallowed benefits that were genuinely **given in consideration of services rendered** (or to be rendered)" negating the application of unjust enrichment and the *solutio indebiti* principle. As examples, Justice Bernabe explains that these disallowed benefits may be in the nature of **performance incentives, productivity pay, or merit increases** that have not been authorized by the Department of Budget and Management as an exception to the rule on standardized salaries. In addition to this proposed exception standard, Justice Bernabe states that the Court may also determine in the proper case *bona fide* exceptions, depending on the purpose and nature of the amount disallowed. These proposals are well-taken.
>
> Moreover, the Court may also determine in a proper case other circumstances that warrant excusing the return despite the application of *solutio indebiti*, such as when **undue prejudice** will result from requiring payees to return or where **social justice or humanitarian considerations** are attendant. (Emphasis supplied)

Unfortunately for PSALM's employees, none of the exceptions are present in this case. Foremost, the expanded benefits under the 2008 and 2009 MABs were not given in relation to the employees' functions, nor were they given as part of performance incentives, productivity pay, or merit increases. Also, it cannot be said that undue prejudice will result in requiring the recipient employees to return the disallowed amount. On the contrary, it is the Government that would be prejudiced if the recipients will not return what they unduly received. Social justice or any humanitarian considerations also do not call for the grant to the employees of expanded benefits in the form of dermatological and dental treatments to their dependents. In short, there was total lack of basis and justification for the grant of the expanded benefits included in the 2008 and 2009 MABs.

Verily, therefore, the employees must be held liable to return the amounts that they and their dependents, if any, respectively received. As earlier discussed, the approving and certifying members and officers of the Board of Directors are jointly and severally liable for the disallowed amounts received by the individual employees.

ACCORDINGLY, the assailed Decision No. 2014-036 dated March 5, 2014, Resolution dated January 26, 2015, and Decision No. 2012-270 dated December 28, 2012 of the Commission on Audit – Commission Proper are **AFFIRMED** with **MODIFICATION**, *viz.*:

1. The PSALM employees are individually liable to return the amounts which they and their dependents, if any, respectively received pursuant to the 2008 and 2009 expanded MABs;

2. The PSALM officers and members of the Board of Directors who took part in the approval of the unauthorized benefits under Board Resolution Nos. 07-67 and 2008-1224-004 are jointly and solidarily liable for the return of the disallowed amounts in connection with the 2008 and 2009 expanded MABs.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Leonen, Caguioa, Gesmundo, Hernando, Carandang, Inting, Lopez, Delos Santos, and *Gaerlan, JJ.*, concur.

Zalameda, J., on official leave.

Baltazar-Padilla, J., on leave.

FIRST DIVISION

[G.R. No. 218155. September 22, 2020]

FACT-FINDING INVESTIGATION BUREAU MILITARY AND OTHER LAW ENFORCEMENT OFFICES (FFIB-MOLEO), *Petitioner, v.* MAJOR ADELO B. JANDAYAN (RET.), *Respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; QUANTUM OF PROOF REQUIRED IN ADMINISTRATIVE CASES; SUBSTANTIAL EVIDENCE, DEFINED. — In administrative cases, the quantum of proof required is substantial evidence. It is such relevant evidence which a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine differently.

2. ID.; ID.; CRIMINAL LAW; CONSPIRACY; CONSPIRACY EXISTS WHEN THE INDIVIDUAL ACTS PERFORMED BY EACH CONSPIRATOR, IF TAKEN TOGETHER, WOULD DEMONSTRATE THE COMMON CRIMINAL GOAL OF THE CONSPIRATORS; CASE AT BAR. — On its own, Jandayan's act of signing the roster of troops and disbursement voucher might seem innocuous. But taken together with the acts of his co-respondents, it shows a common criminal goal to defraud the government.

In fact, the existence of conspiracy between Jandayan and his co-respondents has been resolved in *Fact-Finding Investigation Bureau (FFIB) - Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices v. Miranda (Miranda).* Miranda involves one of Jandayan's co-respondents and the Court's Second Division therein ruled that Miranda failed to prove the reason he authorized the transfer of money to Jandayan. He also failed to present any evidence of Jandayan's authority to disburse funds. The Court's Second Division thus concluded that their actions, taken together, demonstrate a common criminal goal, thus:

> It is indubitable that Maj. Jandayan came into the picture only when respondent [Miranda] out of nowhere and without any valid designation or authority possessed by Maj. Jandayan suddenly brought the latter in as recipient and disburser of the funds. It was truly the final operative act which caused first the release, then the misappropriation, and finally the total loss of the funds which to date, have remained unaccounted for.
>
> . . .
>
> Considering the foregoing, a reasonable mind will accept that Jandayan and his co-respondents were acting with one aim, with each one performing one part, and all their parts completing their aim, which was to make it appear that funds were distributed to PMC personnel when, in reality, they were not so.

3. POLITICAL LAW; PRESIDENTIAL DECREE NO. 1445 (GOVERNMENT AUDITING CODE OF THE PHILIPPINES); TRANSFER OF GOVERNMENT FUNDS FROM ONE OFFICER TO ANOTHER; SUCH TRANSFER MUST BE AUTHORIZED BY THE COMMISSION ON AUDIT; CASE AT BAR. — Jandayan's receipt of the money, as shown by the documents denominated as Funds Entrusted to Agent Officer/Teller, was in clear violation of Section 75 of the *Government Auditing Code of the Philippines*, or Presidential Decree No. 1445, which states:

> SECTION 75. *Transfer of Funds from One Officer to Another.* — Transfer of government funds from one officer to another shall, except as allowed by law or regulation, be made only upon prior direction or authorization of the Commission or its representative.

Jandayan failed to prove that he had any authority to receive the money. Further, it is unrebutted that the normal accounting procedure of the PMC was for the funds to be distributed to the individual disbursing or liaison officers of the different PMC units and that these individuals were tasked to distribute the proceeds to each of the qualified PMC personnel in their units. Jandayan failed to explain why he received the proceeds of the checks even though he was not a disbursing officer but the Assistant Chief of Staff for Personnel.

4. ID.; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; MISCONDUCT; DEFINED; AS AN ADMINISTRATIVE OFFENSE, MISCONDUCT SHOULD RELATE TO, OR BE CONNECTED WITH, THE PERFORMANCE OF THE OFFICIAL FUNCTIONS AND DUTIES OF A PUBLIC OFFICER; WHEN MISCONDUCT IS CONSIDERED GRAVE. — As defined, "[m]isconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. As an administrative offense, misconduct should relate to or be connected with the performance of the official functions and duties of a public officer. It is considered grave where the elements of corruption and clear intent to violate the law or flagrant disregard of established rule are present."

5. ID.; ID.; ID.; DISHONESTY, DEFINITION AND CLASSIFICATION OF; ACTS CONSTITUTING SERIOUS DISHONESTY; CASE AT BAR. — [D]ishonesty has been defined as:

> "x x x disposition to lie, cheat, deceive, or defraud; untrustworthiness, lack of integrity," is classified in three (3) gradations, namely: serious, less serious, and simple. **Serious dishonesty** comprises dishonest acts: (*a*) causing serious damage and grave prejudice to the government; (*b*) directly involving property, accountable forms or money for which respondent is directly accountable and the respondent shows an intent to commit material gain, graft and corruption; (*c*) exhibiting moral depravity on the part of the respondent; (*d*) involving a Civil Service examination, irregularity or fake Civil Service eligibility such as, but not limited to, impersonation, cheating and use of crib sheets; (*e*) committed several times or in various occasions; (*f*) committed with grave abuse of authority; (*g*) committed with fraud and/or falsification of official documents relating to respondent's employment; and (*h*) other analogous circumstances. x x x

Based on the foregoing, a reasonable mind would arrive at the conclusion that Jandayan transgressed an established rule of action and that there was a flagrant disregard of such rule. He also caused serious damage and prejudice to the government involving money for which he was accountable.

. . .

Jandayan signed a roster of troops and disbursement voucher to support the liquidation of the cash advance. Further, he actually received the funds even though he had no authority to do so. Making matters worse, he failed to show where the money went. His acts, taken together with that of his co-respondents before the Ombudsman, show an utter disregard of the trust reposed in him as a public officer and for which he should be held liable.

6. ID.; CONSTITUTIONAL LAW; 1987 CONSTITUTION; ACCOUNTABILITY OF PUBLIC OFFICERS; THOSE IN THE PUBLIC SERVICE ARE ENJOINED TO FULLY COMPLY WITH THE HIGH CONSTITUTIONAL STANDARD OF CONDUCT OR RUN THE RISK OF FACING ADMINISTRATIVE SANCTIONS RANGING FROM REPRIMAND TO THE EXTREME PENALTY OF DISMISSAL FROM THE SERVICE.— As the Court held in *Field Investigation Office of the Office of the Ombudsman v. Castillo*: "[T]his Court has repeatedly emphasized the time-honored rule that a '[p]ublic office is a public trust [and] [p]ublic officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.'" The Court continued that "[t]his high constitutional standard of conduct is not intended to be mere rhetoric, and should not be taken lightly considering that those in the public service are enjoined to fully comply with this standard or run the risk of facing administrative sanctions ranging from reprimand to the extreme penalty of dismissal from the service."

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court assailing the

[1] *Rollo*, pp. 12-37, excluding Annexes.

Decision[2] dated October 31, 2014 and Resolution[3] dated April 15, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 130017. The CA reversed and set aside the Decision[4] dated February 27, 2009 and Joint Order[5] dated January 21, 2013 of the Office of the Ombudsman (Ombudsman) in OMB P-A-06-0106-A insofar as respondent Major Adelo B. Jandayan (Ret.) (Jandayan) was found guilty of grave misconduct and dishonesty. The CA directed that Jandayan be paid his retirement benefits and the proscription to his re-employment in any branch or instrumentality of the government including government-owned and controlled corporations be removed.

Facts

The CA summarized the facts as follows:

In April 2000, the Philippine Marine Corps (PMC) released funds amounting to ₱36,768,028.95 intended for the combat clothing allowance, equivalent to ₱8,381.75 per person, and individual equipment allowance, equivalent to ₱6,337.80 per person (hereafter collectively referred to as the "CCIE allowance"), for allowance to enlisted personnel in active duty from the first to the fourth quarter of 1999. Checks were issued by way of cash advances to cover these allowances. Various documents, such as disbursement vouchers, payrolls, special orders, roster of troops and various certifications, were subsequently submitted to support the liquidation of the cash advances. However, when investigations were conducted of PMC enlisted personnel, whose names were listed in the liquidation payrolls, chosen via random sampling, it was revealed that they never received their CCIE allowance. It was also revealed that the signatures appearing in the liquidation payrolls were not the signatures of the randomly chosen PMC personnel; and neither were these the signatures of their representatives for these PMC personnel had never

---

[2] Id. at 39-54. Penned by Associate Justice Victoria Isabel A. Paredes and concurred in by Associate Justices Ricardo R. Rosario and Pedro B. Corales.

[3] Id. at 56-57.

[4] Id. at 58-65.

[5] Id. at 103-110.

authorized representative to receive the CCIE allowance on their behalf. Moreover, the normal procedure was not followed as recipients were sorted by rank, assigned to different fields at different locations, instead of by unit per battalion, for expediency of release to each unit's liaison officer for speedy payment. Finally, it was revealed that provisions of the Government Accounting and Auditing Manual, applicable to all classes of disbursements, were not complied with when the cash advances for the CCIE allowance was not approved by the head of office nor his authorized representative.

As a result of the investigation, an administrative and criminal affidavit-complaint dated January 13, 2006, was filed charging Colonel Renato P. Miranda, General Percival M. Subala, Major Jesus P. Cabatbat, Major Felicisimo C. Millado, Captain Edmundo D. Yurong, Carolyn L. Bontolo and petitioner [Jandayan], for Malversation through falsification of public documents, Dishonesty, Violation of Commission on Audit (COA) rules and regulations, and Violation of Section 3 (e) of Republic Act No. 3019, by respondent Fact Finding Investigation Bureau – Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices (FFIB[-]MOLEO) before the Ombudsman. The FFIB-MOLEO cited several overt acts committed by the respondents-accused to show conspiracy in the commission of irregularities in the release of the CCIE funds; petitioner was held liable in the conspiracy for issuing a roster of troops and disbursement vouchers certifying that the expenses were necessary, lawful and incurred under his direct supervision.

On December 11, 2006, petitioner submitted his counter-affidavit where he denied the charges against him and insisted that his signing of the aforementioned documents were done as official acts in his capacity as then Assistant Chief of Staff for Personnel, MC1, of the PMC.

Subsequently, Acting Ombudsman Orlando C. Casimiro issued the assailed Decision dated June 1, 2011, in OMB P-A-06-0106-A, finding petitioner herein and the other respondents-accused, except General Percival M. Subala and Carolyn Bontolo, guilty of grave misconduct and dishonesty, and disposed of the administrative case in this wise:

> **WHEREFORE**, finding substantial evidence, this Office finds respondents **COL. RENATO P. MIRANDA, LT. COL. JESON P. CABATBAT, MAJOR ADELO B. JANDAYAN, CAPT. FELICISIMO C. MILLADO, and CAPT. EDMUNDO D. YURONG** GUILTY of Grave Misconduct and Dishonesty pursuant to

> Section 19 in relation to Section 25, RA 6770 otherwise known as The Ombudsman Act of 1989, and are hereby meted out the penalty of DISMISSAL from the service effective immediately with forfeiture of all the benefits, except accrued leave credits, if any, with prejudice to re-employment in any branch or service of the government including government owned and controlled corporations.
>
> With respect to respondent **MAJ. ADELO B. JANDAYAN**, since he had already retired from service, the forfeiture of all his retirement benefits, except accrued leave credits, is hereby **ORDERED**, and his re[-]employment in any branch or instrumentality of the government, including government-owned and controlled corporations is **PROSCRIBED**.
>
> With respect to respondents **BGEN. PERCIVAL M. SUBALA** and **CAROLYN L. BONTOLO**, this case is hereby **DISMISSED**. (Emphasis in the original)[6]

The Ombudsman found that the ₱36,768,028.95 was released by way of cash advances granted to Major Felicisimo C. Millado (Millado), as the checks were all payable to him.[7] He encashed the check and entrusted the proceeds to Jandayan, with the approval of Colonel Renato P. Miranda (Miranda) and Gioksan Dammang[8] as shown by the documents denominated as Funds Entrusted to Agent Officer/Teller.[9]

According to the Ombudsman, following the normal procedure, the money should have been distributed to the respective disbursing officers of the different units of assignment of the Philippine Marine Corps (PMC). These disbursing officers then are responsible for distributing the ₱14,715.05 to the marine soldiers assigned in their units.[10] Given this, it was unlawful

---

[6] Id. at 40-42.

[7] Id. at 62.

[8] Also appears as Giokson Dammang in some parts of the *rollo*.

[9] *Rollo*, pp. 62-63.

[10] Id. at 63.

for Millado to entrust the proceeds of the check to Jandayan. The Ombudsman found that it was unlawful for Jandayan to receive and hold the proceeds of the checks because he was not a disbursing officer.[11]

Jandayan moved for reconsideration but was denied in a Joint Order[12] dated January 21, 2013.

On appeal, the CA reversed and set aside the Ombudsman's Decision. The dispositive portion of the CA Decision states:

> **WHEREFORE**, premises considered, the Petition is **GRANTED**. The Decision dated February 27, 2009 and the Joint Order dated January 21, 2013 of the Office of the Ombudsman, in OMB P-A-06-0106-A, insofar as it found herein petitioner Major Adelo B. Jandayan (Ret.) guilty of grave misconduct and dishonesty, are **REVERSED** and **SET ASIDE**; consequently, the complaint against him is **DISMISSED**. He is ordered to be **PAID** the [retirement] benefits denied him by reason of the assailed Decision and Joint Order; and the proscription to his re-employment in any branch or instrumentality of the government, including government-owned and controlled corporations, is **REMOVED** and **DELETED**.
>
> **SO ORDERED**.[13]

The CA found that Jandayan's act of signing the roster of troops and disbursement vouchers certifying that the expenses were necessary, lawful and incurred under his direct supervision did not constitute grave misconduct.[14] For the CA, there was nothing irregular about the signing of the roster of troops as this has been verified before being released.[15] Further, it was within his area of expertise to know who are the enlisted personnel as he was the Assistant Chief of Staff for Personnel.[16]

---

[11] Id.

[12] Id. at 103-110.

[13] Id. at 53.

[14] Id. at 45.

[15] Id.

[16] Id.

As to Jandayan's signing of the disbursement voucher saying that the expenses were lawful and necessary, the fact of necessity was known to him as he was the Assistant Chief of Staff for Personnel.[17] As ruled by the CA:

> x x x Since the subject of the case before the Ombudsman was whether or not the CCIE funds reached the intended enlisted personnel and **not** whether the CCIE allowances were indeed valid and necessary expenses, nothing in the acts of the petitioner [Jandayan] made him liable for grave misconduct.[18]

As to the charge of dishonesty, the CA ruled that since there was no question as to the necessity of the CCIE allowance, and there was no claim that the roster of troops or anything contained therein was not genuine, thus dishonesty cannot be imputed to Jandayan.[19]

The CA further ruled that the Ombudsman erred in relying on Millado's admission that he had entrusted the proceeds of the check to Jandayan. According to the CA, other than Millado's statement, there was no other proof to show that Jandayan received the money.[20]

Nonetheless, the CA ruled that the signature of Jandayan in the documents denominated as Funds Entrusted to Agent Officer/ Teller did not show that he was liable for grave misconduct and dishonesty. For the CA, his act of signing the document, without any proof of a predisposition to cheat or deceive, did not violate the law.[21] The CA further ruled that Jandayan was able to explain that the combat clothing was issued in kind.[22]

---

[17] Id.

[18] Id.

[19] Id. at 46.

[20] Id. at 48.

[21] Id.

[22] Id. at 49.

On petitioner's finding of conspiracy, the CA ruled that no evidence other than bare assertions supports the allegation of conspiracy. There was no proof of a conscious design or Jandayan's participation in the conspiracy. For the CA, Jandayan's signatures in the roster of troops, certification that the expenses were necessary, and in the Funds Entrusted to Agent Officer/Teller, were all done in the course of his official function as Assistant Chief of Staff for Personnel.[23]

Petitioner moved for reconsideration but the CA denied this in its Resolution dated April 15, 2015.

Hence, this Petition.

Issue

The only issue raised in this Petition is whether the CA erred in reversing and setting aside the Ombudsman's Decision and Joint Order finding Jandayan guilty of grave misconduct and dishonesty.[24]

The Court's Ruling

The Petition is granted.

The CA ruled that there was no evidence other than the bare allegations of petitioner that Jandayan conspired with his co-respondents before the Ombudsman.[25] The CA further ruled that petitioner failed to establish that Jandayan committed the acts imputed to him.[26] These are erroneous.

In administrative cases, the quantum of proof required is substantial evidence. It is such relevant evidence which a reasonable mind might accept as adequate to support a

---

[23] Id. at 50.

[24] Id. at 19.

[25] Id. at 50.

[26] Id.

conclusion, even if other minds equally reasonable might conceivably opine differently.[27]

Here, it is undisputed that Jandayan signed the roster of troops and disbursement vouchers. Jandayan also signed the documents denominated as Funds Entrusted to Agent Officer/Teller[28] which clearly states that he received cash from Millado corresponding to the value of the 19 checks.

On its own, Jandayan's act of signing the roster of troops and disbursement voucher might seem innocuous. But taken together with the acts of his co-respondents, it shows a common criminal goal to defraud the government.

In fact, the existence of conspiracy between Jandayan and his co-respondents has been resolved in *Fact-Finding Investigation Bureau (FFIB) – Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices v. Miranda*[29] *(Miranda)*. *Miranda* involves one of Jandayan's co-respondents and the Court's Second Division therein ruled that Miranda failed to prove the reason he authorized the transfer of money to Jandayan. He also failed to present any evidence of Jandayan's authority to disburse funds. The Court's Second Division thus concluded that their actions, taken together, demonstrate a common criminal goal, thus:

> It is indubitable that Maj. Jandayan came into the picture only when respondent [Miranda] out of nowhere and without any valid designation or authority possessed by Maj. Jandayan suddenly brought the latter in as recipient and disburser of the funds. It was truly the final operative act which caused first the release, then the

---

[27] *Fact-Finding Investigation Bureau (FFIB) – Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices v. Miranda*, G.R. No. 216574, July 10, 2019, p. 14. The Decision was rendered by the Second Division; penned by Associate Justice Amy C. Lazaro-Javier and concurred in by Associate Justices Antonio T. Carpio, Estela M. Perlas-Bernabe, Alfredo Benjamin S. Caguioa, and Jose C. Reyes, Jr.

[28] *Rollo*, pp. 66-84.

[29] *Supra* note 27.

misappropriation, and finally the total loss of the funds which to date, have remained unaccounted for.

In ***Mangubat v. Sandiganbayan***, the Court recognized the importance of the individual acts performed by each conspirator which may at first seem to be an independent act but which, if taken together, would demonstrate the common criminal goal of the conspirators. The Court ordained:

> "x x x no doubt the defraudation of the government would not have been possible were it not for the cooperation respectively extended by all the accused, including herein petitioner. The scheme involved both officials and employees from the Regional Office. Some made the falsifications, others worked to cover-up the same to consummate the crime charged. Petitioner's role was indubitably an essential ingredient especially so because it was he who issued the false LAAs, which as previously mentioned, initiated the commission of the crime. When the defendants by their acts aimed at the same object, one performing one part, and the other performing another part so as to complete it, with a view to the attainment of the same object, and their acts though apparently independent, were in fact concerted and cooperative, indicating closeness of personal association, concerted action and concurrence of sentiments, the court will be justified in concluding that said defendants were engaged in a conspiracy x x x"

The Court keenly notes that from day one up until now, respondent has not produced the authority of Maj. Jandayan, if any, to receive and disburse the funds in question. Too, respondent up until now has not directly or indirectly responded to the core issue against him, albeit he alleged lot of things in his pleadings before the Office of the Ombudsman, the Court of Appeals and this Court. Nowhere in any of these pleadings did respondent ever give a direct response to, let alone, refutation of, the damaging evidence against him.[30]

Considering the foregoing, a reasonable mind will accept that Jandayan and his co-respondents were acting with one aim, with each one performing one part, and all their parts completing their aim, which was to make it appear that funds

---

[30] Id. at 10-11.

were distributed to PMC personnel when, in reality, they were not so.

Further, Jandayan's receipt of the money, as shown by the documents denominated as Funds Entrusted to Agent Officer/ Teller, was in clear violation of Section 75 of the *Government Auditing Code of the Philippines*, or Presidential Decree No. 1445,[31] which states:

> SECTION 75. *Transfer of Funds from One Officer to Another*. — Transfer of government funds from one officer to another shall, except as allowed by law or regulation, be made only upon prior direction or authorization of the Commission or its representative.

Jandayan failed to prove that he had any authority to receive the money. Further, it is unrebutted that the normal accounting procedure of the PMC was for the funds to be distributed to the individual disbursing or liaison officers of the different PMC units and that these individuals were tasked to distribute the proceeds to each of the qualified PMC personnel in their units.[32] Jandayan failed to explain why he received the proceeds of the checks even though he was not a disbursing officer but the Assistant Chief of Staff for Personnel.

As defined, "[m]isconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. As an administrative offense, misconduct should relate to or be connected with the performance of the official functions and duties of a public officer. It is considered grave where the elements of corruption and clear intent to violate the law or flagrant disregard of established rule are present."[33]

---

[31] ORDAINING AND INSTITUTING A GOVERNMENT AUDITING CODE OF THE PHILIPPINES, June 11, 1978.

[32] *Rollo*, pp. 26, 63.

[33] *Fact-Finding Investigation Bureau (FFIB) – Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices v. Miranda*, *supra* note 27, at 12-13, citing *Office of the Ombudsman-Visayas v. Castro*, 759 Phil. 68, 79 (2015) and *Vertudes v. Buenaflor*, 514 Phil. 399, 424 (2005).

On the other hand, dishonesty has been defined as:

"x x x disposition to lie, cheat, deceive, or defraud; untrustworthiness, lack of integrity," is classified in three (3) gradations, namely: serious, less serious, and simple. **Serious dishonesty** comprises dishonest acts: *(a)* causing serious damage and grave prejudice to the government; *(b)* directly involving property, accountable forms or money for which respondent is directly accountable and the respondent shows an intent to commit material gain, graft and corruption; *(c)* exhibiting moral depravity on the part of the respondent; *(d)* involving a Civil Service examination, irregularity or fake Civil Service eligibility such as, but not limited to, impersonation, cheating and use of crib sheets; *(e)* committed several times or in various occasions; *(f)* committed with grave abuse of authority; *(g)* committed with fraud and/or falsification of official documents relating to respondent's employment; and *(h)* other analogous circumstances. x x x[34] (Emphasis in the original)

Based on the foregoing, a reasonable mind would arrive at the conclusion that Jandayan transgressed an established rule of action and that there was a flagrant disregard of such rule. He also caused serious damage and prejudice to the government involving money for which he was accountable.

As the Court held in *Field Investigation Office of the Office of the Ombudsman v. Castillo*:[35] "[T]his Court has repeatedly emphasized the time-honored rule that a '[p]ublic office is a public trust [and] [p]ublic officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.'"[36] The Court continued that "[t]his high constitutional standard of conduct is not intended to be mere rhetoric, and should not be taken lightly considering that those in the public service are enjoined to fully comply with this standard or run the risk of facing administrative sanctions

---

[34] Id. at 12, citing *Office of the Ombudsman, et al. v. PS/Supt. Espina*, 807 Phil. 529, 540-542 (2017).

[35] G.R. No. 221848, August 30, 2016, 801 SCRA 586.

[36] Id. at 596.

ranging from reprimand to the extreme penalty of dismissal from the service."[37]

Jandayan signed a roster of troops and disbursement voucher to support the liquidation of the cash advance. Further, he actually received the funds even though he had no authority to do so. Making matters worse, he failed to show where the money went. His acts, taken together with that of his co-respondents before the Ombudsman, show an utter disregard of the trust reposed in him as a public officer and for which he should be held liable.

WHEREFORE, premises considered, the Petition is **GRANTED**. The Decision dated October 31, 2014 and Resolution dated April 15, 2015 of the Court of Appeals in CA-G.R. SP No. 130017 are **REVERSED and SET ASIDE**. The Decision dated February 27, 2009 and Joint Order dated January 21, 2013 of the Office of the Ombudsman in OMB P-A-06-0106-A as regards respondent Major Adelo B. Jandayan (Ret.) are **REINSTATED**.

SO ORDERED.

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

---

[37] Id.

[*] Designated as Additional Member per S.O. No. 2788 dated September 16, 2020.

FIRST DIVISION

[G.R. No. 227749. September 22, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **BEN SUWALAT**, *Accused-Appellant*.

SYLLABUS

1. **CRIMINAL LAW; RAPE; ELEMENTS. —** Rape is defined and penalized under Article 266-A, paragraph 1 of the Revised Penal Code (RPC), as amended by Republic Act No. 8353 (RA 8353) x x x. Rape requires the following elements: (1) the offender had carnal knowledge of a woman; and (2) the offender accomplished such act through force or intimidation, or when the victim was deprived of reason or otherwise unconscious, or when she was under twelve (12) years of age or was demented. Here, the prosecution had established beyond moral certainty the elements of carnal knowledge and force or intimidation in both cases. Complainant positively identified appellant as the man who had carnal knowledge of her against her will on two (2) separate occasions x x x.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S ASSESSMENT OF THE CREDIBILITY OF WITNESSES' TESTIMONIES DESERVES GREAT WEIGHT AND IS CONCLUSIVE AND BINDING IF NOT TAINTED WITH ARBITRARINESS, ESPECIALLY WHEN THE TRIAL COURT'S FACTUAL FINDINGS CARRY THE FULL CONCURRENCE OF THE COURT OF APPEALS. —** Complainant made a clear, candid, and positive narration of how, in both incidents, appellant went to her bed, undressed her, mounted her, and inserted his penis into her vagina with a threat that he would kill her if she told her father or his wife. The fourteen-year-old complainant could not have merely concocted these ugly details had she not actually experienced them in appellant's hands. x x x [T]he trial court found complainant's testimony to be spontaneous and straightforward. The Court respects the trial court's factual findings on complainant's credibility. For the trial court's assessment of the credibility of the witnesses' testimonies deserves great weight and is

conclusive and binding if not tainted with arbitrariness. More so when the trial court's factual findings carry the full concurrence of the Court of Appeals, as in this case.

3. CRIMINAL LAW; RAPE; THE CLOSE PROXIMITY OF OTHER PEOPLE OR EVEN RELATIVES AT THE RAPE SCENE DOES NOT DISPROVE THE COMMISSION OF RAPE. — Appellant x x x attempts to discredit complainant, averring that the facts and circumstances narrated by complainant are improbable and questionable. He points out that, it was highly unlikely for him to have raped complainant considering that, in both incidents, there were other people present in the same room with them. If it were true, complainant could have easily asked them for help. But she did not. x x x [T]he close proximity of other people or even relatives at the rape scene does not disprove the commission of rape. For lust is no respecter of time and place.

4. ID.; ID.; NOT NEGATED BY THE VICTIM'S FAILURE TO ASK FOR HELP AND OFFER TENACIOUS RESISTANCE. — [C]omplainant's failure to ask for help and offer tenacious resistance does not negate rape. More so since appellant in fact intimidated and threatened her into submission. At any rate, rape victims react differently when confronted with sexual abuse. Their actions are often overwhelmed by fear rather than reason. While some find the courage to immediately reveal their ordeal, others opt to initially keep the harrowing ordeal to themselves. For a young girl of tender age, it is not uncommon to be intimidated into silence by the mildest threat against her life. As shown, appellant here repeatedly threatened to kill complainant who was then only fourteen (14) years old. Notably, complainant tried to repel, albeit unsuccessfully, appellant's sexual acts by pushing, kicking, and boxing him. She later reported the rape incidents to her father, the barangay officials, and the police officers. She also submitted herself to physical examination. Complainant's courageous actions against appellant are eloquent proofs that she was truly wronged and she wanted the wrongdoer to be punished accordingly.

5. REMEDIAL LAW; EVIDENCE; DENIAL AND ALIBI; CANNOT PREVAIL OVER THE COMPLAINANT'S CREDIBLE AND POSITIVE IDENTIFICATION OF THE ACCUSED AS THE PERSON WHO HAD CARNAL KNOWLEDGE OF HER AGAINST HER WILL. — [A]ppellant's defenses boil down

to denial and alibi. These are the weakest of all defenses - - - easy to contrive but difficult to disprove. As between complainant's credible and positive identification of appellant as the person who had carnal knowledge of her against her will, on one hand, and appellant's bare denial and alibi, on the other, the former indubitably prevails. Where nothing supports the alibi except the testimonies of a close relative and friend, appellant's wife and neighbor in this case, it deserves but scant consideration. For such testimonies are suspect and cannot prevail over the unequivocal declaration of a complaining witness.

6. **ID.; CRIMINAL PROCEDURE; ARREST; AN ACCUSED IS ESTOPPED FROM ASSAILING ANY IRREGULARITY OF HIS ARREST IF HE FAILS TO RAISE THIS ISSUE OR TO MOVE FOR THE QUASHAL OF THE INFORMATION AGAINST HIM ON THIS GROUND BEFORE ARRAIGNMENT. —** It is settled that an accused is estopped from assailing any irregularity of his arrest if he fails to raise this issue or to move for the quashal of the information against him on this ground before arraignment. Here, appellant went into arraignment and actively participated in his trial, without questioning his arrest. He only challenged his warrantless arrest on appeal, after a verdict of conviction was handed down by the trial court. Appellant's challenge, therefore, came too late in the day.

7. **CRIMINAL LAW; RAPE; SPECIAL QUALIFYING CIRCUMSTANCES; OFFENDER'S KNOWLEDGE OF VICTIM'S MENTAL DISABILITY; TO BE APPRECIATED, IT MUST BE SUFFICIENTLY ALLEGED AND PROVED WITH EQUAL CERTAINTY AND CLEARNESS AS THE CRIME ITSELF. —** Rape is penalized under Article 266-A of the Revised Penal Code, as amended by RA 8353. It carries the penalty of *reclusion perpetua* unless attended by the qualifying circumstances defined under Article 266-B. The offender's knowledge of the victim's mental disability during the commission of the crime of rape is a special qualifying circumstance which makes it punishable by death. To be properly appreciated, such qualifying circumstance must be sufficiently alleged and proved with equal certainty and clearness as the crime itself. Otherwise, the same cannot be recognized and there can be no conviction of the crime in its qualified form. Here, appellant's knowledge

of complainant's mental retardation at the time of the commission of rape cannot be appreciated as a qualifying or aggravating circumstance as there is no sufficient and competent evidence to substantiate the same. Neither is there a clear evidence that complainant is a mental retardate. The prosecution did not present any evidence that complainant exhibited external manifestations of mental retardation.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This appeal[1] seeks to reverse and set aside the Decision[2] dated July 29, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 01734 which affirmed the trial court's verdict of conviction[3] against appellant Ben Suwalat for two (2) counts of rape. Its dispositive portion reads:

WHEREFORE, the appeal if DENIED. The October 25, 2012 Decision of the RTC, Branch 27, Iloilo City in Crim. Case Nos. 06-63115 and 06-63116 finding accused Ben Suwalat guilty beyond reasonable doubt of two (2) counts of rape and sentencing him to suffer the penalty of *reclusion perpetua* for each count is hereby AFFIRMED with the following MODIFICATIONS:

1) For each count of rape, accused is hereby ordered to pay CCC the following amount: civil indemnity of ₱75,000.00,

---

[1] *Rollo*, pp. 24-25. Filed under Section 13(c), Rule 124 of the Rules of Court.

[2] Penned by Associate Justice Marilyn B. Lagura-Yap and concurred in by Associate Justices Gabriel T. Ingles and Germano Francisco D. Legaspi, *id.* at 4-23.

[3] CA *rollo*, pp. 26-44.

moral damages of ₱75,000.00 and exemplary damages of ₱75,000.00.

2) All damages awarded in this case should be imposed with interest at the rate of six percent (6%) per annum from the finality of this judgment until fully paid.

SO ORDERED.[4]

The Information

Appellant was charged with two (2) counts of rape by carnal knowledge in relation to Republic Act No. 7610 (RA 7610), under the following Informations, *viz.*:

Criminal Case No. 06-63115

That on or about November 1, 2006 in the Municipality of [redacted], Province of Iloilo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lust and lewd designs, taking advantage of nighttime to better attain his purpose, knowing of the mental disability of minor-victim, by means of force, threat and intimidation, and for other consideration, did then and there willfully, unlawfully and feloniously have carnal knowledge of [CCC],[5] a minor of fourteen years of age and a mental retardate, against her will and consent, to the damage and prejudice of said minor victim.

Contrary to law.[6]

Criminal Case No. 06-63116

That on or about August 2006 in the Municipality of [redacted], Province of Iloilo, Philippines, and within the jurisdiction of this

---

[4] *Rollo*, p. 22.

[5] The real name of the victim, her personal circumstances and other information which tend to establish or compromise her identity, as well as those of her immediate family, or household members, shall not be disclosed to protect her privacy, and fictitious initial shall, instead, be used in accordance with *People v. Cabalquinto* [533 Phil. 703 (2006)] and Amended Administrative Circular No. 83-2015 dated September 5, 2017.

[6] *Rollo*, pp. 4-5.

Honorable Court, the above-named accused, with lust and lewd designs, taking advantage of nighttime to better attain his purpose, knowing of the mental disability of minor-victim, by means of force, threat and intimidation, and for other consideration, did then and there willfully, unlawfully and feloniously have carnal knowledge of [CCC], a minor of fourteen years of age and a mental retardate, against her will and consent, to the damage and prejudice of said minor victim.

Contrary to law.[7]

The cases were raffled to the Regional Trial Court (RTC)-Iloilo City, Branch 27 and docketed as Criminal Case Nos. 06-63115 and 06-63116, respectively.

Arraignment and Plea

On arraignment, appellant pleaded "not guilty" to both charges.[8]

During the trial, complainant CCC, Elsie Agcanas, Dr. Ma. Ruby Duyag (Dr. Duyag), PO1 Romadel Velasco (PO1 Velasco), Dr. Ali Robles (Dr. Robles) and complainant's father testified for the prosecution. On the other hand, appellant, his wife, and his neighbor testified for the defense.

The prosecution presented the following documentary evidence: complainant's sworn statement, police blotter report, complainant's certificate of live birth, complainant's medico-legal certificate, affidavit of Elsie Agcanas, psychological report, and psychiatric report.

The Prosecution's Version

Complainant testified that appellant raped her twice when she was fourteen (14) years old. The first rape incident happened in the evening of August 2006. On that day, her father went to appellant's house to make charcoal. In the evening of that day, her father left her and her sister to sleep at appellant's house. Her sister slept between her and appellant's wife on the same bed.

---

[7] *Id.* at 5.

[8] *Id.*

She was roused from sleep when she felt pain and saw appellant on top of her. He had removed her shorts and panties, mounted her, and forcefully inserted his penis into her vagina. She kicked, punched, and pushed him away. But he threatened to kill her if she told her father, and something more would happen if she woke up her sister and his wife.

The following morning, appellant again threatened to waylay and kill her if he heard anything about the rape incident. Meantime, she told her father that she saw blood on her panties but the latter thought it was just her menstruation. She did not tell her father about the rape incident because she was scared of appellant.[9]

On November 1, 2006, appellant again raped her inside their own house. Around 10 o'clock in the evening of October 31, 2006, appellant went to their house, asked coffee from her father, then slept on a bench downstairs. She, her sister, and her father slept on the elevated portion of their house. She slept on their bed, while her sister and father slept on the floor beside the bed. Around 4 o'clock the following morning, appellant went to her bed, undressed her, mounted her and forcibly thrusted his penis into her vagina. She pushed and kicked him off the bed, but he stood up and mounted her anew. He then held both her hands with his one hand, and pressed a knife against her body with his other hand. He threatened to impale her with the knife if she tried to shout or made any noise. She cried helplessly out of pain and fear. She tried but failed to wake up her father. After appellant left, she told her father that appellant raped her. They then went to the barangay and [redacted] Police Station to charge appellant with two (2) counts of rape. She underwent medico-legal examination at the Western Visayas Medical Center in Mandurriao, Iloilo City.[10]

---

[9] TSN dated July 24, 2007, pp. 2-7; TSN dated August 7, 2007, pp. 16-23.

[10] TSN dated July 24, 2007, pp. 8-13; TSN dated August 7, 2007, pp. 22-28; TSN dated March 1, 2011, pp. 2-9; TSN dated December 11, 2007, pp. 2-15.

Dr. Duyag testified that she examined complainant. She found an old hymenal laceration at 5 o'clock position. Based on this finding and her interview with complainant, she concluded that complainant was sexually abused.[11]

Elsie Agcanas, a child development social worker at the Department of Social Welfare and Development (DSWD) Child Development, [redacted], Iloilo, testified that in the morning of November 1, 2006, the barangay captain requested her to accompany complainant and complainant's father to the [redacted] police station where complainant was subsequently investigated. She also got appellant himself to go with her to the police station. There, complainant identified appellant as the person who raped her. Appellant was thereafter detained.[12]

Dr. Robles, a psychiatrist at the Western Visayas Medical Center, Mandurriao, Iloilo City, testified that based on her examination of complainant on May 25, 2007, she found that complainant could not conclusively be considered a mental retardate as the latter performed well in her adaptive skills. She also opined that complainant can improve her mental ability given suitable education for her age.[13]

Amelita Lelia Piojo, a psychologist, testified that Dr. Ali Robles referred complainant to her for psychological evaluation. After conducting a series of examinations on complainant, they concluded that although complainant's mental age was eight (8) years old, her level of adaptive skills was not of a mental retardate.[14]

PO1 Velasco, a member of the Calinog Philippine National Police (PNP) assigned at the Women and Children Protection Center, testified that on November 1, 2006, complainant, complainant's father and Elsie Agcanas came to the police

---

[11] TSN dated August 7, 2007, pp. 33-46; *rollo*, p. 15.

[12] TSN dated December 11, 2007, pp. 2-15.

[13] *Rollo*, p. 7.

[14] *Id.*

station to report the alleged rape incidents committed by appellant. She took complainant's statement and referred her for medical examination at the Western Visayas Medical Center. She and other police officers headed to Brgy. Agcalaga to effect appellant's arrest. But they decided to return when they received information that the barangay is NPA infested. They asked Elsie Agcanas instead to fetch and bring appellant to the police station. When appellant arrived at the station, complainant pointed to him as the one who raped her. They, thus arrested and detained appellant.[15]

Complainant's father corroborated complainant's testimony. He testified that appellant was in their house in the evening of October 31, 2006. The following morning, he found appellant already sleeping under the bed where complainant was sleeping. When complainant told him about the alleged rape incidents, they reported the same to the barangay. Thereafter, Elsie Agcanas accompanied them to the police station.

The Defense's Version

Appellant denied the charge. He admitted that complainant went to his house with her father sometime in August 2006, but denied that she slept there. While they were in his house, complainant never left her father's side. He never went to complainant's house in the evening of November 1, 2006 as he was then in his own house together with his wife and their neighbor.[16]

In the morning of November 1, 2006, his wife went to Passi to visit the grave of her deceased relatives in the cemetery. He did not go with her as he helped butcher his neighbor's pig from 9 to 10 o'clock in the morning. Around 11 o'clock in the morning, his other neighbor Elsie came to his house to bring him to the police station for complainant's rape charges against him. He willingly went with Elsie, for only a guilty person would

---

[15] *Id.* at 7-8.

[16] *Id.* at 8.

be afraid to go to the police. He was not arrested. But he was put in jail when he arrived at the police station.[17]

Appellant's neighbor confirmed that appellant was one of the seven (7) or eight (8) men who helped butcher his pig on November 1, 2006, from 8 o'clock until 10 o'clock in the morning.[18]

Appellant's wife testified that around 8 o'clock in the evening of October 31, 2006, their neighbor went to their house and talked with appellant about the pig they would butcher the next morning. Their neighbor left around 11 o'clock in the evening. Thereafter, she and appellant went to sleep, then woke up around 5 o'clock the next morning. She left for Passi around 7 o'clock in the morning. When she learned about appellant's arrest later in the afternoon, she went back to [redacted] to see him. Three (3) days later, she met complainant and the latter's father who told her that he wanted to settle the case. The two (2) did not sleep in their house.[19]

The Trial Court's Ruling

By Decision[20] dated October 25, 2012, the trial court rendered a verdict of conviction, *viz.*:

> WHEREFORE, finding the accused BEN SUWALAT guilty beyond reasonable doubt of two counts of rape by carnal knowledge under paragraph 1 of Article 266-A of the Revised Penal Code as amended by R.A. 8353, he is hereby sentenced to suffer the penalty of *reclusion perpetua* in each case. He is ordered to pay CCC the amount of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages in each case.
>
> SO ORDERED.[21]

---

[17] *Id.*

[18] *Id.* at 8-9.

[19] *Id.* at 9.

[20] Penned by Judge Ma. Elena G. Opinion, CA *rollo*, pp. 26-44.

[21] *Id.* at 43-44.

The Proceedings before the Court of Appeals

On appeal, appellant faulted the trial court for finding him guilty of two (2) counts of rape despite the victim's alleged incredulous testimony and the prosecution's purported failure to prove his guilt beyond reasonable doubt. Appellant essentially argued: (1) His warrantless arrest was illegal as the police officers did not have any personal knowledge of the rape he allegedly committed; and (2) Complainant's testimony was hardly straightforward, much less, categorical, thus, casting doubt on the consummation of rape and the identity of the assailant.

On the other hand, the Office of the Solicitor General (OSG), through Assistant Solicitor General Raul J. Mandin and Associate Solicitor Ormil D. Go, maintained that the prosecution was able to establish appellant's guilt beyond reasonable doubt. Appellant was deemed to have waived any objection against his warrantless arrest when at the arraignment, he did not timely raise it.[22]

The Court of Appeals' Ruling

In its assailed Decision[23] dated July 29, 2016, the Court of Appeals affirmed in the main but modified the award of damages and interest pursuant to ***People v. Jugueta***.[24]

The Present Appeal

Appellant now seeks affirmative relief from the Court and prays anew for his acquittal. In compliance with Resolution[25] dated January 23, 2017, appellant and the People both manifested that, in lieu of supplemental briefs, they were adopting their respective briefs filed before the Court of Appeals.[26]

---

[22] CA *rollo*, pp. 77-93.

[23] Penned by Associate Justice Marilyn B. Lagura-Yap and concurred in by Associate Justices Gabriel T. Ingles and Germano Francisco D. Legaspi, all members of the Eighteenth Division, *id.* at 2-19.

[24] 783 Phil. 848 (2016).

[25] *Rollo*, pp. 29-30.

[26] *Id.* at 50-52, 39-42.

Issue

Did the Court of Appeals err in convicting appellant of two (2) counts of rape?

Ruling

We affirm with modification.

The RTC and the CA correctly appreciated the prosecution's evidence supporting appellant's conviction

Rape is defined and penalized under Article 266-A, paragraph 1 of the Revised Penal Code (RPC), as amended by Republic Act No. 8353 (RA 8353), *viz.*:

> Art. 266-A. *Rape: When and How Committed.* – Rape is committed –
>
> 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
>
> a) Through force, threat or intimidation;
>
> 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.

Rape requires the following elements: (1) the offender had carnal knowledge of a woman; and (2) the offender accomplished such act through force or intimidation, or when the victim was deprived of reason or otherwise unconscious, or when she was under twelve (12) years of age or was demented.

Here, the prosecution had established beyond moral certainty the elements of carnal knowledge and force or intimidation in

both cases. Complainant positively identified appellant as the man who had carnal knowledge of her against her will on two (2) separate occasions, thus:

Q. And what happened when you were in the house of Ben Suwalat in August of 2006?
A. (Witness is crying) Ben Suwalat and my father left the house and the wife of Ben Suwalat watched T.V. at the house of her uncle.

Q. And what happened next?
A. The wife of Ben Suwalat made us sleep in their room together with her and then Ben Suwalat went inside the room and then rape me.

Q. And how did Ben Suwalat rape you?
A. Ben Suwalat remove my clothing then he laid on top of me and then he made it enter.

Q. Where did he made his penis enter?
A. Into my vagina.[27]

x x x x x x x x x

Q. Now, did you fight Ben Suwalat when he made his penis into your vagina?
A. Yes, ma'am.

Q. How did you fight him?
A. I pushed him. Then he threatened me and talked to me after I pushed him.

Q. What did he threaten you?
A. He told me if I will tell my father he will kill me.

Q. And what did you do when he told you that if you tell your father he will kill you?
A. I was afraid that is why, the following morning when he told me that if he will hear anything regarding that incident he will waylay me and kill me.

Q. Now, how did you feel when Ben Suwalat inserted his penis into your vagina.
A. Pain.

---

[27] *Id.* at 11-12.

Q. Did you shout when Ben Suwalat laid on top of you?
A. (Witness crying) I just pushed him. I did not shout because his wife was on my side.

Q. Did you not try to wake up his wife?
A. I was afraid to awaken his wife because according to Ben if his wife will know about of what happened, something more might happen.[28]

x x x x x x x x x

Q. Now, when you say that you were afraid because Ben told you that if his wife will awaken something more will happen, you are trying to say that Ben Suwalat will do something bad against you if you will awaken his wife?
A. Yes, ma'am.

Q. Now, when you said that you were sleeping when Ben enter(ed) the room and laid on top of you, did Ben Suwalat say something to you when he first laid on to you?
A. Yes, ma'am.

Q. What did he say?
A. He said that he will just think about what he will do to me if someone will know what he did to me. If I will be still alive.[29]

Q. And because of what Ben Suwalat said to you, did you feel very afraid of Ben Suwalat?
A. Yes, ma'am I was afraid.

Q. Now, when Ben Suwalat entered his penis into your vagina, did you try to kick him?
A. Yes, ma'am.

Q. And were you able to kick him?
A. Witness is nodding in the affirmative.

Q. And what happened to Ben Suwalat when you kicked him?
A. He went out of the room.

Q. When you kicked him. Was that before or after he inserted his penis into your vagina?
A. Before he inserted.

---

[28] *Id.* at 11-12.

[29] *Id.*

Q. You said that after you kicked him he left his room, when did he left the room, after or before he inserted his penis into your vagina?
A. After.[30]

x x x x x x x x x

Q. Now what happened on November 1, 2006?
A. At about 10:00 o'clock in the evening, Ben Suwalat went to our house and asked coffee from my father but he did not drink that coffee and then he slept our bench. My father covered him with towel and then my father went up and closed the door. At about 4:00 o'clock in the morning, Ben Suwalat went up.

Q. Now, you said that at about 4:00 o'clock in the morning, Ben Suwalat went up, where did he go up?
A. He went up the bed and he did the same thing to me. He removed my clothing because at that time I was wear(ing) 3 garments, a blouse, a skirt, and a panty and then he went on top of me.

Q. Now, what did he do when he went on top of you?
A. He removed all my clothing and then he laid on top of me and did what he did last time. He inserted his penis into my vagina and then I pushed him and then he fell from the bed and then he stood up and again laid on top of me.

Q. So, you mean to say, you pushed him and he fell but he went back and laid on top of you, so, what did you do when he laid on top of you again?
A. He held both of my hands and then he pointed a knife at me and said, "This is the knife that I am going to kill you if you will tell your father." On the following morning, I went to my father and I told my father that there is a man who went upstairs, but my father did not move or as if did not hear what I said.[31]

x x x x x x x x x

---

[30] *Id.* at 13.

[31] *Id.* at 13-14.

Complainant made a clear, candid, and positive narration of how, in both incidents, appellant went to her bed, undressed her, mounted her, and inserted his penis into her vagina with a threat that he would kill her if she told her father or his wife. The fourteen-year-old complainant could not have merely concocted these ugly details had she not actually experienced them in appellant's hands. ***People v. Alberca*** is in point:

> Indeed, no woman, least of a child, will concoct a story of defloration, allow an examination of her private parts, and subject herself to public trial or ridicule if she has not, in truth, been a victim of rape and impelled to seek justice for the wrong done to her. As found by the RTC and CA, AAA's testimony was candid, spontaneous, and consistent. We find no cogent reason to deviate from such finding.

As it was, the trial court found complainant's testimony to be spontaneous and straightforward. The Court respects the trial court's factual findings on complainant's credibility.[32] For the trial court's assessment of the credibility of the witnesses' testimonies deserves great weight and is conclusive and binding if not tainted with arbitrariness. More so when the trial court's factual findings carry the full concurrence of the Court of Appeals,[33] as in this case.

Appellant, however, attempts to discredit complainant, averring that the facts and circumstances narrated by complainant are improbable and questionable. He points out that, it was highly unlikely for him to have raped complainant considering that, in both incidents, there were other people present in the same room with them. If it were true, complainant could have easily asked them for help. But she did not. Likewise, it was impossible to have had sexual intercourse with complainant in his house as complainant herself testified that: (a) she never slept in other people's house; and (b) before he allegedly inserted his penis into her vagina, she kicked him prompting him to walk out of

---

[32] *People v. Hirang*, 803 Phil. 277, 290 (2017).

[33] *Castillano v. People*, G.R. No. 222210 (Notice), June 20, 2016.

the room. Finally, complainant did not identify him with moral certainty considering that when she told her father about her harrowing experience, she simply said that a "man" went up to her bed and raped her, without specifically naming him.

The argument must fail.

For one, the close proximity of other people or even relatives at the rape scene does not disprove the commission of rape. For lust is no respecter of time and place. ***People v. Descartin, Jr.***[34] ordains:

> It is well-settled that close proximity of other relatives at the scene of the rape does not negate the commission of the crime. Rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house where there are other occupants, and even in the same room where other members of the family are also sleeping. It is not impossible or incredible for the members of the victim's family to be in deep slumber and not to be awakened while a sexual assault is being committed. Lust is no respecter of time and place; neither is it deterred by age nor relationship.

For another, complainant's failure to ask for help and offer tenacious resistance does not negate rape. More so since appellant in fact intimidated and threatened her into submission. At any rate, rape victims react differently when confronted with sexual abuse.[35] Their actions are often overwhelmed by fear rather than reason. While some find the courage to immediately reveal their ordeal, others opt to initially keep the harrowing ordeal to themselves.[36] For a young girl of tender age, it is not uncommon to be intimidated into silence by the mildest threat against her life.[37] As shown, appellant here repeatedly threatened to kill complainant who was then only fourteen (14) years old.

---

[34] 810 Phil. 881, 892 (2017).

[35] *People v. Barberan*, 788 Phil. 103, 111 (2016).

[36] *People v. Descartin, Jr.*, supra note 34, at 893.

[37] *People v. Villamor*, 780 Phil. 817, 830-831 (2003).

Notably, complainant tried to repel, albeit unsuccessfully, appellant's sexual acts by pushing, kicking, and boxing him. She later reported the rape incidents to her father, the barangay officials, and the police officers. She also submitted herself to physical examination. Complainant's courageous actions against appellant are eloquent proofs that she was truly wronged and she wanted the wrongdoer to be punished accordingly.

Still another, complainant did not categorically state that she never slept in other people's house, specifically in appellant's house in August 2006. The fact that she stayed in their own house when their father had no work does not absolutely preclude the possibility of her sleeping in other people's house. In fact, she testified that there was no instance that she slept in their house when her father was not there. She, too, categorically testified that appellant's wife made her and her sister sleep in appellant's house that fateful night when the first rape incident happened.

Appellant next claims as doubtful the allegation of penile penetration during the first rape incident. Indeed, appellant left the room after complainant kicked him, but he did so after he had already inserted his penis into her vagina. Complainant testified:

Q. Now, when Ben Suwalat entered his penis into your vagina, did you try to kick him?

A. Yes, ma'am.

Q. And were you able to kick him?

A. Witness is nodding in the affirmative.

Q. And what happened to Ben Suwalat when you kicked him?

A. He went out of the room.

Q. When you kicked him. Was that before or after he inserted his penis into your vagina?

A. Before he inserted.

Q. **You said that after you kicked him he left his room, when did he left the room, after or before he inserted his penis into your vagina?**

A. **After**.[38] (Emphasis added)

Indubitably, there was penile penetration in both incidents. We reckon with complainant's graphic account of the first incident in August 2006: "*At first Ben Suwalat remove(d) my clothing then he laid on top of me and then he made it (his penis) enter.*"[39] *x x x* "*Into my vagina.*"[40] *x x x* She felt "*Pain.*"[41] As regards the second incident on November 1, 2006, complainant vividly narrated: "*He (appellant) removed all my clothing and then he laid on top of me and did what he did last time. He inserted his penis into my vagina and then I pushed him and then he fell from the bed and then he stood up and again laid on top of me.*"[42] If this is not penile penetration, what is?

Finally, appellant claims that his identity was not established considering that when complainant disclosed her ordeal to her father, she only said that a "man" raped her, without specifically naming him. This is misleading as appellant only cited a portion of complainant's testimony. A contextual reading of complainant's testimony readily shows that the "man" she was referring to was appellant. Her testimony is replete with references to appellant. In fact, she specifically named appellant "*Ben Suwalat*" as the one who raped her on both occasions.

While appellant's conviction was primarily based on complainant's testimony, the same solidly conforms with the physical evidence through the medical findings of Dr. Duyag that complainant sustained a "complete healed hymenal laceration

---

[38] *Rollo*, p. 13.

[39] *Id.* at 11.

[40] *Id.* at 11.

[41] *Id.* at 2.

[42] *Id.* at 13.

at 5 o'clock position" which, taken together with complainant's credible disclosure and age, "shows definite evidence of sexual abuse." Dr. Duyag also explained that the absence of fresh laceration does not necessarily mean that no rape was committed as it is possible for sexual intercourse not to result in a laceration.

At any rate, appellant's defenses boil down to denial and alibi. These are the weakest of all defenses --- easy to contrive but difficult to disprove. As between complainant's credible and positive identification of appellant as the person who had carnal knowledge of her against her will, on one hand, and appellant's bare denial and alibi, on the other, the former indubitably prevails.[43]

Where nothing supports the alibi except the testimonies of a close relative and friend, appellant's wife and neighbor in this case, it deserves but scant consideration.[44] For such testimonies are suspect and cannot prevail over the unequivocal declaration of a complaining witness. More, the testimony of appellant's neighbor is immaterial as it only pertains to appellant's activities on November 1, 2006, from 8 o'clock until 10 o'clock in the morning, when the second rape incident had long been consummated.

Appellant is estopped from assailing his warrantless arrest

It is settled that an accused is estopped from assailing any irregularity of his arrest if he fails to raise this issue or to move for the quashal of the information against him on this ground before arraignment.[45]

Here, appellant went into arraignment and actively participated in his trial, without questioning his arrest. He only challenged

---

[43] *Etino v. People*, 826 Phil. 32, 48 (2018); *People v. Candellada*, 713 Phil. 623, 637 (2013).

[44] *People v. Sanchez*, 419 Phil. 808, 814 (2001).

[45] *Castillano v. People*, supra note 33.

his warrantless arrest on appeal, after a verdict of conviction was handed down by the trial court. Appellant's challenge, therefore, came too late in the day.

At any rate, the Court of Appeals correctly affirmed appellant's conviction. For the alleged irregularity of appellant's arrest is not sufficient to invalidate the judgment of conviction. ***Castillano v. People***[46] is *apropos*:

> Nevertheless, even if the petitioner's warrantless arrest is proven to be indeed invalid, this eventuality would still not support his cause; it is settled that the illegal arrest of an accused is not sufficient cause to set aside a valid judgment rendered upon a sufficient complaint after a trial free from error.
>
> All told, we find that the CA did not commit any reversible error in affirming the petitioner's conviction of the crime of rape.

The Penalty

Rape is penalized under Article 266-A of the Revised Penal Code, as amended by RA 8353. It carries the penalty of *reclusion perpetua*[47] unless attended by the qualifying circumstances defined under Article 266-B.[48] The offender's knowledge of the victim's mental disability during the commission of the crime of rape is a special qualifying circumstance which makes it punishable by death. To be properly appreciated, such qualifying circumstance must be sufficiently alleged and proved with equal certainty and clearness as the crime itself. Otherwise, the same cannot be recognized[49] and there can be no conviction of the crime in its qualified form.

---

[46] *Id.*

[47] Revised Penal Code, Article 266-B. *Penalty*. – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

[48] *People v. Mingming*, 594 Phil. 170, 196-197 (2008).

[49] *People v. Niebres*, 822 Phil. 68, 77 (2017).

Here, appellant's knowledge of complainant's mental retardation at the time of the commission of rape cannot be appreciated as a qualifying or aggravating circumstance as there is no sufficient and competent evidence to substantiate the same. Neither is there a clear evidence that complainant is a mental retardate. The prosecution did not present any evidence that complainant exhibited external manifestations of mental retardation. On the other contrary, psychiatrist Dr. Ali Robles testified that complainant could not be conclusively considered a mental retardate because complainant performed well in her adaptive skills. She further opined that complainant's mental ability can be improved given age-appropriate education. Likewise, psychologist Amelita Lelia Piojo found that while complainant's mental age is eight (8) years old, her adaptive skills level is not of a mental retardate.

In ***People v. Niebres***,[50] the prosecution failed to prove beyond reasonable doubt that the accused was aware of the victim's mental disability at the time he raped her. The Court, thus, convicted him of Simple Rape only and meted the penalty of *reclusion perpetua* plus civil indemnity, moral damages, and exemplary damages of ₱75,000.00 each, with interest.

All told, both the trial court and the Court of Appeals correctly convicted appellant of Simple Rape and sentenced him to *reclusion perpetua* in Criminal Case No. 06-63115 and in Criminal Case No. 06-63116. In accord with prevailing jurisprudence, we also sustain the awards of civil indemnity, moral damages and exemplary damages of ₱75,000.00 each, subject to six percent (6%) annual interest from finality of judgment until fully paid.[51]

---

[50] *Id.* at 79.

[51] *People v. Nepomuceno, Jr.*, G.R. No. 227092 (Notice), February 5, 2020; *People v. Jugueta*, 783 Phil. 806, 848-849 (2016).

"II. For Simple Rape/Qualified Rape:

x x x x x x x x x

2.1 Where the penalty imposed is *reclusion perpetua*, other than the above-mentioned:

ACCORDINGLY, the appeal is **DENIED**. The Decision dated July 29, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 01734 is **AFFIRMED**. In Criminal Case No. 06-63115 and Criminal Case No. 06-63116, appellant **Ben Suwalat** is found **GUILTY** of **SIMPLE RAPE** under Article 266-A, paragraph 1 (a), in relation to Article 266-B of the Revised Penal Code, and sentenced to **RECLUSION PERPETUA** in each case.

He is further ordered to **PAY** complainant **CCC** for each count of **SIMPLE RAPE** ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages. All monetary awards are subject to six percent (6%) interest *per annum* from finality of this decision until fully paid.

SO ORDERED.

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

---

a. Civil indemnity — ₱75,000.00
b. Moral damages — ₱75,000.00
c. Exemplary damages — ₱75,000.00;

EN BANC

[G.R. No. 228595. September 22, 2020]

FORMER MUNICIPAL MAYOR HELEN C. DE CASTRO, TOBY C. GONZALES, JR., DENNIS H. DINO, CARMENCITA S. MORATA and LIZA L. HOLLON, *Petitioners, v.* **COMMISSION ON AUDIT,** *Respondent*.

SYLLABUS

1. REMEDIAL LAW; RULES OF PROCEDURE; SHOULD BE TREATED WITH UTMOST RESPECT AND DUE REGARD SINCE THEY ARE DESIGNED TO FACILITATE THE ADJUDICATION OF CASES BUT THERE ARE CERTAIN EXCEPTIONS THAT ALLOW A RELAXATION OF THE PROCEDURAL RULES. — [A] review of the timeline shows the instant petition for review was filed out of time and could have been dismissed by this Court outright. Time and again, We have emphasized that procedural rules should be treated with utmost respect and due regard, since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice. However, there are certain exceptions that allow a relaxation of the procedural rules. In the case of *The Law Firm of Laguesma Magsalin Consulta and Gastardo v. COA,* the Court restated the reasons which may provide justification for a court to suspend a strict adherence to procedural rules, such as: (a) matters of life, liberty, honor or property; (b) the existence of special or compelling circumstances; (c) **the merits of the case;** (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (e) a lack of any showing that the review sought is merely frivolous and dilatory; and, (f) the other party will not be unjustly prejudiced thereby.

2. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTION; BILL OF RIGHTS; RIGHT TO SPEEDY DISPOSITION OF CASES; NOT ONLY AFFORDED TO THE ACCUSED IN CRIMINAL PROCEEDINGS BUT EXTENDS TO ALL PARTIES

IN ALL CASES PENDING BEFORE JUDICIAL, QUASI-JUDICIAL AND ADMINISTRATIVE BODIES. — Section 16, Article III of the 1987 Constitution guarantees that all persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial and administrative bodies. This constitutional right is not only afforded to the accused in criminal proceedings but extends to all parties in all cases pending before judicial, quasi-judicial and administrative bodies - any party to a case can demand expeditious action from all officials who are tasked with the administration of justice.

3. ID.; ID.; ID.; ID.; ID.; SHOULD BE UNDERSTOOD TO BE A RELATIVE OR FLEXIBLE CONCEPT SUCH THAT A MERE MATHEMATICAL RECKONING OF THE TIME INVOLVED WOULD NOT BE SUFFICIENT AS IT IS DEPENDENT ON THE FACTS AND CIRCUMSTANCES OF A PARTICULAR CASE. — [T]he right to a speedy disposition of cases should be understood to be a relative or flexible concept such that a mere mathematical reckoning of the time involved would not be sufficient; it is dependent on the facts and circumstances of a particular case. Thus, it is doctrinal that in determining whether a party is denied the right to speedy disposition of cases, the following factors are considered and weighed: (1) length of delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.

4. ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; PROCEDURAL DUE PROCESS; THE ESSENCE OF PROCEDURAL DUE PROCESS IS EMBODIED IN THE BASIC REQUIREMENT OF NOTICE AND A REAL OPPORTUNITY TO BE HEARD. — The essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard. In administrative proceedings, procedural due process has been recognized to include the following: (1) the right to actual or constructive notice of the institution of proceedings which may affect a respondent's legal rights; (2) a real opportunity to be heard personally or with the assistance of counsel, to present witnesses and evidence in one's favor, and to defend one's rights; (3) a tribunal vested with competent jurisdiction and so constituted as to afford a person charged administratively a reasonable guarantee of honesty as well as impartiality; and (4) a finding by said tribunal

which is supported by substantial evidence submitted for consideration during the hearing or contained in the records or made known to the parties affected. x x x [I]n administrative proceedings, "due notice" simply means the information that must be given or made to a particular person or to the public within a legally mandated period of time so that its recipient will have the opportunity to respond to a situation or to allegations that affect the individual's or public's legal rights or duties.

5. ID.; CONSTITUTIONAL LAW; CONSTITUTION; CONSTITUTIONAL COMMISSIONS; COMMISSION ON AUDIT (COA); GENERAL AUDIT POWER; THE COA IS NOT MERELY LEGALLY PERMITTED, BUT IS ALSO DUTY-BOUND TO MAKE ITS OWN ASSESSMENT OF THE MERITS OF THE DISALLOWED DISBURSEMENT AND NOT SIMPLY RESTRICT ITSELF TO REVIEWING THE VALIDITY OF THE GROUND RELIED UPON BY THE AUDITOR OF THE GOVERNMENT AGENCY CONCERNED. — [T]he COA is not required to limit its review only to the grounds relied upon by a government agency's auditor with respect to disallowing certain disbursements of public funds. In consonance with its general audit power, respondent Commission on Audit is not merely legally permitted, but is also duty-bound to make its own assessment of the merits of the disallowed disbursement and not simply restrict itself to reviewing the validity of the ground relied upon by the auditor of the government agency concerned. To hold otherwise would render COA's vital constitutional power unduly limited and thereby useless and ineffective.

6. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; THE BURDEN OF PROOF TO SHOW GRAVE ABUSE OF DISCRETION IS ON THE PETITIONER. — We stress that the burden of demonstrating, plainly and distinctly, all facts essential to establish their right to a *writ of certiorari* lies on petitioners. In other words, the burden of proof to show grave abuse of discretion is on the petitioners. Here, by not attaching a relevant document in support of their arguments, petitioners failed to discharge their burden of proof.

7. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON

AUDIT; MANDATED TO PREVENT EXCESSIVE AND UNNECESSARY COSTS TO THE GOVERNMENT.— We agree with petitioners that the lack of publication and non-submission to the U.P. Law Center – ONAR, of DPWH Department Order (D.O.) No. 57, series of 2002, rendered the same ineffective, insofar as it requires the adoption of the Associated Construction Equipment Lessors. Inc. (ACEL) rental rates as the basis of equipment rental cost in the preparation of a project's Approved Budget for Contract (ABC). This Court has emphasized that both the requirements of publication and filing of administrative issuances intended to enforce existing laws—R.A. No. 9184, in this case—are mandatory for the effectivity of said issuances. However, the ineffectiveness thereof notwithstanding, COA is not precluded from adopting the rental rates prescribed by the DPWH, if it is shown that the same is more practical and of least cost to the government. This is in view of COA's mandate preventing excessive and unnecessary costs to the government. In this case, it is apparent that the DPWH rental rates are lower than that prescribed in Municipal Ordinance No. 002, Series of 2005, which was used as basis in the preparation of the ABC for the BIBT project. Hence, the COA did not commit grave abuse of discretion in sustaining the COA-TAS rental cost estimate for the lease of heavy equipment, based on the DPWH rental rates.

8. **ID.; ADMINISTRATIVE LAW; PRESIDENTIAL DECREE NO. 1445 (THE GOVERNMENT AUDITING CODE OF THE PHILIPPINES); GOVERNMENT FUNDS AND PROPERTY; EXPENDITURES OF GOVERNMENT FUNDS OR USES OF GOVERNMENT PROPERTY IN VIOLATION OF LAW OR REGULATIONS SHALL BE A PERSONAL LIABILITY OF THE OFFICIAL OR EMPLOYEE FOUND TO BE DIRECTLY RESPONSIBLE THEREFOR.—** This brings Us to the issue of who are liable under ND No. 2008-06-27-002-101 (2009). We hold that only the BAC Chairman Dino and Municipal Engineer Gonzales are liable for this disallowance. Under Section 103 of Presidential Decree (P.D.) No. 1445, expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor. Considering that the BAC chairman and the municipal engineer were directly involved in the preparation of the budget for the project, they

should be made liable for the overestimated quantity of the materials and the rates used for the costing of the BIBT project.

9. ID.; ID.; EXPENDITURES OF GOVERNMENT FUNDS; EXCESSIVE TRANSACTIONS; THE FACT THAT A PERSON IS THE FINAL APPROVING AUTHORITY OF THE TRANSACTION IN QUESTION AND THAT THE OFFICERS WHO PROCESSED THE SAME ARE DIRECTLY UNDER HER SUPERVISION DO NOT SUFFICE TO MAKE HER LIABLE, IN THE ABSENCE OF INDICATION THAT SHE HAS NOTICE OF ANY CIRCUMSTANCE THAT COULD AROUSE HER SUSPICION THAT WHAT SHE IS APPROVING FALLS WITHIN THE PURVIEW OF AN EXCESSIVE TRANSACTION. — Petitioner De Castro x x x cannot be held liable under this disallowance, since she had nothing to do with the preparation of the estimated cost of the BIBT project. Applying the *Arias* doctrine, the fact that petitioner De Castro was the final approving authority of the transactions in question and that the officers who processed the same were directly under her supervision, do not suffice to make her liable, in the absence of indication that she had notice of any circumstance that could have aroused her suspicion that what she was approving falls within the purview of an excessive transaction. To be clear, the documents in question involve technical matters that are beyond the professional competence of De Castro.

10. CIVIL LAW; HUMAN RELATIONS; PRINCIPLE OF UNJUST ENRICHMENT; ELEMENTS.— The proprietor of the private contractor S.R. Baldon Construction and Supply should be excluded from liability under this disallowance, since she was not privy to the preparation of the estimates for project. The Court finds fault in COA's imputation of liability against the contractor on the basis of unjust enrichment. For one to be liable under the principle of unjust enrichment, the essential elements must be present: (1) that the defendant has been enriched, (2) that the plaintiff has suffered a loss, (3) that the enrichment of the defendant is without just or legal ground, and (4) that the plaintiff has no other action based on contract, quasi-contract, crime or quasi-delict. In this case, the first element is lacking, as it was never alleged, much less proved, that the overestimated quantities of construction materials, rental costs of equipment and labor cost, were not utilized or spent for the project or that the same channeled directly for personal use or gain of the private contractor.

11. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTION; CONSTITUTIONAL COMMISSIONS; COMMISSION ON AUDIT; NOTICE OF DISALLOWANCE; IF A NOTICE OF DISALLOWANCE IS SET ASIDE BY THE COURT, THERE IS NO AMOUNT TO DISALLOW OR TO RETURN.— The x x x clause on liquidated damages is clear about its purpose and application: it is a deterrent against delays by the contractor, which result in a breach of the contract. The same clause provides that the reckoning of the delay excludes any time extension duly granted. In other words, if the delay is not the contractor's fault, the clause on liquidated damages is not triggered and no such damages are due. Consequently, ND No. 2008-06-27-003-101 should be set aside. Under Part I of the Rules of Return in the case of *Madera v. COA,* there is no amount to disallow or to return. Even assuming such liquidated damages are due, it must likewise be noted that the suspension was due to an ongoing loan negotiation which followed the failure of the bond flotation initially intended to fund the project. Petitioner De Castro argues that the issuance of the work suspension order was done to protect the interests of the municipality by avoiding collection suits from private contractors. This, to Our mind, is a badge of good faith which may excuse the "return" of the amount disallowed, as per Part 2a of *Madera.*

12. ID.; ID.; ID.; ID.; ID.; WHEN THE AMOUNT COVERED BY THE NOTICE OF DISALLOWANCE CANNOT BE CHARACTERIZED AS AN ILLEGAL OR IRREGULAR DISBURSEMENT SO AS TO CONSTITUTE A VALID GROUND FOR DISALLOWANCE, NO LIABILITY IN AUDIT ARISES THEREFROM. — The power of COA to disallow expenditures proceeds from its duty to prevent irregular, unnecessary, excessive, or extravagant expenditures or uses of government funds or property, and those which are illegal and unconscionable. It stands to reason, therefore, that in the absence of these anomalous types of disbursements, there is no ground to warrant the disallowance of an expenditure. Such is the situation in this case. To recall, the purported ground for the issuance of ND No. 2008-06-27-004-101 (2009) by the ATL, was the illegal or irregular disbursement of the sum of ₱169,721.20 representing the liquidated damages for the alleged

34-day delay in the completion of the Bulan Slaughterhouse project — an amount that ought to have been deducted from the final payment to the private contractor. However, upon review of both the COA RD and the COA Proper, both tribunals found no sufficient basis to sustain the assessment of the ATL under the original ND No. 2008-06-27-004-101 (2009), ostensibly holding that there was insufficient evidence to establish the alleged 34-day delay. On this score, Our own perusal of the evidence yields to the same finding. x x x [P]etitioners' documentary evidence preponderantly establish that the project was completed prior to the expiration of the 180-day contract time, ending on June 20, 2007. x x x Under the x x x established facts, the purported delay in the project completion—the basis for the issuance of the original ND No. 2008-06-27-004-101 (2009)—is belied. In view thereof, the amount covered by ND No. 2008-06-27-004-101 (2009), as assessed by the ATL, cannot be characterized as an illegal or irregular disbursement so as to constitute a valid ground for its disallowance. Accordingly, no liability in audit arises therefrom, considering that a liability for disallowance should partake of the nature of an obligation for restitution of an expenditure or disbursement that is found to be illegal, irregular, unnecessary, excessive, extravagant or unconscionable.

13. ID.; ID.; ID.; ID.; HAS AUTHORITY TO MERELY INITIATE APPROPRIATE ADMINISTRATIVE ACTION, AS WELL AS CIVIL AND CRIMINAL, AGAINST ANY GOVERNMENT OFFICER OR EMPLOYEE, WHENEVER UPON EXAMINATION OR AUDIT, A VIOLATION OF LAW OR REGULATION IS DISCOVERED OR DISCLOSED.— Turning now to the liability imposed upon the Municipal Engineer Gonzales to pay the amount of ₱169,721.20 under ND No. 2008-06-27-004-101 (2009) on the ground of his supposed misfeasance, the same clearly constitutes an administrative liability, since it was meted not for the purpose of restituting the government of an unlawful disbursement, but obviously as a fine or penalty. By doing so, COA clearly overstepped its authority to merely initiate appropriate administrative action, as well as civil and criminal, against any government officer or employee, whenever upon examination or audit, a violation of law or regulation is discovered or disclosed.

14. ID.; ID.; ID.; ID.; SUBSUMED IN COA'S AUTHORITY TO INITIATE APPROPRIATE CRIMINAL, CIVIL OR ADMINISTRATIVE ACTION, WHENEVER IT DISCOVERS A VIOLATION OF A LAW OR REGULATION UPON EXAMINATION, AUDIT, OR SETTLEMENT OF AN ACCOUNT OR CLAIM, IS THE AUTHORITY TO MAKE PRELIMINARY FINDINGS AND CONCLUSIONS AS BASES FOR FILING SUCH ACTIONS. — Subsumed in respondent's authority to initiate an appropriate criminal, civil or administrative action, whenever it discovers a violation of a law or regulation upon examination, audit, or settlement of an account or claim, is the authority make preliminary findings and conclusions as bases for filing such actions. Hence, it is within the bounds of COA's jurisdiction to make determinations as to petitioners' administrative liability, albeit preliminarily and only for the purpose of filing the appropriate action. Under the circumstances, respondent COA's disposition of ND Nos. 2008-06-27-005-101 (2009) and ND No. 2008-06-27-006-101 (2009), which states "without prejudice to the administrative liability of Mayor De Castro, Head of Procuring Entity and the BAC Members for violation of the provisions of R.A. No. 9184 and its IRR regarding the full use of PhilGEPS" is not indicative of an imposition of administrative liability. Hence, the respondent committed no grave abuse of discretion in making such pronouncement.

APPEARANCES OF COUNSEL

Efren L. Dizon for petitioners.
The Solicitor General for respondent.

D E C I S I O N

GAERLAN, *J.*:

This petition for *certiorari*[1] under Rule 65, in relation to Rule 64 of the Rules of Court, seeks to annul and set aside the Commission on Audit (COA) Decision[2] dated September 11,

---

[1] *Rollo,* pp. 3-119.

[2] Id. at 145-158; numbered as COA Decision No. 2014-209.

2014, in the "Automatic [R]eview of the [COA] Regional Office No. V Decision No. 2012-L-007 dated June 4, 2012 partially granting the appeal of Mayor Helen C. de Castro, Municipal Government of Bulan, Province of Sorsogon, et al., from Notice of Disallowance Nos. 2008-06-27-001-101(2009) to 2008-06-27-005-101(2009) all dated August 18, 2009 and Supplemental Notice of Disallowance No. 2008-06-27-006-101(2009) dated October 9, 2009." The present petition likewise seeks to annul and set aside COA Resolution[3] dated November 9, 2016, re: "Motion for reconsideration of Mayor Helen De Castro, Municipal Government of Bulan, Sorsogon, et al., of [COA] Decision No. 2014-209 dated September 11, 2014, which affirmed with modification [COA] Regional Office No. V Decision No. 2012-L-007 dated June 4, 2012, on the lifting and amendment of various Notices of Disallowance relative to the construction of Bulan Integrated Bus Terminal and Slaughterhouse Projects."

Factual Antecedents

On June 30, 2003, the *Sangguniang Bayan* (SB) of the Municipality of Bulan, Sorsogon enacted Ordinance No. 004, Series of 2003,[4] entitled "Ordinance Authorizing the Bond Flotation of the Municipality of Bulan, Province of Sorsogon in the Amount of Not Exceeding Fifty Million Pesos (₱50,000,000.00) to Fund the Construction and Development of the Bulan Public Bus Terminal, The New Municipal Slaughter House and Other Priority Projects; and for Other Purposes." Section 8 thereof authorized the Municipal Mayor to conduct public biddings for the award of contracts for construction of the projects to be funded therein.

In October 2006, the Municipal Government of Bulan (MGB) conducted public biddings for the Bulan Integrated Bus Terminal (BIBT) and Bulan Slaughterhouse projects. By virtue, thereof, contracts were awarded to the following contractors, respectively:

---

[3] Id. at 135-144; numbered as COA Decision No. 2016-330.

[4] Id. at 374-377.

Project	Contractor	Contract Price
Design and Construction of the BIBT	S.R. Baldon Construction & Supply	₱32,984,700.00[5]
Labor and Materials for the Construction of Bulan Slaughterhouse	Steven Construction & Supply	₱4,991,800.00

After the two projects were paid, the then COA Regional Cluster Director of the Local Government Sector, Cluster II, Province of Sorsogon, issued Office Order No. 2008-06-07 dated June 23, 2008, directing the Audit Team Leader (ATL) to conduct a special audit on the BIBT and Slaughterhouse construction projects of the MGB.[6] The special audit resulted in the issuance of Notices of Disallowance (ND) Nos. 2008-06-27-005-101(2009) to 2008-06-27-005-101(2009)[7] all dated August 18, 2009, and Supplemental ND No. 2008-06-27-006-101(2009)[8] dated October 9, 2009, with the following details:

Item No.	References	Amount Disallowed	Persons Liable	Designation	Reason for Disallowance
1	ND No. 2008-06-27-001-101 (2009)[9]	₱196,526.13	Shirley R. Baldon (Baldon)	Proprietor, S.R. Baldon Construction	Unaccomplished deficiency of 0.58% or Php196,526.13, the equivalent amount in terms of pesos.
			Toby C. Gonzales, Jr. (Gonzales)	Municipal Engineer	
			Dennis H. Dino (Dino)	BAC Chairman	
			Helen C. De Castro (De Castro)	Municipal Mayor	

[5] Id. at 277-278.

[6] Id. at 145.

[7] Id. at 296-300.

[8] Id. at 301.

[9] Id. at 296.

Item No.	References	Amount Disallowed	Persons Liable	Designation	Reason for Disallowance
2	ND No. 2008-06-27-002-101 (2009)[10]	₱4,368,046.58[11]	Baldon	Proprietor, S.R. Baldon Construction	Representing 16.79% as overprice net of 10% tolerable allowance from the 26.79% overpricing of COA Estimated Cost per COA Res No. 91-52 dated September 17, 1991.
			Gonzales	Municipal Engineer	
			Dino	BAC Chairman	
			De Castro	Municipal Mayor	
3	ND No. 2008-06-27-003-101 (2009)[12]	₱2,638,776.00	Baldon	Proprietor, S.R. Baldon Construction	Representing liquidated damages for 80 days in excess of contract time.
			Gonzales	Municipal Engineer	
			Dino	BAC Chairman	
			Castro	Municipal Mayor	
4	ND No. 2008-06-27-004-101 (2009)[13]	₱169,721.20	Jocelyn D. Destura (Desturia)	Owner, Steven Construction and Supply	Representing liquidated damages for 34 days in excess of contract time.
			Gonzales	Municipal Engineer	
			Dino	BAC Chairman	
			Castro	Municipal Mayor	

[10] Id. at 297.

[11] Id. at 150; according to the assailed COA Decision dated September 11, 2014, the amount of disallowance should be ₱4,367,360.90, which was inadvertently indicated as ₱4,368,046.58.

[12] Id. at 298.

[13] Id. at 299.

Item No.	References	Amount Disallowed	Persons Liable	Designation	Reason for Disallowance
5	ND No. 2008-06-27-005-101 (2009)[14]	₱32,984,700.00	Rodosendo Razo, Jr. (Razo)	Municipal Accountant	Violation of Section 8 — Implementing Rules and Regulation (IRR)-A of Republic Act (RA) No. 9184. Procuring entities without internet access may avail of the Philippine Government Procurement System (PhilGEPS) Public Access Terminals which shall be installed at DBM-designated locations in the provinces and in Metro Manila. Failure to post a procurement opportunity will render the resulting contract null and void.
			Sonia G. Revilla (Revilla)	Municipal Treasurer	
			Dino	BAC Chairman	
			De Castro	Municipal Mayor	
6	ND No. 2008-06-27-006-101 (2009)[15]	₱4,991,800.00	Razo	Municipal Accountant	Violation of Section 8 — IRR-A of Republic Act (RA) No. 9184. Procuring entities without internet access may avail of the Philippine Government Procurement System (PhilGEPS) Public Access Terminals which shall be installed at DBM-designated locations in the provinces and in Metro Manila. Failure to post a procurement opportunity will render the resulting contract null and void
			Revilla	Municipal Treasurer	
			Dino	BAC Chairman	
			De Castro	Municipal Mayor	

[14] Id. at 300.

[15] Id. at 301.

The NDs were based on the following findings:

ND No. 2008-06-27-001-101 (2009)
(*Unaccomplished Deficiency of 0.58%*)

In the Inspection Report[16] of the COA – Technical Audit Specialists (TAS) dated August 19, 2008, the following findings and observations were made:

> Ocular inspection conducted by the undersigned together with the above named MEO personnel showed that, as per documents submitted, the [above-named] project is only 99.42% completed. The deficiency in the accomplishment was due to the fact that the Bus Terminal is still tapped to temporary source pending approval with Soreco of a permanent line leading to the building. The transformer being used is a 25 kva instead of a 50 kva, as programmed. Also included in the deduction, being accessory to the transformer[,] is the cut-out/lighting arrester and the corresponding KWH meter.[17]

ND No. 2008-06-27-002-101 (2009)
(*Contract Cost Excess of 16.79% Net of 10% Tolerable Allowance*)[18]

In a handwritten Detailed Estimates,[19] the COA-TAS came up with an estimated project cost of ₱26,015,762.82 only for the BIBT project. Thus, in a Cost Comparison Sheet,[20] the COA-TAS concluded:

> CONCLUSION:
>
> The approved budget for the contract amounting to ₱32,730,452.37 and contract cost of ₱32,984,700.00 were found to be 25.81% and

---

[16] Id. at 383-384.

[17] Id. at 384.

[18] Paragraph 7, COA Resolution No. 91-52 states:

> The total contract price should be equal to or less than the total COA estimate plus 10% in order to sustain a finding of reasonableness, otherwise, the contract price will be deemed excessive.

[19] *Rollo*, pp. 240-260.

[20] Id. at 261-262.

26.79% above the COA estimated cost[,] respectively, hence considered excessive per COA Resolution No. 91-52 dated September 17, 1991 re: TSO Policy Guidelines governing auditorial review and evaluation of bidded infrastructure. The difference was due to the [overestimated] quantity of some construction materials, cost of equipment rental and cost of labor. Some construction materials were [overpriced].

NOTE: Unit prices were based on the previously reviewed contracts and the unit prices used in the project, Construction of Slaughterhouse[,] located at Brgy. J.P. Laurel, Bulan, Sorsogon. The equipment rental rates were based on the DPWH rental rates of heavy equipments [sic].[21]

ND No. 2008-06-27-003-101 (2009)
(*Liquidated Damages for 80 Days Excess of Contract Time*)

The special audit yielded to the following findings as to the timeliness of the completion of the BIBT project:

CONSTRUCTION OF [BIBT]

Contract Duration	180 Calendar Days
Notice to Proceed	December 13, 2006
Actual Date of Construction Started	December 23, 2007
Actual Date Completed	September 29, 2007
No. of days from Signing of NTP to Completion	260 Calendar Days

That the contractor shall commence work on the Site within 30 calendar days after the date of receipt of NTP on December 13, 2006

January	13-31, 2007 -	19
February	01-28, 2007 -	28
March	01-31, 2007 -	31
April	01-30, 2007 -	30

[21] Id. at 262.

May	01-31, 2007 -	31
June	01-30, 2007 -	30
July	01-31, 2007 -	31
August	01-31, 2007 -	31
September	01-29, 2007 -	29
		===
Total		260
Less (Contract Time)		180
		===

Excess of Contract Time 80 x ₱32,984.70 = ₱2,638,776.00
(Liquidated Damages)

That suspension order*[22] *issued by the Hon. Mayor [De Castro],for work stoppage starting July 02, 2007 to September 10, 2007, due to refinancing agreement between the lending bank and the LGU ha[s] no legal basis. x x x[23]

ND No. 2008-06-27-004-101 (2009)
(*Liquidated Damages for 34 Days Excess of Contract Time*)

The special audit yielded to the following findings as to the timeliness of the completion of the Bulan Slaughterhouse project:

CONSTRUCTION OF BULAN SLAUGHTERHOUSE

Contract Duration	180 Calendar Days
Notice to Proceed	December 13, 2006
Actual Date of Construction Started	December 23, 2006
Certificate Issued to LBP Irosin Branch, Sorsogon that the project is still on-going	July 24, 2007[24]

[22] Id. at 264.

[23] Id. at 341-342.

[24] Id. at 355.

Accomplishment report[25] submitted to Hon. Mayor Helen C. De Castro of LGU Bulan, Sorsogon by Engr. [Gonzales], Municipal Engineer dated April 29, 2007, was 100% completed, while on the contrary a certification was likewise issued dated May 29, 2007,[26] with 100% work accomplishment x x x.

December	23-31, 2006 -	9
January	01-31, 2007 -	31
February	01-28, 2007 -	28
March	01-31, 2007 -	31
April	01-30, 2007 -	30
May	01-31, 2007 -	31
June	01-30, 2007 -	30
July	01-24, 2007 -	24
Total		214
Less (Contract Time)		180
		===

Excess of Contract Time

34 x ₱4,991.80 = **₱169,721.20** [LD][27]

ND No. 2008-06-27-005-101 (2009)
and ND No. 2008-06-27-006-101 (2009)
(*Failure to Post the Procurement Opportunity thru the PhilGEPS Website*)

The ATL declared the contracts over the BIBT and the Bulan Slaughterhouse projects null and void, by reason of the failure of the MGB to post procurement opportunities relative thereto in the PhilGEPS website, in violation of Section 8-IRR-A of Republic Act (R.A.) No. 9184.

---

[25] Id. at 356.

[26] Id. at 357.

[27] Id. at 350-351.

The above NDs were all duly received by the persons held liable. Within the reglementary period of six months, petitioners (public officials of the MGB) together with the private contractors, namely: Baldon and Engr. Destura, appealed the said NDs to the Regional Director (RD) of the COA Regional Office (RO) No. V, Rawis, Legaspi City, raising the following issues:

> 1. Whether the disallowance of ₱196,526.13, representing cost of unaccomplished work/deficiency in the Construction of the BIBT, could now be lifted in view of the subsequent accomplishment done by Contractor-(S.R. Baldon);
>
> 2. Whether Baldon, et al. could be held liable for the Final Cost Variance (FCV) of ₱4,368,046.58 in the Construction of BIBT, which amount represents the excess of Contract Price of ₱32,984,700.00 over COA estimated cost of ₱26,015,762.82, after considering the 10% allowable variance of ₱2,600,890.60;
>
> 3. Whether there is legal basis to bill or charge S.R. Baldon Construction and Supply x x x for LD amounting to ₱2,638,776.00, in the light of the idle time allowed and the suspension order issued by Hon. Mayor x x x De Castro;
>
> 4. Whether Steven Construction and Supply, represented by its proprietor x x x Destura, should be held liable for LD amounting to ₱169,721.20 despite allegation by management that the Construction of Bulan Slaughterhouse was finished within the contract duration of 180 days;
>
> 5. Whether there is basis to nullify the entire contracts for the Construction of the BIBT and Slaughterhouse, and disallow the related costs, for reasons that the Municipality failed to post the procurement opportunities in the PhilGEPS."[28]

On June 4, 2012, the RD rendered COA Regional Office No. V. Decision No. 2012-L-007, disposing as follows:

> (1) ND No. 2008-06-27-001-101 (2009) amounting to ₱196,526.13 was partly affirmed holding the contractor liable for liquidated damages amounting to ₱145,770.60 only, assessed by reason

[28] Id. at 147-148.

of the delay in the delivery or installation of additional 25 kva transformer and its accessories in the main terminal building;

(2) ND No. 2008-06-27-002-101 (2009) amounting to ₱4,368,046.58 was partly lifted in so far as the portion that relates to overpricing is concerned, but not the portion that relates to overestimation in quantity amounting to ₱2,838,384.00;

(3) ND No. 2008-06-27-003-101 (2009) amounting to ₱2,638,776.00 was lifted for lack of legal basis without prejudice to the administrative liability of the Honorable Mayor (and other officials, if any), for issuing a patently erroneous and baseless suspension of work order that ran counter to Item 9, (1) of Annex "E" to IRR-A of RA 9184;

(4) ND No. 2008-06-27-004-101 (2009) amounting to ₱169,721.00 was lifted due to insufficiency of evidence, but with a stern warning to the Municipal Engineer to stop giving inconsistent and misleading information (i.e., dates of project completion, work accomplishment, etc.) to users of his reports; and

(5) ND No. 2008-06-27-005-101 (2009) and 2008-06-27-006-101 (2009) totaling ₱37,976,500.00 are lifted for want of legal basis, without prejudice to the administrative liability of the BAC Secretariat for dereliction of duties and conduct grossly prejudicial to the best interest of service and/or other criminal or civil liabilities that may be imposed under appropriate laws and regulations.[29]

The Decision of the COA-RD of Region V was elevated to respondent COA Proper for automatic review pursuant to Section 7, Rule V of the 2009 Revised Rules of Procedure of the COA (RRPC) as the RD modified the ruling of the ATL.

On September 11, 2014, respondent rendered the assailed Decision,[30] the dispositive portion of which reads:

---

[29] Id. at 148-149.

[30] Id. at 145-158.

WHEREFORE, in view of the foregoing, this Commission **AFFIRMS** with **MODIFICATION** COA Regional Office No. V Decision No. 2012-L-007 dated June 4, 2012, as follows:

The modified **ND No. 2008-06-27-001-101 (2009)**, holding x x x Baldon, Proprietor, S.R. Baldon Construction and Supply, liable for the liquidated damages amounting to ₱145,770.60 only based on the Inspection/Evaluation Report dated March 18, 2011 of COA TAS is affirmed;

The partial lifting of **ND No. 2008-06-27-002-101 (2009)** is sustained but the correct amount of the ND should be ₱4,367,360.90 instead of ₱4,368,046.58. Consequently, the amount of ₱2,509,485.57 pertaining to the overpricing is lifted but the remaining ₱1,857,875.33 for the overestimation in quantity is sustained;

The lifting of **ND No. 2008-06-27-003-101 (2009)** in the amount of ₱2,638,776.00 is hereby set aside. Mayor x x x De Castro shall be held liable for the amount of disallowance for her issuance of a work suspension order not in accordance with the provision of Item 9 (1) Annex E to IRR-A of R.A. 9184;

The lifting of **ND No. 2008-06-27-004-101 (2009)** amounting to ₱169,721.00 is hereby set aside. Engr. x x x Gonzales, x x x Municipal Engineer, MGB, Province of Sorsogon, shall be held liable for the amount of disallowance for misfeasance in giving inconsistent and misleading information regarding the date the project was completed; and

The lifting of **ND No. 2008-06-27-005-101 (2009)**;and **ND No. 2008-06-27-006-101 (2009)** totaling ₱37,976,500.00 is affirmed for want of legal basis without prejudice to the administrative liability of Mayor x x x De Castro, Head of Procuring Entity and the BAC members for their violation of the provisions of R.A. 9184 and its IRR regarding the full use of the PhilGEPS.

The Audit Team Leader, Municipal Government of Bulan, province of Sorsogon, is hereby directed to prepare a Notice of Settlement of Suspensions/Disallowances/Charges to reflect the disallowance lifted, and issue an amended Notice of Disallowance to reflect the reduced amount in accordance with the attached Schedule I, forming an integral part of this Decision.

Aggrieved, S. R. Baldon, Orencio C. Luzuriaga, petitioners De Castro, Dino, Gonzales, Liza L. Hollon (Hollon), and

Carmencita S. Morata (Morata) moved for reconsideration, which respondent COA denied in its assailed Resolution[31] dated November 9, 2016, the dispositive portion of which reads:

> **WHEREFORE**, premises considered, this Commission hereby **DENIES** the motion for reconsideration. Accordingly, [COA] Decision No. 2014-209 dated September 11, 2014, which affirmed with modification COA Regional Office No. V. Decision No. 2012-L-007 dated June 4, 2012, on the lifting and amendment of various [NDs] relative to the construction of [BIBT] and Slaughterhouse Projects in the Municipality of Bulan, Sorsogon, is **AFFIRMED with FINALITY**.
>
> The Prosecution and Litigation Office, Legal Services Sector, this Commission, is hereby directed to forward the case to the Office of the Ombudsman for investigation and filing of the appropriate charges, if warranted, against the persons liable for the transaction.[32]

Hence, the present petition.

GROUNDS

A

RESPONDENT COA HAD COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT CAPRICIOUSLY DISALLOWED IN AUDIT BASED ON A WRONG LEGAL AUTHORITY THE WORK SUSPENSION ORDER ISSUED BY PETITIONER x x x DE CASTRO; AND IT EVEN WHIMSICALLY HELD HER LIABLE FOR THE SUPPOSED LIQUIDATED DAMAGES IN THE x x x BIBT OF THE MUNICIPALITY OF BULAN, SORSOGON.

B

RESPONDENT COA HAD COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT INSISTED TO APPLY THE ACEL EQUIPMENT RENTAL RATES (A PRIVATE GROUP'S INITIATIVE WHICH WAS ADOPTED BY THE DPWH AS PART OF ITS GUIDELINES IN PROJECT COSTING) IN THE BIBT PROJECT WHICH BECAME THE BASIS OF THE ASSAILED COA

---

[31] Id. at 135-144.

[32] Id. at 141-142.

RESOLUTION AND THE ASSAILED COA DECISION (ANNEXES A AND B HEREOF) TO AFFIRM PART OF THE DISALLOWANCE IN THE ASSAILED ND NO. 2008-06-27-002-101(2009) (ANNEX E HEREOF) WHICH DPWH GUIDELINES HAD NOT BEEN LEGALLY PUBLISHED OR FILED FOR ITS OWN ORDINANCE ON EQUIPMENT RENTAL.

C

RESPONDENT COA HAD COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT REPEATEDLY DID NOT RESOLVE THE SUBJECT CASE IN EACH STAGE OF THE APPEAL ON TIME WHICH IS IN VIOLATION OF THE PROVISIONS OF THE 2009 RRPC AND THE PETITIONER'S RIGHTS TO DUE PROCESS AND TO SPEEDY DISPOSITION OF THE SUBJECT CASE.

D

RESPONDENT COA HAD COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT WANTONLY DID NOT INDIVIDUALLY RESOLVE OR HAD CAPRICIOUSLY DISREGARDED ARGUMENTS I(a) AND III OF PETITIONERS DE CASTRO AND GONZALES AND ARGUMENT I OF PETITIONER BALDON IN THE SUBJECT MR (ANNEX C HEREOF) AND FALSELY CLAIMING IN THE ASSAILED COA RESOLUTION (ANNEX A HEREOF) THAT THEY WERE MERE REHASH OR REITERATION OF THE GROUNDS ALREADY PASSED UPON EARLIER IN THE ASSAILED COA DECISION (ANNEX B HEREOF) WHICH DISREGARD OR CLAIM VIOLATED THE RESPONDENT'S OWN 2009 RRPC AND THE PETITIONERS' RIGHT TO DUE PROCESS.

E

RESPONDENT COA HAD COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN, DESPITE BEING CONTRARY TO EXISTING JURISPRUDENCE, IT STILL IMPUTED LIABILITY TO PETITIONER xxx DE CASTRO AS HEAD OF PROCURING ENTITY FOR THE ALLEGED OVERESTIMATION IN QUANTITY OF MATERIALS IN THE CONSTRUCTION OF THE BULAN INTEGRATED BUS TERMINAL PROJECT.

F

RESPONDENT COA HAD COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF

JURISDICTION WHEN IT SUSTAINED OR AFFIRMED THE ALLEGED OVERESTIMATION IN QUANTITY AMOUNTING TO ₱1,857,875.33 AS THE REMAINING DISALLOWANCE UNDER ND NO. 2008-06-27-002-101(2009) DESPITE THE OBVIOUSLY QUESTIONABLE COMPUTATION (THAT IS, UNDERESTIMATION IN THE COA COST ESTIMATE) AND THE TOTAL DISREGARD OF RELEVANT CIRCUMSTANCES MATERIALLY AFFECTING THE PROJECT COSTING MADE BY THE COA INSPECTOR CONCERNED.

G

RESPONDENT COA HAD COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN INSTEAD OF ALREADY ATTACHING THE AMENDED NOTICES OF DISALLOWANCE TO THE ASSAILED COA DECISION (ANNEX B HEREOF) IN ORDER TO REFLECT THE REDUCED AMOUNT OF DISALLOWANCE BASED ON THE SCHEDULE APPENDED THERETO AS ANNEX I AND FORMING AN INTEGRAL PART OF THE SAID COA DECISION, IT ONLY DIRECTED THE AUDIT TEAM LEADER CONCERNED TO ISSUE THE SUPPOSEDLY AMENDED NDs, THEREBY DEPRIVING THE PETITIONERS OF THE EXACT FACTS AND REASONS FOR THE DISALLOWANCE, AMONG OTHERS. AND WORSE, THE RESPONDENT HAD OPENLY TOLERATED THE CONCERNED AUDIT TEAM LEADER'S NOT ISSUING THE AMENDED NOTICES OF DISALLOWANCE EVEN AFTER THE ASSAILED COA RESOLUTION (ANNEX A HEREOF) WAS PROMULGATED, OR MORE THAN TWO (2) YEARS DELAYED ALREADY, IN VIOLATION OF PETITIONERS' RIGHT TO DUE PROCESS AND THE PERTINENT PROVISIONS OF THE 2009 RRPC.

H

RESPONDENT COA HAD COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT SUDDENLY AND SURREPTITIOUSLY CHANGED OR SUBSTITUTED THE AMOUNT AND REASON FOR THE DISALLOWANCE STATED IN THE ASSAILED ND NO. 2008-06-27-001-101(2009) (ANNEX D HEREOF) WITHOUT FIRST ISSUING AND SERVING A NEW NOTICE OF DISALLOWANCE DESPITE ITS CLEAR VIOLATION OF COA CIRCULAR NO. 2009-006 DATED SEPTEMBER 15, 2009 AND THE PETITIONERS' RIGHT TO DUE PROCESS.

I

RESPONDENT COA HAD COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT AFFIRMED THE ASSAILED NDs DESPITE THEIR PATENT SERIOUS DEFECT FOR THEIR FAILURE TO CITE THE LAW VIOLATED AS REQUIRED UNDER THE 2009 RRPC WHICH SERIOUS DEFECT INFRINGED THE PETITIONERS' RIGHT TO DUE PROCESS.

J

RESPONDENT COA HAD COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT RULED THAT PETITIONER x x x GONZALES x x x IS LIABLE FOR THE ₱169,721.00 DISALLOWANCE UNDER THE ASSAILED ND NO. 2008-06-27-004-101(2009) (ANNEX G HEREOF) FOR AN ALLEGED MISFEASANCE IN PURPORTEDLY GIVING INCONSISTENT AND MISLEADING INFORMATION REGARDING THE DATE THE SLAUGHTERHOUSE PROJECT WAS COMPLETED WHICH IS NOT A GROUND FOR DISALLOWANCE OF TRANSACTION CLAIM OR PAYMENT.

K

RESPONDENT COA HAD COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT STILL MADE A PRONOUNCEMENT THAT PETITIONERS x x x DE CASTRO, AS HEAD OF PROCURING ENTITY, AND THE BAC MEMBERS ARE ADMINISTRATIVELY LIABLE FOR VIOLATION OF THE PROVISIONS OF R.A. [NO.] 9184 AND ITS IRR REGARDING THE FULL USE OF PHILGEPS, DESPITE THE LIFTING OF ND NO. 2008-06-27-005-101(2009) AND ND NO. 2008-06-27-005-101(2009) FOR WANT OF LEGAL BASIS.

L

RESPONDENT COA HAD COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT OVERCHARGED THE PETITIONERS IN THE AMOUNT OF FILING FEES THAT THEY WERE MADE TO PAY WHEN THEY FILED THEIR APPEAL BEFORE THE COA REGION V DIRECTOR, LEGASPI CITY DESPITE THE CLEAR PROVISION OF THE 2009 RRPC.[33]

---

[33] Id. at 12-15.

RULING

Before We delve into the substance of the petition, We shall first address the issue regarding the timeliness of the instant petition.

According to the respondent, the petition should be dismissed for having been filed beyond the 30-day reglementary period for the filing of a petition for *certiorari* under Section 3,[34] Rule 64 of the Rules of Court. Respondent, through the Office of the Solicitor General (OSG), points out that petitioners received a copy of the assailed COA Decision on September 29, 2014 and, in turn, filed a motion for reconsideration on October 9, 2014.[35] Considering that the fresh period rule enunciated in *Neypes v. Court of Appeals*[36] does not apply to petitions for *certiorari* under Rule 64,[37] petitioners had only 20 days remaining, or until December 19, 2016, to file the petition. Accordingly, since petitioners received a copy of the assailed COA Resolution denying their motion for reconsideration on November 29, 2016, the filing of the petition on December 29, 2016 was 10 days late.

Indeed, a review of the timeline shows the instant petition for review was filed out of time and could have been dismissed by this Court outright. Time and again, We have emphasized that procedural rules should be treated with utmost respect and due regard, since they are designed to facilitate the

---

[34] Sec. 3. *Time to file petition* - The petition shall be filed within thirty (30) days from notice of the judgment or final order or resolution sought to be reviewed. The filing of a motion for new trial or reconsideration of said judgment or final order or resolution, if allowed under the procedural rules of the Commission concerned, shall interrupt the period herein fixed. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of denial.

[35] *Rollo,* pp. 411-414.

[36] 506 Phil. 613 (2005).

[37] *Fortune Life Insurance Company, Inc. v. COA Proper, et al.*, 752 Phil. 97, 106 (2015).

adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice.[38]

However, there are certain exceptions that allow a relaxation of the procedural rules. In the case of *The Law Firm of Laguesma Magsalin Consulta and Gastardo v. COA*,[39] the Court restated the reasons which may provide justification for a court to suspend a strict adherence to procedural rules, such as: (a) matters of life, liberty, honor or property; (b) the existence of special or compelling circumstances; (c) **the merits of the case**; (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (e) a lack of any showing that the review sought is merely frivolous and dilatory; and, (f) the other party will not be unjustly prejudiced thereby.[40]

As in any case, this Court is duty-bound to preliminarily ascertain, based on the records, whether the petition has *prima facie* merit, before resolving to dismiss the same on a procedural ground. Here, it is notable that even the OSG, in its partial manifestation,[41] disagrees with respondent COA Proper's ruling on certain points and raises reversible errors allegedly committed by the latter. Taking cue therefrom, this Court has found *prima facie* merit on matters raised in the instant petition for review, which behooved Us to relax technical rules and entertain the petition.

Now We resolve the petition, beginning with the collateral issues raised by petitioners.

Petitioners argue that respondent violated their right to speedy disposition of their case when the latter repeatedly failed to

---

[38] *Subic Bay Metropolitan Authority v. COA*, G.R. No. 230566, January 22, 2019.

[39] 750 Phil. 258 (2015).

[40] Id. at 274-275, citing *Sanchez v. Court of Appeals*, 452 Phil. 665, 674 (2003).

[41] *Rollo*, pp. 432-435.

timely resolve the subject case in each stage of the appeal, within the periods provided in the 2009 Revised Rules of Procedure of the Commission on Audit (RRPC). Petitioners asseverate that: despite the filing of their Appeal Memorandum on February 17, 2010 before the COA-RD of Region V, the latter decided the case on June 4, 2012 beyond the 15-day period[42] prescribed by the 2009 RRPC; despite the indorsement of the case on June 8, 2012 to the respondent COA Proper for automatic review of the Decision of the COA-RD of Region V, respondent rendered the herein assailed Decision on September 11, 2014 only, beyond the 60-day period[43] prescribed; and, despite the filing of their Motion for Reconsideration on October 9, 2014, respondent resolved the same on November 9, 2016 only, beyond the 60-day period prescribed.

In responding to petitioners' claim, COA counters that petitioners failed to show that the delay was capricious, vexatious and oppressive in character, so as to amount to a violation of petitioners' right to speedy disposition of the case. COA likewise submits that the delay was justified by the necessity for thoroughness in audit.

Respondent's position is well-taken.

Section 16, Article III of the 1987 Constitution guarantees that all persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial and administrative bodies. This constitutional right is not only afforded to the accused in criminal proceedings but extends to all parties in all cases pending before judicial, quasi-judicial and administrative bodies

---

[42] Sec. 9. ***Period to Decide Case*** - The Director shall render his decision on the case within fifteen (15) days after submission of complete documents necessary for evaluation and Decision.

[43] Sec. 4. ***Period for Rendering Decision*** - Any case brought to the Commission Proper shall be decided within sixty (60) days from the date it is submitted for decision or resolution, in accordance with Section 4, Rule III hereof.

—any party to a case can demand expeditious action from all officials who are tasked with the administration of justice.[44]

It must be noted, however, that the right to a speedy disposition of cases should be understood to be a relative or flexible concept such that a mere mathematical reckoning of the time involved would not be sufficient;[45] it is dependent on the facts and circumstances of a particular case.[46] Thus, it is doctrinal that in determining whether a party is denied the right to speedy disposition of cases, the following factors are considered and weighed: (1) length of delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.[47]

In this case, after weighing the length of time it took the lower tribunals to decide the instant case *vis-a-vis* the necessity to exercise even the standard degree of thoroughness in the examination and resolution of six disallowances in audit—some of which involving issues that are complex or technical in nature, this Court is of the view that the delay in the resolution of the case was not inordinate.

Petitioners likewise bewail that they were denied administrative due process in view of the following circumstances: failure of respondent to resolve every individual argument raised by petitioners in their Motion for Reconsideration; non-issuance of the amended NDs, in conformity with the pronouncement of respondent in the assailed Decision; and failure of the assailed NDs to cite the law violated.

Again, this Court is unimpressed.

---

[44] *Revuelta v. People of the Philippines*, G.R. No. 237039, June 10, 2019.

[45] Id.

[46] *Navarro v. COA*, G.R. No. 238676, November 19, 2019.

[47] Id.

The essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard.[48] In administrative proceedings, procedural due process has been recognized to include the following: (1) the right to actual or constructive notice of the institution of proceedings which may affect a respondent's legal rights; (2) a real opportunity to be heard personally or with the assistance of counsel, to present witnesses and evidence in one's favor, and to defend one's rights; (3) a tribunal vested with competent jurisdiction and so constituted as to afford a person charged administratively a reasonable guarantee of honesty as well as impartiality; and (4) a finding by said tribunal which is supported by substantial evidence submitted for consideration during the hearing or contained in the records or made known to the parties affected.[49]

Contrary to petitioners' view that ND Nos. 2008-06-27-001-101 (2009), 2008-06-27-003-101 (2009), and 2008-06-27-004-101 (2009) are defective notices for not indicating the particular violations of law upon which the disallowance was based, the Court finds them sufficient enough to comply with the requirements of administrative due process. After all, in administrative proceedings, "due notice" simply means the information that must be given or made to a particular person or to the public within a legally mandated period of time so that its recipient will have the opportunity to respond to a situation or to allegations that affect the individual's or public's legal rights or duties.[50]

In this case, ND Nos. 2008-06-27-001-101 (2009), 2008-06-27-003-101 (2009), and 2008-06-27-004-101 (2009) bore the following reasons for disallowance:

---

[48] *Vivo v. Phil. Amusement and Gaming Corporation*, 721 Phil. 34, 39 (2013).

[49] Id. at 43, citing *Casimiro v. Tandog*, 498 Phil. 660, 667 (2005).

[50] *Securities and Exchange Commission v. Universal Rightfield Property Holdings, Inc.*, 764 Phil. 267, 283 (2015).

References	Facts and/or Reasons for Disallowance
ND No. 2008-06-27-001-101 (2009)	Unaccomplished deficiency of 0.58% or ₱196,526.13[,] the equivalent amount in terms of pesos. Per inspection report attached on Special Audit Report (Annexes "M-1-5")
ND No. 2008-06-27-003-101 (2009)	Representing liquidated damages for 80 days in excess of contract time attached in the Special Audit Report as Annex "Z-15-A"
ND No. 2008-06-27-004-101 (2009)	Representing LD for 34 days in excess of contract time attached in the Special Audit Report as Annexes "Z-16-A" & "18-a-d"

The above-stated reasons, with reference to pertinent documents, were adequate enough to inform the parties concerned that the corresponding bases for the disallowance are contractual in character, thereby affording the parties the opportunity not only to respond, but more importantly, to properly formulate their defenses in their Appeal Memorandum before the COA-RD of Region V.

Neither does the non-issuance of the amended NDs in conformity with the disposition made by respondent in its assailed decision, impair the petitioners' right to due process that would warrant the nullification of the subject NDs. Petitioners have been amply notified of factual and legal basis of each disallowance through the assailed Decision, thus, belying that they were deprived of the exact facts and reasons for their respective liabilities.

Lastly, that respondent did not discuss every individual issue raised by petitioners in their motion for reconsideration does

not by itself amount to a violation of their right to due process. It is an accepted practice that courts or tribunals are not required to resolve all issues raised in pleadings unless necessary for the resolution of the case.[51] Apparently, COA deemed it unnecessary to pass upon some points raised by petitioners, considering that it has exhaustively passed upon the decisive issues involved in this case in its assailed Decision.

All told, the Court finds no compelling reason to grant the instant petition on account of the alleged violations of petitioners' right to speedy disposition of cases and due process.

This brings Us to the main issues affecting each Notice of Disallowance.

ND No. 2008-06-27-001-101 (2009)
(*Liquidated Damages by Reason of the Delay in the Delivery or Installation of Additional 25Kva Transformer and its Accessories in the Main Terminal Building*)

To begin Our discussion on the matter, it bears to recall that the initial finding that prompted the disallowance under ND No. 2008-06-27-001-101 (2009) was the installation of a 25kva, instead of a 50kva, transformer as programmed, which accounted for the 0.58% unaccomplished deficiency. On appeal to the COA-RD of Region V, petitioners and Baldon offered the documents below to show the private contractor's rectification of the deficiency following their receipt of the ND:

1. Letter/Report issued by the Office of the Municipal Engineer, dated October 20, 2009, stating that per inspection of the BIBT project conducted on even date, the 50kva transformer and its accessories, in accordance with the Program of Work (POW), had been installed;[52]

2. Letter of the contractor Baldon, dated October 3, 2009, informing the Municipal Mayor of the installation of the 50kva transformer, as

---

[51] *Insular Bank of Asia & America v. IAC*, 249 Phil. 417, 427 (1988).

[52] *Rollo,* p. 306.

well as all electrical equipment and accessories, had been properly installed;[53]

3. Certification issued by Sorsogon I Electric Cooperative, Inc. (SORECO) on September 30, 2009, stating that a secondary line (consisting of units steel poles; one unit 50kva transformer; and one unit kwh meter class 200) has been installed at the BIBT.[54]

As stated above, the COA-RD of Region V modified the disallowance under ND No. 2008-06-27-001-101 (2009), assessing the private contractor's liability at ₱145,770.60 only, as liquidated damages by reason of the delay in the delivery or installation of additional 25kva transformer and its accessories in the main terminal building. Upon automatic review of the COA Proper, the respondent affirmed the modification made by the COA-RD of Region V.

In presently assailing ND No. 2008-06-27-001-101 (2009), petitioners draw attention to the apparent distinctions between the original ND No. 2008-06-27-001-101 (2009) issued by the ATL, on one hand, and the modified ND No. 2008-06-27-001-101 (2009) as assessed by the COA-RD of Region V, on the other hand, as shown below:

	ND No. 2008-06-27-001-101 (2009)	
	ORIGINAL	MODIFIED
AMOUNT	₱196,526.13	₱145,770.60
REASON FOR DISALLOWANCE	Unaccomplished deficiency of 0.58% upon per inspection	Liquidated Damages by reason of the delay in the delivery and installation of additional 25 kva transformer and its accessories in the main terminal building

[53] Id. at 307.

[54] Id. at 308.

Petitioners assert that there was denial of administrative due process when, after the private contractor Baldon had established that her construction firm had rectified the deficiency cited by the ATL in the original ND No. 2008-06-27-001-101 (2009), the COA-RD and respondent COA Proper still partly sustained the said disallowance based on a new ground. Considering that the basis for the liability under the modified ND was different from that originally cited, petitioners claim that a new ND should have been issued covering the same. Petitioners, thus, argue that respondent COA committed grave abuse of discretion when it affirmed ND No. 2008-06-27-001-101 (2009) as modified by the COA-RD of Region V.

The argument lacks merit.

While the original and the modified ND No. 2008-06-27-001-101 (2009) may appear to refer to distinct violations, both are predicated on the same cause, which was the failure of the contractor to fulfill its obligation to install a 50kva transformer and its accessories in the main terminal building of the project within the contract time. Based on record, it is evident that the shift from the initial ground of disallowance to the new one was simply the residual result of the rectification of the deficiency beyond contract time, that perforce had the effect of causing further delay in the completion of the BIBT project. Hence, petitioners could not have been surprised at all by the succeeding assessment for delay, so as to validate their claim of denial of due process. After all, the cause of the modified disallowance was subsumed in the original. Accordingly, a new notice of disallowance is not required; the modification of the original ND No. 2008-06-27-001-101 (2009) suffices under the circumstances of this case.

In view thereof, the respondent COA Proper aptly affirmed the modification made by the COA RD on ND No. 2008-06-27-001-101 (2009), especially since the evidence on record clearly supports the contractor's liability for the said delay.

In this connection, it may not be amiss to state that the COA is not required to limit its review only to the grounds relied upon by a government agency's auditor with respect to disallowing

certain disbursements of public funds. In consonance with its general audit power, respondent Commission on Audit is not merely legally permitted, but is also duty-bound to make its own assessment of the merits of the disallowed disbursement and not simply restrict itself to reviewing the validity of the ground relied upon by the auditor of the government agency concerned. To hold otherwise would render COA's vital constitutional power unduly limited and thereby useless and ineffective.[55]

ND No. 2008-06-27-002-101 (2009)
(*Cost of Overestimated Quantities of Construction Materials, Rental Cost of Equipment and Cost of Labor Net of 10% Tolerable Allowance*)

The amount originally disallowed under ND No. 2008-06-27-002-101 (2009) was ₱4,367,360.90, computed as follows:[56]

Contract Cost	32,984,700.00
Less COA Estimated Cost	26,015,762.82
Difference: (Gross Variance)	6,968,937.18
Gross Variance/Allowable Variance x 100 = 26.79%	
Less: 10% of COA Estimate (Allowable Variance)[57]	2,601,576.28
Net Cost Variance (NCV) Disallowed in Audit	₱4,367,360.90[58]

---

[55] *Maritime Industry Authority v. COA*, 750 Phil. 288, 334 (2015).

[56] *Rollo*, p. 150.

[57] Paragraph 7, COA Resolution No. 91-52 states:

The total contract price should be equal to or less than the total COA estimate plus ten percent (10%) in order to sustain a finding of reasonableness, otherwise, the contract price will be deemed excessive.

[58] According to the assailed COA Decision dated September 11, 2014, the amount of disallowance should be ₱4,367,360.90, which was inadvertently indicated as ₱4,368,046.58.

The disallowed NCV under the original ND No. 2008-06-27-002-101 (2009) consisted of two parts, namely, overestimated quantities and overpricing:[59]

Details	**Overestimated Quantities**		**Overpricing**		**Total**	
	Amount (P)	**%**	**Amount (P)**	**%**	**Amount (P)**	**%**
Portion of CV for construction materials, rental cost of equipment and cost of labor	2,838,384.00	42.54	3,834,453.30	57.46	6,672,837.30	100
CV for mobilization, overhead cost and contractors profit and tax	125,960.89	42.54	170,138.99	57.46	296,099.88	100
Total Cost Variance/Gross Variance Equivalent to 26.79%	**2,946,344.89**	**42.54**	**4,004,592.29**	**57.46**	**6,968,937.18**	**100**
Less COA Allowable Variance: 10% of Total Estimate: (26,015,762.82)	1,106,710.55	42.54	1,494,865.73	57.46	2,601,576.28	100
Net Cost Variance (NCV) Disallowed	**₱1,857,875.33**	**42.54**	**₱2,509,485.57**	**57.46**	**₱4,367,360.90**	**100**[60]

On appeal to the COA-RD of Region V, the amount of disallowance was reduced to ₱1,857,875.33, after the RD lifted the disallowance of Php2,509,485.57 representing the NCV of the alleged overpriced construction materials. The reason for the partial lifting of the disallowance was the failure of the COA-TAS to support the finding of overpricing with actual canvass sheets and/or price quotations from identified suppliers, as required under COA Memorandum No. 97-012.[61]

---

[59] *Rollo*, p. 151.

[60] Id. at 151-152.

[61] COA Memorandum Order No. 97-012 dated March 31, 1997 states:

Thus, the remaining amount of disallowance pertains to the NCV of the overestimated quantities of construction materials, rental cost of equipment and cost of labor. Petitioners fault the respondent COA Proper in sustaining the disallowance thereof. They argue that respondent gravely abused its discretion in giving credence to the Detailed Estimates[62] made by the COA-TAS, which are attended with the following supposed defects and irregularities:

Point 1:

> It must be noted that in the Detailed Estimates under Masonry Works, page 2, for 10,475 hollow blocks used, Engr. Gomez estimated only 611 bags of cement needed or to be used.
>
> However on page 5, for another Masonry Works, for 13,800 pieces of hollow blocks[,] Gomez estimated that only 120 bags of cement are needed.
>
> x x x x

Point 2:

> Relative to the Perimeter Fencing, on page 1 of both the LGU Program of Work and the COA Detailed Estimates, the COA inspector (Engr. Gomez) did not include in his Detailed Cost Estimates the use of scaffoldings for the construction of the perimeter fence. x x x

Point 3:

> In the COA Detailed Estimates prepared by the COA inspector, the employment of a Civil Engineer, or an Electrical Engineer, or a Project Engineer who must supervise, check and oversee the

---

x x x x

3.2 To firm up the findings to a reliable degree of certainty, initial findings of overpricing based on market price indicators mentioned in pa. 2.1 above have to be supported with canvass sheet and/or price quotations indicating: a) the identities of the suppliers or sellers; b) the availability of stock sufficient in quantity to meet the requirements of the procuring agency; c) the specifications of the items which should match those involved in the finding of overpricing; d) the purchase/contract terms and conditions which should be the same as those of the questioned transaction.

[62] *Rollo*, pp. 240-260.

whole project as big as the Bus Terminal was not included. The BIBT was a big civil works project awarded to a contractor who must hire a professional civil engineer, or any other engineer, depending on the line of work or project being done. The labor cost for such engineer was obviously disregarded or omitted by the COA inspector[,] which could partly account for or explain or reduce the alleged overestimated cost of the project.

Point 4:

COA Inspector (Engr. Gomez) raised the issue that for the acquisition of common borrow which will be used as filling material, why adopt the farther source in the LGU estimate and pay a higher cost of ₱220.00 per cubic meter instead of the nearer source with lower cost of ₱130 per cubic meter? He claimed that in this material alone, the government could have saved ₱90.00 per cubic meter of ₱1,944,000.00 for 21,600 cubic meters.[63]

It must be pointed out that the site of the [BIBT] is very much different from that of the Municipal Slaughterhouse. The BIBT project is located in a rice field needing more selected type of filling materials than the usual filling materials for the construction site of an ordinary project like a slaughterhouse. The BIBT serves as a facility that can carry heavier loads like, not only the building but several buses equivalent to 50 units at some point of time, and thus, the foundation materials had included selected filling materials like boulders and rocks. The area at the site of the BIBT project sits on a ground softer than at the slaughterhouse site. Thus, there was a need for a selected borrow since safety like security is a main concern for the Bus Terminal Management.

Accordingly, [the] alleged savings of ₱90.00 per cubic meter for 21,600 cubic meters or a total amount of ₱1,944,000.00 is totally baseless and therefore there was no overestimation in the quantity and price of the borrow used as filling materials for the BIBT project.

Point 5:

The COA inspector (Engr. Gomez) had questioned the rental of Road Grader estimated by the LGU of Bulan at ₱12,048.00 per eight-hour operation based on Municipal Ordinance No. 002, Series of 2005[64] [xxx] which is the prevailing rate at the construction site.

---

[63] Id. at 388.

[64] Id. at 385-386.

> Engr. Gomez used the DPWH Regional Equipment Rental rates based on the DPWH Order No. 57, Series of 2002, dated February 13, 2002 which is legally non-existent for not having been published or filed with the Office of the National Administrative Register (ONAR) as already discussed above. And if Engr. Gomez used any other rates prevailing in a locality outside of the LGU [of] Bulan or in a place far from the construction site like Legaspi City, then Engr. Gomez failed to consider the factors that affect costing or pricing or rental, like distance, time and the added cost of hauling the heavy equipment to and from the project site at Bulan, Sorsogon.[65]

While this Court finds points 1 to 4 raised by petitioners to be ostensibly sound in theory, it is unfortunate that petitioners failed to present before Us the LGUs Program of Work (POW), in order to enable Us to confirm whether the items or expenses referred to in petitioners' arguments indeed form part of the agency approved budget, and whether they constitute the remaining gross variance of ₱2,964,344.89. Considering that the said document is clearly relevant to the material allegations in this petition, petitioners should have presented the same.

On this note, We stress that the burden of demonstrating, plainly and distinctly, all facts essential to establish their right to a *writ of certiorari* lies on petitioners.[66] In other words, the burden of proof to show grave abuse of discretion is on the petitioners.[67] Here, by not attaching a relevant document in support of their arguments, petitioners failed to discharge their burden of proof.

As to the costing of heavy equipment rentals, petitioners argue that COA erroneously sustained the reliance of the COA-TAS upon the Department of Public Works and Highways (DPWH) rental rates, as mandated by DPWH Department Order

---

[65] Id. at 94-97.

[66] *Morales, Jr. v. Ombudsman Carpio-Morales*, 791 Phil. 539, 556 (2016).

[67] Id.

(D.O.) No. 57, series of 2002,[68] in arriving at the rental cost estimates. According to petitioners, since DPWH D.O. No. 57, series of 2002, was not published in the University of the Philippines (U.P.) Law Center – Office of the National Administrative Register (ONAR), the same is "inexistent."

We agree with petitioners that the lack of publication and non-submission to the U.P. Law Center – ONAR, of DPWH Department Order (D.O.) No. 57, series of 2002, rendered the same ineffective, insofar as it requires the adoption of the Associated Construction Equipment Lessors, Inc. (ACEL) rental rates as the basis of equipment rental cost in the preparation of a project's Approved Budget for Contract (ABC). This Court has emphasized that both the requirements of publication and filing of administrative issuances intended to enforce existing laws—R.A. No. 9184, in this case—are mandatory for the effectivity of said issuances.[69]

However, the ineffectiveness thereof notwithstanding, COA is not precluded from adopting the rental rates prescribed by the DPWH, if it is shown that the same is more practical and of least cost to the government. This is in view of COA's mandate preventing excessive and unnecessary costs to the government. In this case, it is apparent that the DPWH rental rates are lower than that prescribed in Municipal Ordinance No. 002, Series of 2005, which was used as basis in the preparation of the ABC for the BIBT project. Hence, the COA did not commit grave abuse of discretion in sustaining the COA-TAS rental

---

[68] Item A.3.1 of DPWH D.O. No. 57, series of 2002, states:

A.3 Equipment Expenses.

A.3.1 Rental equipment which shall be based on the prevailing "Associated Construction Equipment Lessors, Inc." (ACEL) rental rates approved for the use by the DPWH. Rental Rates of Equipment not indicated in the ACEL booklet shall be taken from the rental rates prepared by the Bureau of Equipment. x x x

[69] *Rep. of the Phils. v. Pilipinas Shell Petroleum Corporation*, 574 Phil. 134, 144 (2008), *NASECORE v. Energy Regulatory Board*, 517 Phil. 23, 54 (2006).

cost estimate for the lease of heavy equipment, based on the DPWH rental rates.

This brings Us to the issue of who are liable under ND No. 2008-06-27-002-101 (2009). We hold that only the BAC Chairman Dino and Municipal Engineer Gonzales are liable for this disallowance. Under Section 103 of Presidential Decree (P.D.) No. 1445, expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor. Considering that the BAC chairman and the municipal engineer were directly involved in the preparation of the budget for the project, they should be made liable for the overestimated quantity of the materials and the rates used for the costing of the BIBT project.

Petitioner De Castro, on the other hand, cannot be held liable under this disallowance, since she had nothing to do with the preparation of the estimated cost of the BIBT project.[70] Applying the *Arias*[71] doctrine, the fact that petitioner De Castro was the final approving authority of the transactions in question and that the officers who processed the same were directly under her supervision, do not suffice to make her liable, in the absence of indication that she had notice of any circumstance that could have aroused her suspicion that what she was approving falls within the purview of an excessive transaction. To be clear, the documents in question involve technical matters that are beyond the professional competence of De Castro.

The proprietor of the private contractor S.R. Baldon Construction and Supply should be excluded from liability under this disallowance, since she was not privy to the preparation of the estimates for project. The Court finds fault in COA's imputation of liability against the contractor on the basis of unjust enrichment.[72] For one to be liable under the principle of

---

[70] *Dr. Salva v. Chairman Caragu*e, 540 Phil. 279, 286 (2006).

[71] *Arias v. Sandiganbayan*, 259 Phil. 794 (1989).

[72] The principle of unjust enrichment under Article 22 of the Civil Code ordains that "every person, who through an act of performance by another,

unjust enrichment, the essential elements must be present: (1) that the defendant has been enriched, (2) that the plaintiff has suffered a loss, (3) that the enrichment of the defendant is without just or legal ground, and (4) that the plaintiff has no other action based on contract, quasi-contract, crime or quasi-delict.[73] In this case, the first element is lacking, as it was never alleged, much less proved, that the overestimated quantities of construction materials, rental costs of equipment and labor cost, were not utilized or spent for the project or that the same channeled directly for personal use or gain of the private contractor.

ND No. 2008-06-27-003-101 (2009)
(*Liquidated Damages for 80 Days Excess of Contract Time*)

The assailed COA Decision held petitioner De Castro, as then municipal mayor of Bulan, Sorsogon, liable for the disallowance under ND No. 2008-06-27-003-101 (2009) in the amount of ₱2,638,776.00, representing the liquidated damages for the 80-day delay in the completion of the BIBT project. In so ruling, the respondent invalidated the Work Suspension Order dated May 15, 2007 issued by petitioner De Castro, which served as the basis for the contractor to stop the work operations on the project from July 2, 2007 until September 10, 2007. According to COA, De Castro's Work Suspension Order, which was predicated on the municipal government's recourse to undertake an alternative financing scheme to fund the project, is not a fortuitous event that would render it a valid ground for work suspension under Item 9(1) of Annex E to IRR-A of R.A. No. 9184, which states:

9.1. The procuring entity shall have the authority to suspend the work wholly or partly by written order for such period as may be

---

or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him."

[73] *Shinryo (Philippines) Company, Inc. v. RRN Incorporated*, 648 Phil. 342, 351 (2010).

deemed necessary, due to force majeure or any fortuitous events or for failure on the part of the contractor to correct bad conditions which are unsafe for workers or for the general public, to carry out valid orders given by the procuring entity or to perform any provisions of the contract, or due to adjustment of plans to suit field conditions as found necessary during construction. The contractor shall immediately comply with such order to suspend the work wholly or partly.

COA further ruled that neither does the said circumstance fall under Item 9(2) of Annex E to IRR-A of R.A. No. 9184, which enumerates the following grounds for a contractor to request for work suspension:

9.2. The contractor or its duly authorized representative shall have the right to suspend work operation on any or all projects/activities along the critical path of activities after fifteen (15) calendar days from date of receipt of written notice from the contractor to the district engineer/regional director/consultant or equivalent official, as the case may be, due to the following:

a. There exist right-of-way problems which prohibit the contractor from performing work in accordance with the approved construction schedule.

b. Requisite construction plans which must be owner-furnished are not issued to the contractor precluding any work called for by such plans.

c. Peace and order conditions make it extremely dangerous, if not possible, to work. However, this condition must be certified in writing by the Philippine National Police (PNP) station which has responsibility over the affected area and confirmed by the Department of Interior and Local Government (DILG) Regional Director.

d. There is failure on the part of the procuring entity to deliver government-furnished materials and equipment as stipulated in the contract.

e. Delay in the payment of contractor's claim for progress billing beyond forty-five (45) calendar days from the time the contractor's claim has been certified to by the procuring entity's authorized representative that the documents are complete unless there are justifiable reasons thereof which shall be communicated in writing to the contractor.

Taking exception therefrom, petitioners argue that the respondent committed grave abuse of discretion in relying solely upon the grounds for work suspension mentioned in Items 9(1) and (2) of Annex E to IRR-A of R.A. No. 9184 to invalidate the subject Work Suspension Order. They assert that De Castro's order may likewise be justified under the General Welfare Clause of the Local Government Code. Expounding on this assertion, they explain that in order to fund the construction and development of the several priority projects, such as the BIBT, SB Ordinance No. 004, series of 2003,[74] was enacted authorizing the municipal mayor to float Bulan bonds in the amount of ₱50,000,000.00. In the same ordinance, the municipal mayor was also authorized to undertake alternative arrangements should such be necessary due to cost considerations. Thereafter, when the implementation of the Bulan bonds turned out to be difficult, SB Resolution No. 033, series of 2007[75] was issued on July 16, 2007, authorizing the municipal mayor to apply, negotiate and enter into a contract of loan or any credit accommodation or facility to finance the early redemption or bail-out of the outstanding Bulan Bonds. Considering the amount of time, it would take to process the refinancing agreement, petitioner De Castro issued the questioned Work Suspension Order in order to protect the interest of the municipality from being sued by the private contractor for any resulting delay in the payment of progress and final billings.

Petitioners likewise submit that, in any case, since the date of approval of the loan is uncertain and beyond the control of De Castro, it can be considered a fortuitous event or force majeure, which thus constitutes as valid basis for the issuance of the challenged Work Suspension Order. Accordingly, they argue that there was no delay in the completion of the project since the work suspension was justified.

Petitioners further lament the imposition of personal liability upon De Castro for the subject disallowance. They claim that assuming that there was indeed a delay, the liability to pay

---

[74] *Rollo*, 374-377.

[75] Id. at 378.

liquidated damages must be shouldered by the private contractor alone, based on the tenor of Item 8(1), Annex "E" of the IRR of R.A. No. 9184, which reads:

> 8.1. Where the contractor refuses or fails to satisfactorily complete the work within the specified contract time, plus any time extension duly granted and is hereby in default under the contract, the contractor shall pay the procuring entity for liquidated damages, and not by way of penalty, an amount, as provided in the conditions of contract, equal to at least one tenth (1/10) of one (1) percent of the cost of the unperformed portion of the works for every day of delay.

Petitioner's last argument was echoed by the OSG in its Partial Manifestation.

We find merit in petitioners' arguments.

The above-cited clause on liquidated damages is clear about its purpose and application: it is a deterrent against delays by the contractor, which result in a breach of the contract. The same clause provides that the reckoning of the delay excludes any time extension duly granted. In other words, if the delay is not the contractor's fault, the clause on liquidated damages is not triggered and no such damages are due. Consequently, ND No. 2008-06-27-003-101 should be set aside. Under Part 1[76] of the Rules of Return in the case of *Madera v. COA*,[77] there is no amount to disallow or to return.

Even assuming such liquidated damages are due, it must likewise be noted that the suspension was due to an ongoing loan negotiation which followed the failure of the bond flotation initially intended to fund the project. Petitioner De Castro argues that the issuance of the work suspension order was done to protect the interests of the municipality by avoiding collection suits from private contractors. This, to Our mind, is a badge

---

[76] Part 1 provides: If a Notice of Disallowance is set aside by the Court, no return shall be required from any of the persons held liable therein.

[77] G.R. No. 244128, September 8, 2020.

of good faith which may excuse the "return" of the amount disallowed, as per Part 2a[78] of *Madera*.

ND No. 2008-06-27-004-101 (2009)
(*Disallowance by Reason of Alleged Misfeasance in Giving Inconsistent and Misleading Information Regarding the Actual Date of Completion of the said Project*)

Under the original ND No. 2008-06-27-004-101 (2009),the amount of ₱169,721.20 was disallowed, covering the liquidated damages for the purported 34-day delay in the completion of the Bulan Slaughterhouse project, based on a Certification[79] issued by Municipal Engineer Gonzales, dated July 24, 2007, which states that the BIBT and the Bulan Slaughterhouse projects were still on-going. On appeal to the COA-RD for Region V, Gonzales explained that the content of the said Certification dated July 24, 2007 was an honest mistake. He claimed the project was actually completed on April 29, 2007, based on his Accomplishment Report[80] on even date. He further argued that even supposing that the actual completion date was on May 29, 2007, as purported by the Certification[81] issued by the Project-in-Charge and noted by him, the same was still well-within schedule, and thus, there was no basis to impose liquidated damages.

On July 4, 2012, the COA Regional Director for Region V issued a Decision lifting ND No. 2008-06-27-004-101 (2009) due to insufficiency of evidence that the Bulan Slaughterhouse was completed beyond schedule, but gave a stern warning to the municipal engineer to stop giving inconsistent and misleading information (i.e., dates of project completion, work accomplishment, etc.) to users of his reports.

---

[78] Approving and certifying officers who acted in good faith, in regular performance of official functions, and with the diligence of a good father of the family are not civilly liable to return consistent with Section 38 of the Administrative Code of 1987.

[79] *Rollo*, p. 355.

[80] Id. at 356.

[81] Id. at 357.

On automatic review of the decision of the COA RD, the COA Proper set aside the lifting of ND No. 2008-06-27-004-101 (2009). The public respondent found Municipal Engineer Gonzales, solely and personally liable for the disallowance under ND No. 2008-06-27-004-101 (2009), by reason of his alleged misfeasance in giving inconsistent and misleading information regarding the actual date of completion of the said project. The COA Proper held that although there was no legal basis to sustain the ND No. 2008-06-27-004-101 (2009), as issued by the ATL, the same is without prejudice to the administrative liability of the Municipal Engineer for his misfeasance.

Petitioners now assail the ruling of respondent COA Proper, arguing that misfeasance is not a ground for disallowance. Along this line of argument, the OSG likewise challenges the said COA ruling, arguing that the liability imposed upon Gonzales cannot be considered as a disallowance since there is no irregular or excessive expenditure to speak of in this case. The OSG posits that in imposing liability on Gonzales for his supposed misfeasance, the public respondent, in excess of its jurisdiction, rendered the municipal engineer guilty of an administrative offense. According to the OSG, COA Proper, in effect, imposed a fine upon Gonzales for his alleged misfeasance, in the guise of a disallowance.

We agree with the OSG.

The power of COA to disallow expenditures proceeds from its duty[82] to prevent irregular,[83] unnecessary,[84] excessive,[85] or

---

[82] COA Circular 85-55a, September 8, 1985.

[83] **Irregular expenditure** signifies an expenditure incurred without adhering to established rules, regulations, procedural guidelines, policies, principles or practices that have gained recognition in law.

[84] **Unnecessary expenditure** pertains to expenditures which could not pass the test of prudence or the diligence of a good father of a family, thereby denoting non-responsiveness to the exigencies of the service.

[85] **Excessive expenditure** signifies unreasonable expense or expenses incurred at an immoderate quantity and exorbitant price. It also includes expenses which exceed what is usual or proper as well as expenses which

extravagant[86] expenditures or uses of government funds or property,[87] and those which are illegal[88] and unconscionable.[89] It stands to reason, therefore, that in the absence of these anomalous types of disbursements, there is no ground to warrant the disallowance of an expenditure.

Such is the situation in this case. To recall, the purported ground for the issuance of ND No. 2008-06-27-004-101 (2009) by the ATL, was the illegal or irregular disbursement of the sum of ₱169,721.20 representing the liquidated damages for the alleged 34-day delay in the completion of the Bulan Slaughterhouse project — an amount that ought to have been deducted from the final payment to the private contractor.[90] However, upon review of both the COA RD and the COA Proper, both tribunals found no sufficient basis to sustain the assessment of the ATL under the original ND No. 2008-06-27-004-101 (2009), ostensibly holding that there was insufficient evidence to establish the alleged 34-day delay.

On this score, Our own perusal of the evidence yields to the same finding. On one hand, the single evidence relied upon by the ATL in support of its finding of delay, was the Certification[91] issued by petitioner Gonzales dated July 24, 2007, stating that the construction of the project was then still ongoing. On the

---

are unreasonably high, and beyond just measure or amount. They also include expenses in excess of reasonable limits.

[86] **Extravagant expenditure** signifies those incurred without restraints, judiciousness and economy. Extravagant expenditures exceed the bounds of propriety. These expenditures are immoderate, prodigal, lavish, luxurious, waste grossly excessive, and injudicious.

[87] Section 33 of P.D. No. 1445.

[88] **Illegal expenditures** are expenditures which are contrary to law.

[89] **Unconscionable expenses** are expenditures which are unreasonable and immoderate, and which no man in his right sense would make, nor a fair or honest man would accept as reasonable, and those incurred in violation of ethical and moral standards.

[90] Item 8.3 of Annex "E" of the IRR-A of R.A. No. 9148.

[91] *Rollo*, p. 355.

other hand, petitioners harped on the following documents to prove that the project was completed prior to its deadline on June 20, 2007, and the statement made by Gonzales in the Certification dated July 24, 2007, regarding the ongoing status of the project, was an honest mistake:

a. Accomplishment Report issued by Municipal Engineer Gonzales, dated April 29, 2007, stating that the Bulan Slaughterhouse was actually completed on April 29, 2007;[92]

b. Request for Inspection and Final Payment, dated May 28, 2007, from Steven Construction and Supply, addressed to then Mayor De Castro;[93]

c. Certification issued by the Project-in-Charge Mr. Benito Marquez, and noted by Municipal Engineer Gonzales, dated May 29, 2007, stating that the project was 100% work accomplished as of May 29, 2007;[94]

d. Official Receipt issued by Steven Construction dated June 4, 2007, acknowledging that final payment has been made by the LGU of Bulan for a project already completed.[95]

To Our minds, petitioners' documentary evidence preponderantly establish that the project was completed prior to the expiration of the 180-day contract time, ending on June 20, 2007. In their chronological sequence, these documents credibly tell the following narrative: that on April 29, 2007 (128 days from the commencement date), the construction of Bulan Slaughterhouse project was completed; thereafter, on May 28, 2007, the private contractor requested the municipal government to conduct an inspection on the project as a necessary precursor for the final payment; on May 29, 2007 (still well-within the 180-day contract time), the project was inspected and the work thereon was certified as 100% accomplished "as of" the inspection

---

[92] Id. at 356.

[93] Id. at 358.

[94] Id. at 357.

[95] Id. at 358.

date; accordingly, the final payment was made to the private contractor on 4 June 2007. Under the foregoing established facts, the purported delay in the project completion—the basis for the issuance of the original ND No. 2008-06-27-004-101 (2009)—is belied.

In view thereof, the amount covered by ND No. 2008-06-27-004-101 (2009), as assessed by the ATL, cannot be characterized as an illegal or irregular disbursement so as to constitute a valid ground for its disallowance. Accordingly, no liability in audit arises therefrom, considering that a liability for disallowance should partake of the nature of an obligation for restitution[96] of an expenditure or disbursement that is found to be illegal, irregular, unnecessary, excessive, extravagant or unconscionable.

Turning now to the liability imposed upon the Municipal Engineer Gonzales to pay the amount of ₱169,721.20 under ND No. 2008-06-27-004-101 (2009) on the ground of his supposed misfeasance, the same clearly constitutes an administrative liability, since it was meted not for the purpose of restituting the government of an unlawful disbursement, but obviously as a fine or penalty. By doing so, COA clearly overstepped its authority to merely initiate appropriate administrative action, as well as civil and criminal, against any government officer or employee, whenever upon examination or audit, a violation of law or regulation is discovered or disclosed.[97]

---

[96] Section 4.17 of the 2009 COA Rules and Regulations on the Settlement of Accounts:

4.17. Liability - a personal obligation arising from an audit disallowance or charge which may be satisfied through payment or restitution as determined by competent authority or by other modes of extinguishment of obligation as provided by law.

[97] Section 31 of Volume 1: Government Auditing Rules and Regulations of the Government Accounting and Auditing Manual provides:

Section 31. Initiation of criminal, civil, or administrative action. — Pursuant to its constitutional power to examine, audit and settle all accounts of the government, the Commission may initiate, in the proper forum, an appropriate criminal, civil or administrative action against any government

ND No. 2008-06-27-005-101 (2009) and
ND No. 2008-06-27-006-101 (2009)

ND Nos. 2008-06-27-005-101 (2009) and ND No. 2008-06-27-006-101 (2009), which declared null and void the contracts over the BIBT and the Bulan Slaughterhouse projects, respectively, were predicated on petitioners' violation of Section 8-III-A of R.A. No. 9184, for their failure to post procurement opportunities relative to the said projects in the PhilGEPS website. On appeal to the COA RD for Region V and upon automatic review by the COA Proper, both tribunals found no legal basis to nullify the subject contracts and ordered the lifting of the said disallowances, without prejudice to the administrative liability of the municipal officers and employees responsible for the said violation. The COA Proper ratiocinated:

> It is clear from the provision of Section 8.2.1 and 8.3.1 of IRR-A of R.A. No. 9184 that the Procuring Entity is mandated to fully use the PhilGEPS. The Head of the Procuring Entity (HOPE) and BAC in this case, deliberately violated the said provisions through its failure to post the invitation to bid of the said project procurement, results of bidding and related information in the PhilGEPS website.
>
> However, since the project was already completed and delivered, and the public has benefited therefrom, equitable considerations allow for payment to the Contractor based on *quantum meruit*.[98]

Petitioners now assail the portion of the COA Proper Decision finding them administratively liable for the non-posting of the invitation to bid for the BIBT and the Bulan Slaughterhouse projects in the PhilGEPS website. According to petitioners, respondent had illegally assumed administrative disciplinary jurisdiction when it proclaimed petitioners be administratively liable under ND Nos. 2008-06-27-005-101 (2009) and ND No. 2008-06-27-006-101 (2009), notwithstanding its own finding that the said disallowances had no legal basis.

---

officer or employee, or even private persons, whenever upon examination, audit, or settlement of an account or claim, a violation of law or regulation is discovered or disclosed.

[98] *Rollo*, p. 155.

The contention is misplaced.

Subsumed in respondent's authority to initiate an appropriate criminal, civil or administrative action, whenever it discovers a violation of a law or regulation upon examination, audit, or settlement of an account or claim,[99] is the authority make preliminary findings and conclusions as bases for filing such actions. Hence, it is within the bounds of COA's jurisdiction to make determinations as to petitioners' administrative liability, albeit preliminarily and only for the purpose of filing the appropriate action.

Under the circumstances, respondent COA's disposition of ND Nos. 2008-06-27-005-101 (2009) and ND No. 2008-06-27-006-101 (2009), which states "without prejudice to the administrative liability of Mayor De Castro, Head of Procuring Entity and the BAC Members for violation of the provisions of R.A. No. 9184 and its IRR regarding the full use of PhilGEPS" is not indicative of an imposition of administrative liability. Hence, the respondent committed no grave abuse of discretion in making such pronouncement.

At this point, the Court finds it premature to resolve the defenses raised by petitioners to justify the non-posting of the procurement opportunities in the PhilGEPS website, as to do so would be preempting the resolution of the administrative case against them involving the matter.

WHEREFORE, premises considered, the petition is **PARTIALLY GRANTED**. The assailed COA Decision dated September 11, 2014 and Resolution dated November 9, 2016 are **MODIFIED** as follows:

The modified ND No. 2008-06-27-001-101 (2009), holding Shirley R. Baldon, Proprietor, S.R. Baldon Construction and Supply, liable for the liquidated damages amounting to ₱145,770.60 only based on the Inspection/Evaluation Report dated March 18, 2011 of COA-TAS is affirmed;

---

[99] Sec. 31 of Volume 1 of Government Auditing Rules and Regulations of the Government Accounting and Auditing Manual.

The partial lifting of ND No. 2008-06-27-002-101 (2009) is sustained but the correct amount of the ND should be ₱4,367,360.90 instead of ₱4,368,046.58. Consequently, the amount of ₱2,509,485.57 pertaining to the overpricing is lifted but the remaining ₱1,857,875.33 for the overestimation in quantity is sustained. BAC Chairman Dennis H. Dino and Municipal Engineer Toby C. Gonzales, Jr. shall be liable for the disallowance;

The lifting of ND No. 2008-06-27-003-101 (2009) in the amount of ₱2,638,776.00 is hereby affirmed;

The lifting of ND No. 2008-06-27-004-101 (2009) amounting to ₱169,721.00 is hereby affirmed due to insufficiency of evidence of the 34-day delay in project completion, but with a stern warning to the Municipal Engineer to stop giving inconsistent and misleading information (i.e., dates of project completion, work accomplishment, etc.) to users of his reports; and

The lifting of ND No. 2008-06-27-005-101 (2009); and ND No. 2008-06-27-006-101 (2009) totaling ₱37,976,500.00 is affirmed for want of legal basis without prejudice to the administrative liability of Mayor Helen C. De Castro, Head of Procuring Entity and the BAC members for their violation of the provisions of Republic Act No. 9184 and its IRR regarding the full use of the PhilGEPS.

SO ORDERED.

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

Zalameda, J., on official leave.

Baltazar-Padilla, J., on leave.

FIRST DIVISION

[G.R. No. 236562. September 22, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **XXX**,[*] *Accused-Appellant*.

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; CERTIFICATION OR APPEAL OF CASE TO THE SUPREME COURT; THE JUDGMENT OF THE COURT OF APPEALS IMPOSING THE PENALTY OF *RECLUSION PERPETUA*, LIFE IMPRISONMENT OR A LESSER PENALTY MAY BE APPEALED TO THE SUPREME COURT BY NOTICE OF APPEAL FILED WITH THE COURT OF APPEALS; IN THE INTEREST OF JUSTICE, THE COURT MAY TREAT A PETITION FOR REVIEW ON CERTIORARI FILED UNDER RULE 45 OF THE RULES OF COURT AS AN APPEAL UNDER SECTION 13 OF RULE 124. — [T]he Court clarifies that under Section 13(c), Rule 124 of the Rules of Court, as amended by A.M. No. 00-5-03-SC, in cases where the Court of Appeals imposes the penalty of *reclusion perpetua*, life imprisonment or a lesser penalty, it shall render and enter judgment imposing such penalty. The judgment may be appealed to the Supreme Court by notice of appeal filed with the Court of Appeals. Upon advice, the parties may file their respective supplemental briefs before this Court. The title of the case shall remain as it was in the court of origin and the party appealing the case shall be called the "appellant" and the adverse party the "appellee," as in the Court of Appeals. In this case, the penalty imposed by the Court of Appeals for the crime charged is *reclusion perpetua*; thus, the proper mode of appeal to this Court is by notice of appeal filed with the Court of Appeals. In the interest of justice, the Court treats this petition for review

---

[*] The real name of the accused-appellant is withheld pursuant to Amended Administrative Circular No. 83-2015 dated September 5, 2017. Moreover, the title of this case is in accordance with an appeal under Rule 124, Section 13(c) and Section 1; and Rule 125.

on *certiorari* filed under Rule 45 of the Rules of Court (where only questions of law may be raised) as an appeal under Section 13 of Rule 124 (where the whole case is thrown open for review). The Court adopts the appropriate terms for the parties in this case as well as retains the title of the case as it was in the court of origin.

2. CRIMINAL LAW; STATUTORY RAPE; ELEMENTS; ESTABLISHED. — Rape is defined under Article 266-A of the Revised Penal Code *(RPC)* x x x. In this case, appellant committed the crime of statutory rape under paragraph 1(d) of Article 266-A of the RPC because complainant was six (6) years old at the time of the rape. The gravamen of the offense of statutory rape is the carnal knowledge of a woman below 12 years old. The law presumes that the victim does not and cannot have a will of her own on account of her tender years. Moreover, the rape is qualified under Article 266-B of the RPC by the circumstance that the complainant is under eighteen (18) years of age and the accused-appellant is a relative by consanguinity within the third civil degree of complainant as he is her uncle, being the brother of her mother; hence, the statutory rape is punishable with the death penalty. However, the imposition of the death penalty is prohibited by Republic Act No. 9346 and in its stead, the penalty of *reclusion perpetua* is to be imposed. For a conviction of statutory rape under Article 266-A, paragraph 1(d) with the aforementioned qualifying circumstance under Article 266-B of the RPC, the prosecution must allege and prove the following elements: (1) accused-appellant had carnal knowledge of a woman; (2) the offended party is under twelve (12) years of age, a minor at the time of the rape; and (3) the offender is the uncle of the victim. The Court holds that all the aforementioned elements of qualified rape were established by the prosecution.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S CONCLUSIONS ON THE CREDIBILITY OF WITNESSES IN RAPE CASES ARE GENERALLY ACCORDED GREAT WEIGHT AND RESPECT, AND AT TIMES EVEN FINALITY, UNLESS THERE APPEARS CERTAIN FACTS OR CIRCUMSTANCES OF WEIGHT AND VALUE WHICH THE LOWER COURT OVERLOOKED OR MISAPPRECIATED AND WHICH, IF PROPERLY CONSIDERED, WOULD ALTER THE RESULT OF THE CASE;

EXCEPTIONS NOT PRESENT. — Anent the first element, the testimony of complainant showed that appellant had carnal knowledge of complainant in April 2000 x x x. The RTC gave credence to the testimony of complainant, which was affirmed by the Court of Appeals, and the Court sustains their findings. Settled is the rule that the trial court's conclusions on the credibility of witnesses in rape cases are generally accorded great weight and respect, and at times even finality, unless there appears certain facts or circumstances of weight and value which the lower court overlooked or misappreciated and which, if properly considered, would alter the result of the case. In this case, the Court does not find any cogent reason to overturn the conviction of the accused-appellant.

4. **CRIMINAL LAW; STATUTORY RAPE; CRIMES AGAINST CHASTITY MAY BE COMMITTED IN MANY DIFFERENT PLACES WHICH MAY BE CONSIDERED AS UNLIKELY OR INAPPROPRIATE AND THE SCENE OF THE RAPE IS NOT ALWAYS OR NECESSARILY ISOLATED OR SECLUDED, FOR LUST IS NO RESPECTER OF TIME OR PLACE. —** The argument that rape cannot be committed in a house where other members of the family reside or may be found is a contention that has long been rejected by the Court. It is almost a matter of judicial notice that crimes against chastity have been committed in many different places which may be considered as unlikely or inappropriate and that the scene of the rape is not always or necessarily isolated or secluded for lust is no respecter of time or place. Thus, rape can, and has been, committed in places where people congregate, *e.g.*, inside a house where there are occupants, a five (5) meter room with five (5) people inside, or even in the same room which the victim is sharing with the sister of the accused. Thus, it is not improbable for appellant to have raped complainant in their house where 11 family members reside. To stress, complainant testified that she was raped during daytime when no one was home except for herself and appellant.

5. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; CONTRADICTIONS AND DISCREPANCIES BETWEEN THE TESTIMONY OF A WITNESS IN CONTRAST WITH WHAT WAS STATED IN AN AFFIDAVIT DO NOT NECESSARILY DISCREDIT HER, AS *EX PARTE* AFFIDAVITS GIVEN TO POLICE AND BARANGAY OFFICERS ARE ALMOST**

ALWAYS INCOMPLETE AND OFTEN INACCURATE; OPEN COURT DECLARATIONS TAKE PRECEDENCE OVER WRITTEN AFFIDAVITS IN THE HIERARCHY OF EVIDENCE. — [A]ppellant pointed out the inconsistencies in the statements of complainant and her father, CCC. Complainant stated in her affidavit-complaint that appellant stopped sexually abusing her when her father ceased working in 2003 when he underwent surgery. However, during re-direct examination in court, complainant made the correction that her father's operation actually occurred in 1999; that it was in 2003 that their family left for Aklan and the rape stopped. She said that it was her father who provided the date of his operation in her affidavit-complaint. The general rule is that contradictions and discrepancies between the testimony of a witness in contrast with what was stated in an affidavit do not necessarily discredit her. Affidavits given to police and barangay officers are *ex parte*. *Ex parte* affidavits are almost always incomplete and often inaccurate for varied reasons. In any case, open court declarations take precedence over written affidavits in the hierarchy of evidence. Testimonies given during trials are much more precise and elaborate than those stated in sworn statements. In this case, complainant satisfactorily explained in court the correction of the statement she made in her affidavit-complaint.

6. **ID.; ID.; ID.; THE MEDICO-LEGAL FINDING OF HEALED HYMENAL LACERATION AND THE EXPERT TESTIMONY ARE MERELY CORROBORATIVE IN CHARACTER AND NOT INDISPENSABLE IN A PROSECUTION FOR RAPE , AS THE VICTIM'S TESTIMONY ALONE, IF CREDIBLE, IS SUFFICIENT TO CONVICT THE ACCUSED-APPELLANT.** — [A]ppellant asserts that although the medico-legal officer who examined complainant found a deep healed laceration at the 4 o'clock position in her hymen that was caused by a blunt hard object, the said officer was unable to confirm whether such laceration was caused by the insertion of appellant's penis into complainant's vagina in April 2000. Appellant asserts that the hymenal laceration could have been caused by the finger insertion by complainant's lesbian lover prior to the medical examination. It must be stressed that the foremost consideration in the prosecution of rape is the victim's testimony and not the findings of the medico-legal officer. A medical examination

of the victim is not indispensable in a prosecution for rape; the victim's testimony alone, if credible, is sufficient to convict. In this case, the conviction of appellant is based primarily on the credibility of the testimony of complainant who testified in a clear, positive and straightforward manner that appellant raped her. The medico-legal finding of healed hymenal laceration and the expert testimony are merely corroborative in character and not essential to conviction.

7. ID.; ID.; ID.; DELAY IN REPORTING AN INCIDENT OF RAPE IS NOT NECESSARILY AN INDICATION THAT THE CHARGE IS FABRICATED, FOR IT IS NOT UNCOMMON FOR YOUNG GIRLS TO CONCEAL FOR SOME TIME THE ASSAULTS ON THEIR VIRTUE BECAUSE OF THE RAPIST'S THREATS ON THEIR LIVES. — [A]ppellant contends that complainant's long and unexplained silence for nine years rendered her original testimony implausible. Complainant's parents, grandparents and other relatives, who were all living with complainant, did not perceive any unusual behavior or physical signs of child abuse or trauma after the alleged rape. The contention is without merit. The Court has repeatedly held that delay in reporting an incident of rape is not necessarily an indication that the charge is fabricated. It is not uncommon for young girls to conceal for some time the assaults on their virtue because of the rapist's threats on their lives. It is common that a rape victim prefers to suffer in silence because of fear of her aggressor and the lack of courage to face the public stigma stemming from the abuse. Appellant threatened complainant with an icepick after the rape, warning her not to tell anyone. Complainant said that she did not tell anyone about the rape because she was scared of appellant. She did not report the rape even when appellant was no longer living with them because she lost hope and lacked courage to do so. She finally revealed to her mother in October 2008 that appellant had raped her because her mother, who was then working in Australia, was insisting that she live in the house of her maternal grandparents in [redacted], Rizal where appellant was residing. Complainant refused to live in the same house with appellant because he had raped her. Complainant and her father filed the case for rape in 2009 after she revealed to her father that she was raped by appellant.

8. ID.; ID.; ID.; THE RECANTATION OF THE COMPLAINANT DOES NOT NEGATE THE VERACITY OF HER ORIGINAL TESTIMONY THAT ACCUSED-APPELLANT RAPED HER, FOR WHEN A RAPE VICTIM'S TESTIMONY IS CLEAR, CONSISTENT AND CREDIBLE TO ESTABLISH THE CRIME BEYOND REASONABLE DOUBT, A CONVICTION MAY BE BASED ON IT, NOTWITHSTANDING HER SUBSEQUENT RETRACTION. — Regarding the recantation of complainant, the Court sustains the finding of the Court of Appeals that it does not persuade to overturn appellant's conviction. In rape cases particularly, the conviction or acquittal of the accused most often depends almost entirely on the credibility of the complainant's testimony. By the very nature of this crime, it is generally unwitnessed and usually the victim is left to testify for herself. When a rape victim's testimony is clear, consistent and credible to establish the crime beyond reasonable doubt, a conviction may be based on it, notwithstanding its subsequent retraction. Mere retraction by a prosecution witness does not necessarily vitiate her original testimony. Recantation is frowned upon by the courts. x x x. In this case, the trial court did not believe the recantation of complainant x x x. The Court of Appeals also disregarded the recantation of complainant x x x. The Court has reviewed the records of this case and agrees with the findings of the RTC and the Court of Appeals that the recantation of complainant does not negate the veracity of her earlier testimony for the prosecution that appellant raped her.

9. ID.; ID.; DEFENSE OF DENIAL; DENIAL IS AN INTRINSICALLY WEAK DEFENSE WHICH MUST BE BUTTRESSED WITH STRONG EVIDENCE OF NON-CULPABILITY TO MERIT CREDIBILITY. — Appellant's defense of denial cannot overcome the categorical testimony of complainant for the prosecution that appellant raped her. Denial is an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility.

10. CRIMINAL LAW; STATUTORY RAPE; ACCUSED-APPELLANT FOUND GUILTY THEREOF; PENALTY OF *RECLUSION PERPETUA*, IMPOSED IN LIEU OF DEATH PENALTY; CIVIL LIABILITY OF ACCUSED-APPELLANT. — [T]he Court upholds the Decision of the Court of Appeals that accused-appellant is guilty beyond reasonable doubt of the crime of statutory rape. In regard to the penalty imposed, the

Court of Appeals correctly held, thus: On the imposable penalty, Article 266-B (1) of the Revised Penal Code imposes the death penalty if the rape is qualified by the circumstances of the victim's minority and accused-appellant's relationship, as in this case, private complainant was only seven (7) years old at the time of commission of the crime and accused-appellant was her uncle. However, Republic Act No. 9346 has prohibited the imposition of the death penalty, so that the proper penalty that can be imposed upon accused-appellant in lieu of the death penalty is *reclusion perpetua*, without eligibility for parole. Hence, the trial court correctly imposed said penalty. However, We modify the awards of damages to conform to prevailing jurisprudence. In Qualified Rape where the penalty imposed is death but reduced to *reclusion perpetua* because of RA 9346, civil indemnity, moral damages and exemplary damages should each be imposed in the amount of ₱100,000.00. In addition, all damages awarded shall earn interest at the rate of six percent (6%) per annum to be computed from the date of finality of this Judgment until fully paid.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Fortun & Santos Law Offices for accused-appellant.

D E C I S I O N

PERALTA, *C.J.*:

For review is the Decision[1] dated July 17, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08135, which affirmed the Decision[2] dated February 9, 2016 of the Regional Trial Court, Branch 94, Quezon City *(RTC)* in Criminal Case No. Q-159338, convicting accused-appellant XXX of the crime of statutory rape.

---

[1] Penned by Associate Justice Manuel M. Barrios, with Associate Justices Ramon M. Bato, Jr. and Renato C. Francisco of the Eleventh Division, Court of Appeals, concurring; *rollo*, pp. 75-85.

[2] CA *rollo*, pp. 102-112.

The facts are as follows:

In an Information, accused-appellant was charged with the crime of rape committed against his minor niece AAA,[3] *viz.*:

> That sometime during the month of April 2000 at [redacted], Philippines, the above named accused, by means of force and intimidation, and exercising moral ascendancy over one [AAA] since he is her maternal uncle, did then and there willfully, unlawfully and feloniously have carnal knowledge of the said [AAA], his very own niece and a minor seven (7) years of age at the time (born May 19, 1993), against the will of the offended party, to her damage and prejudice.
>
> CONTRARY TO LAW.[4]

When arraigned on August 25, 2009, accused-appellant pleaded not guilty.[5] After the pre-trial, trial proper ensued.

The prosecution presented as witnesses complainant[6] AAA, her father CCC, Dr. Editha Martinez and Dr. Zorayda Umipig. However, complainant later recanted her testimony when she testified for the defense. The defense presented as witnesses complainant AAA, her mother BBB, the accused-appellant XXX, and the father of accused-appellant YYY.

The version of the prosecution, as stated by the Court of Appeals, is as follows:

---

[3] In *People v. Cabalquinto*, 533 Phil. 703 (2006) (Per J. Tinga, En Banc], this Court discussed the need to withhold the victim's real name and other information that would compromise the victim's identity, applying the confidentiality provisions of: (1) Republic Act No. 7610 *(Special Protection of Children against Child Abuse, Exploitation and Discrimination Act)* and its Implementing Rules and Regulations; (2) Republic Act No. 9262 *(Anti-Violence against Women and their Children Act of 2004)* and its Implementing Rules and Regulations; and (3) this Court's October 19, 2004 Resolution in A.M. No. 04-10-11-SC *(Rule on Violence against Women and their Children)*; as cited in *People v. ZZZ*, G.R. No. 229862, June 19, 2019.

[4] Records, p. 1.

[5] *Id.* at 152.

[6] The term "complainant" refers to private complainant AAA.

In April 2000, complainant AAA and her family lived in a house in [redacted], Quezon City. Living together with them were complainant's maternal uncle, herein accused-appellant, and complainant's maternal grandparents and two maternal aunts. Complainant was nearly seven (7) years old at that time.[7]

One morning in April 2000, complainant's parents and siblings were not home, and complainant was left alone with accused-appellant. Appellant called complainant and dragged her to one of the rooms in the house. Inside the room, appellant pushed complainant towards the bed and pinned her down on the bed. Appellant asked complainant if she knew what her parents were doing and told her that they will do the same. Complainant cried. Appellant removed complainant's short pants and underwear, then he went on top of her and inserted his penis inside her vagina. When appellant finished, he dressed up complainant and poked an ice pick on the right side of her neck, warning her not to tell anyone about what happened. For fear of appellant, complainant kept to herself the incident which was repeated several times until 2003. In 2004, when a neighbor, Ate Beth, observed that complainant was always staring blankly and was thinking deeply, complainant confided what appellant did to her. Complainant, however, begged Ate Beth not to tell her parents about her revelation.[8]

In 2006, complainant's mother, BBB, left the country to work in Australia, thus leaving complainant and her siblings in the care of their father. Sometime in October 2008, while BBB was in Australia, she communicated with complainant and was convincing her to live in the house built by BBB's parents in [redacted], Rizal where accused-appellant and his wife and child had transferred to in 2007. Complainant told BBB that she refused to live in [redacted], Rizal because accused-appellant had raped her. BBB was surprised, but she told

---

[7] *Rollo*, p. 159; TSN, December 8, 2009, pp. 9-10.

[8] *Id.*; TSN, November 24, 2009, pp. 6-13.

complainant that she believed her, although she subsequently changed her stance.[9]

In 2009, complainant sought medical attention when she experienced difficulty in breathing and pain in her breasts. It was then that her father finally learned about the rape incident through Ate Beth. Thereafter, complainant and her father lost no time in filing a complaint against accused-appellant. On January 14, 2009, complainant was examined by Dr. Editha Martinez of the Philippine National Police Crime Laboratory, Camp Crame, Quezon City. A medico-legal report[10] was issued containing a finding of deep healed laceration at the 4 o'clock position in the hymen of complainant. Dr. Martinez explained that the healed laceration indicated that there was a previous blunt penetrating trauma to the hymen caused by any hard blunt object like an erect penis or finger. She stated that the deep healed laceration was consistent with the commission of the offense charged.[11]

In the medico-legal report, complainant was advised to consult an obstetrician-gynecologist. Hence, on January 26, 2009, complainant consulted Dr. Zorayda Umipig who examined her and issued her a certification[12] with the same finding of healed hymenal laceration at the 4 o'clock position. Dr. Umipig testified that the laceration could have been caused by an erect penis because it was located at the posterior side of the hymenal orifice.[13]

In defense, accused-appellant denied the accusation against him, reasoning that he could not have raped his niece, complainant herein, since at the alleged time of the rape, there were eleven (11) persons living in the same small house at [redacted],

---

[9] *Rollo*, p. 160; TSN, November 24, 2009, pp. 13-15.

[10] Exhibit "J," records, p. 194.

[11] *Rollo*, p. 160; TSN, November 24, 2009, pp. 20-26; TSN, December 8, 2009, pp. 6-7.

[12] Exhibit "D-1," records, p. 231.

[13] TSN, October 18, 2011, p. 11.

Quezon City. He said that their house, located in a squatters' area, was about five (5) by ten (10) meters with two small rooms beside each other. The first room was occupied by complainant's family, while the second room was occupied by appellant's two sisters. Appellant's parents slept in the sala, while appellant either slept in the sala or in his sisters' room. Appellant contended that it was improbable for the crime to have been committed in April 2000, because they were always in the house since only his sister WWW was working at that time and the rest of them were unemployed. Moreover, in April 2000, complainant and her siblings were also on vacation from school.[14]

Further, accused-appellant stated that his sister BBB, mother of complainant, left the country to work in Australia in 2006. BBB was sending money to her husband CCC to support their family. However, CCC mishandled the funds; hence, starting in 2007, BBB sent remittance to him instead. This caused a rift between him and CCC; thus, his parents, who were in Australia since 2003, asked him to transfer to their newly-constructed house in [redacted], Rizal. He moved to [redacted], Rizal with his girlfriend and their child. He would usually fetch complainant and her siblings at [redacted], Quezon City every Friday, and they would stay with him in [redacted], Rizal during the weekend, then he would bring them back to [redacted], Quezon City on Sunday. Appellant asserted that nothing has changed in his relationship with complainant. After all, he stood as a second father to her and her siblings. When he learned that complainant had a relationship with a tomboy, he advised her of the impropriety of the same. In 2009, he was surprised when his sister BBB called him up and told him that a case for rape was filed against him.[15]

---

[14] *Rollo*, p. 160; TSN, March 24, 2015, pp. 4-14; TSN, September 8, 2015, p. 6.

[15] *Id.* at 161; TSN, September 8, 2015, pp. 13-22.

Accused-appellant's sister BBB and their father YYY corroborated appellant's testimony.[16]

The defense presented complainant as a witness and she recanted her previous testimony that accused-appellant raped her in April 2000. Complainant stated that she only dreamed of someone lying on top of her, and when she told their neighbor, Ate Beth, about her dream, Ate Beth already said that accused-appellant raped her because she saw him closing the door. Her father told her to file the complaint against the accused-appellant after Ate Beth told him that appellant raped her (complainant). Her father was angry at appellant and said that if they would not file the rape case, he would just kill a person. She just followed what her father told her to do because she was afraid of him. It was their neighbor Ate Beth who coached her what to say when she testified about the rape. She refused to stay in [redacted], Rizal because Ate Beth told her that if she (complainant) would stay there with the appellant, her father would leave her and go to Aklan. Complainant said that she had a laceration in her hymen because she had a relationship with a lesbian VVV from 2007 to 2009. VVV inserted her fingers in her vagina and she felt pain. Complainant stated that her father did not tell her to lie, only Ate Beth. Complainant lived with her mother on June 23, 2013.[17]

In a Decision[18] dated February 9, 2016, the RTC found accused-appellant guilty beyond reasonable doubt of the crime of statutory rape despite the recantation of complainant. The dispositive portion of the Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered finding accused [XXX] guilty beyond reasonable doubt of Statutory Rape and is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole.

---

[16] TSN, March 13, 2012; TSN, October 9, 2012; TSN, December 4, 2012.

[17] TSN, June 24, 2014; TSN, November 4, 2014; TSN, December 16, 2014.

[18] CA *rollo*, pp. 102-112.

Accused is ordered to pay AAA ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱30,000.00 as exemplary damages.

SO ORDERED.[19]

The RTC found the testimony of complainant for the prosecution to be credible and trustworthy. It stated that complainant's testimony was direct, candid and replete with details of the rape and she categorically pointed to the accused-appellant as her abuser. Moreover, the medical findings showed that complainant suffered a laceration in her hymen, which supported her allegation of rape. Complainant's Certificate of Live Birth indicated that she was born on May 19, 1993. Hence, she was only six (6) years old when the crime was committed in April 2000. Accused-appellant was thus charged and proven guilty of statutory rape. The trial court found the accused-appellant's defense of denial and the recantation of complainant to be unworthy of credence.[20]

The accused-appellant appealed the RTC's decision to the Court of Appeals, contending that the trial court erred in convicting him of the crime of statutory rape notwithstanding the recantation by the complainant of her earlier statements, and relying solely on the prosecution's assumptions and speculations without any direct and concrete evidence to prove his guilt beyond reasonable doubt.[21]

In a Decision[22] dated July 17, 2017, the Court of Appeals found the appeal unmeritorious and upheld the decision of the RTC. It gave full credence to the testimony of complainant who positively identified accused-appellant as the one who raped her several times when she was younger. In addition, the medical finding of deep healed laceration in complainant's hymen corroborated her statement that appellant raped her. The

---

[19] *Id.* at 112.

[20] *Id.* at 108-111.

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

[22] *Supra* note 1.

appellate court was not persuaded to reverse appellant's conviction on account of complainant's recantation, as it found her recantation insincere and unacceptable.

The Court of Appeals upheld the penalty meted out by the RTC, but modified the award of damages by increasing to ₱100,000.00 the civil indemnity, moral damages and exemplary damages; and it imposed interest of six percent (6%) *per annum* on all damages awarded to be computed from the date of finality of the Decision until fully paid. The *fallo* of the Decision reads:

> **WHEREFORE**, premises considered, the appeal is **DENIED**. The Decision dated 09 February 2016 of the Regional Trial Court, Branch 94, Quezon City, is **AFFIRMED** with **MODIFICATION** that accused-appellant is ordered to pay to private complainant the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, ₱100,000.00 as exemplary damages, plus interest on the aggregate amount at the rate of 6% per annum from the finality of this decision.[23]

The accused-appellant's motion for reconsideration was denied by the Court of Appeals in a Resolution[24] dated December 12, 2017.

Thus, accused-appellant filed this petition for review on *certiorari*, raising these issues:

1. Whether or not the circumstantial evidence presented by the prosecution were sufficient enough to warrant the conviction of herein accused-appellant for the crime of rape;
2. Whether or not the prosecution was able to establish all the elements for the rape;
3. Whether or not the prosecution was able to discharge "proof beyond reasonable doubt" on the basis of such evidences; and

---

[23] *Id.* at 85.

[24] CA *rollo*, pp. 221-224.

4. Whether or not the court *a quo* is correct in convicting the accused-appellant for a crime he obviously did not commit based on such flimsy evidence.[25]

At the outset, the Court clarifies that under Section 13(c),[26] Rule 124 of the Rules of Court, as amended by A.M. No. 00-5-03-SC,[27] in cases where the Court of Appeals imposes the penalty of *reclusion perpetua*, life imprisonment or a lesser penalty, it shall render and enter judgment imposing such penalty. The judgment may be appealed to the Supreme Court by notice of appeal filed with the Court of Appeals. Upon advice, the parties may file their respective supplemental briefs before this Court. The title of the case shall remain as it was in the court of origin and the party appealing the case shall be called the "appellant" and the adverse party the "appellee," as in the Court of Appeals.[28] In this case, the penalty imposed by the Court of Appeals for the crime charged is *reclusion perpetua*; thus, the proper mode of appeal to this Court is by notice of appeal filed with the Court of Appeals. In the interest of justice, the

---

[25] *Rollo*, p. 113.

[26] Rule 124, Sec. 13. *Certification or appeal of case to the Supreme Court*. — (a) Whenever the Court of Appeals finds that the penalty of death should be imposed, the court shall render judgment but refrain from making an entry of judgment and forthwith certify the case and elevate its entire record to the Supreme Court for review.

(b) Where the judgment also imposes a lesser penalty for offenses committed on the same occasion or which arose out of the same occurrence that gave rise to the more severe offense for which the penalty of death is imposed, and the accused appeals, the appeal shall be included in the case certified for review to the Supreme Court.

(c) In cases where the Court of Appeals imposes *reclusion perpetua*, life imprisonment or a lesser penalty, it shall render and enter judgment imposing such penalty. The judgment may be appealed to the Supreme Court by notice of appeal filed with the Court of Appeals.

[27] Re: Amendments to the Revised Rules of Criminal Procedure to Govern Death Penalty Cases, which took effect on October 15, 2004.

[28] See Rule 124 (Procedure in the Court of Appeals), Section 13 (last paragraph) and Section 1; Rule 125 (Procedure in the Supreme Court).

Court treats this petition for review on *certiorari* filed under Rule 45 of the Rules of Court (where only questions of law may be raised) as an appeal under Section 13 of Rule 124 (where the whole case is thrown open for review). The Court adopts the appropriate terms for the parties in this case as well as retains the title of the case as it was in the court of origin.

Before this Court, appellant contends that the RTC and the Court of Appeals erred in convicting him of the crime of statutory rape notwithstanding the valid recantation by complainant of statements she made earlier. He argues that the prosecution failed to discharge the burden of proving his guilt beyond reasonable doubt since it merely relied on the unsubstantiated testimony of complainant, which she retracted in a subsequent testimony.

The main issues are:

1) Whether or not the Court of Appeals correctly upheld the decision of the RTC that accused-appellant is guilty beyond reasonable doubt of the crime of statutory rape; and

2) Whether or not the recantation of complainant should be accepted.

The appeal is unmeritorious. The Court affirms the decision of the Court of Appeals convicting appellant of the crime of statutory rape.

Rape is defined under Article 266-A of the Revised Penal Code *(RPC)*, 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.

2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

In this case, appellant committed the crime of statutory rape under paragraph 1(d) of Article 266-A of the RPC because complainant was six (6) years old at the time of the rape. The gravamen of the offense of statutory rape is the carnal knowledge of a woman below 12 years old. The law presumes that the victim does not and cannot have a will of her own on account of her tender years.[29] Moreover, the rape is qualified under Article 266-B[30] of the RPC by the circumstance that the complainant is under eighteen (18) years of age and the accused-appellant is a relative by consanguinity within the third civil degree of complainant as he is her uncle, being the brother of her mother; hence, the statutory rape is punishable with the death penalty. However, the imposition of the death penalty is prohibited by Republic Act No. 9346[31] and in its stead, the penalty of *reclusion perpetua* is to be imposed.

---

[29] *People v. Dollano, Jr.*, 675 Phil. 827, 843 (2011).

[30] Article 266-B. *Penalties*. — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;

x x x x

[31] Anti-Death Penalty Law.

For a conviction of statutory rape under Article 266-A, paragraph 1 (d) with the aforementioned qualifying circumstance under Article 266-B of the RPC, the prosecution must allege and prove the following elements: (1) accused-appellant had carnal knowledge of a woman; (2) the offended party is under twelve (12) years of age, a minor at the time of the rape; and (3) the offender is the uncle of the victim.

The Court holds that all the aforementioned elements of qualified rape were established by the prosecution. Anent the first element, the testimony of complainant[32] showed that appellant had carnal knowledge of complainant in April 2000, *viz.*:

FISCAL
In the year 2000, April, Ms. Witness, do you remember of any unusual incident that happened to you with [XXX]?

WITNESS
Yes, ma'am.

FISCAL
What was that incident?

WITNESS
During that time when my parents were not at home and me and [XXX] were alone, he dragged me inside the room and pushed me towards the bed.

FISCAL
After he pushed you towards the bed, what happened next?

WITNESS
He asked me if I know what my parents are doing because we will do the same.

FISCAL
And what was your answer, Ms. Witness?

WITNESS
I cried, ma'am.

---

[32] Private complainant was 16 years old when she testified in court.

FISCAL
x x x After he pushed you and asked you what your Mom and Dad were doing, what happened next?

WITNESS
He removed my shorts and panty, ma'am.

FISCAL
Did you shout for help?

WITNESS
I cried and he threatened me and he inserted his "*ari sa akin*."

FISCAL
When you said "*ari*," Madame Witness, what do you mean?

WITNESS
"*Titi niya*" (His penis), ma'am.

FISCAL
x x x Where did he insert his penis?

WITNESS
In my vagina, ma'am.

FISCAL
After he inserted his penis into your vagina, what happened next, Madame Witness?

WITNESS
After that, he dressed me up and he pointed a sharp instrument to me.

FISCAL
What is that sharp instrument, Madam Witness?

WITNESS
An icepick, ma'am.[33]

The RTC gave credence to the testimony of complainant, which was affirmed by the Court of Appeals, and the Court sustains their findings. Settled is the rule that the trial court's conclusions on the credibility of witnesses in rape cases are generally accorded great weight and respect, and at times even

---

[33] TSN, November 24, 2009, pp. 6-8.

finality, unless there appears certain facts or circumstances of weight and value which the lower court overlooked or misappreciated and which, if properly considered, would alter the result of the case.[34] In this case, the Court does not find any cogent reason to overturn the conviction of the accused-appellant.

In regard to the element of minority, the prosecution presented the birth certificate[35] of complainant, which showed that she was born on May 19, 1993 and her parents are BBB and CCC. Therefore, at the time of the rape in April 2000, complainant was only six (6) years old, thus satisfying the age requirement of the victim in statutory rape (below 12 years old) as well as in qualified rape (below 18 years old). The birth certificates[36] of appellant and complainant's mother BBB showed that they are siblings because they have the same parents. Hence, the prosecution established that appellant is an uncle of complainant. In fine, all the elements of the offense charged were established by the prosecution.

Arguing for his acquittal, appellant emphasizes that complainant recanted her testimony which, when considered together with the alleged inconsistent and inconclusive testimonies of the prosecution witnesses, should result in his acquittal because the evidence presented did not fulfill the test of moral certainty required for conviction.

First, appellant contends that complainant's testimony of rape is not credible as it is against human nature and common human experience for a person to commit rape in broad daylight and in a small house of five (5) by ten (10) meters where 11 persons reside.

The contention is without merit. The argument that rape cannot be committed in a house where other members of the family

---

[34] *People v. Villamor*, 780 Phil. 817, 829 (2016).

[35] Exhibit "A," records, p. 156.

[36] Exhibits "H" and "I," *id.* at 171-172.

reside or may be found is a contention that has long been rejected by the Court.[37] It is almost a matter of judicial notice that crimes against chastity have been committed in many different places which may be considered as unlikely or inappropriate and that the scene of the rape is not always or necessarily isolated or secluded for lust is no respecter of time or place.[38] Thus, rape can, and has been, committed in places where people congregate, *e.g.*, inside a house where there are occupants, a five (5) meter room with five (5) people inside, or even in the same room which the victim is sharing with the sister of the accused.[39] Thus, it is not improbable for appellant to have raped complainant in their house where 11 family members reside. To stress, complainant testified that she was raped during daytime when no one was home except for herself and appellant.

Second, appellant pointed out the inconsistencies in the statements of complainant and her father, CCC. Complainant stated in her affidavit-complaint[40] that appellant stopped sexually abusing her when her father ceased working in 2003 when he underwent surgery. However, during re-direct examination in court, complainant made the correction that her father's operation actually occurred in 1999; that it was in 2003 that their family left for Aklan and the rape stopped.[41] She said that it was her father who provided the date of his operation in her affidavit-complaint.[42] Her father also corroborated the fact that his operation for hernia took place in January 1999 and he was mistaken in telling complainant that he was operated in 2003.[43] He testified that he went to the province in 2003 and his kids

---

[37] *People v. Poñado*, 370 Phil. 558, 572 (1999).

[38] *People v. Sandico*, 366 Phil. 663, 675 (1999).

[39] *Id.*

[40] Exhibit "B," records, p. 126.

[41] TSN, June 22, 2010, pp. 3, 4, 13.

[42] *Id.* at 4.

[43] TSN, August 24, 2010, pp. 5, 14.

followed him there, and they returned to Manila in December 2003.[44] Moreover, complainant's mother BBB, who testified for the defense, stated that she and her children went to Aklan in 2003 and stayed there from May to December 2003.[45] Thus, it is apparent that complainant made an innocuous mistake when she stated in her affidavit-complaint that her father's operation occurred in 2003, which she subsequently corrected during her testimony in court.

The general rule is that contradictions and discrepancies between the testimony of a witness in contrast with what was stated in an affidavit do not necessarily discredit her.[46] Affidavits given to police and barangay officers are *ex parte*.[47] *Ex parte* affidavits are almost always incomplete and often inaccurate for varied reasons.[48] In any case, open court declarations take precedence over written affidavits in the hierarchy of evidence.[49] Testimonies given during trials are much more precise and elaborate than those stated in sworn statements.[50] In this case, complainant satisfactorily explained in court the correction of the statement she made in her affidavit-complaint.

In addition, appellant argues that since complainant's father underwent surgery in January 1999, there would be no opportunity for appellant to rape complainant in April 2000, considering that her father was unemployed and had to stay home to recover.

The argument is tenuous. Complainant's father testified that he underwent surgery for hernia in January 1999 and he started to work one month following his operation.[51] The rape happened

---

[44] *Id.* at 18.

[45] TSN, March 13, 2012, pp. 17, 18, 20.

[46] *People v. Masapol*, 463 Phil. 25, 33 (2003).

[47] *Id.*

[48] *People v. Erardo*, 343 Phil. 438, 450 (1993).

[49] *People v. Balleno*, 455 Phil. 979, 986 (2003).

[50] *People v. Erardo*, *supra* note 48.

[51] TSN, August 24, 2010, pp. 5, 7.

in April 2000, or one (1) year and three (3) months after his operation, which is sufficient time for him to recover from his operation and be able to work or go out of the house. Moreover, complainant testified that the rape happened in the morning when her parents and siblings were not home, and she was left alone with appellant.[52] Since it was appellant's defense that complainant's father was at home and not working during the time of the rape, it was incumbent upon the defense to prove it. However, the defense failed to do so.

Third, appellant asserts that although the medico-legal officer who examined complainant found a deep healed laceration at the 4 o'clock position in her hymen that was caused by a blunt hard object, the said officer was unable to confirm whether such laceration was caused by the insertion of appellant's penis into complainant's vagina in April 2000. Appellant asserts that the hymenal laceration could have been caused by the finger insertion by complainant's lesbian lover prior to the medical examination.

It must be stressed that the foremost consideration in the prosecution of rape is the victim's testimony and not the findings of the medico-legal officer.[53] A medical examination of the victim is not indispensable in a prosecution for rape; the victim's testimony alone, if credible, is sufficient to convict.[54] In this case, the conviction of appellant is based primarily on the credibility of the testimony of complainant who testified in a clear, positive and straightforward manner that appellant raped her. The medico-legal finding of healed hymenal laceration and the expert testimony are merely corroborative in character and not essential to conviction.[55]

Fourth, appellant contends that complainant's long and unexplained silence for nine years rendered her original testimony

---

[52] TSN, November 24, 2009, pp. 6-13; TSN, June 22, 2010, p. 13.

[53] *People v. ZZZ*, *supra* note 2.

[54] *Id.*

[55] *Id.*

implausible. Complainant's parents, grandparents and other relatives, who were all living with complainant, did not perceive any unusual behavior or physical signs of child abuse or trauma after the alleged rape.

The contention is without merit. The Court has repeatedly held that delay in reporting an incident of rape is not necessarily an indication that the charge is fabricated.[56] It is not uncommon for young girls to conceal for some time the assaults on their virtue because of the rapist's threats on their lives.[57] It is common that a rape victim prefers to suffer in silence because of fear of her aggressor and the lack of courage to face the public stigma stemming from the abuse.[58] Appellant threatened complainant with an icepick after the rape, warning her not to tell anyone. Complainant said that she did not tell anyone about the rape because she was scared of appellant.[59] She did not report the rape even when appellant was no longer living with them because she lost hope and lacked courage to do so.[60] She finally revealed to her mother in October 2008 that appellant had raped her because her mother, who was then working in Australia, was insisting that she live in the house of her maternal grandparents in [redacted], Rizal where appellant was residing. Complainant refused to live in the same house with appellant because he had raped her. Complainant and her father filed the case for rape in 2009 after she revealed to her father that she was raped by appellant.

Regarding the recantation of complainant, the Court sustains the finding of the Court of Appeals that it does not persuade to overturn appellant's conviction.

---

[56] *People v. Alfaro*, 458 Phil. 942, 961 (2003).

[57] *People v. Ramos*, 315 Phil. 435, 442 (1995).

[58] *People v. Lantano*, 566 Phil. 628, 639 (2008).

[59] TSN, June 22, 2010, p. 5.

[60] *Id.*

In rape cases particularly, the conviction or acquittal of the accused most often depends almost entirely on the credibility of the complainant's testimony.[61] By the very nature of this crime, it is generally unwitnessed and usually the victim is left to testify for herself.[62] When a rape victim's testimony is clear, consistent and credible to establish the crime beyond reasonable doubt, a conviction may be based on it, notwithstanding its subsequent retraction.[63] Mere retraction by a prosecution witness does not necessarily vitiate her original testimony.[64] Recantation is frowned upon by the courts. *People v. Teodoro*[65] held, thus:

> As a rule, recantation is viewed with disfavor firstly because the recantation of her testimony by a vital witness of the State like AAA is exceedingly unreliable, and secondly because there is always the possibility that such recantation may later be repudiated. Indeed, to disregard testimony solemnly given in court simply because the witness recants it ignores the possibility that intimidation or monetary considerations may have caused the recantation. Court proceedings, in which testimony upon oath or affirmation is required to be truthful under all circumstances, are trivialized by the recantation. The trial in which the recanted testimony was given is made a mockery, and the investigation is placed at the mercy of an unscrupulous witness. Before allowing the recantation, therefore, the court must not be too willing to accept it, but must test its value in a public trial with sufficient opportunity given to the party adversely affected to cross-examine the recanting witness both upon the substance of the recantation and the motivations for it. The recantation, like any other testimony, is subject to the test of credibility based on the relevant circumstances, including the demeanor of the recanting witness on the stand. In that respect, the finding of the trial court on the credibility of witnesses is entitled to great weight on appeal unless cogent reasons necessitate its re-examination, the reason being that the trial court

---

[61] *People v. Espenilla*, 718 Phil. 153, 166 (2013).

[62] *Id.*

[63] *Id.*

[64] *Id.*

[65] 704 Phil. 335, 356-357 (2013). (Citations omitted)

is in a better position to hear first-hand and observe the deportment, conduct and attitude of the witnesses.

In this case, the trial court did not believe the recantation of complainant as it held:

> Lastly, the recantation of AAA is unworthy of credence.
>
> x x x Courts look with disfavor upon retractions because they can easily be obtained from witnesses through intimidation or for monetary consideration. It is also a dangerous rule for courts to reject testimony solemnly taken before courts of justice simply because the witness who gave it later changed his mind for one reason or another. x x x. A retraction does not necessarily negate an earlier declaration. (citation omitted)
>
> AAA claimed that she lied when she first testified and everything that she stated at that time were dictated to her by Ate Beth. However, **the court notes that the initial testimony of AAA is positive, credible and convincing. There was no indication whatsoever, from her tone of voice, facial expression or action that she was lying. Further, it must be noted that when AAA made the recantation, she was already in the custody of her mother BBB who sided with the accused. Thus, it is not far-fetched that AAA was influenced by BBB to retract her initial testimony.** Finally, the defense failed to show why Ate Beth would make AAA lie on such a serious matter.[66]

The Court of Appeals also disregarded the recantation of complainant as it found, thus:

> Here, We note that private complainant's recollection of the rape incidents were unrelentingly categorical and firm that accused-appellant committed the rape by removing her undergarments, pinning her down on the bed, and inserting his penis inside her vagina. Not even her recantation can depreciate the direct and tangible evidence establishing the guilt of accused-appellant. Her belated claim that it was only Ate Beth who coached her to impute such crime to accused-appellant is nonsensical under the circumstances, considering that nothing was shown of any underlying motive on the part of Ate Beth to do the same. Private complainant even admitted that she

---

[66] Records, pp. 399-340. (Citations omitted; emphases ours)

also confided to her paternal aunt, DDD, and her cousin FFF about her predicament, on her own volition, and without the instruction of Ate Beth; thus, this belies her claim that Ate Beth was the instigant of this entire controversy. It is also noteworthy that at the time private complainant recanted on 04 November 2014, she was already of age and in the custody of her mother, BBB, who was already back from Australia. Private complainant undoubtedly depended on her mother for sustenance and support, especially so since her father had no stable job. It is not unnatural or illogical to postulate that her mother prevailed over private complainant to retract her accusation against her mother's brother, herein accused-appellant. Such recantation, therefore is deemed insincere and unacceptable.[67]

The Court has reviewed the records of this case and agrees with the findings of the RTC and the Court of Appeals that the recantation of complainant does not negate the veracity of her earlier testimony for the prosecution that appellant raped her. As stated by the trial court, complainant's testimony for the prosecution was direct, candid, credible, and convincing, unlike her recantation. Complainant would not have gone through the ordeal of having her private parts examined, undergoing trial against her uncle, appellant herein, that would affect her relations with her maternal relatives, and exposed herself to the stigma of such revelation unless she desired justice for herself. Complainant's allegation that it was her neighbor, Ate Beth, who taught her the words she uttered before the trial court and who instigated her to impute the crime of rape against her uncle fails to convince the Court. The defense did not establish that Ate Beth had a motive to do so. Complainant would not impute such a serious crime against her own uncle, who claims to be a second father to her, on the mere instigation of a neighbor if it were not true. As noted by the RTC and the Court of Appeals, at the time of her recantation, complainant was already in the custody of her mother who sided with appellant and possibly influenced complainant to recant her initial testimony.

---

[67] *Rollo*, p. 165.

Appellant's defense of denial cannot overcome the categorical testimony of complainant for the prosecution that appellant raped her.[68] Denial is an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility.[69]

Based on the foregoing, the Court upholds the Decision of the Court of Appeals that accused-appellant is guilty beyond reasonable doubt of the crime of statutory rape.

In regard to the penalty imposed, the Court of Appeals correctly held, thus:

> On the imposable penalty, Article 266-B (1) of the Revised Penal Code imposes the death penalty if the rape is qualified by the circumstances of the victim's minority and accused-appellant's relationship, as in this case, private complainant was only seven (7) years old at the time of commission of the crime and accused-appellant was her uncle. However, Republic Act No. 9346 has prohibited the imposition of the death penalty, so that the proper penalty that can be imposed upon accused-appellant in lieu of the death penalty is *reclusion perpetua*, without eligibility for parole. Hence, the trial court correctly imposed said penalty.
>
> However, We modify the awards of damages to conform to prevailing jurisprudence. In Qualified Rape where the penalty imposed is death but reduced to *reclusion perpetua* because of RA 9346, civil indemnity, moral damages and exemplary damages should each be imposed in the amount of ₱100,000.00. In addition, all damages awarded shall earn interest at the rate of six percent (6%) per annum to be computed from the date of finality of this Judgment until fully paid.[70]

WHEREFORE, the appeal is **DENIED**. The Decision of the Court of Appeals dated July 17, 2017 in CA-G.R. CR-HC No. 08135, finding accused-appellant XXX guilty beyond reasonable doubt of the crime of statutory rape is hereby

---

[68] *People v. Bentayo*, 810 Phil. 263, 274 (2017).

[69] *Id.*

[70] *Rollo*, pp. 84-85. (Citations omitted)

AFFIRMED. Accused-appellant is sentenced to suffer the penalty of *reclusion perpetua*, without eligibility for parole, and **ORDERED** to **PAY** private complainant AAA ₱100,000.00 as civil indemnity; ₱100,000.00 as moral damages; and ₱100,000.00 as exemplary damages. All damages awarded shall be subject to an interest of six percent (6%) *per annum* to be computed from the finality of this Decision until fully paid.

SO ORDERED.

Caguioa, Lazaro-Javier, Lopez, and *Gaerlan,*[**] *JJ.*, concur.

[**] Designated additional member per Special Order No. 2788 dated September 16, 2020.

FIRST DIVISION

[G.R. No. 237201. September 22, 2020]

MARIA VICTORIA A. REYES, *Petitioner, v.* **ISABEL MENDOZA MANALO, CELSO MENDOZA, JOSEPHINE GONZALES, ISAGANI BLANCO, and all persons acting for and in their behalf,** *Respondents.*

SYLLABUS

1. REMEDIAL LAW; STATUTORY CONSTRUCTION; PROCEDURAL RULES; REQUISITES FOR SUSPENSION OR LIBERAL APPLICATION OF PROCEDURAL RULES; CASE AT BAR. — Time and again, the Court has ruled that litigation is not merely a game of technicalities. The law and jurisprudence grant to courts – in the exercise of their discretion along the lines laid down by this Court – the prerogative to relax compliance with procedural rules, mindful of the duty to reconcile both the need to put an end to litigation speedily and the parties' right to an opportunity to be heard. Settled is the principle that procedural rules of the most mandatory character may be suspended where "matters of life, liberty, honor or property" warrant its liberal application especially so when attended by the following: (1) special or compelling circumstances, (2) the merits of the case, (3) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (4) a lack of any showing that the review sought is merely frivolous and dilatory, and (5) the other party will not be unjustly prejudiced thereby." Thus, a liberal application of procedural rules requires that: (1) there is justifiable cause or plausible explanation for non-compliance, and (2) there is compelling reason to convince the court that the outright dismissal would seriously impair or defeat the administration of justice.

Here, the Court finds that the ends of justice and fairness would best be served if respondents are given the full opportunity to present their defenses in their belatedly-filed Answers. In the *first* place, the Answers contain meritorious arguments as to why and how respondents have come to possess

the subject property. According to them, they have been in possession of the same as early as 1944 through their predecessors-in-interest and have valid and legal documents to show ownership thereof. But since the necessary documents are almost 70 years old, they encountered several delays and setbacks in their search. In addition, they similarly faced challenges in their search for legal representation.

2. ID.; SPECIAL CIVIL ACTIONS; ACTIONS TO RECOVER POSSESSION OF REAL PROPERTY. — [A] person claiming to be the owner of a piece of real property cannot simply wrest possession thereof from whoever is in actual occupation of the property. To recover possession of real property, said party claiming to be the owner thereof must first resort to the proper judicial remedy, and thereafter, satisfy all the conditions necessary for such action to prosper. Accordingly, the owner may choose among three kinds of actions to recover possession of real property — an *accion interdictal, accion publiciana* or an *accion reivindicatoria*.

3. ID.; ID.; ID.; *ACCION INTERDICTAL*; FORCIBLE ENTRY AND UNLAWFUL DETAINER, DISTINGUISHED. — [A]n *accion interdictal* is summary in nature, and is cognizable by the proper municipal trial court or metropolitan trial court. It comprises two distinct causes of action, namely, forcible entry (*detentacion*) and unlawful detainer (*desahuico*). In forcible entry, one is deprived of the physical possession of real property by means of force, intimidation, strategy, threats, or stealth, whereas in unlawful detainer, one illegally withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied.

4. ID.; ID.; ID.; *ACCION PUBLICIANA*. — [A]n *accion 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.

5. ID.; ID.; ID.; *ACCION REIVINDICATORIA*. — [A]n *accion reivindicatoria* is an action to recover ownership, also brought in the proper RTC in an ordinary civil proceeding. It is a suit which has for its object the recovery of possession over the

real property as owner. It involves recovery of ownership and possession based on the said ownership.

6. ID.; ID.; ACCION INTERDICTAL; UNLAWFUL DETAINER; JURISDICTIONAL FACTS TO ALLEGE AND PROVE. — [Petitioner] elected to file an action for unlawful detainer, claiming to be the owner of the subject property. As such, she bore the correlative burden to sufficiently allege, and thereafter prove by a preponderance of evidence all the jurisdictional facts in the said type of action. Specifically, Victoria was charged with proving the following jurisdictional facts, to wit: (i) initially, possession of property by the defendant was by contract with or by tolerance of the plaintiff; (ii) eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession; (iii) thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and (iv) within one year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment.

7. ID.; ID.; ID.; ID.; ID.; TOLERANCE; TOLERANCE CARRIES WITH IT PERMISSION, NOT MERELY SILENCE OR INACTION. — [T]he fact of tolerance is of utmost importance in an action for unlawful detainer. This rule is so stringent such that the Court categorically declared that tolerance cannot be presumed from the owner's failure to eject the occupants from the land. Rather, "tolerance always carries with it 'permission' and not merely silence or inaction for silence or inaction is negligence, not tolerance."

8. ID.; ID.; ID.; ID.; ID.; WHEN THE COMPLAINT FAILS TO STATE HOW ENTRY WAS EFFECTED OR HOW AND WHEN DISPOSSESSION STARTED, THE REMEDY SHOULD EITHER BE AN *ACCION PUBLICIANA* OR *ACCION REIVINDICATORIA*. — A cursory perusal of Victoria's complaint, however, would show her failure to prove the necessary jurisdictional facts of how and when the respondents entered the subject property, as well as how and when her family tolerated said respondents' possession. In her complaint, Victoria was so elusive in her narration of facts that one cannot possibly determine the details of the element of tolerance. . . .

. . .

> . . . Accordingly, when the complaint fails to aver the facts constitutive of forcible entry or unlawful detainer, as where it does not state how entry was effected or how and when dispossession started, the remedy should either be an *accion publiciana* or *accion reivindicatoria*.

APPEARANCES OF COUNSEL

Joel J. Jabal for petitioner.
Theodore Allan M. Montealegre for respondents.

D E C I S I O N

PERALTA, *C.J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to nullify and set aside the Decision[1] dated February 13, 2017 and the Resolution[2] dated January 11, 2018 of the Court of Appeals (*CA*) in CA-G.R. SP No. 145429, which set aside the July 6, 2015 Decision[3] of the Regional Trial Court (*RTC*) of Pinamalayan, Oriental Mindoro, Branch 41, which, in turn, affirmed the November 10, 2014 Decision[4] of the Municipal Trial Court (*MTC*) of Pinamalayan, Oriental Mindoro, that granted the complaint for unlawful detainer filed by petitioner against respondents.

The antecedent facts are as follows.

At the heart of the present dispute is a parcel of land with an area of 19,735 square meters, more or less, covered by Transfer Certificate of Title (*TCT*) No. J-7757 (T-1120), in

---

[1] Penned by Associate Justice Rosmari D. Carandang (now a member of this Court, with Associate Justices Mario V. Lopez (now also a member of this Court) and Myra V. Garcia-Fernandez, concurring; *rollo*, pp. 199-205.

[2] *Id*. at 208-209.

[3] Penned by Presiding Judge Harry D. Jaminola, *id*. at 139-144.

[4] Penned by Judge Rosalie A. Lui, *id*. at 115-117.

the name of the spouses Asuncion Mercader and Damian Reyes, and situated in Pinamalayan, Province of Oriental Mindoro. On September 2, 2014, petitioner, Maria Victoria A. Reyes, filed a Complaint[5] for unlawful detainer as a co-owner of the subject property, granddaughter of the deceased spouses Asuncion and Damian, and daughter of the spouses' son, Rufino Reyes. In the complaint, she alleged that her grandparents owned and possessed the subject property and that during their lifetime, they hired farmworkers and administrators to make the same productive. The property was once a part of a coconut plantation straddling Barangays Zone I, II, and Marfrancisco and used to include the present site of the St. Agustine Church and the Immaculate Heart of Mary Academy. Victoria narrated that her grandmother, Asuncion, died in 1939, her grandfather, Damian, died in 1979, and her father, Rufino, died in 1982. Thereafter, in 1999, Victoria and her co-heirs extrajudicially adjudicated the subject property.[6]

Victoria maintained that, for years her family allowed and tolerated political supporters from Marinduque to occupy and cultivate portions of the property. Throughout the years, Pinamalayan became urbanized making the subject property ideal for residential and commercial purposes. As such, informal settlers, including the respondents Isabel Mendoza Manalo, Celco Mendoza, Josephine Gonzales, Isagani Blanco, also occupied the premises. According to Victoria, her family tolerated the respondents' use and possession thereof with the understanding that in the event that they would need the same, the occupants would vacate peacefully. She added that respondents built structures for residential and commercial purposes without permission from her family's predecessors.[7]

During her inspection of the property in February 2014, she discovered that respondents occupied the same in the following proportions: Isabel Mendoza Manalo and Celso Mendoza with

---

[5] *Rollo*, pp. 30-53.

[6] *Id*. at 200.

[7] *Id*. at 200-201.

a total of 1,350 square meters, Josephine Gonzales with a total of 350 square meters, and Isagani Blanco with a total of 1,000 square meters. As Victoria and her co-owners now need the property, she demanded that they vacate the premises through letters sent to each of the respondents in April and July 2014. But despite these demands, respondents remained in their respective portions. As a result, Victoria filed the subject complaint before the MTC for unlawful detainer with prayer for the issuance of a temporary restraining order/preliminary injunction and damages. The MTC, however, denied the prayer for the issuance of an injunction.[8]

Despite receipt of summons, respondents failed to file their Answer on time, filing the same 33 days late. Consequently, Victoria moved that judgment be rendered which was, however, opposed by respondents who argued that the case involves documents and transactions which happened almost 70 years ago. As such, it took them several days to find the necessary documents to prove ownership as they had to make a research in the archive of the Clerk of Court and the office of the notary public involved. They also had a hard time looking for their counsel to represent them in the instant case.[9]

The MTC, however, did not give credence to respondents' arguments and instead, granted Victoria's Motion to Render Judgment, eventually rendering a Decision on November 10, 2014 granting Victoria's complaint for unlawful detainer. It disposed of the case as follows:

> WHEREFORE, finding the allegations of the plaintiff to be with merit, judgment is hereby rendered in favor of the plaintiff and against the defendants. Defendants, their privies and all persons claiming rights under them are hereby ordered to:
>
> 1. Vacate the property and surrender possession thereof to plaintiff.
>
> 2. Remove [the] house, improvements, and structures found therein.

---

[8] *Id*. at 201.

[9] *Id*. at 201-202.

3. Pay attorney's fees in the amount of Php10,000.00.

4. Pay the Cost of suit.

SO ORDERED.[10]

On July 6, 2015, the RTC rendered a Decision affirming the MTC ruling. It held that the MTC was correct in acting expediently pursuant to the summary nature of the unlawful detainer case, in rendering judgment based on Victoria's complaint, and in disregarding the belatedly-filed Answers of respondents.

In its Decision dated February 13, 2017, however, the CA set aside the rulings of the MTC and the RTC. It found that the controversy involved was not simply an ejectment case wherein the main issue was possession *de facto* since there is a need to resolve the issue of ownership in addition to the issue of possession. As such, it necessitates a full-blown trial on the merits in an *accion reivindicatoria* that is cognizable by the RTC. Consequently, the CA ruled that instead of dismissing the complaint, it is in the interest of substantial justice that the case be remanded to the RTC to conduct further proceedings and try the case as an action for recovery of possession and ownership.[11]

When the appellate court denied Victoria's motion for reconsideration in its Resolution dated January 11, 2018, she filed the instant petition invoking the following issues:

I.

WHETHER THE HONORABLE COURT OF APPEALS ERRED WHEN IT REVERSED THE MTC AND RTC AND ADMITTED RESPONDENTS' ALLEGATIONS IN THEIR RESPECTIVE ANSWERS WHICH WERE FILED 33 DAYS FROM SERVICE OF SUMMONS.

II.

WHETHER THE HONORABLE COURT OF APPEALS ERRED WHEN IT ADMITTED RESPONDENTS' ANSWER IN VIOLATION OF

---

[10] *Id*. at 117.

[11] *Id*. at 203-205.

SECTION 6 OF RULE 70 OF THE RULES OF COURT EVEN IF THE ANSWERS DID NOT CONTAIN ANY EXPLANATION AS TO ITS LATE FILING.

Victoria posits that the reasons cited by the respondents for their failure to file their Answers within the reglementary 10-day period are not cogent reasons to warrant a relaxation of the Rules.[12] Assuming, without admitting, that respondents have documents which they claimed to be 70 years old, then it would not take them 33 days to produce the same. With respect to respondents Isagani Blanco and Josephine Gonzales, Victoria argued that as buyers of the property in 2014, they had the duty to ensure that the property they were buying had complete documents of ownership. As for respondents Isabel Mendoza Manalo and Celso Mendoza, Victoria maintained that if they claimed that they had proof of ownership dating back to 1944, it should not have taken them 33 days to produce the same.

In addition, she pointed out that the purported transactions being mentioned by respondents were not among those annotated on the title TCT No. J-7757 (T-1120) of the subject property. As correctly observed by the CA, the title embraces a large tract of land, which has been subdivided into smaller lots, and which contained annotations of sale, including sale to the Catholic Church way back in 1938 and several other individuals. As such, assuming *arguendo* that there is an issue on who really owns the subject property, Victoria maintained that in an ejectment case such as this, the issue of ownership is resolved only preliminarily to determine the issue of material possession. At any rate, respondents' Answers with claim of ownership

---

[12] Section 6 of Rule 70 of the 1997 Rules of Court provides:

SECTION 6. *Answer*. — Within ten (10) days from service of summons, the defendant shall file his answer to the complaint and serve a copy thereof on the plaintiff. Affirmative and negative defenses not pleaded therein shall be deemed waived, except lack of jurisdiction over the subject matter. Cross-claims and compulsory counterclaims not asserted in the answer shall be considered barred. The answer to counterclaims or cross-claims shall be served and filed within ten (10) days from service of the answer in which they are pleaded.

should not divest the MTC of jurisdiction since jurisdiction is not dependent on the allegations in the Answer but on the allegations of the complaint.

The petition is denied.

Prefatorily, We find that contrary to Victoria's contention, the circumstances of the instant case warrant a relaxation of procedural rules. Time and again, the Court has ruled that litigation is not merely a game of technicalities. The law and jurisprudence grant to courts – in the exercise of their discretion along the lines laid down by this Court – the prerogative to relax compliance with procedural rules, mindful of the duty to reconcile both the need to put an end to litigation speedily and the parties' right to an opportunity to be heard.[13] Settled is the principle that procedural rules of the most mandatory character may be suspended where "matters of life, liberty, honor or property" warrant its liberal application especially so when attended by the following: (1) special or compelling circumstances, (2) the merits of the case, (3) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (4) a lack of any showing that the review sought is merely frivolous and dilatory, and (5) the other party will not be unjustly prejudiced thereby."[14] Thus, a liberal application of procedural rules requires that: (1) there is justifiable cause or plausible explanation for non-compliance, and (2) there is compelling reason to convince the court that the outright dismissal would seriously impair or defeat the administration of justice.[15]

Here, the Court finds that the ends of justice and fairness would best be served if respondents are given the full opportunity to present their defenses in their belatedly-filed Answers. In the *first* place, the Answers contain meritorious arguments as to why and how respondents have come to possess the subject

---

[13] *Spouses Edillo v. Spouses Dulpina*, 624 Phil. 587, 597 (2010).

[14] *Villanueva v. People*, 659 Phil. 418, 430 (2011).

[15] *Pagadora v. Ilao*, 678 Phil. 208, 226 (2011).

property. According to them, they have been in possession of the same as early as 1944 through their predecessors-in-interest and have valid and legal documents to show ownership thereof. But since the necessary documents are almost 70 years old, they encountered several delays and setbacks in their search. In addition, they similarly faced challenges in their search for legal representation.

Second, as the respondents pointed out, Victoria presented no evidence to show that the parcels of land belonging to them are still included in her reconstituted TCT. No subdivision plan was submitted. As aptly found by the appellate court, the subject property is a large tract of land totaling an area of 19,735 square meters, more or less. A perusal of the TCT would show that certain portions of the subject property have been subdivided and even sold to several third persons. Thus, it is not far-fetched that the portions actually being possessed by the respondents were acquired by their predecessors-in-interest by virtue of a sale.

Third, it must be noted that the respondents and their predecessors-in-interest have built their homes on the subject property and have allegedly been residing thereat for decades. Thus, an irreparable and grave injustice would certainly befall upon respondents if the MTC's order to vacate and demolish their houses thereon is summarily executed. Besides, it cannot be said that Victoria would be unjustly prejudiced by a full-blown trial as she is neither stripped of any affirmative defenses nor deprived of due process of law. Indeed, the Court must relax the rigid application of the rules of procedure to afford the parties opportunity to fully ventilate the merits of their cases, in line with the time-honored principle that cases should be decided only after giving all parties the chance to argue their causes and defenses.[16] This is especially since respondents' seemingly meritorious claims would remain unventilated unless We relax our application of the technical requirements under the Rules.

---

[16] *Polanco v. Cruz*, 598 Phil. 952, 960 (2009).

Having resolved the procedural hurdles of the present case, the Court further resolves to deny Victoria's request to reinstate the rulings of the MTC and the RTC which granted her complaint for unlawful detainer. Time and again, the Court has held that a person claiming to be the owner of a piece of real property cannot simply wrest possession thereof from whoever is in actual occupation of the property. To recover possession of real property, said party claiming to be the owner thereof must first resort to the proper judicial remedy, and thereafter, satisfy all the conditions necessary for such action to prosper. Accordingly, the owner may choose among three kinds of actions to recover possession of real property — an *accion interdictal*, *accion publiciana* or an *accion reivindicatoria*. Notably, an *accion interdictal* is summary in nature, and is cognizable by the proper municipal trial court or metropolitan trial court. It comprises two distinct causes of action, namely, forcible entry (*detentacion*) and unlawful detainer (*desahuico*). In forcible entry, one is deprived of the physical possession of real property by means of force, intimidation, strategy, threats, or stealth, whereas in unlawful detainer, one illegally withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied. Conversely, an *accion 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. *Finally*, an *accion reivindicatoria* is an action to recover ownership, also brought in the proper RTC in an ordinary civil proceeding.[17] It is a suit which has for its object the recovery of possession over the real property as owner. It involves recovery of ownership and possession based on the said ownership.[18]

Here, Victoria elected to file an action for unlawful detainer, claiming to be the owner of the subject property. As such, she

---

[17] *Javelosa v. Tapus*, G.R. No. 204361, July 4, 2018.

[18] *Tuazon v. Tuazon*, G.R. No. 200115 (Notice), August 1, 2018.

bore the correlative burden to sufficiently allege, and thereafter prove by a preponderance of evidence all the jurisdictional facts in the said type of action. Specifically, Victoria was charged with proving the following jurisdictional facts, to wit: (i) initially, possession of property by the defendant was by contract with or by tolerance of the plaintiff; (ii) eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession; (iii) thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and (iv) within one year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment.[19]

A cursory perusal of Victoria's complaint, however, would show her failure to prove the necessary jurisdictional facts of how and when the respondents entered the subject property, as well as how and when her family tolerated said respondents' possession. In her complaint, Victoria was so elusive in her narration of facts that one cannot possibly determine the details of the element of tolerance. *First*, she stated that her grandparents, *during their lifetime*, "hired *farmworkers and administrators* to make the property productive." Then, she revealed that Asuncion died in 1939, Damian died in 1979, and her father died in 1982. In 1999, she and her co-heirs extra-judicially adjudicated the subject property among themselves. Victoria went on to state that "*for years*, the Reyes clan has allowed and tolerated *political supporters* from Marinduque to occupy and cultivate portions of the subject property. *Through the years*, Pinamalayan became urbanized which made the subject property ideal for residential and commercial uses. *Informal settlers* totally unknown to the Reyes clan *also occupied* the subject property." Thereafter, she narrated that "plaintiff tolerated these settler's possession and use of the subject property with the understanding that in the event that they would need the same, the tolerated occupants would vacate and peacefully turn-over the subject lots to the owners." It was only after the foregoing that Victoria mentioned the respondents, for the first

---

[19] *Javelosa v. Tapus*, *supra* note 17.

time, in saying that: "in fact, these *tolerated occupants, including the defendants,* built structures for their residential and even commercial uses without the permission from the plaintiff and her predecessors."[20]

There arises, then, a consequent vagueness on the element of tolerance that was imperative upon Victoria to prove. Unfortunately, no clear allegation was presented as to how the entry of respondents was effected, as well as to how and when the dispossession started and who permitted such alleged entry.[21] In her complaint, Victoria makes mention of several occupants of the subject property at various, unknown periods of time: (1) "during the lifetime of her grandparents," farmworkers and administrators to make the property productive; (2) "for years," political supporters from Marinduque to cultivate the property; and (3) "through the years," informal settlers totally unknown to the Reyes clan. One can only surmise that respondents fall under this third category of "informal settlers" who "also occupied" certain portions of the 19,735-square-meter property.

Lamentably, the vagueness of the complaint is aggravated by respondents' assertion that they have been in possession of the subject property as early as 1944 through their precedessors-in-interest, which was not exactly denied by Victoria. Thus, We find no cogent reason to reverse the findings of the appellate court in view of Victoria's failure to prove the jurisdictional fact that respondents' initial possession was effected through her permission or tolerance or any of her predecessors-in-interest nor as to when respondents' possession of the properties became unlawful – a requisite for a valid cause of action in an unlawful detainer case. Victoria simply declared that "these tolerated occupants, including defendants (respondents), built structures... without permission." Unfortunately for her, however, mere allegation is not evidence and is not equivalent to proof.[22]

---

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

[21] *Javelosa v. Tapus, supra* note 17, citing *Carbonilla v. Abiera, et al.,* 639 Phil. 473 (2010).

[22] *Javelosa v. Tapus, supra* note 17.

Indeed, the Court has always been consistent in emphasizing that the fact of tolerance is of utmost importance in an action for unlawful detainer.[23] This rule is so stringent such that the Court categorically declared that tolerance cannot be presumed from the owner's failure to eject the occupants from the land.[24] Rather, "tolerance always carries with it 'permission' and not merely silence or inaction for silence or inaction is negligence, not tolerance."[25] Accordingly, when the complaint fails to aver the facts constitutive of forcible entry or unlawful detainer, as where it does not state how entry was effected or how and when dispossession started, the remedy should either be an *accion publiciana* or *accion reivindicatoria*.[26]

In view of the foregoing, We sustain the findings of the CA that the present controversy is not simply an ejectment case wherein the main issue is possession *de facto*. A review of the records would reveal an undeniable reality that there is a need to resolve the issue of ownership to completely settle the controversy. In fact, it appears that Victoria, herself, has conceded that the issue of the present case is not merely confined to possession but necessarily includes ownership when she argued that as buyers of their respective portions of the subject property, respondents Isagani Blanco and Josephine Gonzales had the duty to ensure that the same had complete documents of ownership.

Accordingly, We further affirm the CA's view that instead of dismissing the complaint that would merely postpone the ultimate reckoning between the parties, We deem it in the interest of substantial justice to remand the case to the RTC to conduct further proceedings and try it as an action for recovery of possession and ownership. Certainly, justice is better served by a brief continuance, trial on the merits, and a final disposition

---

[23] *Id.*

[24] *Id.*, citing *Go, Jr. v. CA*, 415 Phil. 172 (2001).

[25] *Id.*, citing *Dr. Carbonilla v. Abiera, et al.*, 639 Phil. 482 (2010).

[26] *Id.*, citing *Suarez v. Spouses Emboy*, 729 Phil. 315 (2014).

of cases before the court.[27] Contrary to Victoria's assertion though, remand must be made to the RTC and not the MTC. It bears repeating that if, indeed, Victoria is the owner of the subject property, but possession was deprived from her for almost 70 years, now almost 80, case law dictates that she presents her claim before the RTC in an *accion reivindicatoria* and not before the MTC in a summary proceeding of unlawful detainer. For even if she is the owner, possession of the property cannot be wrested from another who had been in possession thereof for a good 70 years through a summary action for ejectment. Conversely, whatever may be the character of respondents' prior possession, if they have in their favor priority in time, they have the security that entitles them to remain on the property until they are lawfully ejected by a person having a better right by an *accion reivindicatoria*.[28]

WHEREFORE, premises considered, the instant petition is **DENIED** for lack of merit. The Decision dated February 13, 2017 and the Resolution dated January 11, 2018 of the Court of Appeals in CA-G.R. SP No. 145429 is **AFFIRMED**. The instant case is **REMANDED** to the Regional Trial Court of Pinamalayan, Oriental Mindoro, Branch 41, and the latter is **DIRECTED** to conduct further proceedings and try the case as a plenary action for recovery of possession and ownership.

SO ORDERED.

Caguioa, Lazaro-Javier, Delos Santos,[*] and *Gaerlan,*[**] *JJ.,* concur.

---

[27] *Ramos v. Spouses Alvendia, et al.*, 589 Phil. 226, 236 (2008).

[28] *Javelosa v. Tapus, supra* note 17, citing *Spouses Muñoz v. Court of Appeals*, 288 Phil. 1001 (1992).

[*] Designated additional member in lieu of Associate Justice Mario V. Lopez per Raffle dated August 19, 2020.

[**] Designated additional member per Special Order No. 2788 dated September 16, 2020.

FIRST DIVISION

[G.R. No. 242216. September 22, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **XXX**, *Accused-Appellant*.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; WHILE THE ACCUSED IN A RAPE CASE MAY BE CONVICTED SOLELY ON THE TESTIMONY OF THE COMPLAINING WITNESS, COURTS ARE, NONETHELESS, DUTY-BOUND TO ESTABLISH THAT THEIR RELIANCE ON THE VICTIM'S TESTIMONY IS JUSTIFIED. —** In rape cases, the conviction of the accused rests heavily on the credibility of the victim. Hence, the strict mandate that all courts must examine thoroughly the testimony of the offended party. While the accused in a rape case may be convicted solely on the testimony of the complaining witness, courts are, nonetheless, duty-bound to establish that their reliance on the victim's testimony is justified. Courts must ensure that the testimony is credible, convincing, and otherwise consistent with human nature. If the testimony of the complainant meets the test of credibility, the accused may be convicted on the basis thereof.

2. **ID.; ID.; ID.; THE EVALUATION BY THE TRIAL COURT OF THE CREDIBILITY OF WITNESSES AND THEIR TESTIMONIES ARE ENTITLED TO THE HIGHEST RESPECT UNLESS IT IS SHOWN THAT ITS EVALUATION WAS TAINTED WITH ARBITRARINESS OR CERTAIN FACTS OF SUBSTANCE AND VALUE HAVE BEEN PLAINLY OVERLOOKED, MISUNDERSTOOD, OR MISAPPLIED. —** It is settled that the evaluation by the trial court of the credibility of witnesses and their testimonies are entitled to the highest respect. This is in view of its inimitable opportunity to directly observe the witnesses and their deportment, conduct and attitude, especially during cross-examination. Thus, unless it is shown that its evaluation was tainted with arbitrariness or certain facts of substance and value have been plainly overlooked, misunderstood, or misapplied, the same will not

be disturbed on appeal. No such facts were overlooked or misconstrued in the case at bench.

In rape cases, the conviction of the accused rests heavily on the credibility of the victim. Here, the trial court found AAA's testimony to be credible as it was made in a "straightforward and spontaneous" manner. Notably, the CA agreed with the RTC on this point and saw no reason to overturn the same. After approximating the perspective of the trial court through a meticulous scrutiny of the records, the Court likewise finds no justification to disturb the findings of the RTC. Despite his vigorous protestations, the Court agrees with the findings of the courts *a quo* that the prosecution was able to prove beyond reasonable doubt that XXX raped AAA on that fateful afternoon of November 20, 2007.

3. CRIMINAL LAW; RAPE; WHERE ACCUSED IS THE VICTIM'S UNCLE, MORAL ASCENDANCY OR INFLUENCE TAKES THE PLACE OF VIOLENCE AND INTIMIDATION. — Taking advantage of AAA's minority, XXX was able to put his penis inside said victim's vagina to satisfy his lust. Considering the discrepancy between the ages of XXX and AAA, and that said appellant is the victim's uncle who frequented her house and exercised influence over her, it need no longer be belabored upon that the sexual molestation was committed by threat, force or intimidation because moral ascendancy or influence takes the place of violence and intimidation.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; WHEN THE OFFENDED PARTY IS OF TENDER AGE AND IMMATURE, COURTS ARE INCLINED TO GIVE CREDIT TO HER ACCOUNT OF WHAT TRANSPIRED, CONSIDERING NOT ONLY HER RELATIVE VULNERABILITY BUT ALSO THE SHAME TO WHICH SHE WOULD BE EXPOSED IF THE MATTER TO WHICH SHE TESTIFIED IS NOT TRUE. — AAA's statements pertaining to the identity of XXX as her violator and the perverse act he visited upon her were straightforward and categorical. Her simple narration evinces her sincerity and truthfulness. It bears stressing that AAA was only twelve (12) years old when she was raped and sixteen (16) years old when she testified before the RTC. The Court has held time and again that testimonies of child-victims are normally given full weight and credit. When the offended party is of tender age and

immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true. Their youth and immaturity are generally badges of truth and sincerity. Hailed to the witness stand, AAA never faltered in her positive identification of appellant or gave any statements materially inconsistent with her entire testimony.

5. **ID.; ID.; ID.; WHEN THERE IS NO EVIDENCE TO SHOW ANY DUBIOUS REASON OR IMPROPER MOTIVE WHY A PROSECUTION WITNESS SHOULD TESTIFY FALSELY AGAINST THE ACCUSED OR IMPLICATE HIM IN A SERIOUS OFFENSE, THE TESTIMONY DESERVES FULL FAITH AND CREDIT. —** Worth noting too is the fact that there is no evidence or even a slightest indication that AAA was impelled by an improper motive in making the accusation against her uncle XXX. The absence of any improper motive of AAA to impute such a serious offense against XXX persuades us that said minor victim filed the rape charge against appellant for no other reason than to seek justice for the dastardly deed done against her. Settled is the doctrine that when there is no evidence to show any dubious reason or improper motive why a prosecution witness should testify falsely against the accused or implicate him in a serious offense, the testimony deserves full faith and credit. We are, thus, convincingly assured that the RTC prudently fulfilled its obligation as a factual assessor and legal adjudicator.

6. **CRIMINAL LAW; RAPE; RAPE CAN BE COMMITTED EVEN IN PLACES WHERE PEOPLE CONGREGATE, AS LUST IS NO RESPECTER OF TIME AND PLACE. —** Anent XXX's contention that it is improbable that he could sexually molest AAA inside a place adjacent to the house where his mother was, suffice it to state that lust is no respecter of time and place. The Court has repeatedly held that rape can be committed even in places where people congregate, in parks along the roadsides, in school premises, in a house where there are other occupants, in the same room where other members of the family are also sleeping, and even in places which to many, would appear unlikely and high risk venues for its commission.

7. **ID.; ID.; AN INTACT HYMEN DOES NOT NEGATE THE FINDING THAT THE VICTIM WAS RAPED; NEITHER IS HYMENAL**

RAPTURE, VAGINAL LACERATION, OR GENITAL INJURY INDISPENSABLE BECAUSE THE SAME IS NOT AN ELEMENT OF THE CRIME OF RAPE. — The absence of injury in the private part of AAA is not fatal to the cause of the prosecution. Hymenal rapture, vaginal laceration or genital injury is not indispensable because the same is not an element of the crime of rape. Even an intact hymen does not negate the finding that the victim was raped. What is decisive in a rape charge is that the commission of the rape by the accused against the complainant has been sufficiently proven, as in the case at bench.

8. REMEDIAL LAW; EVIDENCE; DENIAL; THE DEFENSE OF DENIAL PALES IN COMPARISON WITH THE POSITIVE TESTIMONY OF THE OFFENDED PARTY THAT ASSERTS THE COMMISSION OF A CRIME AND THE IDENTIFICATION OF THE ACCUSED AS ITS CULPRIT. — Appellant's denial must be rejected as the same could not prevail over AAA's unwavering testimony and of her positive and firm identification of him as the man who had undressed her and sexually gratified himself off her. As a negative evidence, it pales in comparison with a positive testimony that asserts the commission of a crime and the identification of the accused as its culprit. We find that the facts in the instant case do not present any exceptional circumstance warranting a deviation from this established rule. Thus, it is clear that appellant could no longer hide behind the protective shield of his presumed innocence.

9. CRIMINAL LAW; QUALIFIED RAPE; PENALTY; DEATH PENALTY IS IMPOSABLE WHERE THE SPECIAL QUALIFYING CIRCUMSTANCES OF THE VICTIM'S MINORITY AND HER RELATIONSHIP TO THE ACCUSED ARE PROPERLY ALLEGED IN THE INFORMATION AND DULY PROVED DURING TRIAL; PENALTY OF *RECLUSION PERPETUA* IMPOSED IN LIEU OF THE DEATH PENALTY. — The Court finds that the penalty imposed by the RTC is correct. The special qualifying circumstances of the victim's minority and her relationship to appellant were properly alleged in the Information and duly proved during trial warranting the imposition of the supreme penalty of death on appellant. However, in view of the enactment of Republic Act No. 9346 prohibiting the imposition of the death penalty, the penalty to

be meted on appellant is *reclusion perpetua* without eligibility for parole in accordance with Sections 2 and 3 thereof.

10. ID.; ID.; CIVIL LIABILITY OF ACCUSED; MORAL AND EXEMPLARY DAMAGES.— With respect to the award of damages, the CA, following prevailing jurisprudence, correctly awarded ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages. Further, six percent (6%) interest *per annum* shall be imposed on all damages awarded to be reckoned from the date of the finality of this judgment until fully paid.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

PERALTA, *C.J.*:

This is an appeal from the June 20, 2018 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 02408, which affirmed with modification the July 29, 2016 Judgment[2] of the Regional Trial Court, Branch 56, Mandaue City (*RTC*), finding accused-appellant XXX guilty beyond reasonable doubt of the crime of Rape committed against AAA.[3]

---

[1] Penned by Associate Justice Edgardo L. Delos Santos (now a Member of this Court), with Associate Justices Edward B. Contreras and Louis P. Acosta, concurring; *rollo*, pp. 4-20.

[2] Penned by Presiding Judge Teresita A. Galanida; CA *rollo*, pp. 33-43.

[3] The victim's name and personal circumstances, as well as the names of the victim's immediate family or household members, are withheld and replaced with fictitious initials pursuant to Section 44 of Republic Act No. 9262 and Section 40 of A.M. No. 04-10-11-SC or the Rule on Violence Against Women and their Children. See *People v. Cabalquinto*, 533 Phil. 703 (2006).

The Facts

XXX was indicted for the crime of Rape by sexual intercourse in an Information, the accusatory portion of which states:

> That sometimes (sic) on the 20th day of November 2017, in [redacted], Philippines, and within the jurisdiction of this Honorable Court, the said accused by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with her 12-year-old minor niece [AAA] against her will.
>
> The crime was attended by a qualifying circumstance since the accused is the uncle of the complainant, a relative within the 3rd civil degree.
>
> CONTRARY TO LAW.[4]

Upon arraignment, XXX pleaded not guilty to the charge. After pre-trial was terminated, trial on the merits followed.

Version of the Prosecution

To substantiate its charge against accused XXX, the prosecution presented the minor-victim AAA, her mother BBB, her sister CCC, and Dr. Naomi N. Poca (*Dr. Poca*) as its witnesses.

The combined testimonies of AAA, BBB and CCC showed that XXX, together with his parents and younger siblings, resided in a house located at Almers compound in [redacted], Mandaue City. Adjoined to said house is the small dwelling place of AAA, BBB and CCC. XXX is AAA's uncle, being the younger brother of her mother BBB.

On November 20, 2007, at around 1 o'clock in the afternoon, AAA was at home because she only had a half-day class session for that day. Suddenly, XXX entered AAA's house, grabbed her by the arm and dragged her inside the bedroom. There, XXX inquired from AAA the whereabouts of her mother, sister and brother. In reply, AAA said that her mother and sister were both at work, while her brother was at school. Upon learning

---

[4] CA *rollo*, p. 33.

that AAA was alone in the house, XXX took off AAA's shorts and underwear. Then, XXX also took off his shorts and underwear. Thereupon, XXX went on top of AAA and inserted his penis inside AAA's vagina. AAA claimed that she was not able to resist or fight XXX's sexual advances because he threatened her not to make noise.

In the meantime, CCC arrived home from work at around 1 o'clock in the afternoon as she only went on a half-day duty. CCC saw a pair of slippers outside their door that she was not familiar with. Upon entering, CCC was shocked by what she had witnessed. She saw XXX and AAA both naked waist down, with XXX on top of AAA, who was then continuously crying. CCC caught XXX having carnal knowledge of AAA. Startled, XXX immediately stood up. Failing to contain her fury, CCC berated and attacked XXX. CCC and XXX briefly wrestled with each other until XXX's mother (AAA and CCC's grandmother) intervened, and asked CCC not to tell the incident to anyone. Meanwhile, XXX took his shorts and underwear and ran away. CCC recalled that AAA could not utter a word and was in obvious state of shock. CCC told AAA to put on her underwear and shorts.

CCC and AAA went to the place of work of their mother, BBB, and CCC apprised the latter of what happened. BBB and CCC accompanied AAA to the police station to report the incident as well as to lodge a complaint against XXX. The following day, they proceeded to the [redacted] Memorial Medical Center where AAA was medically examined.

XXX was about 26 to 27 years old while, AAA was only 12 years, 3 months and 27 days old at the time of the rape incident. The birth certificate of AAA submitted by the prosecution disclosed that she was born on July 23, 1995.

Dr. Poca testified that she conducted a medical examination on AAA. She did not notice any traces of injury on the private part of AAA at the time of the examination. Dr. Poca, however, observed redness around the hymen of the victim which can

be caused by infection or irritation. She declared that the medical evaluation cannot exclude sexual abuse.[5]

Version of the Defense

XXX interpose the defense of denial. He claimed that he never had sexual intercourse with AAA. He recalled that he woke at about 10 o'clock in the morning on November 20, 2007. He went to the house of his sister BBB to look for food. When he started eating, AAA arrived from school and removed her uniform. He scolded her for not attending her class. AAA replied that she was not feeling well and has a fever. He did not believe her so he asked AAA to put back her uniform. He then touched AAA to confirm his hunch that she was not really feverish. At that instant, CCC arrived and accused him of molesting AAA. He surmised that CCC came to this conclusion because AAA was then naked from waist down and he was just an arm's length away from her.[6]

RTC Ruling

On July 29, 2016, the RTC rendered a verdict of conviction, the dispositive portion of which reads:

> Wherefore, predicated on the foregoing facts and circumstances, the Court hereby Convicts the herein accused [XXX] for the crime of Rape, in [r]elation to RA 7610 in Crim. Case No. DU-15896[,] as the prosecution has proved his guilt beyond reasonable doubt. For which reason, the Court hereby sentences the accused to suffer the penalty of *reclusion perpetua* (20 years and 1 day to 40 years), without eligibility for parole, and to pay [AAA], the sum of ₱50,000.00 as civil indemnity and the amount of ₱50,000.00 as moral damages.
>
> Said accused, however, is credited with his preventive imprisonment.
>
> SO ORDERED.[7]

---

[5] *Id.* at 34-38.

[6] *Id.* at 39.

[7] *Id.* at 43.

The RTC held that the prosecution was able to establish with certitude that XXX had carnal knowledge of AAA through force and intimidation, and such fact was established through the clear and convincing testimony of the said victim who has no motive to testify falsely against XXX. The trial court ruled that AAA's claim of rape was amply corroborated by the testimony of CCC, who actually witnessed XXX having carnal knowledge of AAA against the latter's will.

The RTC rejected the defense of denial proffered by XXX declaring the same to be unconvincing and self-serving negative evidence which could not prevail over the positive identification of him by AAA and CCC as the culprit to the dastardly deed. Finally, the RTC ruled that the presence of the qualifying circumstances of minority and relationship justified the imposition of death penalty, but because of the passage of Republic Act No. 9346, the penalty of *reclusion perpetua* without eligibility for parole was imposed against XXX instead.

Not in conformity, XXX appealed the July 29, 2016 RTC Decision before the CA.

The CA Ruling

On June 20, 2018, the CA rendered its assailed Decision affirming the conviction of XXX for Rape by sexual intercourse. The appellate court declared that the credible testimony of AAA was sufficient to sustain XXX's conviction for the crime charged. It, likewise, debunked appellant's denial declaring that the same was not satisfactorily established and not at all persuasive when pitted against the positive and convincing identification by the victim. The CA considered the testimony of CCC to be in the nature of a circumstantial evidence of the sexual intercourse between XXX and AAA. It increased the amounts awarded for civil indemnity and moral damages to ₱100,000.00 each in consonance with the prevailing jurisprudence. The CA, likewise, determined that AAA is entitled to the award of ₱100,000.00 by way of exemplary damages. The *fallo* of the Decision reads:

WHEREFORE, the appeal is DENIED. The Judgment dated 29 July 2016 rendered by the Regional Trial Court, Branch 56, Mandaue City

in Criminal Case No. DU-15896, is AFFIRMED with MODIFICATION, in that:

1) [XXX] is ordered to pay AAA the amount of One Hundred Thousand Pesos (₱100,000.00) as civil indemnity, One Hundred Thousand Pesos (₱100,000.00) as moral damages, and One Hundred Thousand Pesos (₱100,000.00) as exemplary damages; and

2) All damages awarded shall earn an interest of six percent (6%) per annum to be computed from the finality of this Decision until fully paid.

SO ORDERED.[8]

The Issues

Unfazed, XXX filed the present appeal and posited the same issues he previously raised before the CA, to wit:

I

THE TRIAL COURT ERRED IN GIVING FULL FAITH AND CREDENCE TO THE TESTIMONY OF THE PRIVATE COMPLAINANT, AAA.

II

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE FAILURE OF THE PROSECUTION TO PROVE AND ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT.[9]

In the Resolution[10] dated November 12, 2018, the Court directed both parties to submit their supplemental briefs, if they so desired. On January 31, 2019, the Office of the Solicitor General filed a Manifestation and Motion[11] stating that it will

---

[8] *Rollo*, p. 19.

[9] CA *rollo*, p. 19.

[10] *Rollo*, pp. 28-29.

[11] *Id.* at 30-31.

no longer file a supplemental brief as its Appellee's Brief had sufficiently ventilated the issues raised. On February 28, 2019, the accused-appellant filed a Manifestation[12] averring that he would adopt all his arguments in his Appellant's Brief filed before the CA.

The Court's Ruling

Essentially, XXX faults the RTC for giving undue faith and credence on the testimony of AAA. He theorizes that the prosecution evidence failed to overcome his constitutional presumption of innocence because it was not established that he employed force, threat or intimidation against AAA in the alleged commission of the crime.

Further, XXX submits that it is highly improbable that the alleged rape took place in broad daylight and inside a place adjacent to the house where his mother was then present, arguing that rape is essentially committed in secret, away from the prying eyes of anybody. He avers that the improbabilities in the testimonies of AAA and CCC cast serious doubt on the veracity of the prosecution's charge. Lastly, he points out that the medical findings of Dr. Poca effectively belied the prosecution's claim of forced coitus since no injury was found on AAA's private part.

Appellant's contentions fail to muster legal and rational merit.

In rape cases, the conviction of the accused rests heavily on the credibility of the victim. Hence, the strict mandate that all courts must examine thoroughly the testimony of the offended party. While the accused in a rape case may be convicted solely on the testimony of the complaining witness, courts are, nonetheless, duty-bound to establish that their reliance on the victim's testimony is justified. Courts must ensure that the testimony is credible, convincing, and otherwise consistent with human nature. If the testimony of the complainant meets the

---

[12] *Id.* at 34-35.

test of credibility, the accused may be convicted on the basis thereof.[13]

It is settled that the evaluation by the trial court of the credibility of witnesses and their testimonies are entitled to the highest respect. This is in view of its inimitable opportunity to directly observe the witnesses and their deportment, conduct and attitude, especially during cross-examination. Thus, unless it is shown that its evaluation was tainted with arbitrariness or certain facts of substance and value have been plainly overlooked, misunderstood, or misapplied, the same will not be disturbed on appeal.[14] No such facts were overlooked or misconstrued in the case at bench.

In rape cases, the conviction of the accused rests heavily on the credibility of the victim. Here, the trial court found AAA's testimony to be credible as it was made in a "straightforward and spontaneous"[15] manner. Notably, the CA agreed with the RTC on this point and saw no reason to overturn the same. After approximating the perspective of the trial court through a meticulous scrutiny of the records, the Court likewise finds no justification to disturb the findings of the RTC. Despite his vigorous protestations, the Court agrees with the findings of the courts *a quo* that the prosecution was able to prove beyond reasonable doubt that XXX raped AAA on that fateful afternoon of November 20, 2007.

The trial court's reliance on the victim's testimony is apt, considering that it was credible in itself and buttressed by the testimony of her sister, CCC. AAA was able to convey the details of his traumatic experience in the hands of XXX in simple yet convincing and consistent manner. Without hesitation, AAA pointed an accusing finger against XXX as the person who ravished and sexually molested her. She credibly recounted how XXX held her by the arm and forcibly pulled her to the

---

[13] *People v. Publico*, 664 Phil. 168, 180 (2011).

[14] *People v. Agustin*, 690 Phil. 17, 27 (2012).

[15] CA *rollo*, p. 41.

bedroom; that upon learning that she is alone, XXX took off her shorts and underwear; he then removed his shorts and underwear, placed himself on top of AAA and inserted his penis into her vagina. AAA could not offer any resistance or fight XXX because he threatened her not to make any noise. Thus, she kept quiet and cried silently while appellant consummated her carnal knowledge of her.

Taking advantage of AAA's minority, XXX was able to put his penis inside said victim's vagina to satisfy his lust. Considering the discrepancy between the ages of XXX and AAA, and that said appellant is the victim's uncle who frequented her house and exercised influence over her, it need no longer be belabored upon that the sexual molestation was committed by threat, force or intimidation because moral ascendancy or influence takes the place of violence and intimidation.[16]

We quote with approval the following observation of the CA, to wit:

> Here, since accused-appellant was her mother's younger brother, AAA naturally regarded the accused-appellant as a close family member. With the absence of her real father, she would naturally recognize the parental authority exercised by accused-appellant over her and, in return, she gave the reverence and respect due him as a father. Undeniably, accused-appellant exercised moral ascendancy over the victim. His moral ascendancy and influence over AAA substituted for actual physical violence and intimidation, which made her easy prey for his sexual advances. Accused-appellant's moral and physical dominion of AAA were sufficient to cow her into submission to his beastly desires.[17]

AAA's statements pertaining to the identity of XXX as her violator and the perverse act he visited upon her were straightforward and categorical. Her simple narration evinces her sincerity and truthfulness. It bears stressing that AAA was only twelve (12) years old when she was raped and sixteen

---

[16] *People v. Yatar*, 472 Phil. 556, 574 (2004).

[17] *Rollo*, pp. 15-16.

(16) years old when she testified before the RTC. The Court has held time and again that testimonies of child-victims are normally given full weight and credit. When the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true.[18] Their youth and immaturity are generally badges of truth and sincerity.[19] Hailed to the witness stand, AAA never faltered in her positive identification of appellant or gave any statements materially inconsistent with her entire testimony.

Worth noting too is the fact that there is no evidence or even a slightest indication that AAA was impelled by an improper motive in making the accusation against her uncle XXX. The absence of any improper motive of AAA to impute such a serious offense against XXX persuades us that said minor victim filed the rape charge against appellant for no other reason than to seek justice for the dastardly deed done against her. Settled is the doctrine that when there is no evidence to show any dubious reason or improper motive why a prosecution witness should testify falsely against the accused or implicate him in a serious offense, the testimony deserves full faith and credit.[20] We are, thus, convincingly assured that the RTC prudently fulfilled its obligation as a factual assessor and legal adjudicator.

Anent XXX's contention that it is improbable that he could sexually molest AAA inside a place adjacent to the house where his mother was, suffice it to state that lust is no respecter of time and place.[21] The Court has repeatedly held that rape can be committed even in places where people congregate, in parks along the roadsides, in school premises, in a house where there are other occupants, in the same room where other members

---

[18] *People v. Prodenciado*, 749 Phil. 746, 758 (2014).

[19] *People v. Guambor*, 465 Phil. 671, 678 (2004).

[20] *People v. Degamo*, 450 Phil. 159, 175 (2003).

[21] *People v. Castel*, 593 Phil. 288, 314 (2008).

of the family are also sleeping, and even in places which to many, would appear unlikely and high risk venues for its commission.[22]

The absence of injury in the private part of AAA is not fatal to the cause of the prosecution. Hymenal rapture, vaginal laceration or genital injury is not indispensable because the same is not an element of the crime of rape.[23] Even an intact hymen does not negate the finding that the victim was raped.[24] What is decisive in a rape charge is that the commission of the rape by the accused against the complainant has been sufficiently proven, as in the case at bench.

Appellant's denial must be rejected as the same could not prevail over AAA's unwavering testimony and of her positive and firm identification of him as the man who had undressed her and sexually gratified himself off her. As a negative evidence, it pales in comparison with a positive testimony that asserts the commission of a crime and the identification of the accused as its culprit.[25] We find that the facts in the instant case do not present any exceptional circumstance warranting a deviation from this established rule. Thus, it is clear that appellant could no longer hide behind the protective shield of his presumed innocence.

The Court finds that the penalty imposed by the RTC is correct. The special qualifying circumstances of the victim's minority and her relationship to appellant were properly alleged in the Information and duly proved during trial warranting the imposition of the supreme penalty of death on appellant. However, in view of the enactment of Republic Act No. 9346 prohibiting the imposition of the death penalty, the penalty to be meted on

---

[22] *People v. Malones*, 469 Phil. 301, 326 (2004).

[23] *People v. Valenzuela*, 597 Phil. 732, 745 (2009).

[24] *People v. Tampos*, 455 Phil. 844, 858 (2003).

[25] *People v. Canares*, 599 Phil. 60, 76 (2009).

appellant is *reclusion perpetua* without eligibility for parole in accordance with Sections 2[26] and 3[27] thereof.

With respect to the award of damages, the CA, following prevailing jurisprudence,[28] correctly awarded ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages. Further, six percent (6%) interest *per annum* shall be imposed on all damages awarded to be reckoned from the date of the finality of this judgment until fully paid.[29]

WHEREFORE, the appeal is **DISMISSED**. The Decision of the Court of Appeals dated June 20, 2018 in CA-G.R. CR-HC No. 02408 is hereby **AFFIRMED**. Accused-appellant XXX is found **GUILTY** beyond reasonable doubt of Qualified Rape by Sexual Intercourse and is sentenced to suffer the penalty of *Reclusion Perpetua* without eligibility for parole. He is **ORDERED** to **PAY** the victim AAA the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages and ₱100,000.00 by way of exemplary damages. He is also **ORDERED** to **PAY** interest at the rate of six percent (6%) *per annum* from the time of finality of this Decision until fully paid, to be imposed on the civil indemnity, moral damages and exemplary damages.

SO ORDERED.

Caguioa, Lazaro-Javier, Lopez, and *Gaerlan,*[*] *JJ.*, concur.

---

[26] SEC. 2. In lieu of the death penalty, the following shall be imposed:

(a) the penalty of *reclusion perpetua* when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code.

(b) x x x.

[27] SEC. 3. Persons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua* by reason of this Act, shall not be eligible for parole under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended.

[28] *People v. Jugueta*, 783 Phil. 806 (2016).

[29] *People v. Romobio*, G.R. No. 227705, October 11, 2017.

[*] Designated additional member per Special Order No. 2788 dated September 16, 2020.

FIRST DIVISION

[G.R. No. 250439. September 22, 2020]

FIL-EXPAT PLACEMENT AGENCY, INC., *Petitioner*, *v.* **MARIA ANTONIETTE CUDAL LEE,** *Respondent*.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; *CERTIORARI;* FACTUAL FINDINGS; IN LABOR CASES, THE SUPREME COURT IS NOT PRECLUDED FROM REVIEWING THE CONFLICTING FACTUAL FINDINGS OF THE LOWER TRIBUNALS. — In labor cases, the CA is empowered to evaluate the materiality and significance of the evidence alleged to have been capriciously, whimsically, or arbitrarily disregarded by the NLRC in relation to all other evidence on record. The CA can grant the prerogative writ of certiorari when the factual findings complained of are not supported by the evidence on record; when it is necessary to prevent a substantial wrong or to do substantial justice; when the findings of the NLRC contradict those of the LA; and when necessary to arrive at a just decision of the case. To make this finding, the CA necessarily has to view the evidence to determine if the NLRC ruling had substantial basis. Verily, the CA can examine the evidence of the parties since the factual findings of the NLRC and the LA are contradicting. Indeed, this Court has the same authority to sift through the factual findings of both the CA and the NLRC in the event of their conflict. This Court is not precluded from reviewing the factual issues when there are conflicting findings by the CA, the NLRC, and the LA.

2. ID.; LABOR RELATIONS; SUBSTITUTION OR ALTERATION OF EMPLOYMENT CONTRACT; ILLEGAL RECRUITMENT; SUBSTITUTION OR ALTERATION OF PREVIOUSLY APPROVED AND VERIFIED EMPLOYMENT CONTRACTS TO THE PREJUDICE OF THE WORKER IS A PROHIBITED PRACTICE AND IS ALSO CONSIDERED AN ACT OF ILLEGAL RECRUITMENT; CASE AT BAR. — The substitution or alteration of employment contracts is listed as a prohibited practice under Article34(i) of the Labor Code. Indeed, ***"[t]o***

substitute or alter to the prejudice of the worker, *employment contracts approved and verified by the Department of Labor and Employment from the time of actual signing thereof by the parties up to and including the period of the expiration of the same without the approval of the Department of Labor and Employment"* - is considered an act of "illegal recruitment" under Section 6(i) of Republic Act No. 8042.

Fil-Expat claimed that there was no contract substitution because Maria Antoniette did not sign any document. Hence, there is no second contract. Admittedly, the foreign employer attempted to make Maria Antoniette sign a new contract but it was not intended to prejudice her. The purpose was only to secure a signed contract as required by the KSA's Ministry of Health and to device a uniform contract for all the employees. On this postulate, the NLRC agreed with Fil-Expat and ruled that "*[w]here the purpose, however, is to comply with a foreign law requirement both for the protection of the worker and the employer from Saudi Labor Inspection then there could be no violation*." Yet, this unsympathetic stance shows that the NLRC ignored a clear affront against an Overseas Filipino Worker (OFW) and it was only proper for the CA to step in and rectify this grave abuse of discretion.

The employer's claim that the new contract was for uniformity and was not intended to alter the terms of the original contract is implausible. It is illogical to require Maria Antoniette to sign a second contract if it would only restate the contents of the Philippine Overseas Employment Administration (POEA)-approved employment contract, which incidentally, already included an Arabic translation of the agreed terms and conditions between the employee and the foreign employer.

3. ID.; ID.; ID.; ID.; MERE ATTEMPT IN CONTRACT SUBSTITUTION, AS WHEN THE SIGNING OF THE SECOND CONTRACT IS NOT CONSUMMATED, IS STILL CONSIDERED ILLEGAL. — [W]e reject Fil-Expat's contention that the mere attempt in contract substitution should not be considered illegal if the signing of the second contract was not consummated. In *PHILSA International Placement & Services Corp. v. Secretary of Labor & Employment,* the recruitment agency was found guilty of two counts of prohibited contract substitution, even though the workers refused the

second attempt to compel them to sign another contract. In that case, the Court quoted with approval the POEA's findings that the OFW's refusal to sign does not absolve the agency from liability and the mere intention to commit contract substitution should not be left unpunished.

4. ID.; ID.; TERMINATION OF EMPLOYMENT; CONSTRUCTIVE DISMISSAL; THE TEST OF CONSTRUCTIVE DISMISSAL IS WHETHER A REASONABLE PERSON IN THE EMPLOYEE'S POSITION WOULD HAVE FELT COMPELLED TO GIVE UP HIS/HER POSITION DUE TO THE EMPLOYER'S UNFAIR OR UNREASONABLE TREATMENT.— Anent the issue of constructive dismissal, we reiterate that the law recognizes situations wherein the employee must leave his or her work to protect one's rights from the coercive acts of the employer. The employee is considered to have been illegally terminated because he or she is forced to relinquish the job due to the employer's unfair or unreasonable treatment. The test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his position under the circumstances. In this case, we find that Maria Antoniette was constructively dismissed. Despite the seeming benevolence of the foreign employer in providing housing accommodation and other benefits to its medical employees, the evidence shows that Maria Antoniette was singled out and verbally intimidated after she refused to sign the second employment contract.

Fil-Expat tried to simply brush aside Maria Antoniette's complaint saying that she was being overly sensitive given that Arab people are known for their loud voices. This is absurd if not downright insulting. Surely, OFWs, especially the medical professionals working abroad, could discern a loud voice from abusive language.

. . .

. . . [The] circumstances were sufficient indications of the foreign employer's bad faith, hostility, and disdain toward Maria Antoniette. While there was no formal termination of her services, Maria Antoniette's continued employment was rendered unlikely and unbearable amounting to constructive dismissal. She was left without any option except to quit from her job.

APPEARANCES OF COUNSEL

Alquin B. Manguera for petitioner.
Linzag Arcilla and Associates Law Offices for respondent.

R E S O L U T I O N

LOPEZ, *J.*:

Whether substantial evidence exists to establish contract substitution and constructive dismissal is the main issue in this Petition for Review on *Certiorari*[1] under Rule 45 of Rules of Court assailing the Court of Appeals' (CA) Decision[2] dated May 27, 2019 in CA-G.R. SP No. 157997.

ANTECEDENTS

Maria Antoniette Cudal Lee (Maria Antoniette) filed against Fil-Expat Placement Agency, Inc. (Fil-Expat) and Thanaya Al-Yaqoot Medical Specialist (Thanaya Al-Yaqoot) a complaint for constructive dismissal contract substitution and breach of contract and damages before the labor arbiter (LA). Allegedly, Fil-Expat hired Maria Antoniette as an orthodontist specialist in the Kingdom of Saudi Arabia on behalf of its foreign principal Thanaya Al-Yaqoot for a contract period of two years. In May 2016, Marie Antoniette's employer asked her to sign a document written in Arabic and wanted her to agree that only half of the stipulated salary would be declared to the Kingdom of Saudi Arabia (KSA) government for insurance purposes. Maria Antoniette was hesitant but eventually signed the document using a different signature. Thereafter, the employer repeatedly forced her to execute a new employment contract. Maria Antoniette refused but the employer subjected her to varied forms of harassment. She was given additional duties, and was

---

[1] *Rollo*, pp. 8-38.

[2] *Id.* at 42-55; penned by Associate Justice Ramon R. Garcia, with the concurrence of Associate Justices Eduardo B. Peralta, Jr. and Gabriel T. Robeniol.

threatened to deduct 10,000 Saudi Riyal from her salary. She was even told to move out of her accommodation. Worse, the employer attempted on making sexual advances on her, and showed no concern when she suffered a severe allergic reaction to latex surgical gloves. On June 24, 2016, Maria Antoniette was repatriated.[3]

In contrast, Fil-Expat claimed that Maria Antoniette was not maltreated. The Philippine Overseas Labor Office Local Hire together with Fil-Expat's representative visited Maria Antoniette in her workplace. They observed that Maria Antoniette has no swollen hands and bleeding blisters. There was also no evidence of additional duties or sexual abuse. In fact, Maria Antoniette did not complain of any physical harm or untoward incident with her employer, except for that her employer's representative shouted at her. Fil-Expat explained that it is normal for Arab people to talk in a loud voice. Moreover, there was no contract substitution. Fil-Expat admitted that Maria Antoniette was asked to sign a new employment contract. Yet, this was only due to Maria Antoniette's refusal to give a copy of her contract and diploma, which must be submitted to the KSA Ministry of Health. Also, Maria Antoniette was not threatened with salary deduction but merely explained to her that the employer will be fined for that amount should it fail to submit a copy of the contracts to the government.[4] Fil-Expat argued that Maria Antoniette's case could hardly be construed as one of constructive dismissal as it was her own decision to discontinue her contract. Lastly, Maria Antoniette's employer even requested her to stay for two more months until her replacement arrives.[5]

---

[3] *Id.* at 108-156; Position Paper dated July 11, 2017 and Affidavit dated July 11, 2017.

[4] *Id.* at 157-164; Reply (to the Complainant's Position Paper) dated August 11, 2017.

[5] *Id.* at 72-75.

On April 13, 2018, the LA held that Fil-Expat and Thanaya Al-Yaqoot are guilty of breach of contract and constructive dismissal,[6] thus:

> **WHEREFORE**, premises considered, respondents are found guilty of breach of contract and constructive dismissal. Accordingly, respondents, except Mark Amielle De Ocampo, are hereby ordered to jointly and severally pay complainant the following:
>
> (a) salary equivalent to [the] unexpired portion of her contract from June 23, 2016 to December 3, 2017 at its peso equivalent at the time of payment;
>
> (b) unpaid salary of 14,666 SR at its peso equivalent at the time of payment;
>
> (c) refund of placement fee in the amount of 3,637.75 SR[;]
>
> (d) cost of transporting her personal belongings amounting to 3,560 SR at its peso equivalent at the time of payment;
>
> (e) moral damages of ₱20,000.00;
>
> (f) exemplary damages of ₱10,000.00;
>
> (g) attorney's fees equivalent to 10% of the total award; and
>
> (h) interest of 6% per annum reckoned from the finality of this Decision.
>
> **SO ORDERED**.[7] (Emphases in the original.)

Dissatisfied, Fil-Expat and Thanaya Al-Yaqoot appealed to the National Labor Relations Commission (NLRC). On June 27, 2018, the NLRC reversed the arbiter's findings, and ruled that there was no breach of contract and constructive dismissal.[8] There was no contract substitution since there was no intention on the part of the foreign employer to prejudice Maria Antoniette in the execution of the new employment contract. There is also no constructive dismissal because there is no evidence

---

[6] *Id.* at 235-258.

[7] *Id.* at 257-258.

[8] *Id*. at 335-351; Decision dated June 27, 2018; and pp. 364-365, Resolution dated August 15, 2018.

that Maria Antoniette's continued employment was rendered impossible, unreasonable or unlikely, *viz.*:

> Explicitly, from the Report of the one who conducted an investigation regarding the circumstances surrounding the incident of contract substitution, it becomes very clear that THERE WAS NONE. Contract substitution if it had taken place is an illegal activity pursuant to R.A. 8042 as amended by R.A. 10022. Under No. 1) it is made illegal if there is an intention to prejudice the worker.
>
> **Where the purpose however, is to comply with a foreign law requirement both for the protection of the worker and the employer from Saudi Labor [I]nspection then there could be no violation.** Finally, since complainant furnished the investigator of a copy of her contract, there was no longer any need for complainant to accomplish another form for submission to Saudi authorities—Health and Labor.
>
> On the claim that there is constructive dismissal, there is no evidence that complainant's continued employment was rendered impossible, unreasonable or unlikely or that complainant was treated with discrimination, insensibility or disdain.[9] (Emphasis supplied.)

Aggrieved, Maria Antoniette elevated the case to the CA through a petition for *certiorari* docketed as CA-G.R. SP No. 157997. On May 27, 2019, the CA reinstated the Decision of the LA, and found substantial evidence that the foreign employer attempted to force Maria Antoniette into signing a new employment contract. It stressed that the attempt to commit contract substitution should be punished in order to avoid repetition. It also held that Maria Antoniette was compelled to seek repatriation because her employment became intolerable as she suffered verbal and psychological abuses after she refused to sign the new contract. Fil-Expat sought reconsideration but was denied.[10] Hence, this recourse.[11]

---

[9] *Id.* at 361.

[10] *Id.* at 58-59.

[11] *Id.* at 8-38.

RULING

In labor cases, the CA is empowered to evaluate the materiality and significance of the evidence alleged to have been capriciously, whimsically, or arbitrarily disregarded by the NLRC in relation to all other evidence on record. The CA can grant the prerogative writ of *certiorari* when the factual findings complained of are not supported by the evidence on record; when it is necessary to prevent a substantial wrong or to do substantial justice; when the findings of the NLRC contradict those of the LA; and when necessary to arrive at a just decision of the case.[12] To make this finding, the CA necessarily has to view the evidence to determine if the NLRC ruling had substantial basis.[13] Verily, the CA can examine the evidence of the parties since the factual findings of the NLRC and the LA are contradicting. Indeed, this Court has the same authority to sift through the factual findings of both the CA and the NLRC in the event of their conflict.[14] This Court is not precluded from reviewing the factual issues when there are conflicting findings by the CA, the NLRC, and the LA.[15]

Here, we find no error on the part of the CA in reversing the findings of the NLRC. The substitution or alteration of employment contracts is listed as a prohibited practice under Article 34(i) of the Labor Code.[16] Indeed, "***[t]o substitute or***

---

[12] *Paredes v. Feed the Children Phils., Inc.*, 769 Phil. 418, 434 (2015), citing *Univac Development, Inc. v. Soriano*, 711 Phil. 516, 525 (2013).

[13] *Id.*, citing *Diamond Taxi v. Llamas, Jr.*, 729 Phil. 364, 376 (2014).

[14] *Id.* at 435, citing *Pepsi-Cola Products Philippines, Inc. v. Molon*, 704 Phil. 120, 133 (2013).

[15] *Id.*, citing *Plastimer Industrial Corporation v. Gopo*, 658 Phil. 627, 633 (2011).

[16] ART. 34. *Prohibited Practices*. — It shall be unlawful for any individual, entity, licensee, or holder of authority:

(i) To substitute or alter employment contracts approved and verified by the Department of Labor from the time of actual signing thereof by the parties up to and including the periods of expiration of the same without the approval of the Secretary of Labor[.]

***alter to the prejudice of the worker**, employment contracts approved and verified by the Department of Labor and Employment from the time of actual signing thereof by the parties up to and including the period of the expiration of the same without the approval of the Department of Labor and Employment*" – is considered an act of "illegal recruitment" under Section 6(i) of Republic Act No. 8042.[17]

Fil-Expat claimed that there was no contract substitution because Maria Antoniette did not sign any document. Hence, there is no second contract. Admittedly, the foreign employer attempted to make Maria Antoniette sign a new contract but it was not intended to prejudice her. The purpose was only to secure a signed contract as required by the KSA's Ministry of Health and to device a uniform contract for all the employees. On this postulate, the NLRC agreed with Fil-Expat and ruled that "*[w]here the purpose, however, is to comply with a foreign law requirement both for the protection of the worker and the employer from Saudi Labor Inspection then there could be no violation*." Yet, this unsympathetic stance shows that the NLRC ignored a clear affront against an Overseas Filipino Worker (OFW) and it was only proper for the CA to step in and rectify this grave abuse of discretion.

The employer's claim that the new contract was for uniformity and was not intended to alter the terms of the original contract is implausible. It is illogical to require Maria Antoniette to sign a second contract if it would only restate the contents of the Philippine Overseas Employment Administration (POEA)-approved employment contract, which incidentally, already included an Arabic translation of the agreed terms and conditions between the employee and the foreign employer. As the CA aptly observed:

---

[17] THE MIGRANT WORKERS AND OVERSEAS FILIPINO ACT OF 1995; approved on June 7, 1995, as amended by RA No. 10022; lapsed into law on March 8, 2010; *Princess Joy Placement & General Services, Inc. v. Binalla* (Resolution), 735 Phil. 270, 283 (2014).

Private respondents also argued that petitioner was asked to sign a new employment contract because she failed to furnish her foreign employer with a copy of the POEA-approved Standard Employment Contract. This is baffling to say the least. Petitioner started working at the Thanaya Al-Yaqoot Medical Specialist Clinic on December 8, 2015. It was on May 22, 2016 or five months after that she was asked by the foreign employer to sign a new employment contract. **It is quite unbelievable then that petitioner was allowed to work at the clinic without the foreign employer having a copy of the POEA-approved employment contract. Even assuming for the nonce that petitioner failed to provide her foreign employer with a copy of the POEA-approved contract, the latter could just easily request a copy of the same from private respondent Fil-Expat, petitioner's recruitment agency**.

As regards private respondents' asseveration that the purpose of the new employment contract was to comply with the foreign labor law requirement, suffice it to state that **the records are bereft of any evidence to show the specific foreign law requiring another employment contract for overseas Filipino contract workers apart from the POEA-approved Standard Employment Contract which was designed primarily for the workers' protection and benefit**.[18] (Emphases supplied.)

Similarly, we reject Fil-Expat's contention that the mere attempt in contract substitution should not be considered illegal if the signing of the second contract was not consummated. In *PHILSA International Placement & Services Corp. v. Secretary of Labor & Employment*,[19] the recruitment agency was found guilty of two counts of prohibited contract substitution, even though the workers refused the second attempt to compel them to sign another contract. In that case, the Court quoted with approval the POEA's findings that the OFW's refusal to sign does not absolve the agency from liability and the mere intention to commit contract substitution should not be left unpunished.

---

[18] *Rollo*, p. 53.

[19] 408 Phil. 270 (2001).

Anent the issue of constructive dismissal, we reiterate that the law recognizes situations wherein the employee must leave his or her work to protect one's rights from the coercive acts of the employer. The employee is considered to have been illegally terminated because he or she is forced to relinquish the job due to the employer's unfair or unreasonable treatment. The test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his position under the circumstances.[20] In this case, we find that Maria Antoniette was constructively dismissed. Despite the seeming benevolence of the foreign employer in providing housing accommodation and other benefits to its medical employees, the evidence shows that Maria Antoniette was singled out and verbally intimidated after she refused to sign the second employment contract.

Fil-Expat tried to simply brush aside Maria Antoniette's complaint saying that she was being overly sensitive given that Arab people are known for their loud voices. This is absurd if not downright insulting. Surely, OFWs, especially the medical professionals working abroad, could discern a loud voice from abusive language. As the CA succinctly held:

> Further aggravating the foreign employer's intent to commit contract substitution, **petitioner was made to suffer verbal and psychological abuse and threat from her employers on account of her refusal to sign the new employment contract**. As narrated in detail by petitioner, **she was threatened by her employer Dr. Mohammad Al-Qarni that "she will see hell" if she will inform the Philippine embassy about the situation she is in. She was also threatened that her salary will be reduced as penalty for her refusal to sign the new contract. Petitioner was also constantly harassed and pressured into signing the new employment contract even in the middle of work. She was humiliated in front of her co-workers and her employer's relatives and friends. Her foreign employer also showed no concern when she reported that she is suffering from severe allergic reaction to latex surgical gloves causing her hands to swell and have blisters**.

---

[20] *Gilles v. CA*, 606 Phil. 286, 306 (2009); *Madrigalejos v. Geminilou Trucking Service*, 595 Phil. 1153, 1157 (2008).

Such oppressive working condition had even impelled petitioner to seek assistance from the Philippine Embassy and Consulate Officials in Saudi Arabia, as well as from the media, regarding her situation.[21] (Emphasis supplied.)

Taken together, these circumstances were sufficient indications of the foreign employer's bad faith, hostility, and disdain toward Maria Antoniette. While there was no formal termination of her services, Maria Antoniette's continued employment was rendered unlikely and unbearable amounting to constructive dismissal. She was left without any option except to quit from her job.

FOR THESE REASONS, the petition is **DENIED**. The Court of Appeals Decision dated May 27, 2019 in CA-G.R. SP No. 157997 is **AFFIRMED**.

SO ORDERED.

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

---

[21] *Rollo*, p. 53.

[*] Designated additional Member per Special Order No. 2788 dated September 16, 2020.

SECOND DIVISION

[A.C. No. 12713. September 23, 2020]

JIMMY N. GOW, *Complainant, v.* **ATTYS. GERTRUDO A. DE LEON and FELIX B. DESIDERIO, JR.,** *Respondents*.

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; DISBARMENT PROCEEDINGS; REMEDIAL LAW; EVIDENCE; QUANTUM OF PROOF; COMPLAINANT'S ALLEGATIONS MUST BE SATISFACTORILY ESTABLISHED BY SUBSTANTIAL EVIDENCE. —** Disbarment, being the most severe form of disciplinary sanction, is meted out in clear cases of misconduct that seriously affect the standing and character of the lawyer as an officer of the court. In disbarment proceedings, the rule is that lawyers enjoy the presumption of innocence until proven otherwise, and the complainant must satisfactorily establish the allegations of his complaint through substantial evidence. Stated otherwise, in order to warrant the imposition of such a harsh penalty, complainant must show by preponderance of evidence that the respondent lawyer was remiss of his or her duties, and has violated the provisions of the CPR.

2. **ID.; ID.; ID.; ID.; EVIDENTIARY WEIGHT; SELF-SERVING EVIDENCE; PERSONAL NOTES ARE SELF-SERVING AND UNDESERVING OF ANY WEIGHT IN LAW. —** [C]omplainant's allegation that he personally delivered, in one occasion, the entire amount of ₱3,000,000.00 to Atty. De Leon was not substantiated with credible proof. In an effort to lend credence to his claim, complainant presented his own handwritten notes which purportedly show the "purpose of giving [respondents] the ₱3,000,000.00." The Court notes, however, that complainant's personal notes are devoid of any evidentiary weight for being essentially self-serving. Basic is the rule that mere allegations without proof are disregarded and that charges based on mere speculation cannot be given credence. Undoubtedly, complainant's bare allegations must be disregarded for being manifestly self-serving and undeserving of any weight in law.

Moreover, a perusal of the purported notes clearly indicates that they are simply a "breakdown" of the proposed/estimated cost of expenses provided by Atty. De Leon for the various legal action which complainant wanted to implement at the time. By no stretch of imagination can the Court construe the purported notes to be an acknowledgment by respondents that the alleged amount was indeed paid or delivered to respondents.

3. ID.; ID.; ATTORNEY-CLIENT RELATIONSHIP; A FORMAL AGREEMENT IS NOT NECESSARY TO ESTABLISH AN ATTORNEY-CLIENT RELATIONSHIP. — [A] formal agreement is not necessary to establish attorney-client relationship. Thus, its absence does not affect the standing attorney-client relationship between complainant and the respondents.

4. ID.; ID.; THE COURT MAY DENY RELIEF TO A DISHONEST LITIGANT; CASE AT BAR. — [T]he Court senses a veneer of truth in respondents' allegations that complainant refused to sign and document the Retainership Agreement, albeit his conformity thereto, and that complainant preferred cash transactions in all his dealings with respondents in order to avoid leaving document trails for his creditors, because at the time, complainant was being haunted by several creditors and that several cases were already filed against him and his companies.

It is settled that the Court may deny a litigant relief if his conduct has been inequitable, unfair, and dishonest as to the controversy in issue.

To be sure, complainant could have easily asked for an acknowledgment or an official receipt from respondents, but it was his intention not to. Thus, complainant has only himself to blame.

5. ID.; ID.; DISBARMENT PROCEEDINGS; AN UNEXPLAINED DELAY IN FILING DISBARMENT COMPLAINTS CREATES A SUSPICION ON THE MOTIVE OF COMPLAINANTS. — [C]omplainant filed the instant complaint . . . more than three years from the alleged failure to account and return the alleged amount to him. While the ordinary statute of limitations have no bearing in a disbarment proceeding, it is well-entrenched in jurisprudence that an unexplained delay in the filing of the instant complaint creates suspicion on the motive of complainants.

6. ID.; ID.; ID.; A LAWYER'S FAILURE TO ACCOUNT AND RETURN UPON DEMAND THE MONEY RECEIVED FROM A CLIENT GIVES RISE TO THE PRESUMPTION THAT IT WAS APPROPRIATED FOR THE LAWYER'S USE; CASE AT BAR. — The highly fiduciary nature of an attorney-client relationship imposes upon the lawyer the duty to account for the money received from his client; and that his failure to return upon demand the money he received from his client gives rise to the presumption that he has appropriated the same for his own use.

In this case, the records overwhelmingly show that respondents did not violate Rule 16.01 and Rule 16.03, Canon 16 of the CPR, . . .

Also, it was not shown that respondents failed to account for the money which they received from complainant.

7. ID.; ID.; PRINCIPLE OF *QUANTUM MERUIT*; THE RECOVERY OF ATTORNEY'S FEES IS AUTHORIZED WHEN THE ATTORNEY-CLIENT RELATIONSHIP WAS TERMINATED THROUGH NO FAULT OF THE LAWYERS. — Under the principle of *quantum meruit*, recovery of attorney's fees is authorized when the attorney-client relationship was terminated through no fault of the lawyers. Furthermore, the case of *National Power Corp. v. Heirs of Macabangkit Sangkay* teaches us that attorney's fees on the basis of *quantum meruit* is a device used to prevent unscrupulous clients from running away with the fruits of the legal services of counsel without paying for it and also avoids unjust enrichment on the part of the attorney himself. Here, the amount of ₱350,000.00 that was not returned to the complainant simply represents the legal fees and expenses incurred in relation to the services actually rendered and accomplished.

8. ID.; ID.; FAILURE TO ESTABLISH VIOLATION OF THE CODE OF PROFESSIONAL RESPONSIBILITY (CPR) WARRANTS THE DISMISSAL OF THE ADMINISTRATIVE COMPLAINT. — While the Court will not hesitate to punish erring lawyers who are shown to have failed to live up to their sworn duties, neither will the Court hesitate to extend its protective arm to lawyers who are at times maliciously charged. Complainant's failure to discharge its burden of showing that the acts of the respondents truly violated the CPR warrants the dismissal of the instant administrative complaint.

R E S O L U T I O N

INTING, *J.*:

This is an administrative Complaint [1] for Disbarment filed by Jimmy N. Gow (complainant) against Atty. Gertrudo A. De Leon (Atty. De Leon) and Atty. Felix B. Desiderio, Jr. (collectively, respondents) for violation of Rules 16.01 and 16.03, Canon 16 of the Code of Professional Responsibility (CPR) and Grave Misconduct.

The Antecedents

Complainant was the Chairman of the Uniwide Holdings, Inc., Uniwide Sales, Inc., Naic Resources & Development Corporation, Uniwide Sales Realty and Resources Corp., First Paragon Corporation, and Uniwide Sales Warehouse Club, Inc. (collectively known as the Uniwide Group of Companies).[2]

In the complaint, complainant alleged the following:

Sometime in December 2014, complainant engaged the services of the De Leon and Desiderio Law Firm (respondents' law firm) to handle cases involving the Uniwide Group of Companies.[3] Pursuant to the engagement, complainant personally delivered ₱3,000,000.00 to Atty. De Leon to cover, among others, the acceptance fee of ₱500,000.00 and for the cost of the operations, research, leg work, preparation of pleadings, filing of complaints, and media coverage. Respondents, however, did not draw up a formal agreement for the engagement, nor did they issue any acknowledgment or official receipt.[4]

---

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

[2] *Id.* at 2.

[3] *Id.*

[4] *Id.* at 3.

After the lapse of three months, respondents did not perform any significant work regarding the Uniwide Group of Companies. This prompted complainant to ask Atty. Salvador B. Hababag (Atty. Hababag), then President of the Uniwide Group of Companies, to demand from respondents the return of the amount of ₱2,000,000.00. At the time, he was willing to forego the ₱1,000,000.00 in the hope that respondents would return the remaining ₱2,000,000.00.[5]

On June 1, 2015, respondents issued to complainant three postdated checks[6] each with a face value of ₱350,000.00, or a total of only ₱1,050,000.00. Thereafter, no further amount was returned by respondents.[7]

A year later, or sometime in July 2016, complainant asked Mr. Medardo C. Deacosta, Jr. (Deacosta), Chief Finance Officer (CFO) of Uniwide Holdings, Inc., to audit the engagement of respondents' law firm. In an Affidavit[8] dated July 22, 2016, CFO Deacosta noted that respondents failed to deliver the output agreed upon.[9] In the process, CFO Deacosta reminded complainant of respondents' failure to turn over the remaining balance of ₱1,950,000.00 less the discounted amount of ₱1,000,000.00. Thus, complainant wrote respondents a Letter[10] dated July 7, 2016 demanding the return of the amount of ₱950,000.00.

However, complainant received no reply from respondents.[11]

---

[5] *Id.*

[6] *Id.* at 10.

[7] *Id.* at 3.

[8] *Id.* at 12.

[9] *Id.*

[10] *Id.* at 13.

[11] *Id.* at 4.

Hence, the instant complaint charging respondents for failing to account and return the amount of ₱1,950,000.00, which is no longer discounted.[12]

Respondents' Comment

In their Comment,[13] respondents averred the following:

First, respondents submitted to the complainant a Retainership Agreement[14] dated December 1, 2014 which complainant refused to sign and document, albeit the fact of his conformity thereto, on his own excuse that he, at the time, was already being haunted by several creditors.[15]

Second, complainant, in several installments, delivered to respondents the total amount of only ₱2,000,000.00 and not ₱3,000,000.00.[16]

Third, complainant maliciously opted not to disclose the following: (1) the fact that when he tendered the Demand Letter dated July 7, 2016, respondents aptly answered it through a Reply Letter[17] dated July 28, 2016 which clarified the actual amount received by respondents;[18] and (2) aside from the three checks with the total of ₱1,050,000.00, respondents likewise returned the amount of ₱300,000.00 on March 4, 2015 which complainant himself personally acknowledged and another ₱300,000.00 on July 3, 2015 which was acknowledged by CFO Deacosta.[19]

---

[12] *Id.*

[13] *Id.* at 15-38.

[14] *Id.* at 41-44.

[15] *Id.* at 18.

[16] *Id.* at 20.

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

[18] *Id.* at 20.

[19] *Id.* at 28.

Lastly, the Affidavit dated March 22, 2016 allegedly executed by CFO Deacosta to support the claim that respondents failed to deliver the output agreed upon is dubious, spurious, and downright forged. Even more, the Notarial Office of Parañaque City certified that the purported Affidavit is not on file with them which sufficiently casts doubt on its authenticity.[20]

The Issue

Whether respondents violated Rule 16.01 and Rule 16.03, Canon 16 of the CPR.

Our Ruling

Disbarment, being the most severe form of disciplinary sanction, is meted out in clear cases of misconduct that seriously affect the standing and character of the lawyer as an officer of the court.[21] In disbarment proceedings, the rule is that lawyers enjoy the presumption of innocence until proven otherwise,[22] and the complainant must satisfactorily establish the allegations of his complaint through substantial evidence.[23] Stated otherwise, in order to warrant the imposition of such a harsh penalty, complainant must show by preponderance of evidence that the respondent lawyer was remiss of his or her duties, and has violated the provisions of the CPR.[24]

Regrettably, complainant failed to discharge the burden.

To begin with, complainant's allegation that he personally delivered, in one occasion, the entire amount of ₱3,000,000.00 to Atty. De Leon was not substantiated with credible proof. In

---

[20] *Id.* at 26-27.

[21] *In Re: Petition for the Disbarment of Atty. Estrella O. Laysa, Patricia Maglaya Ollada v. Atty. Estrella O. Laysa*, A.C. No. 7936, June 30, 2020.

[22] *Yagong v. City Prosecutor Magno, et al.*, 820 Phil. 291, 294 (2017).

[23] *Ick v. Atty. Amazona*, A.C. No. 12375, February 26, 2020.

[24] *Chang v. Atty. Hidalgo*, 784 Phil. 1, 9 (2016), citing *Penilla v. Atty. Alcid, Jr.*, 717 Phil. 210, 222 (2013).

an effort to lend credence to his claim, complainant presented his own handwritten notes which purportedly show the "purpose of giving [respondents] the ₱3,000,000.00."[25] The Court notes, however, that complainant's personal notes are devoid of any evidentiary weight for being essentially self-serving. Basic is the rule that mere allegations without proof are disregarded and that charges based on mere speculation cannot be given credence.[26] Undoubtedly, complainant's bare allegations must be disregarded for being manifestly self-serving and undeserving of any weight in law. Moreover, a perusal of the purported notes clearly indicates that they are simply a "breakdown" of the proposed/estimated cost of expenses provided by Atty. De Leon for the various legal action which complainant wanted to implement at the time.[27] By no stretch of imagination can the Court construe the purported notes to be an acknowledgment by respondents that the alleged amount was indeed paid or delivered to respondents.

Complainant then implies that respondents intended not to account for whatever money they received because respondents failed to draw up a formal agreement, and that they failed to issue an acknowledgment or official receipt.[28]

The Court, however, finds complainant's argument specious.

For one, a formal agreement is not necessary to establish attorney-client relationship.[29] Thus, its absence does not affect the standing attorney-client relationship between complainant and the respondents.

For another, considering that the absence of a formal agreement between them does not affect their standing attorney-

---

[25] *Rollo*, p. 3.

[26] *Ick v. Atty. Amazona*, supra note 23, citing *BSA Tower Condominium Corp. v. Reyes II*, A.C. No. 11944, June 20, 2018.

[27] *Rollo*, pp. 7-8.

[28] *Id.* at 3.

[29] See *Urban Bank, Inc. v. Atty. Peña*, 417 Phil. 70 (2001).

client relationship, it is with all the more reason that such absence cannot be belatedly used by complainant to support his inordinate claim that respondents "did not want to account for the ₱3,000,000.00 [that complainant] personally handed to [respondents]."[30] Besides, the Court finds it difficult to believe that complainant, after giving the gargantuan amount of ₱3,000,000.00, in cash, to Atty. De Leon, did not insist for the issuance of any receipt that would evidence his payment.

On this note, the Court senses a veneer of truth in respondents' allegations that complainant refused to sign and document the Retainership Agreement, albeit his conformity thereto, and that complainant preferred cash transactions in all his dealings with respondents in order to avoid leaving document trails for his creditors, because at the time, complainant was being haunted by several creditors and that several cases were already filed against him and his companies.[31]

It is settled that the Court may deny a litigant relief if his conduct has been inequitable, unfair, and dishonest as to the controversy in issue.[32]

To be sure, complainant could have easily asked for an acknowledgment or an official receipt from respondents, but it was his intention not to. Thus, complainant has only himself to blame. Furthermore, it has not escaped the attention of the Court that complainant did not disclose the fact: (1) that aside from the three postdated checks,[33] respondents likewise returned the additional amount of ₱600,000.00;[34] and (2) that respondents submitted to complainant a Reply Letter[35] dated July 28, 2016

---

[30] *Rollo*, p. 3.

[31] *Id.* at 18.

[32] *Jenosa, et al. v. Rev. Fr. Delariarte, et al.*, 644 Phil. 565, 573 (2010), citing *University of the Philippines v. Hon. Catungal, Jr.*, 338 Phil. 728, 743-744 (1997).

[33] *Rollo*, p. 10.

[34] *Id.* at 132-133.

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

clarifying the actual amount they received; complainant tendered no protest and is thereby deemed to have acquiesced thereto.

Instead, complainant filed the instant complaint on December 12, 2019, or more than three years from the alleged failure to account and return the alleged amount to him.[36] While the ordinary statute of limitations have no bearing in a disbarment proceeding,[37] it is well-entrenched in jurisprudence that an unexplained delay in the filing of the instant complaint creates suspicion on the motive of complainants.[38] In this case, no explanation was given by complainant for the unusual delay in the institution of the instant complaint. Worse, complainant submitted a dubious affidavit to support his claim that respondents "failed to deliver the output agreed upon."[39]

Even a side glance at CFO Deacosta's signature on the purported affidavit[40] as against his signatures appearing in the acknowledgment receipts of the turn-over of files dated March 3, 2015[41] and March 5, 2015[42] will reveal that it is not his signature. Moreover, the Notarial Office of Parañaque City issued a Certification[43] which states that per available records, the Affidavit dated July 22, 2016, purportedly made by CFO Deacosta does not exist, *viz.*:

THIS IS TO CERTIFY that as per available records of this office, there is no document denominated as AFFIDAVIT dated July 22,

---

[36] *Id.* at 1.

[37] *Calo, Jr. v. Degamo*, 126 Phil. 802, 805-806 (1967).

[38] *Valdez v. Judge Valera*, 171 Phil. 217, 221 (1978); See also *Salamanca v. Atty. Bautista*, 118 Phil. 473 (1963).

[39] *Rollo*, p. 27.

[40] *Id.* at 12.

[41] *Id.* at 52-53.

[42] *Id.* at 54-55.

[43] *Id.* at 130.

2016 with Document No. 355, Page No. 72, Book No. XXXIII, Series of 2016 allegedly notarized by Atty. Josef Cea Maganduga.[44]

This casts doubt as to the affidavit's existence and due execution.[45]

The highly fiduciary nature of an attorney-client relationship imposes upon the lawyer the duty to account for the money received from his client; and that his failure to return upon demand the money he received from his client gives rise to the presumption that he has appropriated the same for his own use.[46]

In this case, the records overwhelmingly show that respondents did not violate Rule 16.01 and Rule 16.03, Canon 16 of the CPR, to wit:

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

Also, it was not shown that respondents failed to account for the money which they received from complainant.

---

[44] *Id.*

[45] *Agagon v. Atty. Bustamante*, 565 Phil. 581, 586 (2007).

[46] *Francia v. Atty. Sagario*, A.C. No. 10938, October 8, 2019.

In fact, on March 4, 2015, even before the issuance of the formal demand letter[47] dated March 31, 2015, respondents had already returned ₱300,000.00 which complainant himself personally acknowledged.[48] Subsequently, respondents issued three postdated checks with the total of only ₱1,050,000.00 on June 1, 2015, and another ₱300,000.00 which was received by CFO Deacosta on July 3, 2015.[49] Thus, out of the sum of ₱2,000,000.00 given by complainant to respondent, the latter was able to return ₱1,650,000.00.

As to the remaining balance of ₱350,000.00, the records show that it was utilized by the respondents for the preparation and filing of the complaint against the former and current officials of the Philippine Reclamation Authority now Public Estates Authority including the expenses for operations, research, leg work and media expense.[50]

Under the principle of *quantum meruit*, recovery of attorney's fees is authorized when the attorney-client relationship was terminated through no fault of the lawyers.[51] Furthermore, the case of *National Power Corp. v. Heirs of Macabangkit Sangkay*[52] teaches us that attorney's fees on the basis of *quantum meruit* is a device used to prevent unscrupulous clients from running away with the fruits of the legal services of counsel without paying for it and also avoids unjust enrichment on the part of the attorney himself. Here, the amount of ₱350,000.00 that was not returned to the complainant simply represents the legal fees and expenses incurred in relation to the services actually rendered and accomplished.

---

[47] *Rollo*, p. 9.

[48] *Id.* at 132.

[49] *Id.* at 133.

[50] See Complaint-Affidavit filed with the Office of the Ombudsman on December 15, 2014, *id.* at 56-70.

[51] *Reyes Cristobal v. Ocson*, 44 Phil. 489, 496-497 (1923).

[52] 671 Phil. 569 (2011).

Evidently, complainant has no basis in asking for the return of an amount which is more than what he actually gave to the respondents.

While the Court will not hesitate to punish erring lawyers who are shown to have failed to live up to their sworn duties, neither will the Court hesitate to extend its protective arm to lawyers who are at times maliciously charged.[53] Complainant's failure to discharge its burden of showing that the acts of the respondents truly violated the CPR warrants the dismissal of the instant administrative complaint.

WHEREFORE, the instant complaint against respondents Atty. Gertrudo A. De Leon and Atty. Felix B. Desiderio, Jr. is **DISMISSED**.

SO ORDERED.

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

Delos Santos, J., on official leave.

Baltazar-Padilla, J., on leave.

---

[53] *Burgos v. Atty. Bereber*, A.C. No. 12666, March 4, 2020, citing *Guanzon v. Dojillo*, A.C. No. 9850, August 6, 2020.

SECOND DIVISION

[A.C. No. 12790. September 23, 2020]

LORNA L. OCAMPO, *Complainant, v.* **ATTY. JOSE Q. LORICA IV,** *Respondent*.

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY (CPR); IT IS ESSENTIAL THAT THE LAWYER TIMELY AND ADEQUATELY INFORM HIS CLIENT OF IMPORTANT UPDATES AND CHANGES AS TO THE STATUS OF HIS CLIENT'S CASE. —** "The lawyer's duty to keep his client constantly updated on the developments of his case is crucial in maintaining the client's confidence." Since the lawyer-client relationship is one of utmost confidence, it is essential that the lawyer *timely* and *adequately* inform his client of important updates and changes as to the status of his client's case. Here, Atty. Lorica opted to inform complainant of the Court of Appeals (CA) Decision by sending a letter through the postal service instead of updating them personally or *via* mobile phone of the status of their case. Given that the correspondence was received by complainant, only after thirteen days—or two days before the expiration of the reglementary period for the filing of a motion for reconsideration—there is no question that Atty. Lorica had failed to timely notify complainant of the CA's adverse ruling against her and her husband, in violation of Rule 18.04, Canon 18 of the CPR.

2. **ID.; ID.; VIOLATIONS OF THE CPR AND LAWYER'S OATH IN CASE AT BAR WARRANTED THE PENALTY OF ONE YEAR SUSPENSION FROM THE PRACTICE OF LAW. —** [T]he records show that Atty. Lorica even asked complainant's husband for the payment of ₱25,000.00 as his professional fee *prior* to his filing of a motion for reconsideration in their behalf. This left complainant and her husband with no other choice but to look for another counsel despite the meager time left for the filing of their motion with the CA. To be sure, when faced with such dire circumstances, they would not simply decide to engage a new counsel unless they truly felt that their current counsel was not acting in their best interest. As such, the Court

finds Atty. Lorica in breach of his duty under the Lawyer's Oath not to delay any man's cause for money and Canon 17 of the CPR which states: CANON 17 — A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him. The Court likewise finds that Atty. Lorica had failed to promptly turnover the case records to complainant upon the severance of his legal services. As the IBP aptly noted, complainant was only able to retrieve some documents, albeit on a piece-meal basis, from Atty. Lorica *after* the filing of their motion for reconsideration with the CA. This, in itself, constitutes a clear violation of Rule 22.02, Canon 22 of the CPR, x x x **WHEREFORE**, the Court x x x hereby **SUSPENDS** [Respondent] from the practice of law for a period of one (1) year. He is likewise **STERNLY WARNED** that a repetition of the same or similar acts will be dealt with more severely.

APPEARANCES OF COUNSEL

Pasiwen Law Office for complainant.

D E C I S I O N

INTING, *J.*:

This administrative case is rooted on the Affidavit-Complaint[1] dated September 30, 2015 filed by Lorna L. Ocampo (complainant) against Atty. Jose Q. Lorica IV (Atty. Lorica) before the Integrated Bar of the Philippines (IBP)–Commission on Bar Discipline (CBD) for alleged violations of the Lawyer's Oath and the Code of Professional Responsibility (CPR).

Complainant's Position

Complainant and her husband, Cosme Ocampo, (Spouses Ocampo) were the respondents in a civil case for quieting of title with damages and annulment of documents filed by a certain Andrea Gamboa (Gamboa) before Branch 47, Regional Trial

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

Court (RTC), Urdaneta City, Pangasinan.[2] While the case was pending, their counsel, Atty. Eladio C. Velasco (Atty. Velasco), passed away without the knowledge of the court.[3] Thereafter, the RTC declared them in default[4] and rendered judgment in Gamboa's favor.[5]

This prompted the Spouses Ocampo to engage the legal services of Atty. Lorica for the filing of their Petition for Annulment of Judgment (Annulment Petition) with the Court of Appeals (CA) on the ground of extrinsic fraud. The CA, in turn, referred the case to the Executive Judge of the RTC, Urdaneta City, Pangasinan for raffle to any branch therein, with the exception of Branch 47, for the reception of evidence and further proceedings. The case was raffled to Branch 48, RTC, Urdaneta City, Pangasinan.[6]

Upon completion of the records of the proceedings and the transcripts of stenographic notes, the case was then forwarded to the CA for proper disposition. The CA, in its Decision[7] dated February 27, 2014, dismissed the Annulment Petition for lack of merit.[8] It ruled that the negligence of Atty. Velasco in the handling of the subject civil case did not qualify as extrinsic fraud, considering that complainant and her husband had been

---

[2] See Complaint for Quieting of Title with Damages and Annulment of Documents dated September 23, 2002, *id.* at 5-9.

[3] *Id.* at 1.

[4] See Order dated February 20, 2004, *id.* at 49.

[5] See Decision dated March 15, 2006, *id.* at 10-17; penned by Judge Meliton G. Emuslan.

[6] See Amended Decision dated August 14, 2009, *id.* at 83-87; penned by Associate Justice Pampio A. Abarintos with Associate Justices Portia Aliño-Hormachuelos and Marlene Gonzales-Sison, concurring.

[7] *Id.* at 91-98; penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Rosmari D. Carandang (now a Member of the Court) and Edwin D. Sorongon, concurring.

[8] *Id.* at 97.

aware of Atty. Velasco's illness and incapacity to attend to their case.[9]

Complainant alleged that Atty. Lorica received a copy of the CA Decision on March 10, 2014, but he failed to notify them of the adverse ruling right away. Instead of informing them of the CA Decision personally or by contacting them through their mobile phone, Atty. Lorica wrote them a Letter dated March 11, 2014 advising them that they had fifteen days from March 10, 2014 within which to file a motion for reconsideration with the CA.[10]

Complainant and her husband received the letter on March 23, 2014, or two days before the lapse of the 15-day reglementary period for the filing of their motion for reconsideration. Thereafter, they went to Atty. Lorica's office and expressed their interest to seek relief from the CA's adverse ruling. Atty. Lorica, however, asked them to first pay ₱25,000.00 as his professional fees and to provide a new set of records of the case for the preparation of a motion for reconsideration of the CA Decision.[11]

Due to the difficulty faced by Spouses Ocampo in raising funds to pay for Atty. Lorica's legal services and securing another set of case records, they opted to look for another lawyer and allowed Atty. Lorica to withdraw as their counsel. Fortunately, the Spouses Ocampo, through their new counsel, were able to timely file their motion for reconsideration with the CA.[12]

Thus, in her Affidavit-Complaint, complainant charged Atty. Lorica with violations of the CPR and the Lawyer's Oath for: (a) failure to promptly notify them of the CA's adverse ruling; (b) having lost the records of the case; and (c) requiring the

---

[9] *Id.* at 96.

[10] *Id.* at 1.

[11] *Id.* at 2.

[12] *Id.*

payment of professional fees before assisting them in the filing of their motion for reconsideration before the CA.[13]

Respondent's Position

In his Verified Answer,[14] Atty. Lorica claimed that when he received a copy of the CA Decision on March 10, 2014, he and his staff tried to contact the Spouses Ocampo through their mobile phone but they were either "*out of coverage area*" or their mobile number was "*no longer in service*." He thus decided to write them the following day to inform them of the adverse ruling against them.[15]

Atty. Lorica further averred that when Cosme Ocampo went to his law office, he had already drafted a motion for reconsideration which he expected to finalize before March 25, 2014. He vehemently denied asking for the amount of ₱25,000.00 for the preparation of the motion and explained that the fee was meant to cover all litigation expenses, including the filing fees and the preparation of a petition for review on *certiorari* before the Supreme Court.[16]

In addition, Atty. Lorica likewise denied having lost the records of the case. He argued that the certified copies of the exhibits handed to him by the Spouses Ocampo had been duly submitted to the trial court in the Formal Offer of Exhibits.[17]

The IBP's Report and Recommendation

In his Report and Recommendation[18] dated February 21, 2018, IBP Investigating Commissioner Oliver A. Cachapero (Investigating Commissioner) found Atty. Lorica guilty of violating

---

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

[14] *Id.* at 37-48.

[15] *Id.* at 42.

[16] *Id.* at 43-44.

[17] *Id.* at 44.

[18] *Id.* at 212-218.

Canon 17, Rule 18.04, Canon 18, and Rule 22.02, Canon 22 of the CPR as well as the Lawyer's Oath, and recommended that he be suspended from the practice of law for a period of one year.[19]

The Investigating Commissioner observed that Atty. Lorica had unmistakably breached his duty under Rule 18.04, Canon 18 of the CPR when he failed notify complainant of the adverse ruling against them in a timely manner.[20] He explained that:

> Respondent's sending of the letter through mail and his conduct of not verifying whether the letter had already been received by the Complainant is unmistakably in breach on his duty in this regard. His manner of informing his client is seen as too lackadaisical and lacking in zest. x x x[21]

The Investigating Commissioner also pointed out that Atty. Lorica's reluctance in preparing the motion for reconsideration until his professional fees were paid constituted a violation of the Lawyer's Oath and Canon 17 of the CPR.[22] Finally, the Investigating Commissioner noted that Atty. Lorica likewise violated Rule 22.02, Canon 22 of the CPR when he belatedly turned over the case records to complainant on a piece-meal basis.[23]

In the Resolution[24] dated May 19, 2018, the IBP Board of Governors resolved to adopt the findings of fact and recommendation of the Investigating Commissioner to suspend Atty. Lorica from the practice of law for a period of one year.

---

[19] *Id.* at 218.

[20] *Id.* at 216.

[21] *Id.*

[22] *Id.* at 217.

[23] *Id.*

[24] *Id.* at 211.

Atty. Lorica moved for reconsideration, but the IBP Board of Governors denied the motion per the Resolution[25] dated May 27, 2019.

The Issue

The sole issue for the Court's resolution is whether Atty. Lorica should be administratively sanctioned for the manner in which he handled complainant's case.

The Court's Ruling

After a careful examination of the records, the Court finds Atty. Lorica administratively liable for violation of Canon 17, Rule 18.04, Canon 18, and Rule 22.02, Canon 22 of the CPR as well as the Lawyer's Oath.

Rule 18.04, Canon 18 of the CPR provides:

> Rule 18.04 — A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.

"The lawyer's duty to keep his client constantly updated on the developments of his case is crucial in maintaining the client's confidence."[26] Since the lawyer-client relationship is one of utmost confidence, it is essential that the lawyer *timely* and *adequately* inform his client of important updates and changes as to the status of his client's case.[27]

Here, Atty. Lorica opted to inform complainant of the CA Decision by sending a letter through the postal service instead of updating them personally or *via* mobile phone of the status of their case. Given that the correspondence was received by complainant only after thirteen days—or two days before the

---

[25] *Id.* at 245.

[26] *Mendoza vda. de Robosa v. Atty. Mendoza, et al.*, 769 Phil. 359, 377 (2015).

[27] *Gabucan v. Atty. Narido, Jr.*, A.C. No. 12019, September 3, 2019.

expiration of the reglementary period for the filing of a motion for reconsideration—there is no question that Atty. Lorica had failed to timely notify complainant of the CA's adverse ruling against her and her husband, in violation of Rule 18.04, Canon 18 of the CPR.

To make matters worse, the records show that Atty. Lorica even asked complainant's husband for the payment of ₱25,000.00 as his professional fee *prior* to his filing of a motion for reconsideration in their behalf. This left complainant and her husband with no other choice but to look for another counsel despite the meager time left for the filing of their motion with the CA. To be sure, when faced with such dire circumstances, they would not simply decide to engage a new counsel unless they truly felt that their current counsel was not acting in their best interest. As such, the Court finds Atty. Lorica in breach of his duty under the Lawyer's Oath not to delay any man's cause for money and Canon 17 of the CPR which states:

> CANON 17 — A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him.

The Court likewise finds that Atty. Lorica had failed to promptly turnover the case records to complainant upon the severance of his legal services. As the IBP aptly noted, complainant was only able to retrieve some documents, albeit on a piece-meal basis, from Atty. Lorica *after* the filing of their motion for reconsideration with the CA.[28] This, in itself, constitutes a clear violation of Rule 22.02, Canon 22 of the CPR, which provides:

> Rule 22.02 — A lawyer who withdraws or is discharged shall, subject to a retainer lien, immediately turn over all papers and property to which the client is entitled, and shall cooperate with his successor in the orderly transfer of the matter, including all information necessary for the proper handling of the matter.

---

[28] *Rollo*, p. 213.

In *Castro, Jr. v. Atty. Malde, Jr.*,[29] the Court suspended the erring lawyer from the practice of law for six months due to his failure to update his client on the case, return the documents entrusted to him upon request, and protect his client's interest with utmost diligence. Guided by the foregoing precedent, the Court now imposes the same penalty upon Atty. Lorica for the above-discussed violations of the Lawyer's Oath and the CPR.

WHEREFORE, the Court finds respondent Atty. Jose Q. Lorica IV **GUILTY** of violating Canon 17, Rule 18.04, Canon 18, and Rule 22.02, Canon 22 of the Code of Professional Responsibility as well as the Lawyer's Oath, and hereby **SUSPENDS** him from the practice of law for a period of one (1) year. He is likewise **STERNLY WARNED** that a repetition of the same or similar acts will be dealt with more severely.

The suspension in the practice of law shall take immediately upon receipt of this Decision by respondent Atty. Jose Q. Lorica IV. 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 the Office of the Bar Confidant to be appended to respondent Atty. Jose Q. Lorica IV's personal record, and the Office of the Court Administrator and the Integrated Bar of the Philippines for their information and guidance.

SO ORDERED.

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

Delos Santos, J., on official leave.

Baltazar-Padilla, J.,on leave.

---

[29] A.C. No. 12221, June 10, 2019.

THIRD DIVISION

[G.R. No. 197674. September 23, 2020]

LAND BANK OF THE PHILIPPINES, *Petitioner, v.* **ESPERANZA M. ESTEBAN,** *Respondent*.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW (RA 6657); JUST COMPENSATION; GUIDEPOSTS FOR SETTING THE VALUATION OF JUST COMPENSATION. — In setting the valuation of just compensation for lands that are covered by the Comprehensive Agrarian Reform Law of 1988, as amended, Section 17 thereof provides for the guideposts that must be observed therefor. . . .

Succinctly, the factors enumerated under the foregoing provision are: (a) the acquisition cost of the land, (b) the current value of like properties, (c) the nature and actual use of the property, and the income therefrom, (d) the owner's sworn valuation, (e) the tax declarations, (j) the assessment made by government assessors, (g) the social and economic benefits contributed by the farmers and the farmworkers, and by the government to the property, and (h) the non-payment of taxes or loans secured from any government financing institution on the said land, if any, must be equally considered.

2. ID.; ID.; ID.; FORMULA IN THE DETERMINATION OF JUST COMPENSATION; CASE AT BAR. — [T]he courts are not at liberty to deviate from the DAR basic formula, unless such deviations are amply supported by facts and reasoned justification. This formula, as stated in DAR A.O. No. 5 series of 1998, is as follows:

> LV=(CNI x 0.60) + (CS x 0.30) + (MV X 0.10)
> Where: LV = Land Value, CNI = Capitalized Net Income, CS= Comparable Sales, MV = Market Value per Tax Declaration[.]

The above-stated formula shall be used only if all the three factors, *i.e.*, CNI, CS, and MV, are present, relevant, and applicable. In case one or two factors are not present, the said

A.O. provides for alternate formulas. In the instant case, the parties resorted to the alternate formula of: LV=MV x 2.

3. ID.; ID.; ID.; REMEDIAL LAW; CIVIL PROCEDURE; RECEPTION OF EVIDENCE; CASE AT BAR. — Following a thorough examination of the records, this Court finds that the RTC did not consider all of the factors enumerated in Section 17 of R.A. No. 6657. In the same vein, the LBP's valuation also failed to take into account all of the factors enumerated in the said provision. It also failed to adduce any competent evidence to support its valuation.

Accordingly, in accordance with this Court's ruling in *Alfonso*, a remand of this case for reception of further evidence is necessary in order for the trial court, acting as a special agrarian court, to determine just compensation pursuant to Section 17 of R.A. No. 6657 and the applicable DAR regulations.

APPEARANCES OF COUNSEL

LBP Legal Services Group for petitioner.
Maglinte Avila Ronquillo and Abad Law Offices for respondent.

D E C I S I O N

GAERLAN, *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, seeking the reversal and setting aside of the Decision[2] dated November 10, 2010 and the Resolution[3] dated July 14, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 01431. The assailed issuances affirmed the Consolidated

---

[1] *Rollo,* pp. 3-38.

[2] Id. at 42-52; penned by Associate Justice Edgardo T. Lloren and concurred in by Associate Justices Romulo V. Borja and Ramon Paul L. Hernando (now a Member of this Court).

[3] Id. at 54-55; penned by Associate Justice Edgardo T. Lloren and concurred in by Associate Justices Romulo V. Borja and Carmelita Salandanan-Manahan.

Decision[4] dated October 18, 2005 and Order[5] dated November 14, 2006 of Branch 27 of the Regional Trial Court of Tandag, Surigao del Sur in Civil Case No. 1514, for fixing of just compensation.

Antecedents

At the core of the instant controversy is an untitled parcel of land identified as Lot 2493, Cad. 537-D, located at Barangay Mahayag, San Miguel, Surigao del Sur, comprising an area of 6.1833 hectares, more or less, and covered by Tax Declaration (TD) No. B-16-12-236[6] in the name of respondent Esperanza M. Esteban (respondent).

Pursuant to Section 64[7] of Republic Act (R.A.) No. 6657 otherwise known as the Comprehensive Agrarian Reform Law of 1988, in relation to Section 74[8] of R.A. No. 3844,[9] petitioner

---

[4] Id. at 104-108; penned by Presiding Judge Ermelindo G. Andal.

[5] Id. at 109-112.

[6] Id. at 150.

[7] Section 64. Financial Intermediary for the CARP. – The Land Bank of the Philippines shall be the financial intermediary for the CARP, and shall insure that the social justice objectives of the CARP shall enjoy a preference among its priorities.

[8] Sec. 74. *Creation*. — To finance the acquisition by the Government of landed estates for division and resale to small landholders, as well as the purchase of the land-holding by the agricultural lessee from the landowner, there is hereby established a body corporate to be known as the "Land Bank of the Philippines," hereinafter called the "Bank," which shall have its principal place of business in Manila. The legal existence of the Bank shall be for a period of fifty years counting from the date of the approval hereof. The Bank shall be subject to such rules and regulations as the Central Bank may from time to time promulgate.

[9] AN ACT TO ORDAIN THE AGRICULTURAL LAND REFORM CODE AND TO INSTITUTE LAND REFORMS IN THE PHILIPPINES, INCLUDING THE ABOLITION OF TENANCY AND THE CHANNELING OF CAPITAL INTO INDUSTRY, PROVIDE FOR THE NECESSARY IMPLEMENTING AGENCIES, APPROPRIATE FUNDS THEREFOR AND FOR OTHER PURPOSES.

Land Bank of the Philippines (LBP) is the government financial institution established to aid in the implementation of the Comprehensive Agrarian Reform Program (CARP) as well as to act as financial intermediary of the Agrarian Reform Fund.[10]

On June 20, 1994, respondent made a voluntary offer to sell the subject property to the Department of Agrarian Reform (DAR) for said agency's acquisition under R.A. No. 6657 at the price of ₱60,000.00 per hectare or a total of ₱370,998.00. Following its evaluation of the subject property, LBP's Land Valuation Office XI issued on August 16, 1999 its Claims Valuation and Processing Form No. LBP-XI-VO-95-6697[11] setting the just compensation for the subject property at ₱12,295.42 per hectare, or a total amount of ₱76,026.27 based on the following formula:[12]

$$LV = MV \times 2$$

Where:

LV = Land Value
MV = Market Value per Tax Declaration

Respondent, however, rejected LBP's valuation. Thus, she filed a Petition[13] for judicial determination of just compensation with the RTC on November 14, 2002.

During the trial, the RTC constituted a Board of Commissioners (BOC) to examine and appraise the subject property. Thereafter, the BOC recommended the valuation of ₱43,327.16 per hectare, or a total amount of ₱267,907.88, for the subject property.[14]

On October 18, 2005, the RTC rendered judgment in favor of respondent. The trial court noted that, as found by the BOC, the subject property contained five hectares of unirrigated land

---

[10] *Land Bank of the Philippines v. Livioco*, 645 Phil. 337 (2010).

[11] *Rollo*, pp. 134-137.

[12] Id. at 135.

[13] Id. at 145-149.

[14] Id. at 166.

that had already been planted with *palay* while about one hectare thereof was idle. Thus, the RTC disposed as follows:

> WHEREFORE, judgment is hereby rendered in favor of the petitioners and against respondents, determining and fixing the just compensations for petitioners' properties, as follows:
>
> For Lot No. 2493, subject of Civil Case No. 1514, at ₱43,327.16 per hectare or a total of ₱267,907.83 for the entire 6.1833 hectares;
>
> For Lot No. 2665, subject of Civil Case No. 1515, at ₱18,427.50 per hectare or a total of ₱168,251.13 for the entire 9.1306 hectares;
>
> For Lot No. 2636, subject of Civil Case No. 1516, at ₱43,327.16 per hectare or a total of ₱404,632.35 for the entire 9.3390 hectares.
>
> Respondent LBP is ordered to pay to petitioners, within fifteen (15) days from finality of this Decision, the aforesaid amounts, the mode of payments of which shall be in accordance with the provisions of Section 18, Chapter VI of R.A. 6657.
>
> No pronouncement as to cost.
>
> SO ORDERED.[15]

Aggrieved, LBP interposed a petition for review with the CA, asserting that in fixing the amount of just compensation for the subject property at ₱267,907.83, the RTC violated the formula for valuation as stated in DAR Administrative Order (A.O.) No. 5, series of 1998, in connection with Section 17 of R.A. No. 6657.

The CA, however, did not find any merit in LBP's argument. In its herein assailed decision, the appellate court ruled that the formula set forth by DAR for the computation of just compensation is not mandatory; the courts may, in the exercise of judicial discretion, set it aside. Moreover, the CA found credence in the trial court's evaluation of the subject property's location, land use and current sale value of the nearby properties as important factors to be appreciated in arriving at its fair market value. The CA thus decreed:

---

[15] Id. at 108.

ACCORDINGLY, the petition is DENIED for lack of merit. The Consolidated Decision dated 18 October 2005 of the court a quo is AFFIRMED insofar as the valuation of Lot No. 2493 is concerned.

SO ORDERED.[16]

LBP moved for reconsideration of the foregoing decision, which the CA denied in its herein assailed resolution dated July 14, 2011.

Hence, the present recourse.

Issue

This Court is now tasked with resolving whether or not the CA erred in affirming the Decision of the RTC.

Ruling of the Court

The concept of just compensation was defined by this Court in *Land Bank of the Philippines v. American Rubber Corp.*[17] in the following manner:

> This Court has defined "just compensation" for parcels of land taken pursuant to the agrarian reform program as "the full and fair equivalent of the property taken from its owner by the expropriator." The measure of compensation is not the taker's gain but the owner's loss. Just compensation means the equivalent for the value of the property at the time of its taking. It means a fair and full equivalent value for the loss sustained. All the facts as to the condition of the property and its surroundings, its improvements and capabilities should be considered.[18]

In setting the valuation of just compensation for lands that are covered by the Comprehensive Agrarian Reform Law of 1988, as amended, Section 17 thereof provides for the guideposts that must be observed therefor, *viz.*:

---

[16] Id. at 51.

[17] 715 Phil. 154 (2013).

[18] Id. at 169.

SECTION 17. Determination of Just Compensation. – In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

Succinctly, the factors enumerated under the foregoing provision are: (a) the acquisition cost of the land, (b) the current value of like properties, (c) the nature and actual use of the property, and the income therefrom, (d) the owner's sworn valuation, (e) the tax declarations, (j) the assessment made by government assessors, (g) the social and economic benefits contributed by the farmers and the farmworkers, and by the government to the property, and (h) the non-payment of taxes or loans secured from any government financing institution on the said land, if any, must be equally considered.[19]

In *Alfonso v. Land Bank of the Philippines, et al.*,[20] the Court emphatically made the following pronouncement:

For clarity, we restate the body of rules as follows: The factors listed under Section 17 of RA 6657 and its resulting formulas provide a uniform framework or structure for the computation of just compensation which ensures that the amounts to be paid to affected landowners are not arbitrary, absurd or even contradictory to the objectives of agrarian reform. Until and unless declared invalid in a proper case, the DAR formulas partake of the nature of statutes, which under the 2009 amendment became law itself, and thus have in their favor the presumption of legality, such that courts shall consider, and not disregard, these formulas in the determination of just compensation for properties covered by the CARP. When faced with situations which do not warrant the formula's strict application, courts

---

[19] *Land Bank of the Phils. v. Rural Bank of Hermosa (Bataan), Inc.*, 814 Phil. 157, 165 (2017).

[20] 801 Phil. 217 (2016).

may, in the exercise of their judicial discretion, relax the formula's application to fit the factual situations before them, subject only to the condition that they clearly explain in their Decision their reasons (as borne by the evidence on record) for the deviation undertaken. It is thus entirely allowable for a court to allow a landowner's claim for an amount higher than what would otherwise have been offered (based on an application of the formula) for as long as there is evidence on record sufficient to support the award.

x x x x

For the guidance of the bench, the bar, and the public, we reiterate the rule: Out of regard for the DAR's expertise as the concerned implementing agency, courts should henceforth consider the factors stated in Section 17 of RA 6657, as amended, as translated into the applicable DAR formulas in their determination of just compensation for the properties covered by the said law. If, in the exercise of their judicial discretion, courts find that a strict application of said formulas is not warranted under the specific circumstances of the case before them, they may deviate or depart therefrom, provided that this departure or deviation is supported by a reasoned explanation grounded on the evidence on record. In other words, courts of law possess the power to make a final determination of just compensation.[21]

Veritably, the courts are not at liberty to deviate from the DAR basic formula, unless such deviations are amply supported by facts and reasoned justification.[22] This formula, as stated in DAR A.O. No. 5, series of 1998, is as follows:

LV = (CNI x 0.60) + (CS x 0.30) + (MV x 0.10)

Where:

LV = Land Value
CNI = Capitalized Net Income
CS = Comparable Sales
MV = Market Value per Tax Declaration

---

[21] Id. at 282-322.

[22] *Land Bank of the Philippines v. Prado Verde Corporation*, G.R. No. 208004, July 30, 2018.

The above-stated formula shall be used only if all the three factors, *i.e.*, CNI, CS, and MV, are present, relevant, and applicable. In case one or two factors are not present, the said A.O. provides for alternate formulas.[23] In the instant case, the parties resorted to the alternate formula of: LV = MV x 2.

Following a thorough examination of the records, this Court finds that the RTC did not consider all of the factors enumerated in Section 17 of R.A. No. 6657. In the same vein, the LBP's valuation also failed to take into account all of the factors enumerated in the said provision. It also failed to adduce any competent evidence to support its valuation.

Accordingly, in accordance with this Court's ruling in *Alfonso*, a remand of this case for reception of further evidence is necessary in order for the trial court, acting as a special agrarian court, to determine just compensation pursuant to Section 17 of R.A. No. 6657 and the applicable DAR regulations.[24]

WHEREFORE, the Decision dated November 10, 2010 and the Resolution dated July 14, 2011 of the Court of Appeals in CA-G.R. SP No. 01431 are hereby **REVERSED** and **SET ASIDE**. Civil Case No. 1514 is **REMANDED** to the Regional Trial Court of Tandag, Surigao del Sur, Branch 27, for reception of evidence on the issue of just compensation in accordance with this ruling.

SO ORDERED.

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

Zalameda, J., on official leave.

---

[23] *Land Bank of the Phils. v. Heirs of Jesus Alsua*, 753 Phil. 323, 333 (2015).

[24] *Land Bank of the Phils. v. Heirs of Lorenzo Tañada*, 803 Phil. 103, 108-109 (2017).

THIRD DIVISION

[G.R. No. 204010. September 23, 2020]

LAND BANK OF THE PHILIPPINES, *Petitioner, v.* **LUDOVICO D. HILADO,** *Respondent*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; DISMISSAL OF A CASE PURELY ON TECHNICAL GROUNDS IS FROWNED UPON; PETITIONER'S SUBSEQUENT COMPLIANCE SHOULD HAVE INSPIRED THE COURT OF APPEALS TO TREAT THE PETITION WITH LIBERALITY. — It is well to remember that this Court, in not a few cases, has consistently held that cases shall be determined on the merits, after full opportunity to all parties for ventilation of their causes and defenses, rather than on technicality or some procedural imperfection. In so doing, the ends of justice would be better served. The dismissal of cases purely on technical grounds is frowned upon and the rules of procedure ought not to be applied in a very rigid, technical sense, for they are adopted to help secure, not override, substantial justice, and thereby defeat their very ends. Indeed, rules of procedure are mere tools to expedite the resolution of cases and other matters pending in court. A strict and rigid application of the rules that would result in technicalities that tend to frustrate rather than promote justice must be avoided. LBP's explanation and subsequent compliance through its motion for reconsideration should have inspired an attitude of liberality on the part of the CA. While it appears to have done so in its second assailed Resolution, it went on to uphold the dismissal of the case for lack of merit, instead of reinstating or giving due course to the petition.

2. POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION; EMINENT DOMAIN; DETERMINATION OF JUST COMPENSATION OF LANDS ACQUIRED BY THE GOVERNMENT UNDER THE COMPREHENSIVE AGRARIAN REFORM LAW OF 1988 (RA 6657), EXPLAINED; FAILURE TO CONSIDER THE VALUATION FACTORS UNDER THE LAW RESULTS IN THE REMAND OF THE CASE TO THE SPECIAL AGRARIAN COURT FOR PROPER

DETERMINATION OF JUST COMPENSATION. –– Respondent's property was taken when R.A. No. 6657 or the "Comprehensive Agrarian Reform Law of 1988" was already in effect. The taking of property under R.A. No. 6657 is an exercise of the power of eminent domain by the State. The valuation of property or determination of just compensation in eminent domain proceedings is essentially a judicial function which is vested in the courts and not in administrative agencies. Section 57 of R.A. No. 6657 expressly grants the RTCs, acting as SACs, original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners. In determining just compensation of lands acquired by the government under CARP, Section 17 of R.A. No. 6657 prescribes the valuation factors to be considered. While Congress passed R.A. No. 9700 on August 7, 2009, further amending certain provisions of R.A. 6657, as amended, among them, Section 17, its implementing rules, *i.e.*, DAR A.O. No. 2, series of 2009 clarified that the said law shall not apply to claims/cases where the claim folders were received by the LBP prior to July 1, 2009, as in this case. In such a situation, just compensation shall be determined in accordance with Section 17 of R.A. No. 6657, as amended, prior to its further amendment by R.A. No. 9700. x x x [I]t is mandatory for the SAC to consider the DAR formula in the determination of just compensation for properties covered by the CARP. However, the SAC may depart from a strict application of the formula, provided the deviation is sufficiently justified by the surrounding circumstances and clearly explained in the decision. x x x [I]t becomes apparent, upon a reading of the Decision dated August 17, 2010, that the SAC did not consider the valuation factors enumerated under Section 17 of R.A. No. 6657 and did not adhere to the formula laid down in DAR A.O. No. 5, series of 1998, nor did it discuss the reasons for its non-observance[.] x x x In view of the foregoing, it is necessary to remand the case to the SAC for the determination of just compensation due to the respondent based on Section 17 of R.A. No. 6657, DAR A.O. No. 5, series of 1998, and in consonance with prevailing jurisprudence.

APPEARANCES OF COUNSEL

LBP Legal Services Group for petitioner.
Romeo S. Subaldo for respondent.

D E C I S I O N

GAERLAN, *J.*:

Before the Court is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court filed by petitioner Land Bank of the Philippines (LBP), assailing the Resolutions dated March 30, 2011[2] and September 27, 2012[3] issued by the Court of Appeals (CA) – Cebu City in CA-G.R. SP No. 05614, for being contrary to law and established jurisprudence. The first assailed Resolution dismissed the petition for review filed by LBP on purely technical grounds; the second assailed Resolution, on the other hand, denied for lack of merit petitioner's motion for reconsideration of the dismissal.

Ludovico D. Hilado (respondent) is the registered owner of a 31.3196-hectare parcel of land in Brgy. Mailum, Bago City, Negros Occidental covered by Transfer Certificate of Title (TCT) No. T-14735.[4]

On October 24, 2000, respondent voluntarily offered his property for sale to the Department of Agrarian Reform (DAR) for coverage under the Comprehensive Agrarian Reform Program (CARP) at ₱200,000.00 per hectare.[5]

Upon ocular inspection, however, it was determined that only the 17.9302-hectare portion of respondent's property devoted to the planting of rice, corn and *ipil-ipil* trees, with a small section used as a homelot, could be included in the said program.

---

[1] *Rollo*, pp. 18-43.

[2] Id. at 6-8; penned by Associate Justice Eduardo B. Peralta, Jr., with Associate Justices Edgardo L. Delos Santos (now a Member of this Court) and Gabriel T. Ingles, concurring.

[3] Id. at 10-13; penned by Associate Justice Gabriel T. Ingles, with Associate Justices Edgardo L. Delos Santos (now a Member of this Court) and Zenaida T. Galapate-Laguilles, concurring.

[4] CA *rollo*, p. 56.

[5] Id.

The remaining 13.3894 hectares, identified as a slope with no sign of any cultivation, was excluded therefrom.[6]

LBP valued the CARP-covered portion of respondent's property at ₱767,641.07, as reflected in the following breakdown:

LAND USE	AREA (HA.)	PRICE/HA.	LAND VALUE
Riceland-unirrigated	0.5473	Php 84,166.74	Php 46,064.46
Cornland	8.3188	33,272.76	76,789.44
Ipil-ipil	8.9153	49,071.30	437,485.36
Homelot	0.1488	49,071.30	7,301.81
TOTAL	**17.9302**		**Php 767,641.07**

Respondent rejected LBP's valuation. Consequently, he lodged a petition for preliminary determination of just compensation before the Department of Agrarian Reform Adjudication Board (DARAB).[7] The petition was docketed as DARAB Case No. R-0605-1357-01.[8]

After a re-inspection of the property and the presentation of evidence by the parties, the DARAB rendered a judgment sustaining the valuation made by LBP.[9] Accordingly, the amount of ₱767,641.07 was released to respondent without prejudice to his filing of a case for judicial determination of just compensation.[10]

Taking the position that his property could command a higher price, respondent filed, on November 12, 2002, an action[11] for

---

[6] Id. at 73-73.

[7] Id. at 85.

[8] Id. at 86.

[9] Id.

[10] Id. at 113.

[11] Id. at 56-59.

"fixing of just compensation" before the Regional Trial Court (RTC) of Bacolod City, Negros Occidental, Branch 46, sitting as a Special Agrarian Court (SAC). It was docketed as CAR Case No. 02-038.

Respondent alleged that LBP's valuation was unfair and unjust as it was solely based on the crops planted on his land at the time of the inspection and no consideration was made on the classification of the land based on its kind of soil and productivity. He pointed out that his property is situated not far from the highway and that, at the same time, it runs parallel to the Ma-ao river which can be used as a source for irrigation. He claimed that his property, as with the other surrounding properties, was formerly planted with sugarcane and that the buying price of land in the area was already pegged at ₱200,000.00 per hectare, making the price offered by LBP grossly inadequate.[12]

In its answer,[13] LBP denied that the basis of its valuation was unfair and unjust. It averred that the value of the 17.9302-hectare property of respondent was computed using the formula laid down by DAR in its Administrative Order (A.O.) No. 5, series of 1998.[14]

Thereafter, trial on the merits ensued. On August 17, 2010, the SAC rendered a Decision[15] ruling in favor of respondent and fixing the just compensation at ₱1,496,258.00, the decretal portion of which reads:

IN VIEW OF THE FOREGOING CONSIDERATIONS, this Court fixes the just compensation of [respondent's] 17.9302- hectare CARP-covered area, as follows:

---

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

[13] *Id.* at 67-70.

[14] Entitled "REVISED RULES AND REGULATIONS GOVERNING THE VALUATION OF LANDS VOLUNTARILY OFFERED OR COMPULSORILY ACQUIRED PURSUANT TO REPUBLIC ACT NO. 6657", April 15, 1998.

[15] CA *rollo*, pp. 42-48; under the sala of Judge George S. Patriarca.

A) For the cornland with an area of 8.3188 hectares, more or less, at ₱100,000.00 per hectare;

B) For the riceland with an area of .5473 hectares [sic], more or less, at ₱200,000.00 per hectare;

C) For the ipil-ipil planted area of 8.9153 hectares, more or less, at ₱60,000.00 per hectare; and

D) For the homelot with an area of .1488 hectare, more or less, at ₱20,000.00

in the total amount of ₱1,496,258.00.

SO ORDERED.[16]

LBP sought reconsideration,[17] but the same was denied by the SAC in its Order[18] dated November 17, 2010.

Subsequently, LBP interposed an appeal *via* a petition for review[19] before the CA. In its first assailed Resolution[20] dated March 30, 2011, the CA dismissed LBP's petition outright, citing three reasons:

1. the IBP (Integrated Bar of the Philippines) Receipts and PTRs (Professional Tax Receipt) of the two lawyers who signed the Petition in representation of Land Bank of the Philippines were not current as of the year they signed the Petition. The Supreme Court demands strict compliance with the requirement that members of the bar should include the number and date of the official receipt of payment of annual membership dues to the Integrated Bar of the Philippines in all pleadings, motions and papers to be filed in court. In addition the pleadings must indicate the professional tax receipt number of the counsel;

---

[16] Id. at 47-48.

[17] Id. at 51-52B.

[18] Id. at 50.

[19] Id. at 16-41.

[20] *Rollo*, pp. 6-8.

2. the IBP (Integrated Bar of the Philippines) Receipts and PTRs (Professional Tax Receipt) of the Notary Public in the Notarial Acknowledgment of the Verification and Certification of Non-Forum Shopping that was attached to the Petition, were apparently not current for the year the document was notarized in violation of the mandate in Section 2, Rule VIII of the 2004 Rules on Notarial Practice; and

3. there was no proper proof of service of the Petition to the adverse party and the court *a quo* as required by Section 13, Rule 13 of the 1997 Rules of Civil Procedure. Certainly, registry receipts can hardly be considered sufficient proof of receipt by the addressee of registered mail.[21] (Citations omitted)

On May 2, 2011, LBP filed a motion for reconsideration[22] of the aforesaid issuance. In its second assailed Resolution[23] dated September 27, 2012, the CA ruled that, "even if the Court glossed over the procedural infirmities of the [p]etition, the same is still dismissible under Section 4, Rule 42 of the Rules of Court for being patently filed without merit."[24] It affirmed the findings made by the SAC that LBP's valuation of respondent's property at ₱767,641.07 was "enormously low, inadequate and contrary to the sporting idea of fairness and equity."[25]

Hence, the instant petition anchored on the following grounds:

THE HONORABLE [CA] COMMITTED A SERIOUS ERROR OF LAW WHEN IT DENIED LBP'S MOTION FOR RECONSIDERATION BASED ON ALLEGED LACK OF MERIT.

THE HONORABLE [CA] COMMITTED A SERIOUS ERROR OF LAW WHEN IT ADOPTED THE SAC VALUATION OF ₱1,496,258.00

---

[21] Id. at 7-8.

[22] Id. at 55-65.

[23] Id. at 10-13.

[24] Id. at 11.

[25] Id. at 13.

FOR THE 17.9302 HECTARE-PROPERTY OF THE RESPONDENT, THE SAC HAVING CLEARLY IGNORED THE VALUATION FACTORS AS ENUMERATED UNDER SECTION 17 OF R.A. 6657 AS TRANSLATED INTO A BASIC FORMULA IN DAR ADMINISTRATIVE ORDER NO. 5, SERIES OF 1998.[26]

The petition is partly meritorious.

In dismissing outright LBP's petition for review, the CA found the following defects: (1) failure to indicate the current Professional Tax Receipt (PTRs) and Integrated Bar of the Philippines (IBP) official receipts of the lawyers who signed the petition; (2) failure to indicate the current PTR and IBP official receipt of the Notary Public in the notarial acknowledgment of the verification and certification of non-forum shopping; and (3) no proper proof of service.[27]

It is well to remember that this Court, in not a few cases, has consistently held that cases shall be determined on the merits, after full opportunity to all parties for ventilation of their causes and defenses, rather than on technicality or some procedural imperfection. In so doing, the ends of justice would be better served. The dismissal of cases purely on technical grounds is frowned upon and the rules of procedure ought not to be applied in a very rigid, technical sense, for they are adopted to help secure, not override, substantial justice, and thereby defeat their very ends. Indeed, rules of procedure are mere tools to expedite the resolution of cases and other matters pending in court. A strict and rigid application of the rules that would result in technicalities that tend to frustrate rather than promote justice must be avoided.[28]

LBP's explanation and subsequent compliance through its motion for reconsideration should have inspired an attitude of liberality on the part of the CA. While it appears to have done

---

[26] Id. at 27-28.

[27] Id. at 8.

[28] *Dr. Malixi v. Dr. Baltazar*, 821 Phil. 423, 442 (2017), citing *Durban Apartments Corporation v. Catacutan*, 514 Phil. 187, 195 (2005).

so in its second assailed Resolution, it went on to uphold the dismissal of the case for lack of merit, instead of reinstating or giving due course to the petition. Relying on the fact that SACs have original and exclusive jurisdiction over all petitions for the determination of just compensation, the CA made a sweeping statement that the SAC was correct in finding LBP's valuation of ₱767,641.07 to be iniquitous which, in effect, upheld the SAC's valuation of respondent's property at ₱1,496,258.00.

On this, petitioner differs by arguing that despite the nature of the jurisdiction of the SAC, it should not have totally ignored the valuation factors enumerated under Section 17 of Republic Act (R.A.) No. 6657[29] and the formula laid down in DAR A.O. No. 5, series of 1998.

The crux of the present controversy, therefore, lies in the binding character of the DAR formula, in relation to Section 17 of R.A. No. 6657, on the SACs in the exercise of their judicial function to determine just compensation.

Respondent's property was taken when R.A. No. 6657 or the "Comprehensive Agrarian Reform Law of 1988" was already in effect. The taking of property under R.A. No. 6657 is an exercise of the power of eminent domain by the State. The valuation of property or determination of just compensation in eminent domain proceedings is essentially a judicial function which is vested in the courts and not in administrative agencies.[30] Section 57 of R.A. No. 6657 expressly grants the RTCs, acting as SACs, original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners.

In determining just compensation of lands acquired by the government under CARP, Section 17 of R.A. No. 6657 prescribes the valuation factors to be considered. While Congress passed R.A. No. 9700[31] on August 7, 2009, further amending

---

[29] Comprehensive Agrarian Reform Law of 1988.

[30] *Land Bank of the Philippines v. Celada*, 515 Phil. 467, 477 (2006).

[31] Entitled "An Act Strengthening the Comprehensive Agrarian Reform Program (CARP), Extending the Acquisition and Distribution of All

certain provisions of R.A. 6657, as amended, among them, Section 17, its implementing rules, *i.e.*, DAR A.O. No. 2, series of 2009[32] clarified that the said law shall not apply to claims/cases where the claim folders were received by the LBP prior to July 1, 2009, as in this case. In such a situation, just compensation shall be determined in accordance with Section 17 of R.A. No. 6657, as amended, prior to its further amendment by R.A. No. 9700.[33]

Thus, Section 17 of R.A. No. 6657 provides:

> Sec. 17. *Determination of Just Compensation*. – In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property, as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

Pursuant to the DAR's rule-making power to carry out the object and purposes of R.A. No. 6657, as amended, DAR A.O. No. 5, series of 1998 precisely "filled in the details" of Section 17, R.A. No. 6657 by providing a basic formula by which the factors mentioned therein may be taken into account,[34] *viz.*:

Agricultural Lands, Instituting Necessary Reforms, Amending for The Purpose Certain Provisions of Republic Act No. 6657, Otherwise Known as the Comprehensive Agrarian Reform Law of 1988, as Amended, and Appropriating Funds Therefor." (2009)

[32] Entitled "RULES AND PROCEDURES GOVERNING THE ACQUISITION AND DISTRIBUTION OF AGRICULTURAL LANDS UNDER REPUBLIC ACT (R.A.) NO. 6657, AS AMENDED BY R.A. 9700." (2009)

[33] *Heirs of Pablo Feliciano, Jr. v. Land Bank of the Philippines*, 803 Phil. 253, 261-262 (2017).

[34] *JMA Agricultural Development Corporation v. Land Bank of the Philippines*, G.R. No. 206026, July 10, 2019.

II. The following rules and regulations are hereby promulgated to govern the valuation of lands subject of acquisition whether under voluntary offer to sell (VOS) or compulsory acquisition (CA).

A. There shall be one basic formula for the valuation of lands covered by VOS or CA:

LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1)

Where:	LV	=	Land Value
	CNI	=	Capitalized Net Income
	CS	=	Comparable Sales
	MV	=	Market Value per Tax Declaration

The above formula shall be used if all three factors are present, relevant and applicable.

A.1 When the CS factor is not present and CNI and MV are applicable, the formula shall be:

LV = (CNI x 0.9) + (MV x 0.1)

A.2 When the CNI factor is not present, and CS and MV are applicable, the formula shall be:

LV = (CS x 0.9) + (MV x 0.1)

A.3 When both the CS and CNI are not present and only MV is applicable, the formula shall be:

LV = MV x 2

In no case shall the value of idle land using the formula MV x 2 exceed the lowest value of land within the same estate under consideration or within the same barangay or municipality (in that order) approved by LBP within one (1) year from receipt of claim folder. (Emphasis in the original)

In *Alfonso v. Land Bank of the Philippines*,[35] the Court harmonized the SAC's exercise of judicial discretion, on the one hand, and the obligatory application of the compensation

[35] 801 Phil. 217 (2016).

valuation factors in Section 17 of R.A. 6657 and the DAR formula, on the other, ruling in this wise:

x x x **The factors listed under Section 17 of RA 6657 and its resulting formulas provide a uniform framework or structure for the computation of just compensation which ensures that the amounts to be paid to affected landowners are not arbitrary, absurd or even contradictory to the objectives of agrarian reform. Until and unless declared invalid in a proper case, the DAR formulas partake of the nature of statutes, which under the 2009 amendment became law itself, and thus have in their favor the presumption of legality, such that courts shall consider, and not disregard, these formulas in the determination of just compensation for properties covered by the CARP. When faced with situations which do not warrant the formula's strict application, courts may, in the exercise of their judicial discretion, relax the formula's application to fit the factual situations before them, subject only to the condition that they clearly explain in their Decision their reasons (as borne by the evidence on record) for the deviation undertaken. It is thus entirely allowable for a court to allow landowner's claim for an amount higher than what would otherwise have been offered (based on an application of the formula) for as long as there is evidence on record sufficient to support the award.**[36] (Emphasis in the original)

Hence, it is mandatory for the SAC to consider the DAR formula in the determination of just compensation for properties covered by the CARP. However, the SAC may depart from a strict application of the formula, provided the deviation is sufficiently justified by the surrounding circumstances and clearly explained in the decision.

Applying the above principles to the case at bar, it becomes apparent, upon a reading of the Decision dated August 17, 2010, that the SAC did not consider the valuation factors enumerated under Section 17 of R.A. No. 6657 and did not adhere to the formula laid down in DAR A.O. No. 5, series of 1998, nor did it discuss the reasons for its non-observance:

After considering the entire records of this case and the evidence presented, the Court finds the petition impressed with merit.

---

[36] Id. at 282.

Justice and equity dictate that it be so.

R.A. 6657 of the Comprehensive Agrarian Reform Act was signed into law on June 15, 1988. The said law mandates that the Land Bank of the Philippines (LBP) shall compensate the landowner in such amount as may be agreed upon by the landowner, the DAR and LBP or as may be determined by the court as just compensation taking into consideration the costs [sic] of acquisition of the land, the current value of like properties, its nature, actual use, income, sworn valuation by the owner, tax declarations and the assessments by government assessors.

In the case at bar, it appears that petitioner was compensated by respondents the amount of ₱767,641.07 only for his 17.9302-hectare CARP-covered area, or at the average cost of only around ₱43,000.00, more or less, per hectare. Applying the tax declaration dated January 1, 2000 (supra) with the market value of the said property in the total amount of ₱1,938,056.85, the average value per hectare would be ₱62,000.00, more or less, and this average value per hectare even includes the 13 hectares which were rejected by respondents because the same constituted a slope.

Likewise, it appears that the eight (8)-hectare portion which was planted to corn has a land valuation of only ₱33,272.76 per hectare. The evidence showed that this area was previously planted by petitioner to sugarcane (Exhibit "G"). Petitioner claimed that the value of the land adjacent to this portion was assessed by respondents a land valuation of ₱100,000.00 per hectare.

In the case of LBP vs. Pacita Agricultural Multi-Purpose Coop., etc., G.R. No. 177607, January 19, 2009, the Supreme Court held that it is more equitable for the Special Agrarian Court (SAC) to determine just compensation of the property using the valuation at the time of its payment and considering the full and fair equivalent of the property taken from its owner by the expropriator, equivalent being real, substantial, full and ample.

Verily, respondents' valuation of petitioner's landholding is enormously low, inadequate and contrary to the sporting idea of fairness and equity. Petitioner has presented its case with clear, compelling and substantive evidence.[37] (Underscoring in the original)

---

[37] CA *rollo*, pp. 46-47.

The SAC merely stated that LBP's valuation is "enormously low, inadequate and contrary to the sporting idea of fairness," which approximates the statement made by the SAC in *Alfonso* that the government's valuation is "unrealistically low." In arriving at the amount of just compensation to be paid to respondent, the SAC solely based its conclusion on the market value per tax declaration of respondent's property and the alleged assessment made by LBP on the land adjacent thereto. This Court notes that the 17.9302-hectare property of respondent comprises of several portions with varying land uses and the SAC did not even bother to offer a detailed explanation as to how the land values for each of them came about, as well as the evidence to support the same.

For these reasons, the valuation made by the SAC cannot be upheld and must be struck down as illegal. Nevertheless, this Court cannot automatically adopt LBP's own calculation as prayed for in the instant petition. The veracity of the facts and figures which it used in arriving at the amount of just compensation under the circumstances involves the resolution of questions of fact which is, as a rule, improper in a petition for review on *certiorari*. We have likewise consistently taken the position that this Court is not a trier of facts.[38]

In view of the foregoing, it is necessary to remand the case to the SAC for the determination of just compensation due to the respondent based on Section 17 of R.A. No. 6657, DAR A.O. No. 5, series of 1998, and in consonance with prevailing jurisprudence.

WHEREFORE, premises considered, the petition is **PARTIALLY GRANTED**. Accordingly, the Resolutions dated March 30, 2011 and September 27, 2012 issued by the Court of Appeals – Cebu City in CA-G.R. SP No. 05614 are **ANNULLED and SET ASIDE**.

---

[38] *Land Bank of the Philippines v. Heirs of Lorenzo Tañada, et al.*, 803 Phil. 103, 114 (2017).

CAR Case No. 02-038 is **REMANDED** to the Regional Trial Court of Bacolod City, Negros Occidental, Branch 46 for the recomputation of the final valuation of respondent Ludovico Hilado's 17.9302-hectare property with deliberate dispatch.

SO ORDERED.

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

Zalameda, J., on official leave.

SECOND DIVISION

[G.R. No. 218778. September 23, 2020]

RODOLFO N. PADRIGON, *Petitioner*, *v.* **BENJAMIN E. PALMERO,** *Respondent*.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; AS A RULE, FINDINGS OF FACT AND CONCLUSIONS OF LAW OF THE COURT OF APPEALS ARE RESPECTED ON APPEAL; CASE AT BAR.— [T]he Court adopts the findings of fact and conclusions of law of the CA in its assailed Decision in CA-G.R. CV No. 101739 which ruled that respondent had sufficiently established his claim by preponderance of evidence; and that the deeds and the checks presented duly established that there was an existing obligation between the parties herein. Further, the CA ruled that it was no less than the existence of Prudential Bank Check Nos. 040571 and 040572 issued in favor of respondent and drawn against the bank account of petitioner for an amount of ₱200,000.00 and ₱600,000.00, respectively, that established the actual amount owed by petitioner to respondent.

2. MERCANTILE LAW; NEGOTIABLE INSTRUMENTS; CHECKS; A CHECK THAT IS COMPLETED AND DELIVERED TO ANOTHER IS SUFFICIENT *PER SE* TO PROVE THE EXISTENCE OF A LOAN OBLIGATION.— Citing *Pacheco v. Court of Appeals*, the CA ratiocinated that a check constitutes an evidence of indebtedness and is a veritable proof of an obligation that can be used *in lieu* of and for the same purpose as a promissory note. Thus, the checks, completed and delivered to respondent, are sufficient *per se* to prove the existence of the loan obligation of petitioner to respondent.

3. CIVIL LAW; DAMAGES; ACTUAL OR COMPENSATORY DAMAGES; INTEREST ON THE MONETARY AWARD, COMPUTATION THEREOF; CASE AT BAR.— [T]he Court deems it proper to modify the monetary awards which was granted by the RTC Makati in favor of respondent as affirmed by the CA. Since the present case involves forbearance of money, the interest imposed on the award of ₱800,000.00 as

actual damages should be modified such that in accordance with *Nacar v. Gallery Frames, et al.*, the award of ₱800,000.00 should bear the interest rate of 12% per annum of the total monetary awards, computed from the date of demand, *i.e.*, January 6, 2005 to June 30, 2013, and 6% per annum from July 1, 2013 until when this Decision becomes final and executory.

Further, the Court held in *Nacar v. Gallery Frames, et al.*, when the judgment of the court awarding a sum of money becomes final and executory, regardless of whether the obligation constitutes a loan or forbearance of money, the rate of legal interest 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.

Thus, in this case, the total monetary awards in favor of respondent should earn legal interest at the rate of 6% per annum from finality of this Decision until fully paid.

APPEARANCES OF COUNSEL

Sillano and Associates for petitioner.
Campanilla and Ponce Law Firm for respondent.

D E C I S I O N

INTING, *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision[2] dated February 6, 2015 and the Resolution[3] dated June 16, 2015 of the Court of Appeals (CA) in CA-G.R. CV No. 101739 which affirmed the Decision[4] dated September 19,

---

[1] *Rollo*, pp. 6-14.

[2] *Id.* at 26-41; penned by Associate Justice Isaias P. Dicdican with Associate Justices Elihu A. Ybañez and Victoria Isabel A. Paredes, concurring.

[3] *Id.* at 42-43.

[4] CA *rollo*, pp. 41-44; penned by Presiding Judge Ronald B. Moreno.

2013 rendered by Branch 147, Regional Trial Court, Makati City (RTC Makati) in Civil Case No. 05-060.

The Antecedents

The case stemmed from a Complaint[5] for Collection of Sum of Money with Damages filed by Benjamin E. Palmero (respondent) against Rodolfo N. Padrigon (petitioner) on January 25, 2005.

In the complaint, respondent alleged the following:

Sometime in 2001, petitioner expressed his intention to buy respondent's property consisting of a parcel of land with an ice plant located in Brgy. Tugos, Paracale, Camarines Norte with Transfer Certificate of Title (TCT) No. T-38111 (subject property); and that petitioner offered to buy the subject property for ₱2,000,000.00 to be paid by delivering in respondent's favor eight developed lots plus cash in the amount of ₱500,000.00.[6]

In May 2001, the parties executed a Deed of Conditional Sale[7] with the following conditions, to wit:

That this Deed of Conditional Sale will be replaced by a Deed of Absolute Sale after the satisfactory compliance by both the vendor and the vendee of the following terms and conditions:

1. That Mr. BENJAMIN PALMERO shall execute a DEED OF ABSOLUTE SALE in favor of Engr. RODOLFO PADRIGON against a parcel of land, including the improvements therein, described as Lot 1161-B, Psd-05-018356, located at Brgy. Tugos, Paracale, Camarines Norte, covered by TCT No. 38111 and containing an area of ONE THOUSAND THREE HUNDRED (1,300) SQUARE METERS more or less;

2. That Engr. RODOLFO PADRIGON shall, in his name, apply for a bank loan at any bank of his choice, using the said

---

[5] Records, pp. 1-6.

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

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

parcel of land covered by TCT No. 38111 as collateral or security thereof;

3. That Engr. RODOLFO PADRIGON shall, after loan take out, remit to Mr. BENJAMIN PALMERO the amount of FIVE HUNDRED EIGHTY THOUSAND FOUR HUNDRED PESOS (Php580,400.00) by way of three (3) postdated personal checks dated September 1, 2001, October 1, 2001, and November 1, 2001;

4. That finally, Engr. RODOLFO PADRIGON shall close out the mortgage for the eight (8) parcels of land which is the subject of this Conditional Deed of Sale and submit to Mr. BENJAMIN PALMERO the titles of such parcels of land on or before February 1, 2002, free from all liens and encumbrances.[8]

On May 11, 2001, respondent executed a Deed of Absolute Sale[9] over the subject property in compliance with the conditions stated in the Deed of Conditional Sale earlier executed by both respondent and petitioner.

In the process, petitioner asked him to change the actual amount of the consideration for the subject property to make it appear that it was sold only for ₱70,000.00. Moreover, before all of the conditions in the Deed of Conditional Sale could be complied with, petitioner changed his original offer of the eight developed residential lots considering that there was a group who wanted to acquire them. Petitioner instead asked respondent if petitioner could replace them with two bigger parcels of land, plus a cash amount of ₱1,000,000.00. Respondent agreed to the offer. Subsequently, the deed of conditional sale was cancelled.[10] Petitioner, thereafter, executed an undated Deed of Absolute Sale[11] conveying two parcels of land located at

---

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

[9] *Id.* at 10.

[10] See Cancellation of Deed of Conditional Sale dated February 28, 2002, *id.* at 11.

[11] *Id.* at 12.

Brgy. Tawig, Paracale, Camarines Norte in favor of respondent and issued three postdated checks[12] in respondent's name to cover the amount of ₱1,000,000.00 as part of the agreement.

Later on, petitioner requested respondent to postpone the encashment of the checks issued to him. Respondent acceded. However, after several extensions, respondent finally proceeded to deposit the checks. Unfortunately, the checks were all dishonored by reason of "account closed."[13]

Sometime in June 2004, petitioner replaced one of the dishonored checks with another check in the amount of ₱200,000.00. However, petitioner refused to replace the two other dishonored checks amounting to ₱800,000.00.[14]

Notwithstanding respondent's repeated demands, the last of which was thru a letter dated December 11, 2004 which was received on January 6, 2005, petitioner continuously failed and refused to make good the amount represented by the dishonored checks or to pay the amount of ₱800,000.00 to respondent. Thus, respondent filed an action for collection of sum of money for the amount of ₱800,000.00 against petitioner.[15]

Instead of an Answer, petitioner filed a Motion to Dismiss[16] raising absence of cause of action on the part of respondent considering that the checks, subject of the complaint, were already stale and could no longer be a source of a valid right.[17]

On July 1, 2005, the RTC Makati denied the motion.[18] Petitioner filed a Motion for Reconsideration (to the Order dated July 1,

---

[12] Prudential Bank Check Nos. 040570, 040571 and 040572, *id.* at 13-15.

[13] *Id.* at 16.

[14] *Id.* at 29.

[15] Records, pp. 333-334.

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

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

[18] See Order dated July 1, 2005, *id.* at 68.

2005),[19] but the RTC Makati denied it in an Order[20] dated February 23, 2006. The RTC Makati gave petitioner a period of ten days from receipt of the Order to file his Answer. Petitioner moved for an extension of time to file his Answer which the RTC Makati favorably granted. Again, instead of filing an Answer, petitioner filed a Petition[21] (with prayer for Prohibitory and Mandatory Injunction and/or Temporary Restraining Order) under Rule 65 of the Rules of Court with the CA assailing the RTC Makati Order denying his Motion to Dismiss. Consequently, the RTC Makati issued an Order dated June 29, 2006 sending the records of the case to the Archives without prejudice to its reinstatement.

The CA dismissed the petition in a Resolution[22] dated January 6, 2010. It likewise denied petitioner's motion for reconsideration.

Hence, on August 18, 2011, respondent filed with the RTC Makati a Motion to Revive the case.[23] Petitioner opposed asserting that the case must be dismissed because respondent had failed to prosecute the case within a period of five years, and that he was guilty of *laches*.

The RTC Makati in an Order[24] dated September 18, 2011, granted respondent's motion to revive the proceedings before it and ordered petitioner to file his Answer within a non-extendible period of 15 days. For the third time, instead of filing an Answer, petitioner filed a Motion for Reconsideration.[25] Respondent filed his Comment/Opposition (to the Motion for Reconsideration

---

[19] *Id.* at 75-76.

[20] *Id.* at 77.

[21] *Id.* at 84-92.

[22] *Id.* at 127-128; penned by Associate Justice Priscilla J. Baltazar-Padilla (now a member of the Court) with Associate Justices Hakim S. Abdulwahid and Vicente S.E. Veloso, concurring.

[23] *Id.* at 113-115.

[24] *Id.* at 134.

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

dated 25 October 2011) with a Motion to Declare the [Petitioner] in Default.[26]

On September 19, 2012, the RTC Makati denied the Motion for Reconsideration filed by petitioner.[27] On October 4, 2012, it declared petitioner in default.[28] Hence, respondent was able to present his evidence *ex parte*.

Feeling aggrieved by the default order, petitioner filed a Motion to Set Aside Order of Default with attached Answer[29] dated November 8, 2012. On January 28, 2013, the RTC Makati denied the motion.[30]

On August 29, 2013, respondent proceeded with the presentation of his evidence *ex parte*.[31]

The Ruling of the RTC

On September 19, 2013, the RTC Makati rendered the Decision[32] in favor of respondent and ordered petitioner to pay the following: (1) actual damages in the amount of ₱800,000.00 with 6% interest *per annum* counted from the date of demand until the amount is fully paid; (2) attorney's fees in the amount of ₱80,000.00; and (3) cost of suit.

Petitioner filed an appeal with the CA.

The Ruling of the CA

Petitioner questioned the order of revival of the proceedings and the default order issued by the RTC Makati. He asserted that the RTC Makati erred in granting in favor of respondent

---

[26] *Id.* at 153-157.

[27] See Order dated September 19, 2012, *id.* at 163-164.

[28] *Id.* at 171.

[29] *Id.* at 173-174.

[30] See Order dated January 28, 2013, *id.* at 225.

[31] *Rollo*, p. 31.

[32] CA *rollo*, pp. 41-44.

the amount being prayed for in the complaint for collection of sum of money with damages.

In the assailed Decision[33] dated February 6, 2015, the CA denied petitioner's appeal for lack of merit and affirmed the RTC Makati Decision.

Petitioner filed a Motion for Reconsideration[34] and prayed for the reversal of the above CA Decision. On June 16, 2015, the CA rendered a Resolution[35] denying the motion.

Petitioner filed his Petition for Review on *Certiorari* before the Court.

The Petition

In the petition, petitioner alleges that respondent filed a Complaint[36] for Rescission of Deed of Absolute Sale, Recovery of TCT No. T-38111 & Damages (Complaint for Rescission) before Branch 39, RTC, Daet, Camarines Norte (RTC Daet) praying that the Deed of Absolute Sale dated May 11, 2001 over the subject property executed by respondent in favor of petitioner be rescinded or cancelled; and that petitioner be ordered to return and to deliver to him the owner's duplicate copy of TCT No. T-38111.[37]

Petitioner argues that respondent, in praying for the rescission, nullification, and cancellation of the Deed of Absolute Sale dated May 11, 2001 and for the return of the corresponding owner's duplicate copy of TCT No. T-38111, is deemed to have abandoned, discarded, relinquished, and withdrawn the instant Complaint for Sum of Money with Damages before the RTC Makati for the simple reason that there is no more transaction to serve as a basis for the collection. Thus, petitioner

---

[33] *Rollo*, 26-41.

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

[35] *Id.* at 42-43.

[36] *Id.* at 15-19.

[37] *Id.* at 18.

insists that the filing of the new complaint is a supervening fact that will render the complaint for sum of money moot. To make the petitioner still liable by virtue of the cancelled deed of absolute sale dated May 11, 2001 is to unjustly enrich respondent.[38]

Comment

In his Comment,[39] respondent did not contest the existence of the Complaint for Rescission before the RTC Daet. However, respondent denies abandoning his claims in the Complaint for Sum of Money and Damages before the Makati RTC which is now before the Court on appeal.

Notably, respondent argues that the Complaint for Sum of Money and Damages before the Makati RTC is grounded on petitioner's failure to make good his obligation of paying the consideration for the sale of the building, ice plant, and machinery. On the other hand, the case before the RTC Daet is the Complaint for Rescission which is grounded on petitioner's failure to settle his obligation for the sale of respondent's lot covered by TCT No. T-38111 of the Registry of Deeds for Daet, Camarines Norte.

Our Ruling

The Court denies the petition.

First, the Court deems it worthy to emphasize that there is yet no judgment rendered on the merits on respondent's Complaint for Rescission declaring the rescission of the deed of absolute sale dated May 11, 2001. Thus, petitioner's claim that there is no more purchase price to collect in the complaint for sum of money and damages because there is no more deed of absolute sale to speak of is erroneous.

Second, petitioner failed to establish the abandonment of respondent's Complaint for Sum of Money with Damages by

---

[38] *Id.* at 11.

[39] *Id.* at 50-61.

virtue of respondent's act of filing the Complaint for Rescission before the RTC Daet.

To recall, as narrated by the CA, petitioner conveyed to respondent two parcels of land located at Brgy. Tawig, Paracale, Camarines Norte in favor of respondent and issued three postdated checks with a total amount of ₱1,000,000.00 in respondent's name as payment for the purchase of respondent's parcel of land covered by TCT No. T-38111. But per allegation of respondent, petitioner's payment is also for the purchase of the building, ice plant, and machinery. Unfortunately, the three postdated checks were dishonored. While petitioner replaced one of the dishonored checks, he refused to replace the two checks with a total amount of ₱800,000.00. Thus, respondent filed the Complaint for Sum of Money with Damages against petitioner.

On the other hand, the Complaint for Rescission which was attached by petitioner in his petition provides in part:

> 4. *On May 11, 2001, [respondent] and [petitioner] entered into an agreement whereby the lot covered by TCT No. T-38111 will be sold for a value of PhP1,000,000.00 to the latter. The building and the ice-making machineries standing on this lot is covered by a separate agreement on the sale thereof also for an amount of Php1,000,000.00.* Hence, the total value of the Lot, Building and Ice-Making Machines is ₱2,000,000.00.
>
> x x x x
>
> 7. Consequently, a Deed of Absolute Sale for the two lots was also executed by [petitioner] in favor of the [respondent], copy is marked as Annex "D". In both deeds (Annex "C" and "D"), the real value of the consideration agreed by the parties was understated. Significantly, however, these two lots with TCT Nos. T-42380 and T-42381 correspond already as payment to the value of the land of the plaintiff with TCT No. T-38111 worth PhP 1,000,000.00 and [petitioner] issued three post-dated Prudential Bank Check Nos. 040570, 040571 and 040572 dated August 15, 2002, May 15, 2002 and June 15, 2002 with a value of PhP 200,000.00, PhP 200,000.00 and PhP 600,000.00 respectively to cover the payment for the building and machineries that costs PhP 1,000,000.00.

8. Thereafter, [petitioner] requested that the 8 lots be exchanged to two lots covered by TCT Nos. T-42830 and T-42381 because he found interested buyers of the 8 lots, the corresponding Deed of Absolute Sale is marked as Annex "D" supra. TCT Nos. T-42830 and T-42381 are marked as Annex "E" and "F" respectively.

9. During the agreed barter of TCT No. T-38111 for TCT Nos. T-42380 and T-42381, the title of the latter lots were covered by a mortgage with Development Bank of the Philippines (DBP) but [petitioner] promised to redeem it and deliver these titles to [respondent] a month after August 19, 2002. However, [petitioner] failed to redeem it and [respondent] discovered upon verification from the Registry of Deeds of Camarines Norte that these TCT Nos. T-42380 and T-42381 were already acquired by and registered to DBP, the mortgagee bank, as of February 14, 2008 with new TCT Nos. 71719 and 717118 copies are marked as Annex "G" and "H";

10. Consequently, [respondent] wrote [petitioner] on August 2, 2012 and demand for the return of payment of PhP 1,000,000.00 as the agreed value of the TCT No. T-38111 which title was delivered by [respondent] to [petitioner] upon execution of the Deed of Absolute Sale on May 11, 2001, copy of the letter is marked as Annex "I";

11. In his reply dated August 17, 2012, [petitioner] asserts that the sale of the land with TCT No. T-38111 is void because it was declared in the deed as residential when it is not the letter is marked as Annex "J". This is just a false ground for [petitioner] to declare the sale void because the declaration in the sale that the land is residential when in truth it is agricultural not a fraudulent representation that nullifies the sale. It was his own scheme to declare it as residential to increase the appraised value for his own purpose of mortgaging it with the bank. Be that as it may, [petitioner] also treats the sale void although on an erroneous ground;

12. Considering that the [petitioner] failed to make good with the delivery of TCT Nos. T-42380 and T-42381 or pay the sum of ₱1,000,000.00 as consideration for TCT No. T-38111, the Deed of Absolute Sale executed on May 11, 2001 should be rescinded.

CAUSE/S OF ACTION

13. In the Deed of Absolute Sale dated May 11, 2001, [petitioner's] obligation was to deliver the titles of the land with TCT Nos. T-42380 and T-42381 or pay the sum of PhP 1,000,000.00. However, [petitioner]

failed to comply with his obligations which constitutes breach of contract.

x x x x

14. It turned out that [petitioner] had no intention at all to comply with his own obligation because all his representations made to secure the consent of [respondent] in this dealing were false. His manifest bad faith warrants the imposition upon him not just of moral damages that [respondent] suffered such as anxiety, stress, sleepless nights but also exemplary damages for his bad faith.

x x x x

PRAYER

WHEREFORE, premises considered, it is respectfully prayed of this Honorable Court that this judgment be rendered to wit:

1. Declaring the Deed of Sale dated May 11, 2001 executed by [respondent] in favor of [petitioner] rescinded or canceled;
2. Ordering the [petitioner] to return or deliver to [respondent] the Owner's Duplicate Copy of TCT No. T-38111;
3. Ordering [petitioner] to pay moral and exemplary damages as the Court may determine after trial, and;
4. Ordering the [petitioner] to pay Acceptance Fee of PhP 50,000.00, PhP 2,000.00 for every Court Hearing, and the costs of suit.

Other relief just and equitable under the premises are likewise prayed for.[40]

Without prejudging the merits of the Complaint for Rescission, the Court finds that petitioner failed to establish that respondent abandoned the Complaint for Sum of Money with Damages by filing the Complaint for Rescission.

Specifically, a reading of the Complaint for Rescission shows that while respondent sought the rescission or cancellation of the Deed of Absolute Sale dated May 11, 2001, it appears that what respondent intends to be rescinded by the RTC Daet is

---

[40] *Id.* at 16-18.

only the sale of the lot and not the sale of the building, ice plant, and machinery. This can be gathered from respondent's premise as stated in his Complaint for Rescission that the sale of the lot is separate from the sale of the building, ice plant, and machinery.

In the mind of respondent, there are two transactions: *first*, for the sale of the lot; and *second*, for the sale of the building, ice plant, and machinery. Further, the consideration for the purchase of the building, ice plant, and the machinery is separate from the consideration for the purchase of the lot where the ice plant and the machinery stand.

Notably, while the complaint is one for rescission, respondent only discussed therein petitioner's failure to deliver the titles of the land with TCT Nos. T-42380 and T-42381 or pay the sum of ₱1,000,000.00. Respondent did not raise petitioner's failure to replace the two dishonored checks amounting to a total of ₱800,000.00 which, undoubtedly, is a breach of the agreement which may give rise to rescission under Article 1191[41] of the Civil Code. However, respondent omitted any discussion as to the postdated checks.

In fact, in his Comment, respondent averred that the sale of the ice plant building and machinery was already consummated upon turn over of the same.[42]

---

[41] Article 1191, CIVIL CODE:

ARTICLE 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with articles 1385 and 1388 and the Mortgage Law (1124).

[42] *Rollo*, p. 60.

Thus, regardless of whether respondent's appreciation of his agreement with petitioner as elucidated in the Complaint for Rescission is correct, the Court finds that the filing of the Complaint for Rescission by respondent is not sufficient to establish respondent's abandonment of the Complaint for Sum of Money and Damages which is the subject of this petition, and consequently, its dismissal.

The Court notes petitioner's argument that there would be unjust enrichment on the part of the respondent if the Court is to affirm petitioner's liability for ₱800,000.00 with interest despite what he claims as the purported cancellation of the Deed of Absolute Sale dated May 11, 2001. To repeat, there is no ruling yet as to whether the rescission of the Deed of Absolute Sale dated May 11, 2001 is proper. Further, to the mind of the Court, it is before the RTC Daet where the Complaint for Rescission is pending for petitioner to raise the legal repercussions of the instant case—the Complaint for Sum of Money before the Makati RTC.

Accordingly, the determination of whether the court *a quo* and the appellate court erred in granting in favor of respondent the amount sought in the complaint for collection of sum of money remains to be an actual controversy involving rights which are legally demandable and enforceable that the Court needs to settle.[43]

All told, the Court adopts the findings of fact and conclusions of law of the CA in its assailed Decision in CA-G.R. CV No. 101739 which ruled that respondent had sufficiently established his claim by preponderance of evidence;[44] and that the deeds and the checks presented duly established that there was an existing obligation between the parties herein.[45] Further, the

---

[43] See *Purisima v. Security Pacific Assurance Corp.*, G.R. No. 223318, July 15, 2019, *citing Rep. of the Phils. v. Principalia Management and Personnel Consultants, Inc.*, 768 Phil. 334, 343 (2015), further citing *Sps. Arevalo v. Planters Development Bank, et al.*, 686 Phil. 236, 248-249 (2012).

[44] *Rollo*, p. 38.

[45] *Id.*

CA ruled that it was no less than the existence of Prudential Bank Check Nos. 040571 and 040572 issued in favor of respondent and drawn against the bank account of petitioner for an amount of ₱200,000.00 and ₱600,000.00, respectively, that established the actual amount owed by petitioner to respondent.[46]

Citing *Pacheco v. Court of Appeals*,[47] the CA ratiocinated that a check constitutes an evidence of indebtedness and is a veritable proof of an obligation that can be used *in lieu* of and for the same purpose as a promissory note.[48] Thus, the checks, completed and delivered to respondent, are sufficient *per se* to prove the existence of the loan obligation of petitioner to respondent.[49]

However, the Court deems it proper to modify the monetary awards which was granted by the RTC Makati in favor of respondent as affirmed by the CA.

Since the present case involves forbearance of money, the interest imposed on the award of ₱800,000.00 as actual damages should be modified such that in accordance with *Nacar v. Gallery Frames, et al.*,[50] the award of ₱800,000.00 should bear the interest rate of 12% per annum of the total monetary awards, computed from the date of demand, *i.e.*, January 6, 2005 to June 30, 2013, and 6% per annum from July 1, 2013 until when this Decision becomes final and executory.[51]

Further, the Court held in *Nacar v. Gallery Frames, et al.*, when the judgment of the court awarding a sum of money becomes final and executory, regardless of whether the obligation

---

[46] *Id.* at 39.

[47] 377 Phil. 627 (1999).

[48] *Rollo*, p. 39.

[49] *Id.* at 40.

[50] 716 Phil. 267 (2013).

[51] See also *Rivera v. Sps. Chua*, 750 Phil. 663 (2015).

constitutes a loan or forbearance of money, the rate of legal interest 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.

Thus, in this case, the total monetary awards in favor of respondent should earn legal interest at the rate of 6% per annum from finality of this Decision until fully paid.

WHEREFORE, the petition is **DENIED**. The Decision dated February 6, 2015 and the Resolution dated June 16, 2015 of the Court of Appeals in CA-G.R. CV No. 101739 are **AFFIRMED** with **MODIFICATION** in that petitioner is ordered to pay respondent the following:

1. the amount of ₱800,000.00 as actual damages which shall earn legal interest of 12% *per annum* of the total monetary awards, computed from January 6, 2005 to June 30, 2013, and 6% *per annum* from July 1, 2013 until finality of judgment;
2. attorney's fees in the amount of ₱80,000.00;
3. cost of suit;
4. 6% *per annum* interest on the total monetary awards from the finality of this Decision until fully paid.

SO ORDERED.

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

Delos Santos, J., on official leave.

Baltazar-Padilla, J., on leave.

SECOND DIVISION

[G.R. No. 238805. September 23, 2020]

SPOUSES JIMMY M. LIU & EMILE L. LIU, *Petitioners, v.* **COURT OF APPEALS, REGIONAL TRIAL COURT, BRANCH 17 (DAVAO CITY) PRESIDING JUDGE AND ALVIN CRUZ,** *Respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEALS FROM JUDGMENTS OF THE COURT OF APPEALS SHOULD BE BY A VERIFIED PETITION FOR REVIEW ON CERTIORARI UNDER RULE 45 OF THE RULES OF COURT. —** Well-settled is the rule that appeals from judgments or final orders or resolutions of the CA should be by a verified petition for review on *certiorari* under Rule 45 of the Rules of Court. The Court made it clear that an aggrieved party is prohibited from assailing a decision or final order of the CA *via* Rule 65 because this recourse is proper only if the party has no plain, speedy, and adequate remedy in the course of law. In this case, petitioners had an adequate remedy which is a petition for review on *certiorari* under Rule 45 of the Rules of Court.

2. **ID.; TRIAL COURTS; JURISDICTION OVER COMPLAINT FOR *ACCION REIVINDICATORIA*. —** The Court reiterates the ruling in *Heirs of Valeriano Concha, Sr. v. Sps. Lumocso*, thus: In a number of cases, we have held that actions for reconveyance of or for cancellation of title to or to quiet title over real property are actions that fall under the classification of cases that involve "title to, or possession of, real property, or any interest therein." x x x Thus, under the old law, there was no substantial effect on jurisdiction whether a case is one, the subject matter of which was incapable of pecuniary estimation, under Section 19(1) of B.P. 129, or one involving title to property under Section 19(2). The distinction between the two classes became crucial with the amendment introduced by R.A. No. 7691 in 1994, which expanded the exclusive original jurisdiction of the first level courts to include "all civil actions which involve title to, or possession of, real property, or any

interest therein **where the assessed value of the property or interest therein does not exceed Twenty thousand pesos (₱20,000.00) or, in civil actions in Metro Manila, where such assessed value does not exceed Fifty thousand pesos (₱50,000.00) exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses and costs."** Thus, **under the present law, original jurisdiction over cases the subject matter of which involves "title to, possession of, real property or any interest therein" under Section 19(2) of B.P. 129 is divided between the first and second level courts, with the assessed value of the real property involved as the benchmark.** This amendment was introduced to "unclog the overloaded dockets of the RTCs which would result in the speedier administration of justice." The CA correctly ruled that it is the MTC that has jurisdiction over petitioners' complaint for *accion reivindicatoria* and not the RTC.

APPEARANCES OF COUNSEL

Zozobrado Tupas & Zozobrado Law Office for petitioners.
Teves Cabiten Polinar Lee & Partners for respondent Alvin Cruz.

D E C I S I O N

INTING, *J.*:

This resolves the Petition for *Certiorari*[1] under Rule 65 of the Rules of Court praying that the Decision[2] dated July 31, 2017 and the Resolution[3] dated January 31, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 07413-MIN be set aside and annulled.

---

[1] *Rollo*, pp. 8-30.

[2] *Id.* at pp. 32-40; penned by Associate Justice Oscar V. Badelles with Associate Justices Romulo V. Borja and Ruben Reynaldo G. Roxas, concurring.

[3] *Id.* at 41-43.

The Antecedents

The case stemmed from a complaint for recovery of real property *(accion reivindicatoria)*, reconveyance, to declare deed of sale by attorney-in-fact, power of attorney, affidavit of recovery and title null and void with damages filed by Spouses Jimmy M. Liu and Emile L. Liu (petitioners) against Alvin Cruz (private respondent) with Branch 17, Regional Trial Court (RTC), Davao City.

In the complaint, petitioners alleged that they are the registered owners in fee simple of a parcel of land covered by Transfer Certificate of Title (TCT) No. T-296879 located at Juan Luna Street, Poblacion, Davao City (subject property) with an assessed value of ₱19,840.00 and a market value of ₱99,200.00. They discovered that their original owner's duplicate copy of TCT No. T-296879 was missing. Hence, they reported the loss to the police authorities, who conducted an investigation. The investigation was reflected in the Police Blotter Entry No. 457 dated March 22, 2005.[4]

Petitioners further alleged that they executed an Affidavit of Loss and caused its annotation at the dorsal portion of the original certificate of title with the Registry of Land Titles & Deeds of Davao City with Entry No. 246006 inscribed on May 11, 2005. In the process, they discovered that two entries were also annotated at the dorsal portion of the Original Title, to wit: a sham Affidavit of Recovery with Entry No. 294863 and a spurious Special Power of Attorney with Entry No. 294864. They also discovered an annotation with no entry number referring to an "Absolute Deed of Sale" between private respondent and Tek Liong T. Jao (Jao) showing that petitioners' subject property was sold to private respondent in the amount of ₱1,488,000.00. No specimen signatures of petitioners appeared on the deed. The deed was notarized before a notary public in Davao City.[5]

---

[4] *Id.* at 9-10, 33.

[5] *Id.* at 10.

Petitioners furthermore alleged that upon verification with Atty. Remo Flores (Atty. Flores), Notary Public, he confirmed that his signatures appearing in the Affidavit of Recovery and Special Power of Attorney were forged; and that he did not notarize them. With this finding, Atty. Flores made a written report with Branch 20, RTC, Tacurong City which approved his notarial commission.[6]

Petitioners denied specifically under oath the genuineness of the purported Affidavit of Recovery and Special Power of Attorney, and asserted that they were the product of forgeries. They asserted that they did not receive a single centavo from the proceeds of the alleged sale.[7]

Hence, the complaint praying that the Affidavit of Recovery, Special Power of Attorney, and the Sale by Attorney-in-Fact be declared as null and void and inexistent; that TCT No. T-413429 in the name of private respondent be cancelled and declared as null and void; and that the ownership and possession of the subject property be reconveyed or returned to them.[8]

In his answer, private respondent denied the allegations of the petitioners, and as an affirmative defense, he alleged the following: (1) he was a buyer in good faith and a purchaser for value; (2) it was Jao who offered to him the sale of the subject property; (3) after an inspection of TCT No. T-296879, he noticed annotations/inscriptions of the Affidavit of Loss, Affidavit of Recovery, and Special Power of Attorney purportedly executed by petitioners; (4) and that he was never disturbed in his ownership and possession of the subject property until the filing of the complaint by petitioners.[9]

Private respondent further denied having personal knowledge of the loss of the owner's duplicate copy of TCT No. T-296879

---

[6] *Id.*

[7] *Id.*

[8] *Id.*

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

and of the forged signatures of Atty. Flores in the Affidavit of Recovery and Special Power of Attorney. However, he asserted that the signatures of Atty. Flores have a close resemblance to the questioned signatures.[10]

By way of cross claim, private respondent averred that reimbursement or refund of the proceeds of the fraudulent transaction was proper; and that attorney's and appearance fees, litigation expenses, moral damages, and exemplary damages should be chargeable to Jao and Jerry Liu.[11]

When it was private respondent's turn to present evidence, he filed a motion to dismiss on the ground of lack of jurisdiction considering that the assessed value of the subject property was only ₱19,840.00.

The Ruling of the RTC

On January 7, 2017,[12] the RTC issued an Order denying the Motion to Dismiss. On motion for reconsideration, the RTC issued another Order dated April 6, 2017 denying it and setting the case for continuation of reception of private respondent's evidence.

Hence, private respondent filed a petition for *certiorari* with the CA, docketed as CA-G.R. SP No. 07413-MIN, assailing the denial of his motion to dismiss.[13]

In an Order dated July 24, 2017, the RTC declared and deemed the private respondent to have rested his case after manifesting that his witness was already dead.[14]

---

[10] *Id.* at 11.

[11] *Id.*

[12] As culled from the Court of Appeals' Decision, *id.* at 36. The Order is dated January 7, 2016 in the Petition for *Certiorari* filed by petitioners with the Court, *id.* at 11.

[13] *Id.* at 11.

[14] *Id.* at 12.

The Ruling of the CA

On July 31, 2017, the CA rendered the assailed Decision[15] declaring that since the complaint was one for recovery of possession and title to the property, the assessed value of the property should be examined in order to determine which between the RTC or the Municipal Trial Court (MTC) has jurisdiction over the case;[16] that jurisdiction is determined by the averments in the complaint;[17] and that in the petitioners' complaint, it was revealed that the assessed value of the subject property was ₱19,840.00 which was well within the jurisdiction of the MTC.[18]

On motion for reconsideration, the CA issued the assailed the Resolution[19] dated January 31, 2018 denying it.

The Petition

The petitioners raise the following issues before the Court, to wit:

1. Whether or not the [CA] committed grave abuse of discretion amounting to lack or excess of jurisdiction in failing to hold that Civil Case No. 31, 986-07 is an action which is not capable of pecuniary estimation; consequently, the [RTC] is properly vested with jurisdiction to hear said case;

2. Whether or not the [CA] committed grave abuse of discretion amounting to lack or excess of jurisdiction in ordering the dismissal of Civil Case No. 31, 986-07 for lack of jurisdiction, in effect remanding the proceedings from the RTC Branch 17 Davao City to the first level court;

3. Whether or not the [CA] committed grave abuse of discretion amounting to lack or excess of jurisdiction in holding the assessed

---

[15] *Id.* at pp. 32-40.

[16] *Id.* at 38.

[17] *Id.*

[18] *Id.*

[19] *Id.* at 41-43.

value of the Juan Luna Street property as determinative of jurisdiction of the court.[20]

Our Ruling

The petition is technically and substantially flawed.

Procedural Aspect

The instant Petition for *Certiorari* is a wrong remedy and must, therefore, fail. The petition should not have been given due course at all.

Well-settled is the rule that appeals from judgments or final orders or resolutions of the CA should be by a verified petition for review on *certiorari* under Rule 45 of the Rules of Court. The Court made it clear that an aggrieved party is prohibited from assailing a decision or final order of the CA *via* Rule 65 because this recourse is proper only if the party has no plain, speedy, and adequate remedy in the course of law.[21] In this case, petitioners had an adequate remedy which is a petition for review on *certiorari* under Rule 45 of the Rules of Court.

Therefore, a petition for review on *certiorari* under Rule 45 is the correct remedy and not a special civil action for *certiorari* under Rule 65 of the Rules of Court.

In *Pasiona, Jr. v. Court of Appeals, et al.*,[22] the Court ratiocinated in this wise:

> Settled is the rule that where appeal is available to the aggrieved party, the special civil action for *certiorari* will not be entertained – remedies of appeal and *certiorari* are mutually exclusive, not alternative or successive. Hence, *certiorari* is not and cannot be a substitute for a lost appeal, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse. One

---

[20] *Id.* at 13.

[21] *Pasiona, Jr. v. Court of Appeals, et al.*, 581 Phil. 124, 138 (2008), citing *Iloilo La Filipina Uycongco Corp. v. Court of Appeals*, 564 Phil. 163, 172 (2007).

[22] 581 Phil. 124 (2008).

of the requisites of *certiorari* is that there be no available appeal or any plain, speedy and adequate remedy. Where an appeal was available, as in this case, *certiorari* will not prosper, even if the ground therefor is grave abuse of discretion. Petitioner's resort to this Court by Petition for *Certiorari* was a fatal procedural error, and the instant petition must, therefore, fail.[23]

Notably, by reason of petitioners' filing of a petition for *certiorari*, the period for them to file a petition for review on *certiorari* under Rule 45 had already lapsed by the time the instant petition was filed. Hence, the assailed CA Decision and Resolution had already attained finality.

Substantive Aspect

Substantially, the instant petition has no merit. The Court reiterates the ruling in *Heirs of Valeriano Concha, Sr. v. Sps. Lumocso*,[24] thus:

> In a number of cases, we have held that actions for reconveyance of or for cancellation of title to or to quiet title over real property are actions that fall under the classification of cases that involve "title to, or possession of, real property, or any interest therein."
>
> x x x Thus, under the old law, there was no substantial effect on jurisdiction whether a case is one, the subject matter of which was incapable of pecuniary estimation, under Section 19(1) of B.P. 129, or one involving title to property under Section 19(2). The distinction between the two classes became crucial with the amendment introduced by R.A. No. 7691 in 1994, which expanded the exclusive original jurisdiction of the first level courts to include "all civil actions which involve title to, or possession of, real property, or any interest therein **where the assessed value of the property or interest therein does not exceed Twenty thousand pesos (₱20,000.00) or, in civil actions in Metro Manila, where such assessed value does not exceed Fifty thousand pesos (₱50,000.00) exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses and costs**." Thus, **under the present law, original jurisdiction over cases the**

---

[23] *Id.* at 138, citing *Iloilo La Filipina Uycongco Corp. v. Court of Appeals*, 564 Phil. 163, 173 (2007).

[24] 564 Phil. 581 (2007).

subject matter of which involves "title to, possession of, real property or any interest therein" under Section 19(2) of B.P. 129 is divided between the first and second level courts, with the assessed value of the real property involved as the benchmark. This amendment was introduced to "unclog the overloaded dockets of the RTCs which would result in the speedier administration of justice."[25] (Emphasis in the original and supplied.)

The CA correctly ruled that it is the MTC that has jurisdiction over petitioners' complaint for *accion reivindicatoria* and not the RTC. The Court quotes and adopts the following, to wit:

> Liu, in his complaint, seeks to annul the deeds of sale, special power of attorney, and an affidavit of recovery and likewise sought to declare the title in the name of Cruz void. While the said action at first blush, falls within the meaning of incapable of pecuniary estimation, Liu, ultimately wanted to recover possession and ownership of the property subject of litigation. The action he filed is really to determine who between Liu and Cruz has a better title to the property subject of litigation.
>
> An action involving title to real property means that the plaintiffs[']cause of action is based on a claim that he owns such property or that he has the legal rights to have exclusive control, possession, enjoyment, or disposition of the same. Exactly the averment of Liu in his complaint.[26]

WHEREFORE, the petition is **DISMISSED** for utter lack of merit. The Decision dated July 31, 2017 and the Resolution dated January 31, 2018 of the Court of Appeals in CA-G.R. SP No. 07413-MIN are **AFFIRMED**.

SO ORDERED.

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

Delos Santos, J., on official leave.

Baltazar-Padilla, J., on leave.

---

[25] *Id.* at 596-597. Citations omitted.

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

THIRD DIVISION

[G.R. No. 243987. September 23, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **BBB,** *Accused-Appellant*.

SYLLABUS

1. CRIMINAL LAW; QUALIFIED RAPE; RAPE IS QUALIFIED WHEN THE VICTIM'S MINORITY AND HER RELATIONSHIP TO THE ACCUSED CONCUR AND ARE ALLEGED IN THE INFORMATION.— Rape is defined under Article 266-A of the Revised Penal Code as follows:

> 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 is 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.
>
> . . .
>
> Rape is qualified when the circumstances of the victim's minority and her relationship to the perpetrator concur and are alleged in the information.

Here, both the Regional Trial Court and Court of Appeals found that the prosecution proved beyond reasonable doubt all the elements of qualified rape.

2. ID.; ID.; REMEDIAL LAW; EVIDENCE; MEDICAL FINDINGS; WHEN THE COHERENT AND UNQUALIFIED TESTIMONY OF THE VICTIM IS CORROBORATED BY THE MEDICAL FINDINGS OF OLD HYMENAL LACERATIONS, THERE IS SUFFICIENT BASIS TO CONCLUDE THAT THERE HAS BEEN

CARNAL KNOWLEDGE; CASE AT BAR.— This Court consistently held that when the coherent and candid testimony of a rape victim is corroborated by medical findings, there is adequate basis to justify a conclusion that the essential requisites of carnal knowledge have been established. By this standard, the testimonies of the victims AAA and CCC which positively, categorically, and unqualifiedly recalled how accused-appellant forced himself upon them on two separate occasions are adequate basis for holding accused-appellant liable. In addition, the findings of the physician showed that both AAA and CCC have old lacerations in their hymens.

3. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE FACTUAL FINDINGS OF THE TRIAL COURT THEREON ARE ACCORDED RESPECT ON APPEAL; CASE AT BAR.—** A careful examination of the records shows nothing that would warrant a reversal of the decisions of the Regional Trial Court and of the Court of Appeals. "It is settled that factual findings of the trial court and its evaluation of the credibility of witnesses and their testimonies are entitled to great respect and will not be disturbed on appeal, unless the trial court is shown to have overlooked, misapprehended or misapplied any fact or circumstance of weight and substance." This Court accords respect to the trial court's findings because "it has the opportunity to observe the witnesses and their demeanor during the trial."

4. **ID.; ID.; ID.; DENIAL; ALIBI; POSITIVE IDENTIFICATION; UNSUBSTANTIATED DEFENSES OF DENIAL AND ALIBI CANNOT PREVAIL OVER THE STRAIGHTFORWARD AND POSITIVE IDENTIFICATION OF THE ACCUSED BY THE VICTIMS; CASE AT BAR.—** Accused-appellant's mere assertion that he was serving in the Philippine army in Jolo, Sulu, on December 10, 1999 does not negate the commission of rape against AAA for his failure to present any proof that he was indeed at Jolo, Sulu, during that time. In *Perez v. People*, this Court ruled that "petitioner's unsubstantiated defense must fail following the doctrine that positive identification prevails over denial and alibi."

Likewise, accused-appellant's testimony that AAA and CCC were not home on March 20, 2004 when he and Bornia discussed business plans until 2:00 a.m. is not fatal to the prosecution's case. Accused-appellant's bare denial that he did not rape CCC

cannot prevail over CCC's consistent and straightforward testimony, especially since he was present at the place of the crime. While it is true that accused-appellant presented Bornia to corroborate his version of events, it still remains that accused-appellant was at the house where CCC claims to have been raped.

5. CRIMINAL LAW; ANTI-VIOLENCE AGAINST WOMEN AND THEIR CHILDREN ACT OF 2004 (R.A. NO. 9262); PSYCHOLOGICAL VIOLENCE; DEFINITION AND ELEMENTS OF PSYCHOLOGICAL VIOLENCE; THE TESTIMONY OF THE VICTIM IS INDISPENSABLE TO ESTABLISH MENTAL OR EMOTIONAL ANGUISH.— Accused-appellant is likewise charged with violation of Section 5 (i) of Republic Act No. 9262 . . . .

AAA v. People reiterated the elements that must be proven by the prosecution:

> (1) The offended party is a woman and/or her child or children;
>
> (2) The woman is either the wife or former wife of the offender, or is a woman with whom the offender has or had a sexual or dating relationship, or is a woman with whom such offender has a common child. As for the woman's child or children, they may be legitimate or illegitimate, or living within or without the family abode;
>
> (3) The offender causes on the woman and/or child mental or emotional anguish; and
>
> (4) The anguish is caused through acts of public ridicule or humiliation, repeated verbal and emotional abuse, denial of financial support or custody of minor children or access to the children or similar such acts or omissions.

Psychological violence is the "means employed by the perpetrator, while mental or emotional anguish is the effect caused upon or the damage sustained by the offended party." Proof must be shown of any of the acts enumerated in Section 5 (i) to establish psychological violence as an element. The victim's testimony must then be presented to establish mental or emotional anguish, "as these experiences are personal to the party."

The Court of Appeals correctly ruled that this element is present as supported by DDD's testimony.

6. ID.; QUALIFIED RAPE; CIVIL LIABILITY IN CRIMES OF RAPE.— There was likewise no error in the Court of Appeals' modification of the award of damages in Criminal Case Nos. 12605 and 12606 for the crime of qualified rape. Applying *People v. Jugueta*, the award of damages should be ₱100,000.00 each as civil indemnity, moral damages, and exemplary damages.

7. ID.; ANTI-VIOLENCE AGAINST WOMEN AND THEIR CHILDREN ACT OF 2004 (R.A. NO. 9262); PSYCHOLOGICAL VIOLENCE; IMPOSABLE PENALTIES FOR VIOLATION THEREOF.— [T]here was also no error in adjusting the penalty for violation of Republic Act No. 9262, Section 5(i). Section 6(f) of the law states that the imposable penalty is *prision mayor*. Applying the Indeterminate Sentence Law, the minimum of the penalty shall be within the period prescribed for *prision correccional*, while the maximum shall be within the period prescribed for *prision mayor*. There is, thus, no error in the Court of Appeals' imposition of the penalty of imprisonment for an indeterminate period of six (6) years of *prision correccional* as minimum to ten (10) years and one (1) day of *prision mayor* as maximum.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

LEONEN, *J.*:

The clear, straightforward, and categorical testimony of a rape victim, who is a minor, prevails over the defenses of alibi and denial.

This is an appeal from the Court of Appeals' Decision,[1] which affirmed with modification the accused-appellant's conviction

[1] *Rollo*, pp. 4-34. The October 19, 2018 Decision docketed as CA-G.R. CR-HC No. 01732-MIN dated October 19, 2018, was penned by

for violation of Article 266-A of the Revised Penal Code, in relation to Republic Act No. 7610, and violation of Section 5(i) of Republic Act No. 9262.

In three separate Informations, BBB was charged with the crime of committing violence against his common-law wife DDD and raping his two minor stepdaughters AAA and CCC:[2]

Crim. Case No. 12493

That in the evening, on or about the 25th day of April 2004, in the municipality of [redacted], within the jurisdiction of this Honorable Court, the said accused did then and there wil[l]fully, unlawfully and feloniously commit violence against women and their children on one [DDD], a 34-year-old [sic] his common-law wife, by causing mental or emotional anguish, public ridicule or humiliation by accused's acts of raping her children [AAA] and [CCC], all minors, on the night of December 9, 1999 and March 30, 2004, respectively, in gross violation of Sec. 5(i) of R.A. 9262.

CONTRARY TO LAW.

Crim. Case No. 12605

That at dawn, on or about the 10th day of December, 1999, in the municipality of [redacted], within the jurisdiction of this Honorable Court, the said accused, by means of force and

---

Associate Justice Ruben Reynaldo G. Roxas and concurred in by Associate Justices Edgardo T. Lloren and Walter S. Ong of the Special Twenty Second Division, Court of Appeals, Cagayan de Oro.

[2] The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, or the Special Protection of Children Against Abuse, Exploitation and Discrimination Act, approved on June 17, 1992; Republic Act No. 9262, or the Anti-Violence Against Women and Their Children Act of 2004 approved on March 8, 2004; and Section 40 of A.M. No. 04-10-11-SC, otherwise known as the "Rule on Violence against Women and Their Children" dated November 15, 2004. See also Amended Administrative Circular No. 83-2015, entitled "Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Personal Circumstances," dated September 5, 2017.

intimidation, did then and there wil[l]fully, unlawfully and feloniously succeed in having sexual intercourse with his stepdaughter [AAA], a 13[-]year old minor, against her will and without her consent.

CONTRARY TO LAW, (Viol. of Art. 266-A of the Revised Penal Code, in relation to R.A. 7610, with the aggravating/qualifying circumstances: that the victim is under 18 years of age and the offender is the step-parent of the victim.)

Crim. Case No. 12606

That at midnight, on or about the 30th day of March 2004, in the municipality of [redacted], within the jurisdiction of this Honorable Court, the said accused, by means of force and intimidation, did then and there wil[l]fully, unlawfully and feloniously succeed in having sexual intercourse with his stepdaughter [CCC], a 13[-]year old minor, against her will and without her consent.

CONTRARY TO LAW, (Viol. of Art. 266-A of the Revised Penal Code, in relation to R.A. 7610, with the aggravating/qualifying circumstances: that the victim is under 18 years of age and the offender is the step-parent of the victim.)[3]

AAA was born on December 31, 1985, and CCC was born on October 21, 1990. Their mother, DDD, was in a live-in relationship with BBB, who was a soldier in the Philippine Army.[4]

According to the prosecution, in the early morning of December 10, 1999, BBB entered the room of AAA, then 13 years old, who just arrived home. BBB laid on top of AAA, undressed her, removed her panty, and then forcibly inserted his penis into her vagina while covering her mouth. BBB threatened AAA with a gun saying that if she tells anyone, he would kill her mother, brother, and sister. A week later, AAA confided to her mother about the incident but DDD did not believe her and instructed her not to tell anyone.[5]

---

[3] CA *rollo*, pp. 61-62.

[4] Id. at 62-63.

[5] *Rollo*, pp. 7-8.

In another incident on the evening of March 30, 2004, CCC, then 13 years old, was left in their house while DDD and AAA were away on a wake vigil. BBB and CCC were playing cards when BBB asked CCC if she had already experienced sex. Instead of answering, CCC went to her room. BBB followed her and attempted to punch her. He then pinned her to the bed and forced himself inside her. BBB threatened CCC to not make any noise and to not report what happened or else he will kill her.[6]

A month after, or on April 25, 2004, BBB told CCC that he will abuse her again, prompting CCC to confide to AAA that she was molested by their stepfather. AAA likewise revealed that a similar incident happened to her.[7]

On the same day, the two sisters told their mother that BBB molested them. They then all went to the office of the National Bureau of Investigation to report the crime.[8]

The prosecution also presented as witness a municipal health officer who, after performing medical examinations on AAA and CCC, testified that they have "old lacerations in their hymens and [are] in non-virginal states."[9] The other prosecution witness was their mother DDD who testified that she fainted upon being informed that her children AAA and CCC were molested by her live-in partner BBB.[10]

BBB denied molesting AAA and CCC. He maintained that on December 10, 1999, he was in Jolo, Sulu serving in the Philippine Army.[11] He likewise claimed that he was home on March 30, 2004 for a business meeting with his neighbor, [redacted] (Bornia), which lasted until 2:00 am, and

---

[6] Id. at 8-9.

[7] Id. at 9.

[8] Id.

[9] Id. at 10.

[10] Id. at 28.

[11] Id. at 10.

that neither AAA nor CCC were at home during that time.[12] This was corroborated by Bornia's testimony.[13]

In its Decision,[14] the Regional Trial Court found BBB guilty beyond reasonable doubt for violation of Section 5 (i)[15] of Republic Act No. 9262 and two (2) counts of rape under Article 266-A of the Revised Penal Code. The dispositive portion of the Decision read:

> **WHEREFORE**, judgment is rendered declaring accused [BBB] guilty beyond reasonable doubt in all these three (3) cases and is penalized as follows:
>
> 1. For Criminal Case No. 12493 for Violation of Section 5(i), R.A. 9262, to suffer the indeterminate sentence of **TWO (2) years and ONE (1) day to FOUR (4) years and TWO (2) months of prision correccional.** In addition, accused shall pay a **FINE of Two Hundred Thousand (₱200,000.00) Pesos** with subsidiary imprisonment in case of insolvency and he shall undergo mandatory psychological counselling or psychiatric treatment and shall report compliance to the Court. In this connection, the jail authorities is [sic] directed to make the necessary arrangement for the compliance of this directive by R.A. 9262.

---

[12] Id. at 11.

[13] Id. at 10.

[14] CA *rollo*, pp. 61-68. The December 1, 2016 Decision docketed as Criminal Case Nos. 12493, 12605, and 12606 dated December 1, 2016 was penned by Judge Jose Rene C. Dondoyano of Branch 7, Regional Trial Court, Dipolog City.

[15] Republic Act No. 9262 (2004), sec. 5 provides:

> SECTION 5. Acts of Violence Against Women and Their Children. — The crime of violence against women and their children is committed through any of the following acts:
>
> . . . .
>
> (i) Causing mental or emotional anguish, public ridicule or humiliation to the woman or her child, including, but not limited to, repeated verbal and emotional abuse, and denial of financial support or custody of minor children or denial of access to the woman's child/children.

2. For Criminal Case No. 12605, for Rape, to suffer the penalty of **RECLUSION PERPETUA** with all its accessory penalties and to pay the private complainant [AAA], civil indemnity of ₱75,000.00, moral damages of ₱75,000.00 and exemplary damages of ₱30,000.00.

3. For Criminal Case No. 12606, for Rape, to suffer the penalty of **RECLUSION PERPETUA** with all its accessory penalties and to pay the private complainant [CCC], civil indemnity of ₱75,000.00, moral damages of ₱75,000.00 and exemplary damages of ₱30,000.00.

The detention of the accused since May 4, 2004 shall be credited to all his sentence.[16] (Emphasis in the original)

BBB appealed to the Court of Appeals, arguing that DDD reported the crime to get rid of him so she could go to another man.[17] He asserted that Bornia's testimony should have been given more weight since Bornia was able to testify that accused-appellant was not in Zamboanga del Norte on December 10, 1999 and that they had a business meeting on the night of March 30, 2004.[18]

In its assailed Decision,[19] the Court of Appeals affirmed the Decision of the Regional Trial Court with modification. It found that the testimonies of the victims were credible and convincing.[20] It gave no merit to BBB's defense that he was serving in the Army in Sulu on December 10, 1999 as he failed to produce any evidence to prove this. It likewise found that his mere denial that that he did not rape CCC was weak when weighed with the clear and convincing testimony of the victim.[21]

---

[16] CA *rollo*, p. 68.

[17] Id. at 56.

[18] Id. at 57.

[19] Id. at 4-34.

[20] Id. at 24-25.

[21] Id. at 30.

The Court of Appeals, however, modified the penalty for violation of Republic Act No. 9262, in view of *Quimvel v. People*,[22] as well as the amount of damages awarded, in view of *People v. Jugueta*.[23] The dispositive portion the Court of Appeals' Decision read:

> **WHEREFORE**, foregoing premises considered this ordinary appeal is **DENIED** for lack of merit. The 01 December 2016 Judgment rendered by the Regional Trial Court, Branch 7, Dipolog City, in Criminal Case Nos. 12493, 12605 and 12606 is **AFFIRMED** with **MODIFICATION**. Appellant [redacted] is found **GUILTY beyond reasonable doubt of two (2) Counts of Qualified Rape under Article 266-A (1) of the Revised Penal Code, as amended by R.A. No. 8353, in relation to R.A. No. 7610**.
>
> Accordingly, said appellant is **SENTENCED** to suffer the penalty of *reclusion perpetua* for each case, in lieu of the abolition of death penalty under Article 266-B of the Revised Penal Code as amended by R.A. No. 8353, in relation to R.A. No. 7610. Moreover, appellant is hereby ORDERED to pay both [redacted] and [redacted] the amount of One Hundred Thousand Pesos (Php100,000.00) as civil indemnity; One Hundred Thousand Pesos (Php100,000.00) as moral damages; and One Hundred Thousand Pesos (Php100,000.00) as exemplary damages for each case.
>
> All damages awarded shall earn interest at the rate 6% per annum from date of finality of judgment until fully paid.
>
> As to Criminal Case No. 12493, appellant [redacted] is also found **GUILTY beyond REASONABLE DOUBT for Violation of Section 5(i), R.A. 9262 also known as *The Anti-Violence Against Women and Their Children Act 2004***.
>
> Said appellant is **SENTENCED** suffer the penalty of imprisonment for an **INDETERMINATE PERIOD** of six (6) years of *prision correccional*, as minimum, to ten (10) years and one (1) day of *prision nayor*, as maximum. In addition, appellant is also ordered to pay a fine in the amount of Two Hundred Thousand (₱200,000.00) pesos, to undergo a mandatory psychological counselling or psychiatric

---

[22] 808 Phil. 889 (2017) [Per J. Velasco, Jr., En Banc].

[23] 783 Phil. 806 (2016) [Per J. Peralta, En Banc].

treatment and report compliance to the Regional Trial Court (RTC), Branch 7, Dipolog City.

SO ORDERED.[24] (Emphasis in the original)

Accused-appellant filed his Notice of Appeal.[25] In a March 20, 2019 Resolution,[26] this Court noted the records forwarded by the Court of Appeals and informed the parties that they may file their Supplemental Briefs.

On July 16, 2019, the Office of the Solicitor General filed a Manifestation,[27] on behalf of the People of the Philippines, stating that it would no longer file a Supplemental Brief considering that the counter-arguments raised in its Brief filed before the Court of Appeals are exhaustive enough to refute the arguments of the accused-appellant.

On June 28, 2019, the accused-appellant filed a Manifestation[28] indicating that he, too, would no longer file a Supplemental Brief since he had already thoroughly discussed his defenses in the Appellant's Brief he filed before the Court of Appeals.

For this Court's resolution is the sole issue of whether or not the Court of Appeals erred in affirming the accused-appellant's conviction.

Rape is defined under Article 266-A of the Revised Penal Code as follows:

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:

---

[24] *Rollo*, pp. 32-33.

[25] Id. at 35-37.

[26] Id. at 42-43.

[27] Id. at 49-51.

[28] Id. at 44-45.

a) Through force, threat, or intimidation;

b) When the offended party is deprived of reason or is otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority; and

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

Rape is qualified when the circumstances of the victim's minority and her relationship to the perpetrator concur and are alleged in the information.[29]

Here, both the Regional Trial Court and Court of Appeals found that the prosecution proved beyond reasonable doubt all the elements of qualified rape. The Regional Trial Court ruled that the allegations of AAA and CCC are credible:

> They were raped by the accused at the time that they were still at their tender age. Complainant [AAA] was only 14 years old while complainant [CCC] was also 14 years old. The tenderness of their age made them susceptible to fear and intimidation employed by the accused. The accused was even armed with his gun when he raped [AAA]. Both complainants testified consistently, candidly[,] and in direct manner even during cross-examination. A candid and straightforward narration by the victim of how she [had] been raped bears the earmarks of credibility. Both the complainants were able to clearly show to the court the clear picture of how they were molested by the accused.[30]

---

[29] *People v. Armodia*, 810 Phil. 822, 832-833 (2017) [Per J. Leonen, Third Division], citing *People v. Malana*, 646 Phil. 290, 310 (2010) [Per J. Perez, First Division].

[30] *CA rollo*, pp. 66-67.

The Court of Appeals similarly ruled that the testimonies of AAA and CCC during the direct examination showed that they candidly recalled how accused-appellant committed the crime. The pertinent portion of AAA's testimony is as follows:

> Q: When he entered the room what did he say to you?
> A: He asked me if I felt cold and I said yes and then he embraced me and lay on top of me.
>
> Q: And then what did he do?
> A: He undressed me.
>
> Q: You were naked?
> A: Only at the lower portion.
>
> Q: Including your panty?
> A: Yes, sir.
>
> Q: After taking your panty and your clothes what did he do?
> A: He inserted his pines (sic) into my vagina.
>
> Q: Did you shout?
> A: No because he covered my mouth and told me if I will report the matter he will kill my mother[,] my sister[,] and my brother.
>
> Q: Why did he bring any weapon?
> A: Yes a gun.
>
> Q: What did you feel at that time?
> A: I felt sad.[31]

CCC's testimony also frankly narrated the series of events in a straightforward manner:

> Q: When you were already lying down and already naked after removing his shortpants, what did he do to you?
> A: He raped me.
>
> Q: What did he say if there was any?
> A: He told me not to shout.
>
> . . . .

---

[31] *Rollo*, p. 14.

Q: Did he cover your mouth[?]
A: He just threatened me.

Q: How did he threaten you?
A: He threatened that he will kill me.[32]

The Court of Appeals found the testimonies of AAA and CCC sufficient to convict accused-appellant for two (2) counts of qualified rape, as they were able to establish that accused-appellant was the live-in partner of their mother.[33]

A careful examination of the records shows nothing that would warrant a reversal of the decisions of the Regional Trial Court and of the Court of Appeals. "It is settled that factual findings of the trial court and its evaluation of the credibility of witnesses and their testimonies are entitled to great respect and will not be disturbed on appeal, unless the trial court is shown to have overlooked, misapprehended or misapplied any fact or circumstance of weight and substance."[34] This Court accords respect to the trial court's findings because "it has the opportunity to observe the witnesses and their demeanor during the trial."[35]

Accused-appellant is likewise charged with violation of Section 5 (i) of Republic Act No. 9262:

SECTION 5. *Acts of Violence Against Women and Their Children.* — The crime of violence against women and their children is committed through any of the following acts:

. . . .

---

[32] Id. at 20.

[33] Id. at 24.

[34] *People v. Pusing*, 789 Phil. 541, 556 (2016) [Per J. Leonen, Third Division] citing *People v. De Jesus*, 695 Phil. 114, 122 (2012) [Per J. Brion, Second Division].

[35] *People v. Quintos*, 746 Phil. 809, 820 (2014) [Per J. Leonen, Third Division], citing *People v. Montinola*, 567 Phil. 387, 404 (2008) [Per J. Carpio, Second Division], citing *People v. Fernandez*, 561 Phil. 287 (2007) [Per J. Carpio, Second Division]; *People v. Abulon*, 557 Phil. 428 (2007) [Per J. Tinga, En Banc]; *People v. Bejic*, 552 Phil. 555 (2007) [Per J. Chico-Nazario, En Banc].

(i) Causing mental or emotional anguish, public ridicule or humiliation to the woman or her child, including, but not limited to, repeated verbal and emotional abuse, and denial of financial support or custody of minor children or denial of access to the woman's child/children.

AAA v. People[36] reiterated the elements that must be proven by the prosecution:

(1) The offended party is a woman *and/or* her child or children;

(2) The woman is either the wife or former wife of the offender, or is a woman with whom the offender has or had a sexual or dating relationship, or is a woman with whom such offender has a common child. As for the woman's child or children, they may be legitimate or illegitimate, or living within or without the family abode;

(3) The offender causes on the woman and/or child mental or emotional anguish; and

(4) The anguish is caused through acts of public ridicule or humiliation, repeated verbal and emotional abuse, denial of financial support or custody of minor children or access to the children or similar such acts or omissions.[37]

Psychological violence is the "means employed by the perpetrator, while mental or emotional anguish is the effect caused upon or the damage sustained by the offended party."[38] Proof must be shown of any of the acts enumerated in Section 5 (i) to establish psychological violence as an element. The victim's testimony must then be presented to establish mental or emotional anguish, "as these experiences are personal to the party."[39]

---

[36] G.R. No. 229762, November 28, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64826> [Per J. Gesmundo, Third Division].

[37] Id.

[38] Id. citing *Dinamling v. People*, 761 Phil. 356, 376 (2015) [Per J. Peralta, Third Division].

[39] Id.

The Court of Appeals correctly ruled that this element is present as supported by DDD's testimony:

> Q: Why are you filing a case of Violation of Section 5 (i) of Republic Act 9262 against your live-in partner [redacted]?
> A: Because I cannot bear of what he did to my children.
>
> Q: Why, what did he do to your children?
> A: Because my children confided to me that they were molested by him.
>
> Q: What do you mean they were molested by him?
> A: (Witness is crying) They were molested by him, [redacted] [redacted].[40]

The Regional Trial Court found that the evidence presented sufficiently established that DDD, being the biological mother of the victims, AAA and CCC, "had suffered mentally and psychologically"[41] considering the crime committed by accused-appellant against her two daughters. Hence, the conviction for violation of Section 5(i) of Republic Act No. 9262 is proper.

Accused-appellant insists that the "prosecution failed to overcome the constitutional presumption of innocence afforded to the accused."[42] He insists on the improbability of raping AAA on December 10, 1999 as he claims that he was assigned in Jolo, Sulu at that time,[43] and of raping CCC on March 30, 2004 as he claims that he discussed business plans with Bornia until 2:00 a.m. at his house where neither AAA nor CCC were staying at that time.[44]

This Court consistently held that when the coherent and candid testimony of a rape victim is corroborated by medical findings, there is adequate basis to justify a conclusion that the essential

---

[40] *Rollo*, pp. 27-28.

[41] CA *rollo*, p. 67.

[42] *Rollo*, p. 11.

[43] Id. at 10.

[44] Id. at 11.

requisites of carnal knowledge have been established.[45] By this standard, the testimonies of the victims AAA and CCC which positively, categorically, and unqualifiedly recalled how accused-appellant forced himself upon them on two separate occasions are adequate basis for holding accused-appellant liable. In addition, the findings of the physician showed that both AAA and CCC have old lacerations in their hymens.

Accused-appellant's mere assertion that he was serving in the Philippine army in Jolo, Sulu on December 10, 1999 does not negate the commission of rape against AAA for his failure to present any proof that he was indeed at Jolo, Sulu during that time. In *Perez v. People*,[46] this Court ruled that "petitioner's unsubstantiated defense must fail following the doctrine that positive identification prevails over denial and alibi."[47]

Likewise, accused-appellant's testimony that AAA and CCC were not home on March 20, 2004 when he and Bornia discussed business plans until 2:00 a.m. is not fatal to the prosecution's case. Accused-appellant's bare denial that he did not rape CCC cannot prevail over CCC's consistent and straightforward testimony, especially since he was present at the place of the crime. While it is true that accused-appellant presented Bornia to corroborate his version of events, it still remains that accused-appellant was at the house where CCC claims to have been raped. *People v. Francica*[48] reiterated that the "self-serving defense of denial falters against the positive identification by, and straightforward narration of the victim."[49]

Accused-appellant's assertion that DDD only reported the crimes so she could go to another man defies reality. As noted

---

[45] *People v. Ausa*, 792 Phil. 437, 447 (2016) [Per J. Perez, Third Division].

[46] 830 Phil. 162 (2018) [Per J. Leonen, Third Division].

[47] Id. at 178.

[48] 817 Phil. 972 (2017) [Per J. Leonen, Third Division].

[49] Id. at 990 citing *Imbo v. People*, 758 Phil. 430, 437 (2015), [Per J. Perez, First Division].

by the Court of Appeals, "there is nothing more tormenting than for a mother to know that her very own flesh and blood had been sexually abused by the man whom she trusted with her own heart."[50] A mother would not be so cruel as to subject her daughters to the emotional trauma of a rape trial merely for her own benefit.

There was likewise no error in the Court of Appeals' modification of the award of damages in Criminal Case Nos. 12605 and 12606 for the crime of qualified rape. Applying *People v. Jugueta*,[51] the award of damages should be ₱100,000.00 each as civil indemnity, moral damages, and exemplary damages.

Finally, there was also no error in adjusting the penalty for violation of Republic Act No. 9262, Section 5 (i). Section 6(f)[52] of the law states that the imposable penalty is *prision mayor*. Applying the Indeterminate Sentence Law, the minimum of the penalty shall be within the period prescribed for *prision correccional*, while the maximum shall be within the period prescribed for *prision mayor*. There is, thus, no error in the Court of Appeals' imposition of the penalty of imprisonment for an indeterminate period of six (6) years of *prision correccional* as minimum to ten (10) years and one (1) day of *prision mayor* as maximum.

---

[50] *Rollo*, p. 28.

[51] 783 Phil. 806 (2016) [Per J. Peralta, En Banc].

[52] Republic Act No. 9262, sec. 6 provides:

SECTION 6. Penalties. - The crime of violence against women and their children, under Section 5 hereof shall be punished according to the following rules:

. . . .

(f) Acts falling under Section 5 (h) and Section 5 (i) shall be punished by prision mayor.

. . . .

In addition to imprisonment, the perpetrator shall (a) pay a fine in the amount of not less than One hundred thousand pesos (₱100,000.00) but not more than three hundred thousand pesos (₱300,000.00); (b) undergo mandatory psychological counseling or psychiatric treatment and shall report compliance to the court.

WHEREFORE, this appeal is **DISMISSED** for failure to show any reversible error in the assailed Decision. The October 19, 2018 Decision of the Court of Appeals in CA-G.R. CR-HC No. 01732-MIN is **AFFIRMED**.

Accused-appellant BBB is found **GUILTY** beyond reasonable doubt of two (2) Counts of Qualified Rape under Article 266-A (1) of the Revised Penal Code, in relation to Republic Act No. 7610. He is sentenced to suffer the penalty of *reclusion perpetua* for each case. He is also **ORDERED** to pay both AAA and CCC the amount of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages for each case.

Accused-appellant BBB is likewise found **GUILTY** beyond reasonable doubt of Violation of Section 5 (i), Republic Act No. 9262, also known as the Anti-Violence Against Women and their Children Act 2004. He is sentenced to suffer the penalty of imprisonment for an indeterminate sentence of six (6) years of *prision correccional*, as minimum, to ten (10) years and one (1) day of *prision mayor*, as maximum. Accused-appellant is also **ORDERED** to pay a fine in the amount of ₱200,000.00, to undergo a mandatory psychological counselling or psychiatric treatment, and to report compliance to the Regional Trial Court of Dipolog City, Branch 7.

All damages awarded shall earn interest at the rate of 6% per annum from date of finality of judgment until fully paid.[53]

SO ORDERED.

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

Zalameda, J., on wellness leave.

---

[53] *Nacar v. Gallery Frames*, 716 Phil. 806 (2016) [Per J. Peralta, En Banc].

THIRD DIVISION

[G.R. No. 247724. September 23, 2020]

DIMAYUGA LAW OFFICES, *Petitioner, v.* **TITAN-IKEDA CONSTRUCTION AND DEVELOPMENT CORPORATION,** *Respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEY'S LIEN; CIVIL LAW; PROPERTY; "LIEN" AND "CHARGING LIEN," DEFINED. — A lien is a charge on property usually for the payment of some debt or obligation. A lien is a qualified right or a proprietary interest, which may be exercised over the property of another. It is a right which the law gives in order for a debt to be satisfied out of a particular thing. It signifies a legal claim or charge on property, either real or personal, as a collateral or security for the payment of some debt or obligation.

. . .

Charging lien is the right which the attorney has upon all judgments for the payment of money, and executions issued in pursuance of said judgments, which he has secured in litigation of his client.

2. ID.; ID.; ID.; A LIEN FOLLOWS THE PROPERTY; THE ATTORNEY'S LIEN AND ADVERSE CLAIM ANNOTATED ON THE CERTIFICATES OF TITLE CANNOT BE CANCELLED BY THE COMPROMISE AGREEMENT BETWEEN THE CLIENT AND THE ADVERSE PARTY; CASE AT BAR. — Pursuant to its successful litigation of Primetown Property's case against Titan-Ikeda Construction, Dimayuga Law Offices caused the annotation of its attorney's lien in Condominium Certificate of Title Nos. 35739, 35743, 35744, 35745, 35748, 35779, 35797, 35798, 35805, 35806 based on the retainer agreement which entitles it to 12% of all the monetary awards and interests granted to Primetown Property. These 10 condominium certificates of title are part of the 60 condominium units which the RTC ordered Titen-Ikeda Construction to return to Primetown Property. Hence, upon the annotation of said attorney's lien to the condominium certificates of title, it became a burden upon the condominium units.

Notably, these 10 condominium units subjected to the attorney's lien of Dimayuga Law Offices were also the subject of Deeds of Absolute Sale entered into between Primetown Property as the seller and Dimayuga Law Offices as the buyer as payment for the latter's attorney's fees.

The lien, until properly discharged, follows the property. . . .

In this case, the attorney's lien was not properly cancelled. The compromise agreement entered into between Primetown Property and Titan-Ikeda Construction providing for the dissolution of any lien and adverse claim annotated upon the condominium certificates of title cannot be the basis for the cancellation of the lien and adverse claim of Dimayuga Law Offices.

3. ID.; ID.; ID.; COMPROMISE; A COMPROMISE AGREEMENT ENTERED INTO BY THE CLIENT WITHOUT THE CONFORMITY OF HIS COUNSEL SHOULD NOT UNJUSTLY DEPRIVE THE LATTER OF THE COMPENSATION FOR LEGAL SERVICES RENDERED; CASE AT BAR. — A compromise is a contract whereby the parties, by making reciprocal concessions, avoid litigation or put an end to one already commenced. There is no question that a client may enter into a compromise agreement even if there is already a final judgment, as in this case. Having exclusive control over the subject matter of the litigation, the client may, at any time before or after judgment, if acting in good faith, compromise, settle, and adjust his or her cause of action out of court and even without the intervention of his counsel. However, this is not without limitations. A compromise agreement is binding only between the parties and their successors-in-interest and could not affect the rights of third persons who were not parties to the agreement. A party's lawyer is a third person who should not be totally deprived of his compensation because of the compromise agreement executed by the client. This is especially true in cases where the compromise agreement was entered into by the parties without the lawyer's participation and conformity.

In this case, a perusal of the provisions of the compromise agreement entered into between Primetown Property and Titan-Ikeda Construction would show that there was no mention of how the attorney's fees earned by Dimayuga Law Offices will be paid. Worse, the compromise agreement even provided for

the cancellation of the attorney's lien already annotated in the 10 condominium certificates of title prior to the execution of the said compromise agreement.

4. ID.; ID.; THE COURTS ARE DUTY-BOUND TO PROTECT AND RESPECT THE ATTORNEY'S LIEN. — While lawyering is not a moneymaking venture and lawyers are not merchants, an attorney is entitled to be properly compensated for the professional services rendered for the client. Equity dictates that Dimayuga Law Offices must be awarded what it is due. . . .

. . .

In the exercise of their supervisory authority over attorneys as officers of the Court, the courts are bound to respect and protect the attorney's lien as a necessary means to preserve the decorum and respectability of the law profession. Hence, the Court must thwart any and every effort of clients already served by their attorneys' worthy services to deprive them of their hard-earned compensation. Truly, the duty of the courts is not only to see to it that attorneys act in a proper and lawful manner, but also to see to it that attorneys are paid their just and lawful fees.

APPEARANCES OF COUNSEL

Dimayuga Law Offices for petitioner.
John Domingo A. Ponce for respondent.

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 Resolutions dated January 17, 2019[2] and May 30, 2019,[3] respectively, of

---

[1] *Rollo*, pp. 9-32.

[2] Penned by Associate Justice Celia C. Librea-Leagogo, with the concurrence of Associate Justices Samuel H. Gaerlan (now a Member of this Court) and Pablito A. Perez; id. at 257-261.

[3] Id. at 33-39.

the Court of Appeals (CA) in CA-G.R. SP No. 159007 denying the Petition for *Certiorari* filed by Dimayuga Law Offices, which questioned the Order[4] of the Regional Trial Court (RTC) of Makati City, Branch 58, to cancel the attorney's lien and adverse claim annotated on the condominium certificates of title subject of this case.

Antecedents

On February 4, 1993, Primetown Property Group, Inc. (Primetown Property) entered into an agreement with Titan-Ikeda Construction and Development Corporation (Titan-Ikeda Construction) for the structural works of its 32-storey condominium building to be known as the "Prime Tower" located at Kalayaan Avenue, Makati City for a contract price of ₱40,000,000.00.[5] On January 31, 1994, the parties entered into a Supplemental Agreement whereby Primetown Property awarded the architectural works in the Prime Tower to Titan-Ikeda Construction for a contract price of ₱130,000,000.00. The parties agreed that the payment shall be by "full swapping" or such number of condominium units and parking lots equivalent to the contract price. Pursuant to this, on June 30, 1994, Primetown Property executed a Deed of Absolute Sale in favour of Titan-Ikeda Construction covering a total of 114 condominium units and 20 parking slots in exchange for the contract price of ₱130,000,000.00.[6]

As the works on Prime Tower progressed, it became evident that Titan-Ikeda Construction would not meet the target completion date. Hence, Primetown Property took over the completion of the architectural works. Primetown Property also hired Integraltech, Inc., a private engineering consultancy firm, which evaluated that as of September 1995, Titan-Ikeda Construction's accomplished architectural works is only estimated

---

[4] Id. at 220-222.

[5] Id. at 56.

[6] Id. at 56-57.

at 48.71%. Per Integraltech, Inc.'s computation, the value of the remaining works still to be completed amounted to ₱66,677,000.00. Hence, Primetown Property overpaid Titan-Ikeda Construction with condominium units and parking slots equivalent to ₱66,677,000.00. Despite repeated demands, Titan-Ikeda refused to return the condominium units and parking slots corresponding to ₱66,677,000.00.[7]

Because of the failure of Titan-Ikeda Construction to return the condominium units and parking slots, Primetown Property filed a complaint for collection of sum of money before the RTC of Makati City, Branch 58 on July 2, 1997.

In its Answer, Titan-Ikeda Construction insists that it had no obligation to return the condominium units and parking slots to Primetown Property. According to Titan-Ikeda Construction, during the progress of the architectural works, additive works and/or change orders were requested by Primetown Property due to revisions in the architectural plan. Titan-Ikeda Construction agreed to do the additive works in the amount of not less than ₱39,000,000.00. Allegedly, these additive works contributed to the delay of the project. Titan-Ikeda Construction also argues that Primetown Property incurred considerable delay in supplying concrete mix and rebars as committed by them. As such, Primetown Property took over the architectural works but Titan-Ikeda Construction claims that it was a mutual agreement and was part of Primetown Property's long-range plan.[8]

To support its counterclaim, Titan-Ikeda Construction explained that prior to the actual turn over of the project to Primetown Property, the parties even conducted a joint inventory where it was agreed that due to the additives made by Titan-Ikeda Construction, it was in fact Primetown Property which owed Titan-Ikeda Construction a total of ₱2,023,876.25.[9] More

---

[7] Id. at 57.

[8] Id. at 58-59.

[9] Id. at 59.

importantly, Primetown Property allegedly failed to deliver the keys as well as management certificates of the condominium units it paid to Titan-Ikeda Construction. Hence, Titan-Ikeda Construction sent a demand for the delivery of the keys and the payment of ₱2,023,876.25. However, Primetown Property failed to do so. This forced Titan-Ikeda Construction to file a complaint with the Housing and Land Use Regulatory Board (HLURB) on December 10, 1996.[10] On April 29, 1997, the HLURB rendered a Decision directing Primetown Property to issue the management certificates and to turn over the keys of the condominium units to Titan-Ikeda Construction and its buyers.[11]

Similarly, on August 5, 1998, the RTC rendered its Decision which dismissed the complaint filed by Primetown Property and granted the counterclaim prayed for by Titan-Ikeda Construction. The RTC ordered Primetown Property to pay the following: (a) the additive works made by Titan-Ikeda Construction in the amount of PhP2,023,876.25; (b) compensatory damages in the amount of USD1,665,260.00; and (c) attorney's fees.[12]

Insisting on its right to demand the return of the condominium units and parking slots, Primetown Property appealed the case until it reached the Supreme Court. Eventually, on February 12, 2008, We rendered a Decision, setting aside the August 5, 1998 Decision of the RTC, the dispositive portion of which provides:

WHEREFORE, the petition is hereby **GRANTED**.

The March 15, 2002 decision and May 29, 2003 resolution of the Court of Appeals in CA-G.R. CV No. 61353 and the August 5, 1998 decision of the Regional Trial Court, Branch 58, Makati City in Civil Case No. 97-1501 are hereby **SET ASIDE**. New judgment is entered:

---

[10] Id.

[11] Id. at 60.

[12] Id. at 61.

1. ordering petitioner **Titan-Ikeda Construction and Development Corporation** to **return** to respondent **Primetown Property Group, Inc.** the **condominium units and parking slots** corresponding to the **payment made in excess of the proportionate (project) cost of its actual accomplishment as of October 12, 1995**, subject to its (petitioner's) allowable claims as stated in the inventory; and

2. **dismissing** petitioner **Titan-Ikeda Construction and Development Corporation's claims for the cost of additional work (or change order) and damages**.

The records of this case are **remanded** to the Regional Trial Court of Makati City, Branch 58 for:

1. the **reception of additional evidence** to determine:

(a) the **percentage of the architectural work actually completed by petitioner Titan-Ikeda Construction and Development Corporation as of October 12, 1995** on the Makati Prime Tower; and

(b) the number of condominium units and parking slots sold by petitioner Titan-Ikeda Construction and Development Corporation to third persons.

2. the **computation of petitioner Titan-Ikeda Construction and Development Corporation's actual liability to respondent Primetown Property Group, Inc.** or vice-versa, and the determination of imposable interests and/or penalties, if any.

SO ORDERED.[13] (Emphasis supplied)

In compliance with the order to remand the case to the RTC of Makati City, Branch 58, the case was set for hearing or reception of other evidence. Eventually, the RTC rendered another Decision[14] dated April 30, 2012. The RTC found that as of October 12, 1995, the percentage of architectural works actually completed by Titan-Ikeda Construction was only 48.71%.[15] The RTC also determined that 117 titles of condominium units are

---

[13] *Titan-Ikeda Construction and Development Corp. v. Primetown Property Group, Inc.*, 568 Phil. 432, 455-456 (2008).

[14] *Rollo*, pp. 56-76.

[15] *Id.* at 66.

transferred to Titan-Ikeda Construction as payment for the architectural works. However, of the 117 titles, 42 were already cancelled and transferred to the names of the buyers of Titan-Ikeda Construction. The remaining 75 titles are still registered in the name of Titan-Ikeda Construction.[16] Since Primetown Property already paid Titan-Ikeda Construction in full and the actual architectural works completed as of October 12, 1995 was only 48.71%, there was overpayment at the rate of 51.29%. Hence, Titan-Ikeda Construction was ordered to return to Primetown Property the amount of ₱66,677,000.00 or 60 condominium units, with the following Condominium Certificate of Title Nos.: 35739, 35743, 35744, 35745, 35748, 35749, 35750, 35751, 35752, 35753, 35756, 35757, 35758, 35762, 35764, 35766, 35767, 35768, 35769, 35770, 35771, 35774, 35776, 35777, 35778, 35779, 35782, 35783, 35785, 35787, 35795, 35796, 35797, 35798, 35801, 35803, 35804, 35805, 35806, 35810, 35811, 35814, 35816, 35817, 35818, 35819, 35820, 35821, 35822, 35823, 35825, 35826, 35827, 35829, 35830, 35831, 35832, 35833, 35834, and 35835.[17]

Titan-Ikeda Construction moved for reconsideration but it was denied in a Resolution dated August 6, 2012. Eventually, Titan-Ikeda Construction filed a notice of appeal. However, in an Order[18] dated December 4, 2012, the RTC dismissed the same for failure to pay the appeal fee within the reglamentary period. Due to this, the April 30, 2012 RTC decision became final and executory.

As counsel for Primetown Property, Dimayuga Law Offices filed a Motion to Record and Enforce Attorney's Lien based on a Retainer Agreement dated April 24, 2003 entered into by them, which entitles Dimayuga Law Offices to 12% of all the monetary awards and interests granted to Primetown Property. The RTC granted the motion in an Omnibus Order[19] dated April

---

[16] Id. at 75.

[17] Id. at 76.

[18] Id. at 77-80.

[19] Id. at 81-82.

10, 2013 which specifically subjected Condominium Certificate of Title Nos. 35739, 35743, 35744, 35745, 35748, 35779, 35797, 35798, 35805, and 35806 to the attorney's lien.[20]

On April 29, 2013, the RTC issued a Writ of Execution[21] of the Decision dated April 30, 2012.[22] On December 19, 2013, the RTC issued an Order instructing Titan-Ikeda Construction to return to Primetown Property the 60 condominium units which include the 10 condominium units paid to Dimayuga Law Offices. Further, the RTC ordered the Register of Deeds to cancel the subject condominium certificates of title in the name of Titan-Ikeda Construction and issue new titles in the name of Primetown Property.[23]

Because of the finality of judgment and issuance of the Writ of Execution, Primetown Property paid Dimayuga Law Offices' attorney's fees in kind, using the ten condominium units earlier subjected to attorney's lien.[24] Hence, on May 5, 2015, Primetown Property and Dimayuga Law Offices executed several Deeds of Absolute Sale involving the 10 condominium units.[25] In addition, Dimayuga Law Offices paid and updated the real property taxes of the 10 condominium units since 2005. However, because the condominium certificates of title were still registered in the name of Titan-Ikeda Construction due to its refusal to comply with the writ of execution ordering it to return the condominium units to Primetown Property, Primetown Property was not able to transfer the condominium certificates of title in the name of Dimayuga Law Offices.[26]

---

[20] Id. at 82.

[21] Id. at 83-84.

[22] Id. at 13.

[23] Id. at 191.

[24] Id.

[25] Id. at 13.

[26] Id. at 192.

To further protect its right, Dimayuga Law Offices executed an Affidavit of Adverse Claim which was also annotated on the ten condominium certificates of title.[27]

However, before the return of the condominium units to Primetown Property, unexpectedly and without the knowledge of Dimayuga Law Offices, Primetown Property and Titan-Ikeda Construction filed a Joint Motion to Approve Compromise Agreement, which the RTC granted. On October 6, 2017, a Compromise Judgement was rendered by the RTC.[28]

Because of this, Dimayuga Law Offices filed an Urgent Motion for Intervention to Protect Attorney's Rights. In an Order[29] dated March 6, 2018, the RTC ordered Primetown Property to pay Dimayuga Law Offices its attorney's fees pursuant to their Retainer Agreement.[30]

In the meantime, Titan-Ikeda Construction filed a Motion to Cancel Attorney's Lien and Adverse Claim on the ten condominium certificates of title earlier subjected to Dimayuga Law Offices' attorney's lien. In an Order[31] dated June 4, 2018, the RTC granted the motion and ordered the removal of the attorney's lien and adverse claim annotated in the ten condominium certificates of title.[32] The RTC ratiocinated that paragraphs 3 and 7 of the Compromise Agreement entered into by Primetown Property and Titan-Ikeda Construction support this, to wit:

x x x x

3. Upon the execution of this Compromise Agreement, the letter dated July 21, 2017 and signed by Kenneth Yap, sent to the Registry

---

[27] Id.

[28] Id. at 14.

[29] Id. at 203-204.

[30] Id. at 204.

[31] Id. at 220-222.

[32] Id. at 221-222.

of Deeds of Makati, addressed to Atty. Caluya, Jr. is considered automatically revoked, withdrawn, recalled and have no effect whatsoever and the processing of any titling or transfer related to the 60 titles mentioned in the Civil Case No. 97-1501 of RTC Branch 58, Makati City, shall be allowed;

x x x x

7. Upon the execution of this Compromise Agreement, any *lis pendens*, adverse claims annotated in the sixty (60) titles mentioned in the decision shall accordingly be cancelled.

x x x x[33]
(Underscoring and italics omitted)

The RTC stated that Dimayuga Law Offices should collect from its client, Primetown Property, and not from Titan-Ikeda Construction. Considering that the condominium titles are still in the name of Titan-Ikeda Construction because the April 30, 2012 Decision of the RTC was never executed, they continued to be owned by the latter and cannot be the subject of attorney's lien.[34]

Dimayuga Law Offices moved for reconsideration but it was denied. Hence, it filed a petition for *certiorari* with the CA. The CA, in its Resolution dated January 17, 2019, dismissed the petition outright for failure to attach certified true copies of relevant documents.[35] In its petition, Dimayuga Law Offices merely attached the assailed orders of the RTC and the writ of execution.[36] On reconsideration, Dimayuga Law Offices rectified its omission and attached the relevant documents but the CA still denied the same.[37] According to the CA, since Dimayuga Law Offices' claim arises from the legal services it rendered to Primetown Property, the same must be satisfied

---

[33] Id. at 220.

[34] Id. at 221.

[35] Id. at 258.

[36] Id. at 258-260.

[37] Id. at 33-39.

from the money or property of its client, Primetown Property. Here, the 10 condominium titles to which the attorney's lien and adverse claim were previously annotated remained in the name of Titan-Ikeda Construction for failure to execute the Decision dated April 30, 3012 of the RTC. Hence, Dimayuga Law Offices' attorney's lien cannot be satisfied from properties which do not belong to its client, Primetown Property.[38] The CA emphasized that in any event, Dimayuga Law Offices' attorney's fees are amply recognized pursuant to its retainer agreement with Primetown Property.

Aggrieved, Dimayuga Law Offices filed this Petition for Review on *Certiorari* dated July 31, 2019. According to Dimayuga Law Offices, the RTC had no jurisdiction to entertain the motion to cancel the adverse claim filed by Titan-Ikeda Construction because what the law requires in cancelling adverse claims is to file a petition in the court where the land is situated and not merely a motion.[39] Dimayuga Law Offices also assails the validity of the compromise agreement entered into by its client, Primetown Property, and Titan-Ikeda Construction. Dimayuga Law Offices claims that in Primetown Property's Manifestation in Lieu of Comment filed to the CA, it manifested that in its negotiations with Titan-Ikeda Construction, it has always stressed that the attorney's lien of Dimayuga Law Offices should be respected. However, through inadvertence, the attorney's lien of Dimayuga Law Offices was not mentioned in the compromise agreement.[40] Dimayuga Law Offices argues that the compromise agreement should not unjustifiably deprive it of its proper compensation for the legal services rendered to Primetown Property.

In its Comment[41] dated November 2, 2019, Titan-Ikeda Construction reiterates that the cancellation of attorney's lien

---

[38] Id. at 38.

[39] Id. at 20.

[40] Id. at 24-25.

[41] Id. at 270-275.

and adverse claim is valid in accordance with the compromise agreement it entered into with Primetown Property.[42] It also stresses that Dimayuga Law Offices' client is Primetown Property and not Titan-Ikeda Construction so its attorney's fees cannot be satisfied from the properties of Titan-Ikeda Construction.[43]

Issue

The issue in this case is whether the attorney's fees and adverse claim of Dimayuga Law Offices annotated as a lien on the 10 condominium certificates of title can be cancelled pursuant to the compromise agreement entered into between Primetown Property and Titan-Ikeda Construction.

Ruling of the Court

The petition filed by Dimayuga Law Offices is impressed with merit.

A lien is a charge on property usually for the payment of some debt or obligation. A lien is a qualified right or a proprietary interest, which may be exercised over the property of another. It is a right which the law gives in order for a debt to be satisfied out of a particular thing. It signifies a legal claim or charge on property, either real or personal, as a collateral or security for the payment of some debt or obligation.[44]

Section 37 of Rule 138 of the Rules of Court provides for the two types of attorney's liens – retaining lien and charging lien, to wit:

> Section 37. Attorneys' liens. – An attorney shall have a lien upon the funds, documents and papers of his client which have lawfully come into his possession and may retain the same until his lawful

---

[42] Id. at 273.

[43] Id. at 175.

[44] *People v. Regional Trial Court of Manila*, 258-A Phil. 68, 76 (1989).

fees and disbursements have been paid, and may apply such funds to the satisfaction thereof. He shall also have a **lien to the same extent upon all judgments for the payment of money, and executions issued in pursuance of such judgments, which he has secured in a litigation of his client**, from and after the time when he shall have the caused a statement of his claim of such lien to be entered upon the records of the court rendering such judgment, or issuing such execution, and shall have the caused written notice thereof to be delivered to his client and to the adverse party; and he shall have the same right and power over such judgments and executions as his client would have to enforce his lien and secure the payment of his just fees and disbursements. (Emphasis supplied)

Charging lien is the right which the attorney has upon all judgments for the payment of money, and executions issued in pursuance of said judgments, which he has secured in litigation of his client.[45] Pursuant to its successful litigation of Primetown Property's case against Titan-Ikeda Construction, Dimayuga Law Offices caused the annotation of its attorney's lien in Condominium Certificate of Title Nos. 35739, 35743, 35744, 35745, 35748, 35779, 35797, 35798, 35805, 35806 based on the retainer agreement which entitles it to 12% of all the monetary awards and interests granted to Primetown Property. These 10 condominium certificates of title are part of the 60 condominium units which the RTC ordered Titen-Ikeda Construction to return to Primetown Property. Hence, upon the annotation of said attorney's lien to the condominium certificates of title, it became a burden upon the condominium units.

Notably, these 10 condominium units subjected to the attorney's lien of Dimayuga Law Offices were also the subject of Deeds of Absolute Sale entered into between Primetown Property as the seller and Dimayuga Law Offices as the buyer as payment for the latter's attorney's fees.

The lien, until properly discharged, follows the property.[46] In fact, under Section 59 of Presidential Decree No. 1529,

---

[45] *Peralta v. Victoriano*, 105 Phil. 194 (1959).

[46] *Dev't. Bank of the Phils. v. Clarges Realty Corp.*, 793 Phil. 227, 244 (2016).

otherwise known as the "Property Registration Decree," whenever a registered land is conveyed, all subsisting encumbrances or annotations appearing in the registration book and noted on the certificate shall be carried over and stated in the new certificate of title except where the said encumbrances or annotations are simultaneously released or discharged.[47]

In this case, the attorney's lien was not properly cancelled. The compromise agreement entered into between Primetown Property and Titan-Ikeda Construction providing for the dissolution of any lien and adverse claim annotated upon the condominium certificates of title cannot be the basis for the cancellation of the lien and adverse claim of Dimayuga Law Offices.

A compromise is a contract whereby the parties, by making reciprocal concessions, avoid litigation or put an end to one already commenced.[48] There is no question that a client may enter into a compromise agreement even if there is already a final judgment, as in this case. Having exclusive control over the subject matter of the litigation, the client may, at any time before or after judgment, if acting in good faith, compromise, settle, and adjust his or her cause of action out of court and even without the intervention of his counsel.[49] However, this is not without limitations. A compromise agreement is binding only between the parties and their successors-in-interest[50] and could not affect the rights of third persons who were not parties to the agreement. A party's lawyer is a third person who should not be totally deprived of his compensation because of the

---

[47] Section 59. *Carry over of encumbrances.* If, at the time of any transfer, subsisting encumbrances or annotations appear in the registration book, they shall be carried over and stated in the new certificate or certificates; except so far as they may be simultaneously released or discharged.

[48] CIVIL CODE OF THE PHILIPPINES, Article 2028.

[49] *Gubat v. National Power Corporation*, 627 Phil. 511, 566-567 (2010).

[50] CIVIL CODE OF THE PHILIPPINES, Article 1311.

compromise agreement executed by the client.[51] This is especially true in cases where the compromise agreement was entered into by the parties without the lawyer's participation and conformity.

In this case, a perusal of the provisions of the compromise agreement entered into between Primetown Property and Titan-Ikeda Construction would show that there was no mention of how the attorney's fees earned by Dimayuga Law Offices will be paid. Worse, the compromise agreement even provided for the cancellation of the attorney's lien already annotated in the 10 condominium certificates of title prior to the execution of the said compromise agreement. The absence of any provision respecting the attorney's lien annotated in the 10 condominium certificates of title cannot prejudice the rights of Dimayuga Law Offices which was not a party to the compromise agreement.

In the first place, the 10 condominium units should not have been included in the compromise agreement because they have already been sold by Primetown Property to Dimayuga Law Offices as payment in kind of the attorney's fees that the latter earned. In other words, the 10 condominium units were already owned by Dimayuga Law Offices long before the compromise agreement was executed. This is the reason why in its *Manifestation in Lieu of Comment* submitted before the CA, Primetown Property admitted that:

> PPGI (referring to Primetown Property), in its negotiations with Defendant Titan-Ikeda has always stressed that the Attorney's lien of Atty. Amado Paolo C. Dimayuga, its counsel be respected. It was its understanding that Atty. Dimayuga's claim be honored because he has worked so hard for it.
>
> However, through inadvertence, and considering further that the representative of the Corporation is not a lawyer he overlooked the fact that the Attorney's lien of Atty. Dimayuga was not mentioned in the Compromise Agreement.[52]

---

[51] *Agustin v. Cruz-Herrera*, 726 Phil. 533 (2014).

[52] Id. at 24-25.

It can be gleaned from here that it was the intention of Primetown Property to retain and respect the attorney's fees earned by Dimayuga Law Offices even during the negotiations it undertook with Titan-Ikeda Construction relative to the compromise agreement. Hence, the 10 condominium certificates of title should not have been included in the compromise agreement.

While lawyering is not a moneymaking venture and lawyers are not merchants,[53] an attorney is entitled to be properly compensated for the professional services rendered for the client.[54] Equity dictates that Dimayuga Law Offices must be awarded what it is due. As aptly found by the Court in *Gubat v. National Power Corporation*:[55]

> x x x x
>
> A lawyer is as much entitled to judicial protection against injustice or imposition of fraud on the part of his client as the client is against abuse on the part of his counsel. The duty of the court is not only to ensure that a lawyer acts in a proper and lawful manner, but also to see to it that a lawyer is paid his just fees.
>
> Even if the compensation of a counsel is dependent only upon winning a case he himself secured for his client, the subsequent withdrawal of the case on the client's own volition should never completely deprive counsel of any legitimate compensation for his professional services. In all cases, a client is bound to pay his lawyer for his services.
>
> x x x x

In the exercise of their supervisory authority over attorneys as officers of the Court, the courts are bound to respect and protect the attorney's lien as a necessary means to preserve

---

[53] *Bach v. Ongkiko Kalaw Manhit and Acorda Law Offices*, 533 Phil. 69, 85 (2006).

[54] *Malvar v. Kraft Food Phils., Inc.*, 717 Phil. 427, 435 (2013).

[55] 627 Phil. 551 (2010).

the decorum and respectability of the law profession. Hence, the Court must thwart any and every effort of clients already served by their attorneys' worthy services to deprive them of their hard-earned compensation. Truly, the duty of the courts is not only to see to it that attorneys act in a proper and lawful manner, but also to see to it that attorneys are paid their just and lawful fees.[56]

WHEREFORE, the Petition for Review on *Certiorari* is **GRANTED**. The Order dated June 4, 2018 of the Regional Trial Court of Makati, Branch 58 is **SET ASIDE**.

SO ORDERED.

Leonen (*Chairperson*), *Gesmundo,* and *Hernando,*[*] *JJ.*, concur.

Zalameda, J., on official leave.

---

[56] *Malvar v. Kraft Food Phils., Inc.*, supra note 54 at 452.

[*] Designated as additional Member per Raffle Dated September 23, 2020.

SECOND DIVISION

[A.C. No. 11925. September 28, 2020]

RE: RESOLUTION DATED OCTOBER 11, 2017 in OCA IPI No. 16-4577-RTJ (ROBERTO T. DEOASIDO and ATTY. JEROME NORMAN L. TACORDA v. HONORABLE JUDGE ALMA CONSUELO B. DESALES-ESIDERA, Presiding Judge, Regional Trial Court, Branch 20, Catarman, Northern Samar, and ATTY. LEONARDO SARMIENTO III, Former Clerk of Court, Regional Trial Court, Branch 20, Catarman, Northern Samar), *v.* **ATTY. JEROME NORMAN L. TACORDA,** *Respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; INDULGING IN DELIBERATE FALSEHOOD; FILING OF A FRIVOLOUS COMPLAINT. – After considering all the parties' submission and arguments, the Court finds that Atty. Tacorda should be held administratively liable for violation of Rule 10.01, Canon 10 of the CPR. Record shows that he indeed indulged in deliberate falsehood (by filing a frivolous complaint) and clearly failed to provide adequate explanations to justify the acts imputed against him.

First, as to the act of utilizing as a basis of the administrative case against herein Judge Desales-Esidera the minutes of the proceedings and intentionally left out the orders issued by the latter, Atty. Tacorda. . . failed to justify his omission of the TSNs and/or the eventual orders of the proceedings which would otherwise reflect in detail what actually transpired during the trial.

Second, as to the act of ascribing to Judge Desales-Esidera the alleged issuance of the erroneous Order dated April 5, 2005 when it was reflected in the attached minutes of the proceedings that the name of the judge therein is Acting Presiding Judge Jose F. Falcotelo, Atty. Tacorda provided a weak explanation . . . .

> *Third*, as to the act of ascribing the delay spanning from 2002 up until April 22, 2016 to Judge Desales-Esidera when it was clear that she already inhibited from the case as early as December 9, 2010, Atty. Tacorda did not provide a better explanation other than asserting the constitutional right of Deoasido to a speedy disposition of his case.
>
> . . .
>
> On this score, it is worth stressing that Atty. Tacorda committed acts of falsehood in violation of the clear pronouncements of the CPR. Verily, Atty. Tacorda's conduct seriously falls short of the high standards of morality, honesty, integrity and fair dealing required from members of the bar. Therefore, it is proper that he be sanctioned accordingly.

2. ID.; ID.; ID.; ID.; PENALTY; A MEMBER OF THE BAR MAY BE DISBARRED OR SUSPENDED FROM THE PRACTICE OF LAW FOR ANY VIOLATION OF THE LAWYER'S OATH. — Having established Atty. Tacorda's administrative liability, the Court now determines the proper penalty. The appropriate penalty to be imposed upon an errant lawyer depends on the exercise of sound judicial discretion after due consideration of the surrounding facts. Under Section 27, Rule 138 of the Rules of Court, a member of the bar may be disbarred or suspended by the Supreme Court from office as an attorney for any violation of the oath which he is required to take before admission to practice.

D E C I S I O N

INTING, *J.*:

In the Verified Complaint[1] dated April 29, 2016, Roberto T. Deoasido (Deoasido) and Atty. Jerome Norman L. Tacorda (Atty. Tacorda) (collectively, complainants) charged then Presiding Judge Alma Consuelo B. Desales-Esidera (Judge Desales-Esidera) of Branch 20, Regional Trial Court (RTC), Catarman, Northern Samar with gross ignorance of the law,

---

[1] *Rollo*, pp. 3-8.

gross neglect of duties, delay in the administration of justice, and impropriety relative to Civil Case No. C-1102 entitled, *Heirs of Lucia Mijares-Telegrapo, et al. v. Miguel Balberde*, a case for reconveyance.

Deoasido is one of the heirs in the civil case, while Atty. Tacorda claimed to be their counsel. Atty. Anselmo Alvanez IV (Atty. Alvanez) initially handled the case until he was suspended by the Court from the practice of law.[2]

Complainants alleged that there were numerous postponements made by Judge Desales-Esidera as evidenced by various certified true copies of the transcript of stenographic notes (TSNs) and minutes of the proceedings, to wit:

1. Minutes of 05 April 2005 proceedings - the parties through their counsels were directed to submit simultaneously their position papers.

   Complainants wondered why they were directed to do so when the case is for reconveyance and position papers are not required since it is not governed by the Rules on Summary Procedure.

2. Minutes of 11 September 2008 proceedings - contained remarks that the hearing would be reset as both counsels were not in court when the case was called.

   Complainants bewailed that respondent Judge did not even issue an order requiring both counsels to show cause for not appearing in court. They added that respondent Judge did not also impose postponement fees as strictly required by the rules. They insisted that the delay is attributable to the passive act of respondent Judge which is violative of the Constitution, the Speedy Trial Act and existing jurisprudence.

3. Minutes of 24 October 2008 proceedings - merely had the inscription that the hearing was reset without indicating the reason for the postponement, nor was there a Notice of Postponement filed by either counsel.

---

[2] *Id.* at 3.

Complainants reasoned that our courts are courts of records, and such principle is so basic that even a first year law student can decipher and understand it by heart, which unfortunately respondent Judge's court did not apply.

4. Minutes of the 19 February 2009 proceedings – contained entries that the initial hearing was again reset for the reason that not all the heirs were contacted, hence complainant Deoasido was directed to contact the other heirs, and a certain Atty. Balicud was also required to submit the names of the heirs of Miguel Balberde.

   Complainant Atty. Tacorda stressed that it is a basic rule that there is already sufficient authority when a party litigant is equipped with an SPA conferring upon him the authority to sign, attend, negotiate for settlement and act in their stead regarding the case.

   As to the directive that Atty. Balicud should submit the names of the heirs of Miguel Balberde, the same is too vague and susceptible of various interpretations. By these acts and omissions, respondent Judge delayed the case.

5. Minutes of the 14 January 2010 and 21 September 2010 proceedings – these merely contained the entries that the hearings were reset without giving any reasons for the repeated postponements.

6. Minutes of the 09 December 2010 proceedings – its entry merely noted that respondent Judge inhibited from the case. Again, the minutes contained no reason for the recusal in blatant disregard of basic rules of court.[3]

Complainants also asserted that from the time of the filing of the complaint in 2002 up until April 22, 2016, only the first witness for the plaintiffs was presented in court. This civil case is now presided by a certain Judge Decoroso-Turla.[4]

Meanwhile, in her Comment with Counterclaim[5] filed on August 30, 2016, Judge Desales-Esidera alleged the following:

---

[3] *Id.* at 9-10.

[4] *Id.* at 10.

[5] *Id.* at 17-27.

The complaint should be dismissed on the ground that Atty. Tacorda, as a member of the bar, failed to indicate his Mandatory Continuing Legal Education compliance; that just like the other administrative cases initiated by the latter, the complaint had no basis in fact and in law and had no other purpose but to harass her, beleaguer her, and disturb her work as a judge.[6]

The ill feelings Atty. Tacorda exhibited against her amounted to perjury and were in clear violation of the Lawyer's Oath and the Code of Professional Responsibility (CPR); that the series of administrative cases filed against her, proved that it was a demolition plan in view of her adverse decisions against some "*political bigwigs and complainant Atty. Jerome Norman Tacorda is a willing conspirator with the cooperation of his clients.*" She added that one of Atty. Tacorda's law firm partners is a relative of one of those sentenced by her and who is still fighting for a reversal of her decision despite its affirmance by the higher courts.[7]

Also, the complaint was unfounded since the basis of the complaint, which were the minutes, did not reflect in detail the entire proceedings that transpired during the trial, but only a summary thereof; that the more complete and reliable court document should have been the TSNs and the eventual orders she issued because the court interpreter did not know shorthand writing and could only write what he understood during the proceedings. Yet, complainants opted not to attach the TSNs and the orders as mentioned because had they done so, there would be no case against her because of the presumption that *when the evidence is suppressed, it is adverse when produced*.[8]

As to the alleged submission of position papers on April 5, 2005, she was still the judge in the Municipal Trial Court, Bobon,

---

[6] *Id.* at 10.

[7] *Id.* at 11.

[8] *Id.*

Northern Samar. The attached Minutes[9] of the session actually reflected the name of Acting Presiding Judge Jose F. Falcotelo; hence, it could be said that she had nothing to do with the requirement respecting the submission of position papers.[10]

Moreover, the September 11, 2008 postponement was because she was attending a seminar in Tacloban City as stated in the Notice of Order dated August 13, 2008; that to her mind, the notice already served as a notice to the litigants that she would not be able to attend the hearing and which would no longer require any postponement fees according to the rules.[11]

Further, complainants intentionally omitted the Order[12] she issued for the proceedings on October 24, 2008; and that the hearing was reset due to the demise of defendant Miguel Balberde and the substitution was in order.[13]

Atty. Tacorda failed to observe Section 16,[14] Rule 3, Rules of Court when the Special Power of Attorney in favor of Deoasido

---

[9] *Id.* at 35.

[10] *Id.* at 11.

[11] *Id.*

[12] *Id.* at 46.

[13] *Id.* at 11.

[14] Section 16, Rule 3 of the Rules of Court provides:

SEC. 16. Death of party; duty of counsel. – Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with this duty shall be a ground for disciplinary action.

The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint a guardian *ad litem* for the minor heirs.

The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice.

If no legal representative is named by the counsel for the deceased party, or if the one so named shall fail to appear within the specified period, the court may order the opposing party, within a specified time, to procure

executed by his siblings and attached to the records did not include the hiring of Atty. Tacorda, or any other lawyer to represent them. Moreover, the court was informed that not all heirs were contacted; hence, the directive to contact all the heirs to be substituted.[15]

As to the minute dated January 14, 2010, although it did not state therein the reason for postponement, the order of even date reads that there was a power failure; while the Order of Inhibition dated December 9, 2010 did not fail to state Judge Desales-Esidera's reason for recusal. She added that as a natural occurrence of her inhibition, the hearing would be postponed. Therefore, after inhibiting herself, she had nothing more to do with the case and no longer answerable as to why it was only on April 22, 2016 that the first witness was presented.[16]

Lastly, there was no September 21, 2010 hearing, minutes, or order. She said that it was during the proceedings on September 2, 2010 that the hearing was reset to October 21, 2010.[17]

Evaluation and Recommendation of the Office of the Court Administrator (OCA)

The Court Administrator recommended that the instant administrative complaint against Judge Desales-Esidera be dismissed for utter lack of merit based on the following evaluation, which reads in this wise:

With respect to the charge of gross ignorance of the law, the Court in the case of *Amante-Descallar vs. Ramas* set forth the elements of the offense as follows: that the subject order or actuation of the

---

the appointment of an executor or administrator for the estate of the deceased and the latter shall immediately appear for and on behalf of the deceased. The court charges in procuring such appointment, if defrayed by the opposing party, may be recovered as costs.

[15] *Rollo*, p. 12.

[16] *Id.*

[17] *Id.*

judge in the performance of his official duties must not only be contrary to existing law and jurisprudence, but more importantly, must be attended by bad faith, fraud, dishonesty or corruption. However, based on the records at hand, both elements were not established by complainants.

As can be deduced, complainants did not present proof that there were orders or resolutions that respondent Judge issued in the performance of her official duties which are contrary to existing law and jurisprudence and motivated by bad faith, fraud, dishonesty and corruption. In fact, complainants merely presented, intentional or otherwise, the minutes of the proceedings. This Office subscribes to respondent Judge's stand that the minutes, which was the basis of complainants for filing the instant case, do not reflect in detail the entire proceedings but merely a summary of what transpired during the trial.

With respect to the charge of neglect of duty, the same is defined as the failure of an employee to give proper attention to a required task or to discharge a duty due to carelessness or indifference. On the other hand, gross neglect of duty is characterized by want of even the slightest care, or by conscious indifference to the consequences, or by flagrant and palpable breach of duty. In the instant case, complainants want to impress upon the Court that respondent Judge's negligence is the direct cause of delay in their case. However, this imputation has no leg to stand on. *Firstly*, as stated earlier, the minutes presented by complainants in filing the instant case, is insufficient to establish the entire proceedings. *Secondly*, complainants failed to ascribe specific conduct that amounts to failure on the part of respondent Judge to give proper attention to a required task or to discharge a duty due to carelessness or indifference. For her part, respondent Judge was able to satisfactorily explain the reasons for the postponements.

It bears stressing that the complainant in an administrative proceeding bears the onus of establishing, by substantial evidence, the averments in the complaint. In the absence of contrary evidence, what will prevail is the presumption that the respondent has regularly performed his official duties. Substantial evidence is such amount of relevant evident which a reasonable mind might accept as adequate to support a conclusion. The standard of substantial evidence is satisfied when there is reasonable ground to believe that the person indicted was responsible for the alleged wrongdoing. Thusly,

respondents Judge's conducts is presumed regular.[18] (Citations omitted.)

Further, the Court Administrator found that the following acts on the part of complainants manifested bad faith and deserved sanctions should they fail to justify their acts, to wit:

First, complainants need to explain why they filed the instant administrative complaint which is utterly lacking in basis;

Second, complainants need to explain why they utilized as basis of the instant administrative case mere minutes of the proceedings and left out, intentionally or otherwise, the orders of said proceedings;

Third, complainants should explain why they ascribed to respondent Judge the alleged issuance of the erroneous Order dated 05 April 2005 when it was reflected in the attached minutes of the proceedings that the name of the judge is Acting Judge Jose F. Falcotelo; and,

Fourth, complainants should explain why they ascribed the delay spanning from 2002 up until 22 April 2016 to respondent Judge while it was clear that respondent Judge already inhibited from the case as early as 09 December 2010;

Finally, for filing this administrative complaint against respondent Judge for alleged gross inefficiency, delay in the administration of justice and impropriety with no basis whatsoever, complainants should explain why they should not be sanctioned for filing said frivolous complaint and maligning respondent which only wasted the Court's time and resources.[19]

In the Resolution[20] dated October 11, 2017, the Court adopted the recommendation of the OCA and directed complainants to explain the above-mentioned acts.

---

[18] *Id.* at 12-13.

[19] *Id.* at 13-14.

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

Issue

Whether Atty. Tacorda should be held administratively liable for the acts attributed to him.

The Court's Ruling

After considering all the parties' submission and arguments, the Court finds that Atty. Tacorda should be held administratively liable for violation of Rule 10.01,[21] Canon 10 of the CPR. Record shows that he indeed indulged in deliberate falsehood and clearly failed to provide adequate explanations to justify the acts imputed against him.

First, as to the act of utilizing as a basis of the administrative case against herein Judge Desales-Esidera the minutes of the proceedings and intentionally left out the orders issued by the latter, Atty. Tacorda merely stated that the minutes as attached to the complaint were supplied by Atty. Alvanez, the first counsel of the heirs of Lucia Mijares-Telegrapo, to complainant Deoasido, who in turn handed them over to Atty. Tacorda. Verily, Atty. Tacorda only attributed the act as the acts of Atty. Alvanez and Deoasido and failed to justify his omission of the TSNs and/or the eventual orders of the proceedings which would otherwise reflect in detail what actually transpired during the trial.

Second, as to the act of ascribing to Judge Desales-Esidera the alleged issuance of the erroneous Order dated April 5, 2005 when it was reflected in the attached minutes of the proceedings that the name of the judge therein is Acting Presiding Judge Jose F. Falcotelo, Atty. Tacorda provided a weak explanation that since Judge Desales-Esidera presided Branch 20, RTC, Catarman, Northern Samar, it follows then that she had control

---

[21] Rule 10.01, Canon 10 of the Code of Professional Responsibility provides:

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.

and supervision of the Clerk of Court, who was then responsible for the records of the minutes.

Third, as to the act of ascribing the delay spanning from 2002 up until April 22, 2016 to Judge Desales-Esidera when it was clear that she already inhibited from the case as early as December 9, 2010, Atty. Tacorda did not provide a better explanation other than asserting the constitutional right of Deoasido to a speedy disposition of his case.

Further, when Atty. Tacorda was asked to explain as to why he should not be sanctioned for filing a frivolous complaint and maligning herein Judge Desales-Esidera, he merely justified his act by saying that under the Canon of Professional Ethics, a lawyer must see to it that justice is done; that grievances against a judge shall be addressed to the duly constituted authorities; and, in this case, the purpose was to invoke the right to speedy trial and that there was no bad faith in instituting the administrative case against Judge Desales-Esidera.

Emphatically, in *Spouses Umaguing v. Atty. De Vera*,[22] the Court highlighted the oath undertaken by every lawyer to not only obey the laws of the land, but also to refrain from doing any falsehood, *viz.*:

> The Lawyer's Oath enjoins every lawyer not only to obey the laws of the land but also to refrain from doing any falsehood in or out of court or from consenting to the doing of any in court, and to conduct himself according to the best of his knowledge and discretion with all good fidelity to the courts as well as to his clients. Every lawyer is a servant of the law, and has to observe and maintain the rule of law as well as be an exemplar worthy of emulation by others. It is by no means a coincidence, therefore, that the core values of honesty, integrity, and trustworthiness are emphatically reiterated by the Code of Professional Responsibility. In this light, Rule 10.01, Canon 10 of the Code of Professional Responsibility provides that "[a] lawyer shall not do any falsehood, nor consent to the doing of

---

[22] 753 Phil. 11 (2015).

any in Court; no shall he mislead, or allow the Court to be misled by any artifice."[23]

The Court likewise gives emphasis to the fact that the practice of law is imbued with public interest, and that "a lawyer owes substantial duties not only to his client, but also to his brethren in the profession, to the courts, and to the nation, and takes part in one of the most important functions of the State — the administration of justice — as an officer of the court."[24] Thus, "[l]awyers are bound to maintain not only a high standard of legal proficiency, but also of morality, honesty, integrity and fair dealing."[25]

On this score, it is worth stressing that Atty. Tacorda committed acts of falsehood in violation of the clear pronouncements of the CPR. Verily, Atty. Tacorda's conduct seriously falls short of the high standards of morality, honesty, integrity and fair dealing required from members of the bar. Therefore, it is proper that he be sanctioned accordingly.

Having established Atty. Tacorda's administrative liability, the Court now determines the proper penalty. The appropriate penalty to be imposed upon an errant lawyer depends on the exercise of sound judicial discretion after due consideration of the surrounding facts.[26] Under Section 27, Rule 138 of the Rules of Court, a member of the bar may be disbarred or suspended by the Supreme Court from office as an attorney for any violation of the oath which he is required to take before admission to practice.

WHEREFORE, respondent Atty. Jerome Norman L. Tacorda is ordered **SUSPENDED** from the practice of law for six (6)

---

[23] *Id.* at 19.

[24] *Tenoso v. Atty. Echanez*, 709 Phil. 1, 5 (2013), citing *In the Matter of the IBP Membership Dues Delinquency of Atty. MARCIAL A. EDILLON (IBP Administrative Case No. MDD-1)*, 174 Phil. 55, 62 (1978).

[25] *Id.*, citing *Ventura v. Atty. Samson*, 699 Phil. 404, 407 (2012).

[26] *Samonte v. Atty. Jumamil*, 813 Phil. 795, 805 (2017).

months with a **WARNING** that the commission of the same or similar offense in the future would be dealt with more severely.

The suspension in the practice of law shall take immediately upon receipt of this Decision by respondent Atty. Jerome Norman L. Tacorda. 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.

The Office of the Bar Confidant is required to attach a copy of this Decision to the records of respondent Atty. Jerome Norman L. Tacorda. Let copies of this Decision be furnished the Integrated Bar of the Philippines for their information and guidance and the Office of the Court Administrator for circulation to all the courts in the country.

SO ORDERED.

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

Delos Santos, J., on official leave.

Baltazar-Padilla, J., on leave.

SECOND DIVISION

[G.R. No. 196476. September 28, 2020]

DEVELOPMENT BANK OF THE PHILIPPINES, *Petitioner*, *v.* **HEIRS OF JULIETA L. DANICO, namely, ROGELIO L. DANICO, CORAZON D. EMETERIO, NENITA D. YBAÑEZ, RODRIGO L. DANICO, DANILO L. DANICO, DANIEL L. DANICO, GLORIA ESCRUPULO, VILMA MOSQUEDA, and NATIONAL POWER CORPORATION,** *Respondents*.

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; IF THE TERMS OF THE CONTRACT ARE CLEAR AND LEAVE NO DOUBT UPON THE INTENTION OF THE CONTRACTING PARTIES, THE LITERAL MEANING OF ITS STIPULATION SHALL CONTROL. — Article 1370 of the Civil Code provides that if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulation shall control. If, indeed, the stipulations in the said two deeds of sale did not express the true intention of the parties, both the Spouses Danico and the NPC could have filed the corresponding action for reformation of the contract. But they did not do so. Besides, both deeds of sale had been executed on the same day, that is, on September 9, 1985. Thus, the parties knew at the time of their execution the existence of the two Statements of Account as stipulated in the contracts. They cannot now impugn the existence of Statement of Account as of April 30, 1985 when the words of both contracts are clear and readily understandable. The contract is the law between the parties. Thus, it should be interpreted according to their literal meaning and should not be interpreted beyond their obvious intendment.

2. ID.; SPECIAL CONTRACTS; NO INTEREST SHALL BE DUE UNLESS IT HAS BEEN EXPRESSLY STIPULATED IN WRITING. — Article 1956 of the Civil Code states that no interest shall be due unless it has been expressly stipulated in writing.

As can be gleaned from the foregoing provision, payment of monetary interest is allowed only if: (1) there was an express stipulation for the payment of interest; and (2) the agreement for the payment of interest was reduced in writing. The concurrence of the two conditions is required for the payment of monetary interest. Thus, We have held that collection of interest without any stipulation therefor in writing is prohibited by law.

3. ID.; DAMAGES; INTEREST BY REASON OF DELAY IN PAYMENT OF THE PURCHASE PRICE, ACCRUES ONLY FROM THE TIME JUDICIAL OR EXTRAJUDICIAL DEMAND IS MADE; CASE AT BAR. — As to DBP's claim for interest by reason of NPC's delay in the payment of the purchase price of the two deeds of sale, We hold that the interest accrues only from the time judicial or extrajudicial demand is made. However, a thorough review of the records would reveal that petitioner DBP failed to make any extrajudicial demand for the payment of the purchase of price of the two deeds of sale. x x x Although petitioner DBP judicially demanded payment through its Answer with Counterclaim and Crossclaim, the consequent tender of payment and consignation on June 28, 2001 by NPC in the total amount of ₱301,350.50 suspends the accrual of interest as to the payment of the purchase price of the first deed of sale. Nonetheless, NPC is liable to pay compensatory interest of twelve percent (12%) per *annum* from the time of its judicial demand, *i.e.* the filing of its Answer with Counterclaim and Crossclaim on July 13, 1999 until the date of its consignment of ₱301,350.50 on June 28, 2001. However, as to the remaining amount of ₱150,641.03 which is a part of the purchase price of the second deed of sale, the same shall earn 12% legal interest per *annum* to be computed from the time of DBP's judicial demand on July 13, 1999 until June 30, 2013 and six percent (6%) legal interest per *annum* from July 1, 2013 until the judgment becomes final as per the guidelines laid down in the case of *Eastern Shipping Lines, Inc. v. Court of Appeals* as modified in *Nacar v. Gallery Frames*, x x x [and] six percent (6%) interest *per annum* on the total judgment award including interest from the time of finality of this Decision until its full satisfaction.

APPEARANCES OF COUNSEL

Jeoffrey C. Sayson for petitioner DBP.
Conrado M. Barroso for respondents Danico, *et al.*

D E C I S I O N

HERNANDO, *J.*:

Challenged in this Petition[1] is the December 2, 2010 Decision[2] of the Court of Appeals (CA) in CA-G.R. CV No. 78619 which affirmed *in toto* the Regional Trial Court's (RTC) January 2, 2003 Decision[3] which: (a) declared the extrajudicial foreclosure of the property covered by Transfer Certificate of Title (TCT) No. T-8127[4] and its subsequent consolidation under TCT No. T-19241 in the name of the Development Bank of the Philippines (DBP) as valid and legal; (b) directed the DBP to accept the total amount of ₱301,350.50 as full payment for Julieta and Daniel Danico's (Spouses Danico) loan obligation; and (c) declared the National Power Corporation (NPC) as without any liability.

The Antecedents

On April 22, 1977, the Spouses Danico obtained an agricultural loan from petitioner DBP in the total amount of ₱150,000.00 which was secured by: a) real estate mortgage (REM) over their four (4) real properties covered by Original Certificate of Title (OCT) No. P-1439, TCT No. T-8127, TCT No. T-3278

---

[1] *Rollo,* pp. 9-29.

[2] CA *rollo,* pp. 150-167; penned by Associate Justice Angelita A. Gacutan and concurred in by Associate Justices Edgardo A. Camello and Rodrigo F. Lim, Jr.

[3] Records, pp. 234-245; penned by Judge Rolando S. Venadas, Sr.

[4] Also mentioned as T-8147 in some parts of the records.

and OCT No. P-537;[5] and b) a chattel mortgage over one unit of Massey Fergusson tractor and accessories.[6]

On July 12, 1982, the Department of Agrarian Reform (DAR) issued a Certification seizing the mortgaged real properties covered by OCT No. P-1439, TCT No. T-3278 and OCT No. P-537 and placing them under the coverage of Presidential Decree No. 27, otherwise known as the Operation Land Transfer.[7]

On August 6, 1982, DBP extrajudicially foreclosed the real property covered by TCT No. T-8127 for failure of the Spouses Danico to pay their loan obligation. Upon the expiration of the redemption period on September 12, 1983, DBP consolidated the ownership of the real property covered by TCT No. T-8127 as per Sheriff Certificate of Sale and Affidavit of Consolidation of Ownership dated September 12, 1983.[8] As a result, TCT No. T-8127 was canceled and TCT No. T-19241 was issued in the name of DBP.[9]

On September 9, 1985, NPC bought from the Spouses Danico the following: (a) Lot No. 861 which is covered by OCT No. P-1439; (b) Lot No. 857-B which is a portion of the land covered by TCT No. T-3278, as the two lots are part of the NPC's Reservoir Area. As per the Deed of Absolute Sale of Registered Land dated September 9, 1985,[10] Lot No. 861 covered by OCT No. P-1439 was sold by the Danicos to NPC in the total amount of ₱511,290.00 provided that:

I, DANIEL DANICO, x x x married to JULIETA LUBOS DANICO, x x x for and in consideration of the sum of FIVE HUNDRED ELEVEN THOUSAND TWO HUNDRED NINETY PESOS ONLY (₱511,290.00),

---

[5] Also mentioned as TCT No. T-537 in some parts of the records.

[6] *Records*, p. 197.

[7] Id.

[8] Id. at 198.

[9] Id. at 20.

[10] Id. at 183-184.

x x x, do hereby SELL, TRANSFER AND CONVEY unto the said NATIONAL POWER CORPORATION, x x x that certain parcel of land x x x with TCT No. T-P-1439 x x x

x x x x

That pursuant to the Statement of Account and Certification issued by the DEVELOPMENT BANK OF THE PHILIPPINES, x x x the herein aforementioned parcel of land is presently mortgaged at said bank at a total amount of ₱393,353.97, account as of December 31, 1985, that the consideration of the sale shall be that the remaining amount of the proceeds of the sale of the above-mentioned lot after paying the herein tenants and the Realty Taxe[s] and Capital Gain[s] Tax to the concerned parties, whatever amount left be paid and issued in separate check to the herein DEVELOPMENT BANK OF THE PHILIPPINES;[11]

On the other hand, the Deed of Absolute Sale of a Portion of Registered Land[12] states that Lot No. 857-B covered by TCT No. T-3278 was sold by the Spouses Danico to NPC in the total amount of ₱242,644.50 provided that:

I, DANIEL DANICO, x x x married to JULIETA LUBOS DANICO, x x x for and in consideration of the sum of TWO HUNDRED FOURTY TWO THOUSAND SIX HUNDRED FOURTY FOUR PESOS & 50/100 ONLY (₱242,644.50), Philippine Currency, x x x do hereby SELL, TRANSFER AND CONVEY unto the said NATIONAL POWER CORPORATION, x x x that certain parcel of land x x x with TCT No. T-3278 x x x

x x x x

That pursuant to the Statement of Account and Certification issued by the DEVELOPMENT BANK OF THE PHILIPPINES, x x x the herein aforementioned parcel of land is presently mortgaged at said bank at a total cost of ₱509,320.82, account as of April 30, 1985, that the consideration of the sale shall be that the remaining amount unpaid after the proceeds of another parcel of land had been applied to the said mortgaged loan to the herein bank and consumated (sic) out of the proceeds of the aforementioned parcel of land herein conveyed,

---

[11] Id.

[12] Id. at 185-186.

and same shall be issued in separate check in favor of the herein bank;[13]

DBP agreed to the sale of the two lots to NPC on the condition that a portion of the proceeds would be applied to the Spouses Danico's outstanding obligation with DBP. However, NPC paid DBP only the total amount of ₱92,003.47[14] from the proceeds of the sale of a portion of land covered by TCT No. T-3278 as per Official Receipt No. 2205487 dated November 17, 1986.[15] NPC did not remit to DBP the amount ₱301,350.50 from the proceeds of the sale of the land covered by OCT No. P-1439.[16]

Meanwhile, on October 10, 1985, DBP and Daniel entered into a Deed of Conditional Sale[17]of the parcel of land covered by TCT No. T-8127, now TCT No. T-19241, for a total consideration of ₱491,600.00 subject to the following terms and conditions:

1. **That the amount of ONE HUNDRED EIGHTEEN THOUSAND TWENTY ONE & 20/100 PESOS (₱118,021.20) previously paid by the Vendee to the Vendor prior to the execution of the contract of conditional sale, shall constitute the downpayment on this contract and the balance of THREE HUNDRED SEVENTY THREE THOUSAND FIVE HUNDRED SEVENTY EIGHT & 70/100 (₱373,578.70)** shall be paid within a period of one (1) year/s on the annual amortization plan with interest at the rate of twenty-one per centum (21%) per annum. The first amortization shall be due on September 30, 1986 in the amount of FOUR HUNDRED FIFTY TWO THOUSAND THIRTY & 35/100 PESOS (₱452,030.35) which includes principal and interest;

2. That the interest and expenses with interest thereon accruing from September 30, 1985 up to the date of execution of the sale

---

[13] Id.

[14] Alternatively mentioned as ₱93,003.97 in some parts of the records.

[15] Records, p. 190.

[16] Id. at 188.

[17] Id. at 216-220.

document shall be paid by the Vendee (applicable to sales to former owners);[18] (Emphasis supplied)

On February 24, 1987, NPC requested DBP to release the copy of OCT No. P-1439 (now TCT No. T-21793 in the name of NPC).[19] It reasoned that Disbursement Voucher No. P4-2-0-85-11-3449[20] dated November 12, 1986 in the amount of ₱301,350.50 had already been issued by NPC to DBP in payment for the sale of the land covered by OCT No. P-1439. However, payment to DBP was put on hold pending compliance with the requirement of the Commission on Audit.[21]

On the same day, DBP issued a Certification that it will only release the original copy of OCT No. P-1439 if the proceeds of the sale of the said property in the amount of ₱301,350.50 had already been paid.[22]

Meanwhile, on January 10, 1999, Julieta Danico and her heirs filed with RTC, Branch 9, Malaybalay City, a complaint against DBP and NPC for the cancellation or release of mortgage over the four (4) properties covered by the real estate mortgage, which was docketed as Civil Case No. 2881-99.[23] They contended that the Spouses Danico's total loan obligation in the amount of ₱393,353.97 had already been satisfied when NPC paid petitioner DBP the total amount of ₱394,069.75. Hence, they prayed that DBP release the mortgage over the foreclosed residential property covered by TCT No. T-8127 (now TCT No. T-19241 in the name of DBP). They likewise prayed that a restraining order be issued against DBP to enjoin the latter from taking possession of the land covered by TCT No. T-8127 (now TCT No. T-19241).

---

[18] Id. at 216.

[19] Id. at 193.

[20] Id. at 192.

[21] Id. at 193.

[22] Id. at 194.

[23] Id. at 1-8.

On May 7, 1999, petitioner DBP, on the other hand, filed with the same trial court, a petition for the issuance of a writ of possession over the parcel of land now covered by TCT No. T-19241 in the name of DBP, which was docketed as Misc. Case No. 338-99.[24]

On July 13, 1999, DBP filed its Answer with Affirmative Defenses, Counterclaim and Crossclaim.[25] DBP denied the allegations of Julieta and her heirs and averred that the Spouses Danico's total loan obligation in the amount of ₱509,520.82 as per Statement of Account dated April 30, 1985 covered only the unforeclosed properties, namely, OCT No. P-1439, TCT No. T-3278 and OCT No. P-537 and not the property covered by TCT No. T-8127 (now TCT No. T-19241) since the latter was already foreclosed by DBP in 1982 even before NPC bought the real properties covered by OCT No. P-1439 and TCT No. T-3278 in 1985. It further denied receipt of payment from NPC of the amount ₱301,350.50 and averred that the mere issuance by the latter of a disbursement voucher did not necessarily constitute payment of the total loan obligation unless tender of payment, in the form of cash or check, had been made by NPC to DBP.

On August 11, 1999, NPC filed its Answer[26] alleging that it already paid DBP the amount ₱301,350.50 as per Disbursement Voucher No. P4-2-0-85-11-3449 dated November 12, 1986 and Check No. 117684 issued in the name of DBP.

On May 19, 2000, the trial court ordered the joint trial of Misc. Case No. 338-99 and Civil Case No. 2881-99.[27]

On November 10, 2000, the trial court issued a Pre-Trial Order with the following stipulation of facts:

---

[24] Id. at 240.

[25] Id. at 37-43.

[26] Id. at 62-65.

[27] Id. at 105.

1. That [Spouses Danico] obtained an agricultural loan from defendant DBP in the amount of ₱150,000.00 x x x secured by a real estate mortgage on four (4) titled properties, three (3) of which were agricultural lands and one (1) was a residential land and a chattel mortgage over a tractor.

2. That [NPC] and [Spouses Danico] entered into a contract of sale over two (2) agricultural lands as aforementioned and it was agreed that the proceeds thereof will be used to pay [Daniel's] loan with the x x x DBP.

3. That [DBP] maintained that [it only received] the sum of ₱92,003.47 out of the total proceeds of the sale x x x. Hence, the rest of the amount has to be accounted for. However, [NPC] is willing to pay the amount of ₱301,350.00 for which it has already prepared a check which has become stale because it was never given to the DBP and that neither DBP took it from the [NPC].

4. At the time of the execution of the contract of sale over the two (2) agricultural lands the total pending account of the [Spouses Danico] with the x x x DBP was in the amount of ₱509,520.82 as of April 30, 1985, which x x x defendant NAPOCOR was ready to pay the amount of ₱301,350.00.

5. That Annex B to the complaint is a statement of account admittedly sent by defendant DBP to the [Spouses Danico] showing a balance only of ₱393,353.90 inclusive of interest as of the date of the statement of account x x x.

6. That x x x Annex B to the complaint x x x refers to the account as of December 31, 1985; that the residential house at that time was already foreclosed by the DBP on August 6, 1982, now consolidated on September 12, 1983 under [DBP'S] name.

7. That x x x the other collateral covered by OCT No. P-1439, TCT No. T-3278 and TCT No. T-537 (sic) and one unit Massey Fergusson agricultural tractor with trailer harrow and accessories remained unforeclosed up to the present time.

8. That the said three (3) unforeclosed real properties were all tenanted and presently covered by the Land Reform Program under PD No. 27 on July 12, 1982 as Annex D to the answer.

9. That on November 15, 1984 x x x Julieta x x x requested for statement of account of the two (2) unforeclosed real estate property

covered by TCT No. T-3278 and OCT No. P-1439 which she alleged [have already been] paid by [NPC] and that according to her she will obtain a DAR clearance for that purpose.

10. That according to defendant DBP the total loan account of the foreclosed property as of April 30, 1985 amounted to ₱509,520.82 x x x.

11. That the amount of ₱301,350.00 was not yet paid by defendant [NPC] to defendant DBP although the corresponding check voucher has already been prepared by [NPC] x x x.[28]

On March 1, 2001, the RTC issued an Order[29] holding in abeyance the trial of the case pending the tender of payment by NPC to DBP of the amount of ₱301,350.50.

On May 7, 2001, NPC filed a Manifestation[30] that the check in the total amount of ₱301,350.50 issued in the name of DBP was ready to be delivered to DBP provided that the latter surrender TCT No. T-21793 and TCT No. T-3278.

However, petitioner DBP refused to accept the check in the total amount of ₱301,350.50 on the ground that the said amount did not include the interest allegedly due. Thus, on June 28, 2001, the RTC ordered the consignment of the said check with DBP, Malaybalay City Branch which shall be under the name and custody of the RTC Clerk of Court, Branch 9, Malaybalay City.[31]

Thereafter, the parties filed their respective memoranda.

Ruling of the Regional Trial Court:

On January 2, 2003, the RTC rendered its Decision[32] declaring the extrajudicial foreclosure of TCT No. T-8127 and its

---

[28] Id. at 127-128.

[29] Id. at 130.

[30] Id. at 143-144.

[31] Id. at 146.

[32] Id. at 234-245.

subsequent consolidation under TCT No. T-19241 in the name of DBP as valid and legal. It also directed DBP to accept the amount of ₱301,350.50 as full payment of the Spouses Danico's loan obligation and declared NPC as without any liability.

Petitioner DBP and respondents heirs and Julieta filed an appeal[33] before the CA. On June 9, 2010, the heirs of Julieta filed a Notice of Death and Substitution of the Heirs[34] on account of Julieta's death on January 10, 2000.

Ruling of the Court of Appeals:

On December 2, 2010, the CA rendered its assailed Decision[35] holding that respondent NPC's obligation to petitioner DBP was only ₱393,353.97 and not ₱509,320.82 by reason of the following: (a) the two deeds of sale of the real properties covered by OCT No. P-1439 and TCT No. T-3278 stated that the obligation of the Spouses Danico as of December 31, 1985 was only ₱393,353.97; and (b) DBP's own admission in its Certification dated February 24, 1987 that it will only release the original copy of the OCT No. P-1439 upon payment by NPC of the amount of ₱301,350.50, which is the difference after deducting NPC's first payment of ₱92,003.47 from ₱393,353.97 which is the Spouses Danico's outstanding obligation as of December 31, 1985.

As to the DBP's contention that NPC is liable to pay interest, penalties and interest charges for the delay in the payment of ₱301,350.50, the appellate court held that since DBP did not ask for interest charges when it signified its conformity with the two deeds of sale, it cannot now ask for the payment of interest. Neither can DBP claim interest pursuant to the stipulation in the mortgage instrument stating that the vendee and vendor shall be jointly and severally liable for the said mortgage obligations including payment of interest because said provision

---

[33] Id. at 249-251.

[34] CA *rollo*, pp. 145-147.

[35] Id. at 150-167.

applies only when the mortgagor conveys or encumbers the mortgaged properties without the written consent of the mortgagee, which circumstance is not present in this case since DBP consented to the sale of the two mortgaged properties.

Also, DBP cannot claim interest by reason of delayed payment because it failed to present evidence that it extrajudicially demanded for the payment of the principal amount and its corresponding interest prior to NPC's tender of payment of the amount of ₱301,350.50. Hence, petitioner DBP's appeal was denied.

The appeal of the heirs of Julieta was likewise denied by the CA for their failure to assail the ruling of the RTC regarding the validity and legality of the extrajudicial foreclosure of the parcel of land covered by TCT No. T-8127.

On January 18, 2011, petitioner DBP filed a Motion for Reconsideration but it was denied by the CA in its March 25, 2011 Resolution.[36]

Hence, this Petition.

Issues

The issues presented for Our resolution are as follows:

1. Is respondent NPC liable to pay the total amount of ₱902,674,79; and

2. Is respondent NPC liable to pay interest and penalty charges?

The Court's Ruling

At the outset, we state that the issue regarding the validity of the foreclosure by DBP of the REM over TCT No. T-8127 has already been settled for failure of the heirs of Danico to file an appeal. It is settled that no affirmative relief can be granted to those parties who did not appeal.

---

[36] Id., unpaginated.

DBP claims that there are two separate and distinct obligations, namely: (a) Contract Mortgage Receivable (CMR) agricultural account in the total amount of ₱393,353.97 as of December 31, 1985 as per Deed of Absolute Sale of Registered Land dated September 9, 1985; and (b) original loan account in the total amount of ₱509,320.82 as of April 30, 1985 arising from the Deed of Absolute Sale of a Portion of Registered Land dated September 9, 1985. The CMR agricultural account pertains to the repurchase of TCT No. T-19241 (originally TCT No. T-8127) by the Spouses Danico from petitioner DBP in the Deed of Conditional Sale dated October 10, 1985 while the original loan account pertains to the unforeclosed properties of the Spouses Danico by virtue of their original agricultural loan dated April 22, 1977. Thus, the total amount of obligation of the Spouses Danico to DBP is ₱902,674.79 excluding accrued interests and default charges.

DBP contends that as of December 31, 1985, the outstanding obligation of the Spouses Danico in their CMR agricultural account was ₱393,353.97, which amount ought to be paid in order for the mortgage to be cancelled and for TCT No. T-3278 to be released. However, respondent NPC belatedly paid only the amount of ₱92,003.47 as per Official Receipt No. 2205487 on November 17, 1986 instead of December 31, 1985 as per the Deed of Sale. The remaining amount of ₱301,350.50 was tendered and consigned with the RTC Clerk of Court as reflected in the lower court's Order dated June 28, 2001. DBP argues that the failure of the Spouses Danico and respondent NPC to comply with their obligation to pay the total amount of ₱393,353.97 on or before December 31, 1985 entitles DBP to claim interest and penalty charges.

Furthermore, DBP argues that the outstanding balance on the original loan obligation on the unforeclosed properties of the Spouses Danico was ₱509,520.82 as of April 30, 1985, which amount has not yet been paid. In the Deed of Sale dated September 9, 1985, the sale consideration for a portion of Lot No. 857 covered by TCT No. T-3278 was ₱242,644.50. The parties admitted that Lot No. 857 was mortgaged with DBP in

the total amount of ₱509,320.82, which amount ought be paid first for the mortgage to be cancelled and the title to be released.

Based on the foregoing, DBP claims that the Spouses Danico had two separate and distinct loan obligations as shown in the two Statements of Accounts dated December 31, 1985 and April 30, 1985. Hence, DBP claims that the judgment award in the amount of ₱301,350.50 is insufficient to fully settle the total obligation in the amount of ₱902,674.79.[37]

DBP maintains that its right to collect interests, penalty and other bank charges is anchored on the contract of agricultural loan and promissory note executed by the Spouses Danico on April 22, 1977. It claims that its conformity to the two Deeds of Sale did not in any way amend, modify nor divest it of its right to demand and collect interests and penalty charges when the NPC defaulted on its obligations as per the two Deeds of Sale.

Moreover, DBP argues that the Spouses Danico and the NPC were both aware of the stipulation in the Deed of Mortgage that:

> The Mortgagor shall not sell, dispose of, mortgage, nor in any manner encumber the mortgage property without the written consent of the Mortgagee. If in spite of this stipulation the property is sold, the Vendee shall assume the mortgage in the terms and conditions under which it is constituted it being understood that the assumption by the Vendee shall not release the Vendor of his obligation to the Mortgagee; on the contrary, both Vendor and Vendee shall be jointly and severally liable for said mortgage obligation. In case a second mortgage of other involuntary encumbrance is constituted, the second Mortgagee or junior encumbrances shall recognize the existing mortgage in favor of the Mortgagee as first lien and shall further agree, promise and bind himself to recognize and consider the extension of any term of said mortgage by the Mortgagee in favor of the Mortgagor or a new mortgage covering the same property to be executed by said Mortgagor in favor of the Mortgagee as first and superior encumbrance.[38]

---

[37] ₱393,353.97 + ₱509,320.827.

[38] Records, p. 44.

DBP further argues that since NPC and the Spouses Danico failed to comply with the two Deeds of Sale by delivering the proceeds of the sale and applying the same on their loan accounts, DBP's consent to the Deeds of Sale is deemed not to have been given which renders the above-quoted provision instantly applicable to the present case. As a result, both NPC as vendee, and the Spouses Danico as vendors, shall be jointly and severally liable for the mortgage obligation including interests and penalty charges for default payment.

On the other hand, NPC contends that the Deed of Sale involving the land covered by OCT No. P-1439 provides no stipulation as to the payment of interest which renders DBP's claim for interest without legal basis. Moreover, NPC argues that DBP cannot invoke the applicability of the Deed of Mortgage to collect interest because the two deeds of sale between NPC and the Spouses Danico were executed with the express conformity of DBP as stipulated therein. Thus, petitioner DBP cannot now impugn the deeds of sale which it willingly consented to.

Moreover, NPC claims that from the moment petitioner DBP gave its consent, the latter is bound to fulfill what was expressly stipulated and its consequences. Also, the deeds of sale do not contain any reservation of ownership in case of failure of delivery of payment.

We partly agree with petitioner DBP.

Is NPC liable to pay DBP the total amount of ₱902,674.79?

A perusal of the records would reveal that the parties entered into two deeds of sale, namely: (a) Deed of Absolute Sale of Registered Land (first deed of sale) dated September 9, 1985 with a total consideration of ₱511,290.00 involving Lot No. 861 covered by OCT No. P-1439;[39] and (b) Deed of Absolute Sale of a Portion of Registered Land (second deed of sale)

[39] Id. at 183-184.

dated September 9, 1985 with a total consideration of ₱242,644.50[40] referring to a portion of Lot No. 857 which is covered by TCT No. T-3278. Notably, these two lots were part of the properties subject of the REM to secure the Spouses Danico's original agricultural loan with DBP executed on April 22, 1977.

The first deed of sale contains a stipulation that Lot No. 861 covered by OCT No. P-1439 and reflected in the Statement of Account as of December 31, 1985, is presently mortgaged with petitioner DBP in the total amount of ₱393,353.97. It is worth noting that the amount ₱393,353.97[41] stated in the Statement of Account as of December 31, 1985 corresponds to the consideration in the Deed of Conditional Sale of TCT No. T-8127 (now T-19241) executed by DBP and the Danicos with ₱373,578.80 as the remaining balance and ₱19,775.17 as the interest on the unmatured principal, to wit:

Deed of Conditional Sale dated October 10, 1985

1. That the amount of ONE HUNDRED EIGHTEEN THOUSAND TWENTY ONE & 20/100 PESOS (₱118,021.20) previously paid by the Vendee to the Vendor prior to the execution of the contract of conditional sale, shall constitute the downpayment on this contract and **the balance of THREE HUNDRED SEVENTY THREE THOUSAND FIVE HUNDRED SEVENTY EIGHT (₱373,578.70)** shall be paid within a period of one (1) year/s on the annual amortization plan **with interest at the rate of twenty-one per centum (21%) per annum**. The first amortization shall be due on September 30, 1986 FOUR HUNDRED TWO THOUSAND THIRTY & 35/100 PESOS (₱52,030.35) which includes principal and interest;[42] [Emphasis supplied.]

---

[40] Id. at 185-186.

[41] ₱373,578.80 + ₱19,775.17 (interest on unmatured principal) = ₱393,353.97.

[42] Records, p. 216.

Statement of Account as of December 31, 1985

x x x x

UNMATURED		
Principal portion	₱373,578.80	
Interest on unmatured principal . .	19,775.17	₱393,353.97[43]

According to the DBP, the amount indicated in the Statement of Account as of December 31, 1985 refers to the loan obligation of the Spouses Danico under the Deed of Conditional Sale or the CMR agricultural loan to repurchase TCT No. T-8127 (now TCT No. T-19241). The deed of sale further stipulates that after paying the tenants, real property tax and capital gains tax, the remaining amount from the proceeds of the sale, that is, ₱511,290.00, shall be remitted to DBP in payment for the Spouses Danico's obligation as per the Statement of Account as of December 31, 1985. The first deed of sale also mentioned that the balance of the proceeds of the sale of Lot No. 861 which is covered by OCT No. P-1439 shall be applied to the remaining balance of Daniel Danico's loan secured by his other parcel of land, that is, a portion of Lot No. 857 covered by TCT No. T-3278, which is likewise purchased and acquired by respondent NPC. The first deed of sale provides, thus:

That pursuant to the Statement of Account and Certification issued by the DEVELOPMENT BANK OF THE PHILIPPINES, Malaybalay Branch, Malaybalay, Bukidnon, a copy of which is hereto attached to form part and integral hereof, **the herein aforementioned parcel of land is presently mortgaged at said bank at a total amount of ₱393,353.97, account as of December 31, 1985, that the consideration of the sale shall be that the remaining amount of the proceeds of the sale of the above-mentioned lot** after paying the herein tenants and the Realty Taxes (sic) and Capital Gain Tax to the concerned parties, **whatever amount left be paid and issued in separate check to the herein DEVELOPMENT BANK OF THE PHILIPPINES;**

---

[43] Id. at 187.

That the herein Vendee, DANIEL DANICO, agrees and hereby agree that the remaining balance of his mortgaged loan/mortgaged amount to DBP, be also deducted and applied on his other parcel of land, identified as Lot No. 857, Pls-9, covered by TCT No. T-3278, which said particular parcel of land is also to be affected, acquired and purchased by NATIONAL POWER CORPORATION for its RESERVOIR AREA, for its Pulangi IV-HE Project at Maramag, Bukidnon;[44] [Emphasis supplied.]

On the other hand, the second deed of sale provides that as of April 30, 1985, Lot No. 857 is presently mortgaged to petitioner DBP for ₱509,320.82. It further provides that the balance of the proceeds in the first deed of sale shall be applied to this mortgage loan as per Statement of Account as of April 30, 1985, that is, ₱509,320.82. Any remaining unpaid amount shall be paid out of the proceeds of the sale of a portion of Lot No. 857, that is, ₱242,644.50. Thus, the second deed of sale provides that:

That pursuant to the Statement of Account and Certification issued by the DEVELOPMENT BANK OF THE PHILIPPINES, Malaybalay Branch, Malaybalay, Bukidnon, a copy of which is hereto attached to form part and integral hereof, **the herein aforementioned parcel of land is presently mortgaged at said bank at a total cost of ₱509,320.82, account as of April 30, 1985, that the consideration of the sale shall be that whatever be the remaining amount unpaid after the proceeds of another parcel of land had been applied to the said mortgaged loan to the herein bank, the remaining amount unpaid shall all be fully paid and consumated** (sic) **out of the proceeds of the aforementioned parcel of land herein conveyed**, and same shall be issued in separate check in favor of the herein bank;

That the other parcel of land owned by the herein named Vendor is also affected by the NATIONAL POWER CORPORATION'S Reservoir Area, and same is acquired and purchased by the herein corporation, **that the proceeds of the sale of said land had been applied to the loan/mortgaged amount of the Vendor to the herein DEVELOPMENT BANK OF THE PHILIPPINES, identified as Lot No. 861, Pls-9, with a total area of 113,620 square meters fully**

---

[44] Id. at 184.

acquired and purchased by the NATIONAL POWER CORPORATION;[45] [Emphasis supplied.]

In fine, the NPC and the Spouses Danico entered into two deeds of sale and stipulated that of the two Statements of Account, the Statement of Account as of December 31, 1985 pertained to the first deed of sale while the Statement of Account as of April 30, 1985 pertained to the second deed of sale. Contrary to the ruling of the CA, the two deeds of sale are clear and unambiguous as to the existence of the two statements of account. In fact, both the Spouses Danico and the NPC adhered and agreed to the terms, conditions and stipulations embodied in the two deeds of sale knowing fully well the existence of the two statements of account.

Article 1370 of the Civil Code provides that if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulation shall control.[46] If, indeed, the stipulations in the said two deeds of sale did not express the true intention of the parties, both the Spouses Danico and the NPC could have filed the corresponding action for reformation of the contract. But they did not do so. Besides, both deeds of sale had been executed on the same day, that is, on September 9, 1985. Thus, the parties knew at the time of their execution the existence of the two Statements of Account as stipulated in the contracts. They cannot now impugn the existence of Statement of Account as of April 30, 1985 when the words of both contracts are clear and readily understandable. The contract is the law between the parties. Thus, it should be interpreted according to their literal meaning and should not be interpreted beyond their obvious intendment.

This is notwithstanding the fact that DBP only referred to the Statement of Account as of December 31, 1985 in its Certification dated February 24, 1987 which states that it would only release the original copy of OCT No. P-1439 upon payment

---

[45] Id. at 186.

[46] *Buce v. Court of Appeals*, 387 Phil. 897, 905 (2000).

of the sale proceeds of the said property in the amount of ₱301,350.50. Even though the said Certification did not mention the Statement of Account as of April 30, 1985, it cannot be assumed from the said omission that the obligation of the Spouses Danico and the NPC pertained only to the Statement of Account as of December 31, 1985. It bears stressing that DBP simply mentioned the Statement of Account as of December 31, 1985 as it pertained to the release of OCT No. P-1439 which is the subject of the first deed of sale. As to the second deed of sale covered by TCT No. T-3278, the title is still with petitioner DBP as per Letter dated December 4, 1997 sent by petitioner DBP to respondent NPC.

Also, it is worth noting that in the Disbursement Voucher No. P4-2-0-85-11-3449 dated November 12, 1986, the proceeds of the sale of Lot No. 861 covered by OCT No. P-1439 (first deed of sale) were distributed in the following manner:[47]

Sale Consideration of Lot No. 861 (OCT No. P-1439)	₱511,290.00
Less:	
a) Daniel Danico (Capital Gain Tax, Documentary Stamp Tax and Certification Fee)	₱ 96,319.50
b) Various Heirs of V. Lubos	₱100,000.00
c) Clodualdo Emeterio – Tenant	₱ 13,620.00
TOTAL	₱301,350.50

The remaining amount of ₱301,350.50 is the amount to be delivered to DBP as payment for the obligation of the Spouses Danico in the total amount of ₱393,353.97 pursuant to the Statement of Account as of December 31, 1985. This amount of ₱301,350.50 had already been consigned by respondent NPC with the RTC Clerk of Court, Branch 9, Malaybalay City per the June 28, 2001 Order of the RTC.

However, the records are bereft of any evidence as to what happened to the second deed of sale. The only fact proven is

---

[47] Records, p. 191.

that out of the proceeds of the second deed of sale in the total amount of ₱242,644.50, ₱92,003.47 had been paid and applied to the Spouses Danico's obligation in the total amount of ₱393,353.97 as per Statement of Account as of December 31, 1985. The records is silent as to the whereabouts of the remaining amount of ₱150,641.03. In fact, NPC persistently insisted that their only obligation to DBP is the amount of ₱393,353.97 as shown in the Statement of Account as of December 31, 1985. No other evidence was submitted to prove that respondent NPC paid the remaining consideration of the second deed of sale in the total amount of ₱150,641.03 to either petitioner DBP or the Spouses Danico.

Nonetheless, NPC cannot be held liable for the total amount of ₱509,320.82 as per Statement of Account as of April 30, 1985. Its obligation is only up the extent of the selling price of the two lots. The two deeds of sale are clear that NPC's obligation pertains only to the purchase of Lot No. 861 covered by OCT No. P-1439 and Lot No. 857-B covered by TCT No. T-3278, to wit:

First Deed of Sale

I, DANIEL DANICO, x x x married to JULIETA LUBOS DANICO, x x x **for and in consideration of the sum of FIVE HUNDRED ELEVEN THOUSAND TWO HUNDRED NINETY PESOS ONLY (₱511,290.00)**, Philippine Currency, x x x do hereby SELL, TRANSFER AND CONVEY unto the said NATIONAL POWER CORPORATION, x x x that certain parcel of land belonging to me x x x with **TCT No. P-1439** (sic) x x x[48] [Emphasis supplied.]

Second Deed of Sale

I, DANIEL DANICO, x x x married to JULIETA LUBOS DANICO, x x x **for and in consideration of the sum of TWO HUNDRED FOURTY TWO THOUSAND SIX HUNDRED FOURTY FOUR PESOS & 50/100 ONLY (₱242,644.50)**, x x x do hereby SELL, TRANSFER AND CONVEY unto the said NATIONAL POWER CORPORATION, x x x

---

[48] Id. at 183.

that certain parcel of land x x x with **TCT No. T-3278** x x x[49] [Emphasis supplied.]

Under the deeds of sale, the proceeds of the sale shall be applied to the outstanding loan obligation of the Spouses Danico. However, NPC cannot be held liable in case the proceeds of the sale of the subject properties are insufficient to satisfy the total loan obligation of Spouses Danico.

The two deeds of sale very clearly indicate that NPC did not expressly assume the obligations of the Spouses Danico under the agricultural loan dated April 22, 1977 and the Deed of Conditional Sale dated October 10, 1985. It merely intended to purchase and acquire the two subject lots of the Spouses Danico which happened to be mortgaged with the DBP. In fact, DBP signified its approval and conformity to the said deeds of sale, to wit:

First Deed of Sale

That the herein **DEVELOPMENT BANK OF THE PHILIPPINES**, x x x **shall signify its conformity in this Deed of Absolute Sale of Registered Land** and hereby consents to the annotation of this instrument in the said TCT No. P-1439, and shall also conform and consent to the issuance of a new TCT in the name of the NATIONAL POWER CORPORATION upon full payment of the purchase price;[50] [Emphasis supplied.]

Second Deed of Sale

That the herein **DEVELOPMENT BANK OF THE PHILIPPINES**, x x x **shall signify its conformity in this Deed of Absolute Sale of a Portion of Registered Land** and hereby consent to the annotation of this instrument in the said TCT No. T-3278; upon full payment of the purchase price;[51] [Emphasis supplied.]

---

[49] Id. at 185.

[50] Id. at 184.

[51] Id. at 186.

Nowhere is it stated in the said deeds of sale that respondent NPC assumed the total obligation of the Spouses Danico. Hence, based on the foregoing, respondent NPC is liable to pay DBP only the following amounts: (a) ₱301,350.50 out of the proceeds of the first deed of sale in the fulfillment of the obligation of the Spouses Danico in the total amount of ₱393,353.97 as per Statement of Account as of December 31, 1985; and (b) ₱150,641.03 out of the proceeds of the second deed of sale in the fulfillment of the Spouses Danico's obligation in the total amount of ₱509,320.82 as per Statement of Account as of April 30, 1985.

Is NPC liable to pay interest?

As to respondent NPC's liability to pay interest, Article 1956 of the Civil Code states that no interest shall be due unless it has been expressly stipulated in writing. As can be gleaned from the foregoing provision, payment of monetary interest is allowed only if: (1) there was an express stipulation for the payment of interest; and (2) the agreement for the payment of interest was reduced in writing. The concurrence of the two conditions is required for the payment of monetary interest. Thus, We have held that collection of interest without any stipulation therefor in writing is prohibited by law.[52]

In the case at bar, it is clearly apparent that the two deeds of sale do not contain any stipulation as to the payment of monetary interest. Contrary to the contention of petitioner DBP, the stipulation as to interest in the original agricultural loan dated April 22, 1977 and the Deed of Conditional Sale dated October 10, 1985 are not applicable to NPC as the latter is not privy to the said contracts. DBP also approved and agreed with the terms and conditions of the two deeds of sale which make the below-quoted provisions of the mortgage instrument inapplicable as NPC's purchase of the two mortgaged properties were made with petitioner DBP's written consent, to wit:

---

[52] *Philippine National Bank v. Heirs of Spouses Alonday*, 797 Phil. 152, 165-166 (2016) citing *Siga-an v. Villanueva*, 596 Phil. 760 (2009).

The Mortgagor shall not sell, dispose of, mortgage, nor in any manner encumber the mortgage property without the written consent of the Mortgagee. If in spite of this stipulation the property is sold, the Vendee shall assume the mortgage in the terms and conditions under which it is constituted it being understood that the assumption by the Vendee shall not release the Vendor of his obligation to the Mortgagee; on the contrary, both Vendor and Vendee shall be jointly and severally liable for said mortgage obligation. In case a second mortgage of other involuntary encumbrance is constituted, the second Mortgagee or junior encumbrances shall recognize the existing mortgage in favor of the Mortgagee as first lien and shall further agree, promise and bind himself to recognize and consider the extension of any term of said mortgage by the Mortgagee in favor of the Mortgagor or a new mortgage covering the same property to be executed by said Mortgagor in favor of the Mortgagee as first and superior encumbrance.[53] [Emphasis supplied.]

Moreover, the two deeds of sale contain no provision that NPC expressly assumed the loan obligation of the Spouses Danico. As correctly ruled by the CA:

> Also, We agree with the OSG that DBP could neither claim interest from NPC by reason of the provision/stipulation in the mortgage instrument between the spouses Danico and DBP that the vendee and vendor shall be jointly and severally liable for the said mortgage obligations including payment of interest because said provision applies only when the mortgagor conveys or encumbers the mortgaged properties without the written consent of the mortgagee, which circumstance is not obtaining in the instant case since DBP signified its consent to the sale of the two mortgaged properties.[54]

As to DBP's claim for interest by reason of NPC's delay in the payment of the purchase price of the two deeds of sale, We hold that the interest accrues only from the time judicial or extrajudicial demand is made.[55] However, a thorough review of the records would reveal that petitioner DBP failed to make

---

[53] Records, p. 44.

[54] CA *rollo*, p. 164.

[55] CIVIL CODE, Article 1169.

any extrajudicial demand for the payment of the purchase price of the two deeds of sale. Again, as correctly observed by the appellate court:

> Moreover, DBP can neither claim interest by reason of delayed payment, since it failed to present evidence that it made any extrajudicial demand upon NPC for the payment of the principal amount and interest prior to the tender of payment of the balance of ₱301,350.50 by NPC. **Verily, the DBP Certifications dated 24 February 1987 and 22 June 1999 cannot, in any way, be construed as demand letters as said certifications did not demand that NPC should pay the remaining balance but merely acknowledged that it has not yet received the balance of ₱310,350.50 (sic). Also, DBP's letters to NPC's Regional Manager dated 4 December 1997 and 25 March 1999 did not demand for payment, rather, said letters merely asked for "clarification" on the transactions regarding the sale of the parcels of land covered by OCT No. P-1439 and TCT No. T-3278.**[56] [Emphasis supplied.]

Although petitioner DBP judicially demanded payment through its Answer with Counterclaim and Crossclaim, the consequent tender of payment and consignation on June 28, 2001 by NPC in the total amount of ₱301,350.50 suspends the accrual of interest as to the payment of the purchase price of the first deed of sale. Nonetheless, NPC is liable to pay compensatory interest of twelve percent (12%) per *annum* from the time of its judicial demand, *i.e.*, the filing of its Answer with Counterclaim and Crossclaim on July 13, 1999 until the date of its consignment of ₱301,350.50 on June 28, 2001.

However, as to the remaining amount of ₱150,641.03 which is a part of the purchase price of the second deed of sale, the same shall earn 12% legal interest per *annum* to be computed from the time of DBP's judicial demand on July 13, 1999 until June 30, 2013 and six percent (6%) legal interest per *annum* from July 1, 2013 until the judgment becomes final as per the guidelines laid down in the case of *Eastern Shipping Lines,*

---

[56] CA *rollo,* p. 165.

Inc. v. Court of Appeals[57] as modified in *Nacar v. Gallery Frames*,[58] to wit:

> Thus, from the foregoing, in the absence of an express stipulation as to the rate of interest that would govern the parties, the rate of legal interest for loans or forbearance of any money, goods or credits and the rate allowed in judgments shall no longer be twelve percent (12%) *per annum* — as reflected in the case of *Eastern Shipping Lines* and Subsection X305.1 of the Manual of Regulations for Banks and Sections 4305Q.1, 4305S.3 and 4303P.1 of the Manual of Regulations for Non-Bank Financial Institutions, before its amendment by BSP-MB Circular No. 799 — but will now be six percent (6%) *per annum* effective July 1, 2013. **It should be noted, nonetheless, that the new rate could only be applied prospectively and not retroactively. Consequently, the twelve percent (12%) *per annum* legal interest shall apply only until June 30, 2013. Come July 1, 2013 the new rate of six percent (6%) *per annum* shall be the prevailing rate of interest *when applicable*.**
>
> x x x x
>
> 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.**
>
> x x x x
>
> 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**

---

[57] 304 Phil. 236 (1994).

[58] 716 Phil. 267 (2013).

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.[59] [Emphasis and underscoring supplied.]

Thus, NPC shall be liable to pay DBP: (a) compensatory interest of twelve percent (12%) per *annum* on ₱301,350.50 from the time of DBP's judicial demand on July 13, 1999 until the date of NPC's consignment of ₱301,350.50 on June 28, 2001; (b) compensatory interest of twelve percent (12%) per *annum* on ₱150,641.03 from the time of DBP's judicial demand on July 13, 1999 until June 30, 2013 and six percent (6%) interest per *annum* from July 1, 2013 until the judgment becomes final; (c) six percent (6%) interest per *annum* on the total judgment award including interest from the time of finality of this Decision until its full satisfaction.

WHEREFORE, the instant petition is hereby **PARTLY GRANTED**. The assailed Decision dated December 2, 2010 of the Court of Appeals in CA-G.R. CV No. 78619 is hereby **AFFIRMED** with **MODIFICATION** as to the monetary award and interest claim. Respondent National Power Corporation is hereby ordered to pay petitioner Development Bank of the Philippines the following:

(a) ₱301,350.50 out of the proceeds of the first deed of sale in the fulfillment of the Spouses Danico's obligation in the total amount of ₱393,353.97 as per Statement of Account as of December 31, 1985;

(b) ₱150,641.03 out of the proceeds of the second deed of sale in the fulfillment of the Spouses Danico's obligation in the total amount of ₱509,320.82 as per Statement of Account as of April 30, 1985;

(c) twelve percent (12%) legal interest per *annum* on ₱301,350.50 from the time of Development Bank of the Philippines' judicial demand on July 13, 1999 until the date

---

[59] Id. at 281-283.

of National Power Corporation's consignment of ₱301,350.50 on June 28, 2001;

(d) twelve percent (12%) legal interest per *annum* on ₱150,641.03 to be computed from the time of Development Bank of the Philippines' judicial demand on July 13, 1999 until June 30, 2013, and six percent (6%) legal interest per *annum* from July 1, 2013 until the finality of this judgment; and

(e) six percent (6%) legal interest rate per *annum* on the total judgment award including interest from the time of finality of this Decision until its satisfaction.

SO ORDERED.

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

Delos Santos, J., on official leave.

Baltazar-Padilla, J., on leave.

THIRD DIVISION

[G.R. No. 208865. September 28, 2020]

LAND BANK OF THE PHILIPPINES, *Petitioner, v.* **JOSE CUENCA GARCIA,** *Respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; MODES OF APPEALS; ORDINARY APPEAL UNDER RULE 41 DISTINGUISHED FROM APPEAL UNDER RULE 42. — Under the Rules of Court, the Regional Trial Court's decision may be appealed before the Court of Appeals via two (2) modes: (1) by ordinary appeal under Rule 41; and (2) by petition for review under Rule 42.

An ordinary appeal is an appeal to the Court of Appeals from the judgment or final order of the Regional Trial Court in the exercise of its original jurisdiction[;] while a petition for review is an appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction.

An ordinary appeal under Rule 41 is deemed perfected upon the filing of a notice of appeal before the Regional Trial Court. The notice of appeal must be filed within the period of 15 days from their notice of the judgment. On the other hand, an appeal under Rule 42 is deemed perfected upon the filing of the petition for review before the Court of Appeals.

Additionally, an appeal under Rule 41 is a matter of right, while an appeal under Rule 42 is a matter of discretion.

2. ID.; ID.; ID.; A JUDGMENT BECOMES FINAL UPON THE EXPIRATION OF THE REGLEMENTARY PERIOD TO APPEAL IF NO APPEAL IS PERFECTED; CASE AT BAR. — In this case, petitioner should have filed an ordinary appeal under Rule 41 and not an appeal under Rule 42, because the decision of the Regional Trial Court was rendered in the exercise of its original jurisdiction. Under Section 57 of Republic Act No. 6657, the Regional Trial Court, acting as Special Agrarian Court, has the "original and exclusive jurisdiction over all

petitions for the determination of just compensation to landowners [.]"

Thus, the petitioner had 15 days from its receipt or notice of judgment to file a notice of appeal before the Regional Trial Court to perfect its appeal. Here, petitioner received a copy of Regional Trial Court decision on September 11, 2009. Counting 15 days from this date, petitioner only had until September 26, 2009 to file its appeal. Hence, the decision already attained finality when the appeal was belatedly filed on October 16, 2009.

3. ID.; ID.; EXECUTION, SATISFACTION, AND EFFECT OF JUDGMENTS; FINALITY OF JUDGMENT; DOCTRINE OF IMMUTABILITY OF JUDGMENT; A JUDGMENT THAT LAPSES INTO FINALITY CAN NEITHER BE MODIFIED NOR ALTERED BY COURTS EVEN IF THE PURPOSE OF THE MODIFICATION OR ALTERATION IS TO CORRECT AN ERRONEOUS JUDGMENT; EXCEPTIONS THERETO, NOT APPLICABLE TO CASE AT BAR. — A final and executory judgment is immutable and unalterable. According to the doctrine of immutability of judgment, the decision can "no longer be modified or amended by any court in any manner even if the purpose of the modification or amendment is to correct perceived errors of law or fact." Nevertheless, the doctrine admits certain exceptions, to wit: (1) correction of clerical errors; (2) *nunc pro tunc* entries which cause no prejudice to any party; (3) void judgments; and (4) supervening events rendered the decision unjust and inequitable.

This case does not fall under any of the exceptions. Hence, there is no reason to review the decision of the trial court.

4. POLITICAL LAW; FUNDAMENTAL POWERS OF THE STATE; EMINENT DOMAIN; SOCIAL LEGISLATION; AGRARIAN RELATIONS; REQUISITES; THE ACQUISITION OF AGRICULTURAL LAND FOR PUBLIC USE UPON PAYMENT OF JUST COMPENSATION IS AN EXERCISE OF EMINENT DOMAIN. — Eminent domain is the inherent power of the State to take private property for public use. As a limit to this otherwise unlimited power, the Constitution provides that the taking must be: (1) for public use; and (2) just compensation must be paid to the private property owner.

These limits are consistent with the constitutional safeguards to due process and right to property. . . .

Acquisition of agricultural land for distribution is likewise an exercise of eminent domain. . . .

The requirement of eminent domain, that the taking is for public use, is satisfied as the Constitution itself calls for agrarian reform. . . .

5. LABOR AND SOCIAL LEGISLATION; AGRARIAN RELATIONS; COMPREHENSIVE AGRARIAN REFORM LAW OF 1988 (R.A. NO. 6657); JUST COMPENSATION; FACTORS IN DETERMINING JUST COMPENSATION. — Just compensation is the "full and fair equivalent of the property taken from its owner by the expropriator." It is equal to the "price which a buyer will pay without coercion and a seller will accept without compulsion." The modifier word "just" means that the payment for the property must be "real, substantial, full, and ample." The payment of just compensation is the safeguard to balance to injury that the taking of the property causes.

Section 17 of Republic Act No. 6657 prescribes a guideline in the determination of just compensation in the taking of agricultural land. It states:

> SECTION 17. *Determination of Just Compensation.* — In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

6. ID.; ID.; ID.; ID.; THE DEPARTMENT OF AGRARIAN REFORM MAKES THE INITIAL DETERMINATION OF JUST COMPENSATION WHILE THE FINAL DETERMINATION THEREOF IS A JUDICIAL FUNCTION VESTED IN THE SPECIAL AGRARIAN COURT. — The jurisdiction of Department of Agrarian Reform and the Special Agrarian Court with respect to agrarian matters is provided for by law. Under Sections 50 and 57 of Republic Act No. 6657. . . .

> The jurisdiction of the two bodies are not contradictory. The jurisdiction given to the Department of Agrarian Reform refers to the agrarian reform matters and matters involving the implementation of agrarian reform. Agrarian dispute includes "controversy relating to compensation" between a landowner to a farmer, or between the landowner to a tenant, or between a landowner to an agrarian reform beneficiary. It does not cover dispute on compensation between the landowner and the State. . . .
>
> . . .
>
> Just compensation disputes under the jurisdiction of the Department of Agrarian Reform only refer to compensation paid by agrarian reform beneficiaries who acquire ownership of the land. On the other hand, compensation given to landowners by virtue of acquisition by the State remains under the exclusive and original jurisdiction of the Special Agrarian Courts.
>
> Moreover, the summary administrative proceedings to make an initial determination of just compensation under the Department of Agrarian Reform is a proceeding held by the provincial, regional, or central adjudicator. The decision of the adjudicator is not appealable to the adjudication board but shall be brought directly to the Special Agrarian Courts. This procedural framework is an acknowledgment that the power to determine just compensation under Republic Act No. 6657 is a judicial function.

7. ID.; ID.; ID.; ID.; THE SPECIAL AGRARIAN COURT HAS ORIGINAL AND EXCLUSIVE JURISDICTION, OVER CASES INVOLVING THE DETERMINATION OF JUST COMPENSATION. — [T]he jurisdiction of the Special Agrarian Court is not merely appellate because the judicial case is not a continuation of the administrative proceeding. In *Philippine Veterans Bank v. Court of Appeals*:

> It is error to think that, because of Rule XIII, § 11, the original and exclusive jurisdiction given to the courts to decide petitions for determination of just compensation has thereby been transformed into an appellate jurisdiction. It only means that, in accordance with settled principles of administrative law, primary jurisdiction is vested in the DAR as an administrative agency to determine in a preliminary manner the reasonable compensation to be paid for the lands taken

under the Comprehensive Agrarian Reform Program, but such determination is subject to challenge in the courts.

8. ID.; ID.; ID.; ID.; ADMINISTRATIVE LAW; DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; THE ADMINISTRATIVE REMEDIES NEED NOT BE EXHAUSTED BEFORE THE AGGRIEVED LANDOWNERS MAY RESORT TO JUDICIAL DETERMINATION OF JUST COMPENSATION. — In *Land Bank of the Philippines v. Manzano,* We reiterated that "there is no need to exhaust administrative remedies before the Department of Agrarian Reform because the final determination of just compensation lies with the Special Agrarian Courts. . . .

. . .

The Regional Trial Courts, acting as Special Agrarian Courts, have original and exclusive jurisdiction over all petitions for the determination of just compensation. Its resolution regarding the value of the land is final. The determination of just compensation, being a judicial function, cannot be dictated by an executive body such as the Department of Agrarian Reform. It follows that the Special Agrarian Court is not strictly bound by the parameters and formula laid down in DAR Administrative Order.

9. ID.; ID.; ID.; ID.; THE DETERMINATION BY THE DEPARTMENT OF AGRARIAN REFORM OF JUST COMPENSATION IS MERELY RECOMMENDATORY. — In upholding the constitutionality of the provision, this Court ruled that there is no arbitrariness, considering that the landowners and other parties are allowed an opportunity to submit evidence before the Department of Agrarian Reform. Nevertheless, this Court held that the determination of just compensation is a function of the courts which "may not be usurped by any other branch or official of the government." The determination of the Department of Agrarian Reform is not final and conclusive because Section 16(f) provides that this matter may be brought to the court for final determination of just compensation. Thus: . . .

. . .

The determination made by the DAR is only *preliminary* unless accepted by all parties concerned. Otherwise, the courts of justice will still have the right

> to review *with finality* the said determination in the exercise of what is admittedly a judicial function."

In the exercise of this judicial function, the Special Agrarian Court's determination may not be dictated and curtailed by a legislative or executive issuance. At most, the formula prescribed by the Department of Agrarian Reform is only recommendatory.

10. ID.; ID.; ID.; ID.; AGRARIAN COURTS MAY INDEPENDENTLY USE A WIDE RANGE OF FACTORS IN DETERMINING THE LAND VALUE.— The determination of just compensation involves the appreciation of facts and evidence which may be specific and peculiar for each case. Thus, the factors which may be considered by a Special Agrarian Court cannot be limited, especially if the available evidence will aid the court to come up with a more precise valuation. Agrarian courts should be given independence to use a wide range of factors in determining land value.

11. ID.; ID.; ID.; ID.; EXECUTIVE ISSUANCES CANNOT DICTATE THE VALUATION OF THE PROPERTY EXPROPRIATED.— The Special Agrarian Court, in making its own determination of just compensation, is not confined to the limits laid down by the Department of Agrarian Reform. The valuation of the land is an exercise which cannot be exactly measured by law or executive issuance.

Just compensation is based on the fair market value of the property at the time of the taking. There is a wide range of factors that must be considered in approximating the real and full value of a land such as the assessed value of the property, schedule of market values determined by the provincial or city appraisal committee, and the nature and character of the property at the time of its taking.

To be regarded as just, the determination cannot be left to the "self-serving discretion of the expropriating agency." The Department of Agrarian Reform, as the representative of the State in acquiring the land, cannot be allowed to dictate the valuation of the property through its issuances. Otherwise, the constitutional right of the landowner will be disregarded.

12. ID.; ID.; ID.; ID.; THE PARAMETERS AND THE FORMULA LAID DOWN IN DAR ADMINISTRATIVE ORDER IN DETERMINING JUST COMPENSATION DO NOT STRICTLY

BIND THE SPECIAL AGRARIAN COURT; CASE AT BAR.— [T]he final determination of just compensation lies with the Special Agrarian Court. It is not merely tasked to verify the correctness of the computation of the Department of Agrarian Reform, but it is given the jurisdiction to make its own, independent evaluation. It is not bound to strictly adhere to the formula and parameters under the Department of Agrarian Reform Administrative Order No. 05-98.

Here, a strict adherence to the formula and limits provided under the Administrative Order may not be appropriate to arrive at a full, real, and just price for the acquisition of the land.

APPEARANCES OF COUNSEL

LBP Legal Services Group for Land Bank of the Philippines.
Roberto Cal Catolico for respondent.

D E C I S I O N

LEONEN, *J.*:

The final determination of just compensation is a judicial function. The Special Agrarian Court is not merely tasked to verify the correctness of the computation of the Department of Agrarian Reform, but it is also given the jurisdiction to make its own, independent evaluation. It is not bound to strictly adhere to the formula and parameters under DAR Administrative Order No. 05-98.

This resolves a Petition for Review[1] assailing the Decision[2] and Resolution[3] of the Court of Appeals in CA-G.R. SP. UDK

---

[1] *Rollo*, pp. 25-41.

[2] Id. at 10-20. The May 24, 2012 Decision docketed as CA-G.R. SP UDK No. 0307 was penned by Associate Justice Gabriel T. Ingles, and concurred in by Associate Justices Victoria Isabel A. Paredes and Pamela Ann Abella Maxino of the Special Twentieth Division, Court of Appeals, Cebu.

[3] Id. at 55-56. The July 24, 2013 Resolution docketed as CA-G.R. SP UDK No. 0307 was penned by Associate Justice Gabriel T. Ingles, and

No. 0307, which affirmed the Decision[4] of the Regional Trial Court, acting as a Special Agrarian Court, which set aside Land Bank of the Philippines' (Land Bank) determination of just compensation.

Land Bank is a government banking and financial institution designated as the financial intermediary and co-implementor in the acquisition and distribution of lands under the Comprehensive Agrarian Reform Program.[5]

Jose Cuenca Garcia (Garcia) is the registered owner of a 10.999-hectare rice land in Ajuy, Iloilo. Sometime in November 1998, the Department of Agrarian Reform sent Garcia a Memorandum of Valuation Claim Folder Profile and Valuation Summary.[6] The memorandum was a notice of coverage informing Garcia of the acquisition of his land for distribution to the Comprehensive Agrarian Reform Program's beneficiaries. The government offered Garcia the price of roughly ₱5.58 per square meter,[7] or a total of ₱647,508.49 for his 10.999 hectare rice land. Believing that his land should have been valued at a higher price, Garcia rejected the offer.[8]

Due to Garcia's contention, the Department of Agrarian Reform Adjudication Board - Region VI conducted a preliminary determination of just compensation, but eventually affirmed Land Bank's initial valuation.[9]

---

concurred in by Associate Justices Ramon Paul L. Hernando (now a member of this court) and Pamela Ann Abella Maxino of the Special Former Special Twentieth Division, Court of Appeals, Cebu.

[4] Id. at 109-133. The August 20, 2009 Decision docketed as Civil Case No. 26042 was penned by Judge Ma. Yolanda M. Panaguiton-Gaviño of Branch 34, Regional Trial Court, Iloilo.

[5] Id. at 10.

[6] Id. at 11.

[7] Id. at 113.

[8] Id.

[9] Id.

Aggrieved, Garcia filed a petition for fixing of just compensation against the Department of Agrarian Reform, Land Bank, and certain farmer-beneficiaries before the Regional Trial Court of Iloilo City.[10]

The parties stipulated the following facts: (1) that Garcia sold the 5.898-hectare lot adjacent to the subject property for ₱50.00 per square meter, for a total of ₱2,949,000.00; (2) that the land being acquired is situated on a strategic location as it adjoins the national highway with long frontage and abuts on the sea on the other side; and (3) that there are buildings and improvements on the land, adding market value to the property.[11]

Garcia claimed that the price offered by the government was without legal and factual bases and was unreasonably low, considering that the land was situated in a strategic location.[12] He pointed out that residential properties within the vicinity were valued at ₱1,000 to ₱1,500 per square meter,[13] and that he was able to sell an adjoining land at ₱50.00 per square meter, or ₱500,000.00 per hectare.[14] He further claimed that his land should be treated as a "first class irrigated rice land[.]"[15]

On the other hand, Land Bank argued that the land subject of the acquisition, an unirrigated rice land, was not comparable to the surrounding commercial and industrial lands which had higher values.[16]

---

[10] Id.

[11] Id. at 114-115.

[12] Id. at 116.

[13] Id.

[14] Id. at 117, 123.

[15] Id. at 123.

[16] Id. at 117.

The trial court,[17] acting as a Special Agrarian Court, ruled in favor of Garcia and increased just compensation to ₱2,196,367.40. Thus:

> WHEREFORE, based on the foregoing premises, judgment is hereby rendered fixing the just compensation of the total area of the land actually taken in the amount of ₱2,196,367.4 and ordering [Land Bank of the Philippines] to pay the plaintiff Jose C. Garcia, the total sum of ₱2,196,367.4 as just compensation for the 10.9990 hectares taken by the government pursuant to R.A. 6657.
>
> SO ORDERED.[18]

The trial court ruled that Land Bank's computation should be modified because its appraisal was based on outdated transactions.[19] Land Bank used the following figures in computing just compensation:

> I. COMPARABILITY FACTORS:
>
> . . .
>
> c) Comparable Sales:
>
> | Location | Date of Registration | . . . | Adjusted Ave. Price/ha. |
> |---|---|---|---|
> | Lambunao | **May [1988]** | . . . | **₱ 59,001.55** |
> | -do- | **[March 1988]** | . . . | **48,673.24** |
> | Ajuy, Iloilo | **[August 1987]** | . . . | **12,790.28** |
>
> Per Hectare: $\frac{\text{Total Ave. Price/Ha.}}{3}$
>
> Remarks[:] Taken from the province where the property is located
>
> ₱120,465.07/3 **₱40,155.02/ha.**

---

[17] Id. at 109-133. The August 20, 2009 Decision docketed as Civil Case No. 26042 was penned by Judge Ma. Yolanda M. Panaguiton Gavino of the Regional Trial Court, Branch 34, Iloilo City.

[18] Id. at 132-133.

[19] Id. at 129.

II. CAPITALIZED NET INCOME:

CROP	PRODUCTION/HA.	SELLING PRICE
Rice-un	4,275 kgs.	₱8.71 kg.

CNI = 4,275 kgs. x ₱ 8.71 x 0.20 / 0.12 = ₱62,058.75

Remarks: Industry data of the province was used.

III. MARKET VALUE PER TAX DECLARATION:

CROP	AREA	. . .	ADJUSTED
Rice-un	10.9990 [Ha.]	. . .	₱95,880.00

Remarks: 1997 SUMV of the province was used.

. . . .

V. COMPUTATION:

CS	(₱40,155.02 x .30)	= ₱12,046.51
CNI	(₱62,058.75 x .60)	= ₱37,235.25
MVTD	(₱95,880.00 x .10)	= ₱9,588.00

COMPUTED VALUE/HA.	= ₱58,869.76
VALUE PER HECTARE USED	= ₱58,869.76 X 10.9990 Ha.
LAND VALUE	= **₱647,508.49.**[20]

(Emphasis supplied)

The trial court observed that Land Bank's computation was based on three (3) sales transactions in 1987 and 1988,[21] around 10 years prior to the notice of coverage sent to Garcia in 1998. On the other hand, Garcia submitted more recent transactions executed in 1997 showing that the land was sold at ₱50.00 per square meter or ₱500,000 per hectare.[22]

---

[20] Id. at 128-129.

[21] Id. at 128.

[22] Id. at 129.

The trial court further pointed out that Land Bank, in computing the market value per tax declaration, used the 1997 schedule of market values of the Province of Iloilo while Garcia presented more recent tax declarations in 1998 and 2001. The tax declarations proffered by Garcia state:

Date of Tax Declaration	Area	Classification	Market Value	Value per hectare
2001	5.6486	Irrigated rice land	₱762,448.02	₱134,980
2001	5.3504	Unirrigated rice land	₱454,784	₱85,000
1998	19.5275	Irrigated rice land	₱2,716,470	₱153,600[23]

The trial court then modified the values of Comparative Sales (CS) and Market Value per Tax Declaration (MVTD) by using the figures submitted by Garcia. Using the formula under Department of Agrarian Reform Administrative Order No. 5, series of 1998, the trial court arrived at a higher price of ₱2,196,367.4:[24]

Land Value = (Capitalized Net Income x 0.6) + (Comparable Sales x 0.3) + Market Value per Tax Declaration x 0.1)

CS = **₱500,000** X .30
= ₱150,000

CNI = ₱62,058.75 x .60
= ₱37,235.25

[M]VTD = **₱134,980 + ₱85,000 + ₱153,000** = ₱ 373,580
= ₱373,580/3 = ₱124,526.667
= ₱l24,526.667 x 0.10
= ₱12,452.6667

Computed Value/HA =

= ₱150,000 + ₱37,235.25 + ₱12,452.6667

= ₱199,687.917

---

[23] Id. at 130.

[24] Id. at 126-128.

Value per hectare used = ₱199,687.917 x 10.9990 ha.

Land value = **₱2,196,367.4**[25]

The trial court held that this price was more reasonable, considering that: (1) the land is located along the national highway; (2) the land has a long frontage and is strategically located between a highway and a beach; and (3) the surrounding residential area is valued at ₱1,000 to ₱1,500 per square meter.[26]

Nevertheless, the trial court ruled that there was no delay that would justify the award of interest in favor of Garcia, considering that the payment of just compensation was deposited in his name in cash and in Land Bank bonds.[27]

Land Bank moved for reconsideration, but the trial court denied his motion.[28]

Upon appeal to the Court of Appeals, Land Bank argued that the trial court erred in considering the value of non-agricultural land like residential, commercial, and industrial lands, as well as the potential use of the rice land, and its strategic location in its determination of just compensation.[29]

It averred that the trial court should have only considered other agricultural land as Section 17 of Comprehensive Agrarian Reform Law limits comparable transactions to "current value of like properties[.]"[30] Moreover, it claimed that it was erroneous to consider the potential use of land and proximity of other areas in the computation, because only the actual use at the time of taking should be factored in.[31]

---

[25] Id. at 130-131.

[26] Id. at 131.

[27] Id. at 132.

[28] Id. at 134.

[29] Id. at 14.

[30] Id.

[31] Id.

Further, it also maintained that the trial court erred in considering "all facts as to the condition of the property and its surrounding[s], as well as its improvements and capabilities" because this was only allowed in ordinary expropriation.[32]

On the other hand, Garcia asserted that the petition must be dismissed for being procedurally infirm. He pointed out that Land Bank should have appealed via Rule 41 and not Rule 42 of the Rules of Court. In any case, Garcia claimed that the appeal was belatedly filed and that the decision was already final and executory.[33]

The Court of Appeals affirmed the ruling of the trial court. Thus,

> WHEREFORE, in view of the foregoing, judgment is hereby rendered DISMISSING the petition for being without merit.
>
> SO ORDERED.[34]

In dismissing the appeal, the Court of Appeals held that while Rule 42 was the correct mode of appeal, the motion for reconsideration before the trial court was filed beyond the prescribed period. It pointed out that the decision already attained finality as Land Bank received the Regional Trial Court decision on September 11, 2009 but it only moved for reconsideration on October 16, 2009.[35]

In any event, the appellate court ruled that the trial court's determination of just compensation was correct.[36]

The Court of Appeals observed that the computation was correctly determined based on values as of the issuance of notice of coverage in 1998, which was also deemed the date

---

[32] Id. at 15.

[33] Id. at 16.

[34] Id. at 20.

[35] Id. at 17.

[36] Id.

of taking. It held that the trial court correctly used the sale of two (2) adjacent lands in 1997 submitted by Garcia, which provided the value of ₱500,000 per hectare.[37]

The Court of Appeals further declared that when these sales transactions transpired, the adjacent lands were still agricultural in nature and also undeveloped like the subject rice land. Moreover, these parcels of land adjoined the subject 10.9990-hectare rice land. Hence, they fell under the criteria of comparable like-property.[38]

It also found that the sales data used by Land Bank were for lands situated in the neighboring town of Lambunao, save for the third one which was in the same town of Ajuy. Thus, the data based on the sale of the two (2) adjacent land was more comparable than Land Bank's data.[39]

The Court of Appeals likewise ruled that the assessment of the trial court was more reasonable as the data it used was more recent and closer to the date of the taking compared to the figure used by Land Bank. The appellate court explained that just compensation must be computed based on the value and character of the land at the time it was taken by the Government. Thus, the computation of the trial court based on sales transaction in 1997 was more accurate than Land Bank's computation based on sales in 1987 and 1988.[40]

The Court of Appeals then remarked that the trial court did not use the data for residential and industrial land with the selling price of ₱1,500 to ₱1,800 per square meter. While it made mention of these prices, it ultimately disregarded the figures based on these lands.[41]

---

[37] Id. at 17-18.

[38] Id. at 18.

[39] Id.

[40] Id. at 18-19.

[41] Id. at 19.

Nonetheless, the Court of Appeals agreed with Land Bank that the tax declaration for 1997 should be used, since the taking occurred in 1998, this amount must be averaged with the details contained in Garcia's 1998 tax declaration. It also stated that the tax declaration in 2001 should not be used because it was a valuation made beyond the date of the taking.[42]

In its computation for just compensation, the appellate court came up with the slightly lower price of ₱2,196,602.04 compared to the trial court's computation of ₱2,196,367.40:

CS = ₱500,000/ha[.]
CNI = ₱62,058.75/ha[.]

MVTD = (₱95,880 +153,600)/2
= ₱124,740/ha[.]

Land Value = (CNI x 0.60) + (CS x 0.30) + (MV x 0.10)
= (₱62,058.75 x 0.60) + (₱500,000 x 0.30) + (₱124,740 x 0.10)
= ₱37,235.25 + ₱150,000 + ₱12,474
= ₱199,709.25/ha.

Just Compensation = ₱199,709.25/ha x 10.9990 has.
= **₱2,196,602.04**[43] (Citations omitted, emphasis supplied)

Nevertheless, the Court of Appeals held that the difference of ₱234.64 was negligible and upheld the trial court's computation.[44]

Land Bank moved for the reconsideration of the decision, but its motion was denied.[45] Hence, it elevated the case to this Court.

---

[42] Id.

[43] Id. at 19-20.

[44] Id. at 20.

[45] Id. at 55-56.

Petitioner Land Bank filed its Petition for Review on Certiorari before this Court after being granted an additional period to file its petition.[46] Subsequently, this Court required respondent to file his Comment, which was complied with.[47] In another Resolution, this Court required petitioner to file its Reply.[48] Petitioner then submitted its Reply.[49]

In its Petition for Review on Certiorari,[50] petitioner Land Bank argues that the lower courts failed to comply with the Department of Agrarian Reform Administrative Order No. 5-98. It avers that the lower courts erred in using sales transactions in 1997 because only comparative sales from 1985 to 1988 may be used according to the administrative order.[51]

Petitioner further argues that the lower courts cannot use other factors such as strategic location and potential use of the land because these factors are not included in the determination of just compensation under Section 17 of the Comprehensive Agrarian Reform Law.[52] Under the law, only values of agricultural properties may be considered. Hence, the lower courts erred in using the sales data of the adjacent land, which was residential in nature, and in considering the potential use of the property as well as its strategic location.[53]

Petitioner likewise asserts that the rulings of the trial court and the Court of Appeals disregarded the distinctions of ordinary expropriation and acquisition of agricultural land when they considered other factors.[54] It argues that considering other factors

---

[46] Id. at 23-B.

[47] Id. at 294, 318.

[48] Id. at 333.

[49] Id. at 341.

[50] Id. at 25-41.

[51] Id. at 31-32.

[52] Id. at 33.

[53] Id. at 33-34.

[54] Id. at 37.

beyond what is provided by the law and administrative order is not allowed in agrarian land acquisition cases. It stresses that considering "all the facts as to the condition of the property and its surroundings, as well as its improvements and capabilities[,]" may only be done with respect to taking of private property for public use.[55]

In his Comment, respondent Garcia maintains that the Court of Appeals correctly applied the law in determining just compensation.[56] Respondent points out that the lower courts did not err in rejecting petitioner's outdated data, which are based on lands not comparable to the subject rice land. He asserts that the sales transactions used by petitioner transpired in 1987 and 1988—around 10 years prior to the date of taking. Moreover, these transactions cover lands in town of Lambunao, which is more than 60 kilometers away from the subject rice land.[57]

On the other hand, he provided two sales transactions which transpired only a year prior to the taking of the land. Hence, he insists that the appellate court is correct in considering the more recent data he presented over the data submitted by petitioner.[58]

Moreover, respondent argues that this petition cannot be used as a substitute for lost appeal. As ruled by the Court of Appeals, the decision of the trial court had already become final and executory.[59] Under Rule 42, Section l of the Rules of Court, a motion for new trial or reconsideration must be filed within 15 days from notice of the decision. Here, petitioner had until September 26, 2009 to file the motion, counting 15 days from September 11, 2009-the day petitioner received the decision.[60]

---

[55] Id.

[56] Id. at 308.

[57] Id.

[58] Id.

[59] Id. at 311.

[60] Id.

When petitioner moved for reconsideration on October 16, 2009, the decision of the trial court was already final and executory.[61]

Petitioner, in its Reply, asserts that it correctly used sales transactions in 1987 and 1988 as bases for the computation of just compensation.[62] Under Item II.C.2 of Department of Agrarian Reform AO 5-98, comparable sales transactions should have been executed within the period of January 1, 1985 to June 15, 1988.[63]

Further, under the same administrative order, petitioner is allowed to consider a similar land sales transaction from a different barangay, municipality, or province, when the required number of sales transactions within the area is not available.[64]

With regard to the alleged procedural lapse, petitioner counters that the Court of Appeals already disregarded this issue when it resolved the case on the merits.[65]

The issues for this Court's resolution are the following:

1) Whether or not the decision of the trial court has already attained finality; and

2) Whether or not the appellate court and the trial court erred in their determination of just compensation; Subsumed under this issue:

    a. Whether or not the sales transaction in 1997 may be considered under Department of Agrarian Reform Administrative Order; and

    b. Whether or not the appellate court considered the strategic location and potential use of the land in its computation.

---

[61] Id. at 312.

[62] Id. at 341.

[63] Id. at 342.

[64] Id.

[65] Id. at 343.

I

Under the Rules of Court, the Regional Trial Court's decision may be appealed before the Court of Appeals via two (2) modes: (1) by ordinary appeal under Rule 41; and (2) by petition for review under Rule 42.[66]

An ordinary appeal is an appeal to the Court of Appeals from the judgment or final order of the Regional Trial Court in the exercise of its original jurisdiction,[67] while a petition for review is an appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction.[68]

An ordinary appeal under Rule 41 is deemed perfected upon the filing of a notice of appeal before the Regional Trial Court. The notice of appeal must be filed within the period of 15 days from their notice of the judgment.[69] On the other hand, an appeal under Rule 42 is deemed perfected upon the filing of the petition for review before the Court of Appeals.[70]

---

[66] *Heirs of Garcia I v. Municipality of Iba, Zambales*, 764 Phil. 408, 412-415 (2015) [Per J. Bersamin, First Division].

[67] RULES OF COURT, Rule 41, sec. 2(a) provides:

SECTION 2. Modes of appeal. —

(a) *Ordinary appeal*. — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

[68] RULES OF COURT, Rule 41, sec. 2(b) provides:

SECTION 2. *Modes of appeal*. —

(b) *Petition for review*. — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review in accordance with Rule 42.

[69] *Heirs of Garcia I v. Municipality of Iba, Zambales*, 764 Phil. 408, 413 (2015) [Per J. Bersamin, First Division].

[70] Id. at 415.

Additionally, an appeal under Rule 41 is a matter of right, while an appeal under Rule 42 is a matter of discretion. *Heirs of Garcia I v. Municipality of Iba, Zambales*,[71] discussed the distinction between the two modes of appeal:

> The distinctions between the various modes of appeal cannot be taken for granted, or easily dismissed, or lightly treated. The appeal by notice of appeal under Rule 41 is a matter [of] right, but the appeal by petition for review under Rule 42 is a matter of discretion. An appeal as a matter of right, which refers to the right to seek the review by a superior court of the judgment rendered by the trial court, exists after the trial in the first instance. In contrast, the discretionary appeal, which is taken from the decision or final order rendered by a court in the exercise of its primary appellate jurisdiction, may be disallowed by the superior court in its discretion. Verily, the CA has the discretion whether to due course to the petition for review or not.
>
> The procedure taken after the perfection of an appeal under Rule 41 also significantly differs from that taken under Rule 42. Under Section 10 of Rule 41, the clerk of court of the RTC is burdened to immediately undertake the transmittal of the records by verifying the correctness and completeness of the records of the case; the transmittal to the CA must be made within 30 days from the perfection of the appeal. This requirement of transmittal of the records does not arise under Rule 42, except upon order of the CA when deemed necessary.[72] (Citations omitted)

In this case, petitioner should have filed an ordinary appeal under Rule 41 and not an appeal under Rule 42, because the decision of the Regional Trial Court was rendered in the exercise of its original jurisdiction. Under Section 57 of Republic Act No. 6657,[73] the Regional Trial Court, acting as Special Agrarian Court, has the "original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners[.]"[74]

---

[71] 764 Phil. 408 (2015) [Per J. Bersamin, First Division].

[72] Id. at 415-416.

[73] Comprehensive Agrarian Reform Law of 1988.

[74] Republic Act No. 6657 (1988), sec. 57 provides:

SECTION 57. *Special Jurisdiction*. — The Special Agrarian Courts shall have original and exclusive jurisdiction over all petitions for the determination

Thus, the petitioner had 15 days from its receipt or notice of judgment to file a notice of appeal before the Regional Trial Court to perfect its appeal. Here, petitioner received a copy of Regional Trial Court decision on September 11, 2009. Counting 15 days from this date, petitioner only had until September 26, 2009 to file its appeal. Hence, the decision already attained finality when the appeal was belatedly filed on October 16, 2009.

A final and executory judgment is immutable and unalterable. According to the doctrine of immutability of judgment, the decision can "no longer be modified or amended by any court in any manner even if the purpose of the modification or amendment is to correct perceived errors of law or fact."[75] Nevertheless, the doctrine admits certain exceptions, to wit: (1) correction of clerical errors; (2) *nunc pro tunc* entries which cause no prejudice to any party; (3) void judgments; and (4) supervening events rendered the decision unjust and inequitable.[76]

This case does not fall under any of the exceptions. Hence, there is no reason to review the decision of the trial court. In any case, even if We disregard this procedural infirmity, the petition will still fail on the merits.

II

Eminent domain is the inherent power of the State to take private property for public use.[77] As a limit to this otherwise

---

of just compensation to landowners, and the prosecution of all criminal offenses under this Act. The Rules of Court shall apply to all proceedings before the Special Agrarian Courts, unless modified by this Act. The Special Agrarian Courts shall decide all appropriate cases under their special jurisdiction within thirty (30) days from submission of the case for decision.

[75] *Mercury Drug Corp. v. Spouses Huang*, 817 Phil. 434, 445 (2017) [Per J. Leonen, Third Division].

[76] *Id.* at 446.

[77] *Apo Fruits Corp. v. Court of Appeals*, 543 Phil. 497-529 (2007) [Per J. Chico-Nazario, Third Division].

unlimited power, the Constitution provides that the taking must be: (1) for public use; and (2) just compensation must be paid to the private property owner.[78]

These limits are consistent with the constitutional safeguards to due process and right to property. Article III, Sections 1 and 9 of the Constitution provide:

> SECTION 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.
>
> . . . .
>
> SECTION 9. Private property shall not be taken for public use without just compensation.

Acquisition of agricultural land for distribution is likewise an exercise of eminent domain.[79] Under Article XIII, Section 4 of the Constitution:

> SECTION 4. The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and *subject to the payment of just compensation*. In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing. (Emphasis supplied)

The requirement of eminent domain, that the taking is for public use, is satisfied as the Constitution itself calls for agrarian reform. In *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*:[80]

---

[78] CONST., art. III, sec. 9.

[79] See Apo Fruits Corporation *v*. Land Bank of the Phils., 647 Phil. 251 (2010) [Per J. Brion, En Banc].

[80] 256 Phil. 777 (1989) [Per J. Cruz, En Banc].

As earlier observed, the requirement for public use has already been settled for us by the Constitution itself. No less than the 1987 Charter calls for agrarian reform, which is the reason why private agricultural lands are to be taken from their owners, subject to the prescribed maximum retention limits. The purposes specified in P.D. No. 27, Proc. No. 131 and R.A. No. 6657 are only an elaboration of the constitutional injunction that the State adopt the necessary measures "to encourage and undertake the just distribution of all agricultural lands to enable farmers who are landless to own directly or collectively the lands they till." That public use, as pronounced by the fundamental law itself, must be binding on us.[81]

On the other hand, the satisfaction of just compensation is elaborated by law under Republic Act No. 6657, otherwise known as the Comprehensive Agrarian Reform Law.[82]

Just compensation is the "full and fair equivalent of the property taken from its owner by the expropriator."[83] It is equal to the "price which a buyer will pay without coercion and a seller will accept without compulsion."[84] The modifier word "just" means that the payment for the property must be "real, substantial, full, and ample."[85] The payment of just compensation is the safeguard to balance to injury that the taking of the property causes.[86]

Section 17 of Republic Act No. 6657 prescribes a guideline in the determination of just compensation in the taking of agricultural land. It states:

---

[81] Id. at 812.

[82] Id.

[83] *Apo Fruits Corp. v. Court of Appeals*, 543 Phil. 497, 519 (2007) [Per J. Chico-Nazario, Third Division].

[84] Department of Agrarian Reform Administrative Order No. 05-98, I(C).

[85] *Apo Fruits Corp. v. Court of Appeals*, 543 Phil. 497, 519 (2007) [Per J. Chico-Nazario, Third Division].

[86] Id.

SECTION 17. *Determination of Just Compensation*. – In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

Under the law, the procedure for acquisition of private lands begins with the Department of Agrarian Reform. First, the department identifies the land and sends a notice of taking to the land owner. The notice contains the offer to pay a corresponding value of the land.[87] If the landowner rejects the price, a summary administrative proceeding is conducted by the Department of Agrarian Reform to determine the value of the land by requiring the landowner, Land Bank, and other interested parties to submit their evidence.[88] Should the landowner

---

[87] Republic Act No. 6657 (1988), sec. 16(a) provides:

SECTION 16. *Procedure for Acquisition of Private Lands*. — For purposes of acquisition of private lands, the following procedures shall be followed: (a) After having identified the land, the landowners and the beneficiaries, the DAR shall send its notice to acquire the land to the owners thereof, by personal delivery or registered mail, and post the same in a conspicuous place in the municipal building and barangay hall of the place where the property is located. Said notice shall contain the offer of the DAR to pay a corresponding value in accordance with the valuation set forth in Sections 17, 18, and other pertinent provisions hereof.

[88] Republic Act No. 6657 (1988), sec. 16(d) provides:

SECTION 16. *Procedure for Acquisition of Private Lands*. — For purposes of acquisition of private lands, the following procedures shall be followed:
. . . .

(d) In case of rejection or failure to reply, the DAR shall conduct summary administrative proceedings to determine the compensation for the land by requiring the landowner, the LBP and other interested parties to submit evidence as to the just compensation for the land, within fifteen (15) days from the receipt of the notice. After the expiration of the above period, the matter is deemed submitted for decision. The DAR shall decide the case within thirty (30) days after it is submitted for decision.

still reject the price, he or she may file a case for the "final determination of just compensation" before a Special Agrarian Court.[89]

The jurisdiction of Department of Agrarian Reform and the Special Agrarian Court with respect to agrarian matters is provided for by law. Under Sections 50 and 57 of Republic Act No. 6657:

CHAPTER XII

Administrative Adjudication

SECTION 50. *Quasi-Judicial Powers of the DAR.* — The DAR is hereby vested with primary jurisdiction to determine and adjudicate agrarian reform matters and shall have exclusive original jurisdiction over all matters involving the implementation of agrarian reform except those falling under the exclusive jurisdiction of the Department of Agriculture (DA) and the Department of Environment and Natural Resources (DENR).

CHAPTER XIII

Judicial Review

SECTION 57. *Special Jurisdiction.* — The Special Agrarian Courts shall have original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners, and the prosecution of all criminal offenses under this Act. The Rules of Court shall apply to all proceedings before the Special Agrarian Courts, unless modified by this Act.

The Special Agrarian Courts shall decide all appropriate cases under their special jurisdiction within thirty (30) days from submission of the case for decision.

---

[89] Republic Act No. 6657 (1988), sec. 16(f) provides:

SECTION 16. *Procedure for Acquisition of Private Lands.* — For purposes of acquisition of private lands, the following procedures shall be followed: (f) Any party who disagrees with the decision may bring the matter to the court of proper jurisdiction for final determination of just compensation.

The jurisdiction of the two bodies are not contradictory. The jurisdiction given to the Department of Agrarian Reform refers to the agrarian reform matters and matters involving the implementation of agrarian reform. Agrarian dispute includes "controversy relating to compensation" between a landowner to a farmer, or between the landowner to a tenant, or between a landowner to an agrarian reform beneficiary.[90] It does not cover dispute on compensation between the landowner and the State.[91] Section 3(d) of Republic Act No. 6557 clearly states:

> d) Agrarian Dispute refers to any controversy relating to tenurial arrangements, whether leasehold, tenancy, stewardship or otherwise, over lands devoted to agriculture, including disputes concerning farmworkers' associations or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of such tenurial arrangements.
>
> It includes any controversy relating to compensation of lands acquired under this Act and other terms and conditions of transfer of ownership from landowners to farmworkers, tenants and other agrarian reform beneficiaries, whether the disputants stand in the proximate relation of farm operator and beneficiary, landowner and tenant, or lessor and lessee.

Just compensation disputes under the jurisdiction of the Department of Agrarian Reform only refer to compensation paid by agrarian reform beneficiaries who acquire ownership of the land. On the other hand, compensation given to landowners by virtue of acquisition by the State remains under the exclusive and original jurisdiction of the Special Agrarian Courts.[92]

Moreover, the summary administrative proceedings to make an initial determination of just compensation under the Department of Agrarian Reform is a proceeding held by the provincial,

---

[90] Republic Act No. 6657 (1988), sec. 3(d).

[91] *See* Separate Opinion of J. Leonen in *Alfonso v. Land Bank of the Philippines*, 801 Phil. 217-394 (2016) [Per J. Jardeleza, En Banc].

[92] Concurring Opinion of J. Leonen in *Alfonso v. Land Bank of the Philippines*, 801 Phil. 217, 345 (2016) [Per J. Jardeleza, En Banc].

regional, or central adjudicator. The decision of the adjudicator is not appealable to the adjudication board but shall be brought directly to the Special Agrarian Courts.[93] This procedural framework is an acknowledgment that the power to determine just compensation under Republic Act No. 6657 is a judicial function.

Further, the jurisdiction of the Special Agrarian Court is not merely appellate because the judicial case is not a continuation of the administrative proceeding. In *Philippine Veterans Bank v. Court of Appeals:*[94]

> It is error to think that, because of Rule XIII, §11, the original and exclusive jurisdiction given to the courts to decide petitions for determination of just compensation has thereby been transformed into an appellate jurisdiction. It only means that, in accordance with settled principles of administrative law, primary jurisdiction is vested in the DAR as an administrative agency to determine in a preliminary manner the reasonable compensation to be paid for the lands taken under the Comprehensive Agrarian Reform Program, but such determination is subject to challenge in the courts.
>
> The jurisdiction of the Regional Trial Courts is not any less "original and exclusive" because the question is first passed upon by the DAR, as the judicial proceedings are not a continuation of the administrative determination. For that matter, the law may provide that the decision of the DAR is final and unappealable. Nevertheless, resort to the courts cannot be foreclosed on the theory that courts are the guarantors of the legality of administrative action.[95] (Citation omitted)

---

[93] *Philippine Veterans Bank v. Court of Appeals*, 379 Phil. 141, 148-149 (2000) [Per J. Mendoza, Second Division] *citing* DARAB RULES OF PROCEDURE, Rule XIII, sec. 11 provides:

> Section 11. Land Valuation and Preliminary Determination and Payment of Just Compensation. — The decision of the Adjudicator on land valuation and preliminary determination and payment of just compensation shall not be appealable to the Board but shall be brought directly to the Regional Trial Courts designated as Special Agrarian Courts within fifteen (15) days from receipt of the notice thereof. Any party shall be entitled to only one motion for reconsideration.

[94] 379 Phil. 141 (2000) [Per J. Mendoza. Second Division].

[95] Id. at 148-149.

In *Land Bank of the Philippines v. Manzano*,[96] We reiterated that there is no need to exhaust administrative remedies before the Department of Agrarian Reform because the final determination of just compensation lies with the Special Agrarian Courts. Thus:

> There is no need to exhaust administrative remedies through the Provincial Agrarian Reform Adjudicator, Regional Agrarian Reform Adjudicator, or the Department of Agrarian Reform Adjudication Board before a party can go to the Special Agrarian Court for determination of just compensation.
>
> The final decision on the value of just compensation lies solely on the Special Agrarian Court. Any attempt to convert its original jurisdiction into an appellate jurisdiction is contrary to the explicit provisions of the law....
>
> . . . .
>
> Thus, aggrieved landowners can go directly to the Special Agrarian Court that is legally mandated to determine just compensation, even when no administrative proceeding was conducted before DAR.[97] (Citations omitted)

The Regional Trial Courts, acting as Special Agrarian Courts, have original and exclusive jurisdiction over all petitions for the determination of just compensation. Its resolution regarding the value of the land is final.[98] The determination of just compensation, being a judicial function, cannot be dictated by an executive body such as the Department of Agrarian Reform. It follows that the Special Agrarian Court is not strictly bound by the parameters and formula laid down in DAR Administrative Order.

In *Export Processing Zone Authority v. Dulay*,[99] this Court held that "[t]he determination of 'just compensation' in eminent

---

[96] 824 Phil. 339 (2018) [Per J. Leonen, Third Division].

[97] Id. at 367-368.

[98] Republic Act No. 6657 (1988), sec. 16(f).

[99] 233 Phil. 313 (1987) [Per J. Gutierrez, Jr., En Banc].

domain cases is a judicial function."[100] While an executive or legislative body may come up with their initial determinations, the determination of the courts shall prevail when a party claims violation of constitutional right to property and due process.[101]

Similarly, in *National Power Corp. v. Spouses Zabala*:[102]

> The payment of just compensation for private property taken for public use is guaranteed no less by our Constitution and is included in the Bill of Rights. As such, no legislative enactments or executive issuances can prevent the courts from determining whether the right of the property owners to just compensation has been violated. It is a judicial function that cannot "be usurped by any other branch or official of the government." Thus, we have consistently ruled that statutes and executive issuances fixing or providing for the method of computing just compensation are not binding on courts and, at best, are treated as mere guidelines in ascertaining the amount thereof[.][103] (Citations omitted)

This doctrine was echoed in the landmark case of *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*.[104] In that case, one of the issues this Court resolved was the constitutionality of Section 16(d) of Republic Act No. 6657, which provided that the Department of Agrarian Reform may conduct summary administrative proceedings to determine compensation. The petitioner in that case claimed that the provision violated judicial prerogatives as it entrusted the manner of fixing the just compensation to the administrative authorities.

In upholding the constitutionality of the provision, this Court ruled that there is no arbitrariness, considering that the landowners and other parties are allowed an opportunity to submit evidence

---

[100] Id. at 326.

[101] Id.

[102] 702 Phil. 491 (2013) [Per J. Del Castillo, Second Division].

[103] Id. at 500.

[104] 256 Phil. 777 (1989) [Per J. Cruz, En Banc].

before the Department of Agrarian Reform. Nevertheless, this Court held that the determination of just compensation is a function of the courts which "may not be usurped by any other branch or official of the govemment."[105] The determination of the Department of Agrarian Reform is not final and conclusive because Section 16(f) provides that this matter may be brought to the court for final determination of just compensation. Thus:

> But more importantly, the determination of the just compensation by the DAR is not by any means final and conclusive upon the landowner or any other interested party, for Section 16(f) clearly provides:
>
> > Any party who disagrees with the decision may bring the matter to the court of proper jurisdiction for final determination of just compensation.
>
> The determination made by the DAR is only *preliminary* unless accepted by all parties concerned. Otherwise, the courts of justice will still have the right to review *with finality* the said determination in the exercise of what is admittedly a judicial function.[106]

In the exercise of this judicial function, the Special Agrarian Court's determination may not be dictated and curtailed by a legislative or executive issuance.[107] At most, the formula prescribed by the Department of Agrarian Reform is only recommendatory.

The determination of just compensation involves the appreciation of facts and evidence which may be specific and peculiar for each case. Thus, the factors which may be considered by a Special Agrarian Court cannot be limited, especially if the available evidence will aid the court to come up with a more precise valuation. Agrarian courts should be given independence to use a wide range of factors in determining land value.

---

[105] Id. at 814.

[106] Id. at 815.

[107] *Land Bank of the Philippines v. Manzano*, 824 Phil. 339, 367-369 (2018) [Per J. Leonen, Third Division].

In *Alfonso v. Land Bank of the Philippines*,[108] this Court reiterated:

> Out of regard for the DAR's expertise as the concerned implementing agency, courts should henceforth consider the factors stated in Section 17 of RA 6657, as amended, as translated into the applicable DAR formulas in their determination of just compensation for the properties covered by the said law. If, in the exercise of their judicial discretion, courts find that a strict application of said formulas is not warranted under the specific circumstances of the case before them, they may deviate or depart therefrom, provided that this departure or deviation is supported by a reasoned explanation grounded on the evidence on record. In other words, courts of law possess the power to make a final determination of just compensation.[109] (Citation omitted)

While in *Land Bank of the Philippines v. Franco*:[110]

> Administrative Order No. 5 provides a comprehensive formula that considers several factors present in determining just compensation.
>
> However, as this Court held in *Apo Fruits Corporation* and *Hijo Plantation, Inc. v. The Honorable Court of Appeals and Land Bank of the Philippines, and Export Processing Zone Authority*, it is not adequate to merely use the formula in an administrative order of the Department of Agrarian Reform or rely on the determination of a land assessor to show a final determination of the amount of just compensation. Courts are still tasked with considering all factors present, which may be stated in formulas provided by administrative agencies.
>
> In *Land Bank v. Yatco Agricultural Enterprises*, this Court held that when acting within the bounds of the Comprehensive Agrarian Reform Law, special agrarian courts "are not strictly bound to apply the [Department of Agrarian Reform] formula to its minute detail, particularly when faced with situations that do not warrant the formula's strict application; they may, in the exercise of their discretion,

---

[108] 801 Phil. 217 (2016) [Per J. Jardeleza, En Banc].

[109] Id. at 321-322.

[110] G.R. No. 203242, March 12, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65060> [Per J. Leonen, En Banc].

relax the formula's application to fit the factual situations before them."[111] (Citations omitted)

The Department of Agrarian Reform may come up with its own valuation of just compensation but this determination is only preliminary and may be subjected to challenge before the courts. In *Land Bank of the Philippines v. Escandor*:[112]

> It is settled that the determination of just compensation is a judicial function. The DAR's land valuation is only preliminary and is not, by any means, final and conclusive upon the landowner or any other interested party. In the exercise of their functions, the courts still have the final say on what the amount of just compensation will be.
>
> Although the DAR is vested with primary jurisdiction under the Comprehensive Agrarian Reform Law (CARL) of 1988 to determine in a preliminary manner the reasonable compensation for lands taken under the CARP, such determination is subject to challenge in the courts. The CARL vests in the RTCs, sitting as SACs, original and exclusive jurisdiction over all petitions for the determination of just compensation. This means that the RTCs do not exercise mere appellate jurisdiction over just compensation disputes.
>
> We have held that the jurisdiction of the RTCs is not any less "original and exclusive" because the question is first passed upon by the DAR. The proceedings before the RTC are not a continuation of the administrative determination. Indeed, although the law may provide that the decision of the DAR is final and unappealable, still a resort to the courts cannot be foreclosed on the theory that courts are the guarantors of the legality of administrative action.[113] (Citation omitted)

The Special Agrarian Court, in making its own determination of just compensation, is not confined to the limits laid down by the Department of Agrarian Reform. The valuation of the land is an exercise which cannot be exactly measured by law or executive issuance.[114]

---

[111] Id.

[112] 647 Phil. 20 (2010) [Per J. Villarama, Jr., Third Division].

[113] Id. at 28-29.

[114] *See* Separate Opinion of J. Leonen in *Alfonso v. Land Bank of the Philippines*, 801 Phil. 217, 333-361 (2016) [Per J. Jardeleza, En Banc].

Just compensation is based on the fair market value of the property at the time of the taking.[115] There is a wide range of factors that must be considered in approximating the real and full value of a land such as the assessed value of the property, schedule of market values determined by the provincial or city appraisal committee, and the nature and character of the property at the time of its taking.[116]

To be regarded as just, the determination cannot be left to the "self- serving discretion of the expropriating agency."[117] The Department of Agrarian Reform, as the representative of the State in acquiring the land, cannot be allowed to dictate the valuation of the property through its issuances. Otherwise, the constitutional right of the landowner will be disregarded. As held in *Apo Fruits Corporation v. Land Bank of the Philippines*:[118]

> Let it be remembered that shorn of its eminent domain and social justice aspects, what the agrarian land reform program involves is the purchase by the government, through the LBP, of agricultural lands for sale and distribution to farmers. As a purchase, it involves an exchange of values — the landholdings in exchange for the LBP's payment. In determining the just compensation for this exchange, however, the measure to be borne in mind is not the taker's gain but the owner's loss since what is involved is the takeover of private property under the State's coercive power. As mentioned above, *in the value-for-value exchange in an eminent domain situation, the State must ensure that the individual whose property is taken is not shortchanged and must hence carry the burden of showing that the "just compensation" requirement of the Bill of Rights is satisfied.*

---

[115] Land Bank of the Philippines v. Manzano, 824 Phil. 339, 369 (2018) [Per J. Leonen, Third Division].

[116] *See* Separate Opinion of J. Leonen in *Alfonso v. Land Bank of the Philippines*, 801 Phil. 217, 333-361 (2016) [Per J. Jardeleza, En Banc].

[117] *National Power Corp. v. Spouses Ileto*, 690 Phil. 453, 476 (2012) [Per J. Brion, Second Division].

[118] 543 Phil. 497 (2007) [Per J. Chico-Nazario, Third Division].

The owner's loss, of course, is not only his property but also its income-generating potential. Thus, when property is taken, full compensation of its value must immediately be paid to achieve a fair exchange for the property and the potential income lost. The just compensation is made available to the property owner so that he may derive income from this compensation, in the same manner that he would have derived income from his expropriated property. If full compensation is not paid for property taken, then the State must make up for the shortfall in the earning potential immediately lost due to the taking, and the absence of replacement property from which income can be derived; interest on the unpaid compensation becomes due as compliance with the constitutional mandate on eminent domain and as a basic measure of fairness.[119] (Emphasis supplied)

DAR Administrative Order No. 05-98 translates Section 17 of Republic Act No. 6557 into a basic formula for the valuation of lands subject to either voluntary offer to sell or compulsory acquisition.[120] Under the Administrative Order, Land Value (LV) is computed based on Capitalized Net Income (CNI), Comparable Sales (CS), and Market Value per Tax Declaration (MV). Thus,

LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1)

---

[119] Id. at 276-277.

[120] Department of Agrarian Reform Administrative Order No. 05-98, II(A) provides:

II. The following rules and regulations are hereby promulgated to govern the valuation of lands subject of acquisition whether under voluntary offer to sell (VOS) or compulsory acquisition (CA).

A. There shall be one basic formula for the valuation of lands covered by VOS or CA:

LV = (CNI x 0.6) + (CS x 0.3) + (MVTD x 0.1)
Where: LV = Land Value
CNI = Capitalized Net Income
CS = Comparable Sales
MV = Market Value per Tax Declaration

The above formula shall be used if all the three factors are present, relevant, and applicable.

Capitalized Net Income pertains to the productivity of the land based on the gross produce of the land multiplied by the selling price of the crop produced, minus the total cost of operations at the capitalization rate of 12%.[121] In formula terms:

CNI = [(AGP x SP) – CO]/12%

Where:
CNI = Capitalized Net Income
AGP = Annual Gross Product
SP = Selling Price
CO = Cost of Operation

On the other hand, Comparable Sales refers to the estimated sale price of the land based on sales transaction, mortgage, or acquisition cost of similar properties.[122]

To get the value of Comparable Sales based on sales transactions, at least three sales transactions within the same barangay, municipality, or province shall be used as basis to estimate the land's probable price if sold.[123] To qualify as comparable sales transaction, the land covered by the sales

---

[121] Department of Agrarian Reform Administrative Order No. 05-98, II (B) provides:

B. Capitalized Net Income (CNI) — This shall refer to the difference between the gross sales (AGP x SP) and total cost of operations (CO) capitalized at 12%.

[122] Department of Agrarian Reform Administrative Order No. 05-98, II (C) provides:

C. CS shall refer to any one or the average of all the applicable sub-factors, namely ST, AC and MVM.

[123] Department of Agrarian Reform Administrative Order No. 05-98, II(C.2)(a) provides:

C.2 The criteria in the selection of the comparable sales transaction (ST) shall be as follows:

a. When the required number of STs is not available at the baragay level, additional STs may be secured from the municipality where the land being offered/covered is situated to complete the required three comparable STs. In case there are more STs available than what is required at the municipal level, the most recent transactions shall be considered. The same rule shall

transactions must have the same topography and land use as the land sought to be acquired.[124] Moreover the sales transactions should have transpired within the period January 1, 1985 to June 15, 1988, and registered until September 13, 1988.[125]

Here, petitioner assails the valuation of the Special Agrarian Court arguing that it used sales transactions beyond the period prescribed under the DAR Administrative Order No. 05-98.[126] Moreover, it contends that the trial court used other factors not included in the Administrative Order such as the land's strategic location.[127]

Petitioner is mistaken.

To reiterate, the final determination of just compensation lies with the Special Agrarian Court. It is not merely tasked to

---

apply at the provincial level when no STs are available at the municipal level. In all cases, the combination of STs sourced from the barangay, municipality and province shall not exceed three transactions.

[124] Department of Agrarian Reform Administrative Order No. 05-98, II(C.2)(b) provides:

C.2 The criteria in the selection of the comparable sales transaction (ST) shall be as follows:

. . . .

b. The land subject of acquisition as well as those subject of comparable sales transactions should be similar in topography, land use, i.e., planted to the same crop. Furthermore, in case of permanent crops, the subject properties should be more or less comparable in terms of their stages of productivity and plant density.

[125] Department of Agrarian Reform Administrative Order No. 05-98, II(C.2)(c) provides:

C.2 The criteria in the selection of the comparable sales transaction (ST) shall be as follows:

. . . .

c. The comparable sales transactions should have been executed within the period January 1, 1985 to June 15, 1988, and registered within the period January 1, 1985, to September 13, 1988.

[126] *Rollo*, p. 342.

[127] Id. at 33-35.

verify the correctness of the computation of the Department of Agrarian Reform, but it is given the jurisdiction to make its own, independent evaluation. It is not bound to strictly adhere to the formula and parameters under the Department of Agrarian Reform Administrative Order No. 05-98.

Here, a strict adherence to the formula and limits provided under the Administrative Order may not be appropriate to arrive at a full, real, and just price for the acquisition of the land.

First, the Administrative Order mandates that only sales transactions within January 1, 1985 to June 15, 1988 may be used, but in this case there were more recent available data which were considered by the agrarian court. Petitioner used sales transactions in 1987 and 1988, while the agrarian court used transactions executed in 1997—prices which were more accurate and comparable to the value of the land in 1998.

Further, as the appellate court pointed out, the sales transactions are based on lands adjacent to the subject property and when the sales transactions occurred, the lands were still agricultural in nature. Sales transactions based on these adjacent lands are more comparable to the subject property than the transactions used by petitioner which were based on lands from neighboring towns.

It is only rational to take into account more current prices in the computation of the comparable sales. The gap of 10 years is not inconsequential when it comes to land appraisal. It may mean a hefty price difference especially that land is a property that generally appreciates over time. Strict compliance with the period laid down in the Department of Agrarian Reform Administrative Order would have resulted to an inaccurate valuation.

Second, the strategic location of the rice land was not taken into account when the agrarian court computed the value of the rice land. The prices of the surrounding residential area and the appraisal due to the adjacent beach and highway were not included in the computation. From the data used by the

Department of Agrarian Reform, the agrarian court only adjusted the factors Comparable Sales and Market Value per Tax Declaration.

After determining the new value, the trial court merely opined that the higher value is more reasonable considering its strategic location and its proximity to residential areas with high prices.

Thus, the Court of Appeals correctly affirmed the findings of the Special Agrarian Court. While there was a difference in the computation of the Court of Appeals, We agree that this slight deviation is too minor to overturn the decision of the trial court.

In essence, the Special Agrarian Court has determined the value of just compensation in a manner reasonable and appropriate for this particular case. The trial court has the constitutional duty to determine the value of just compensation. As an exercise of judicial function, it is free to make its independent resolution and it is not bound to strictly adhere to the parameters of the Department of Agrarian Reform.

WHEREFORE, the petition for review is **DENIED**. The Decision and Resolution of the Court of Appeals in CA-G.R. SP. UDK No. 0307 are **AFFIRMED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 210597. September 28, 2020]

DANILO OLIVEROS *y* IBAÑEZ, *Petitioner*, *v.* **OFFICE OF THE OMBUDSMAN, DANTE M. QUINDOZA, DIONISIO SAMEN, ERNIE LAZO, SIXTO INALES, OSCAR IGNA, ED HERNANDEZ, VICTORIO SUNGA, RONALD SALVACION, ANGEL PINEDA, DONATO AMADO, ROMEO GALURAN, and ELMER AVANZADO,** *Respondents*.

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROBABLE CAUSE; THE OMBUDSMAN'S FINDINGS ON THE ABSENCE OF PROBABLE CAUSE WILL NOT BE DISTURBED, ABSENT ANY SHOWING OF GRAVE ABUSE OF DISCRETION; CASE AT BAR. — The Office of the Ombudsman's finding on the absence of probable cause to file an information shall be binding, unless it is convincingly shown that such determination was tainted with grave abuse of discretion.

The determination of probable cause entails an assessment of facts, which is a function of the Office of the Ombudsman. Moreover, the determination of probable cause is generally an executive function. Thus, in the absence of grave abuse of discretion, courts should refrain from disturbing the findings of the Office of the Ombudsman, in keeping with the principle of separation of powers.

Petitioner has failed to sufficiently establish his case. The Office of the Ombudsman did not commit grave abuse of discretion in not finding probable cause against respondents.

2. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; THE PHILIPPINE ECONOMIC ZONE AUTHORITY (PEZA); POWERS OF PEZA TO ISSUE BUILDING PERMITS; STRUCTURES CONSTRUCTED WITHOUT A PERMIT INSIDE THE PEZA-OWNED OR

ADMINISTERED AREAS MAY BE SUMMARILY DEMOLISHED BY PEZA. — This Court finds that there is no inconsistency with the provisions of Presidential Decree No. 1096 and Republic Act No. 7916, as held in *PEZA v. Carantes*.

Carantes involved the issue of which between PEZA and the local building official had the authority to issue permits to build structures within the PEZA-owned or administered areas. In deciding the case, this Court discussed how PEZA assumes the power to enforce the National Building Code by virtue of Presidential Decree No. 1716. This Court held:

. . .

> By specific provision of law, it is PEZA, through its building officials, which has authority to issue building permits for the construction of structures within the areas owned or administered by it, whether on public or private lands. *Corollary to this, PEZA, through its director general may require owners of structures built without said permit to remove such structures within sixty (60) days. Otherwise, PEZA may summarily remove them at the expense of the owner of the houses, buildings or structures.*"

Thus, under the law, PEZA's director general and authorized representatives may summarily demolish structures within PEZA-owned or administered areas if constructed without a permit.

3. ID.; ID.; ID.; ID.; ID.; A DEMOLITION PERMIT IS NOT REQUIRED PRIOR TO THE REMOVAL OF STRUCTURES INSIDE THE PEZA-OWNED AREAS. — Here, according to the Office of the Ombudsman, records showed that respondents complied with the due notice requirement under Section 14(i) of Republic Act No. 7916. Moreover, the law does not require PEZA to obtain a demolition permit before structures within its jurisdiction could be demolished. There is also no showing that the respondents acted in an unjust and inhumane way in the demolition.

4. ID.; ID.; ID.; ID.; ID.; A DEMOLITION ORDER MAY BE IMPLEMENTED BY THE AUTHORIZED REPRESENTATIVES OF THE PEZA ADMINISTRATOR. — Petitioner seemingly equates authority and its valid delegation with physical presence. This argument fails to persuade. Section 14 of Republic Act No. 7916 provides that either the director general or their

authorized representatives can carry out the summary demolition. The records show that respondent Engr. Samen was acting under the orders of respondent Quindoza, the Bataan Economic Zone administrator, who is in turn supervised by the director general through a Demolition Order. To insist that the administrator must be physically present in every demolition is to go beyond the law.

5. CRIMINAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT (R.A. NO. 3019); "MANIFEST PARTIALITY," "EVIDENT BAD FAITH," OR "GROSS INEXCUSABLE NEGLIGENCE," CASE AT BAR. — We likewise agree with the Office of the Ombudsman's finding that petitioner failed to establish that respondents exhibited manifest partiality, evident bad faith, or gross inexcusable negligence in demolishing petitioner's house inside the Bataan Economic Zone.

. . .

This Court has interpreted what are meant by manifest partiality, evident bad faith, or gross inexcusable negligence, which fall under the third element. In one case, it explained:

> "Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are." "Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud." "Gross negligence has been so defined as negligence characterized by the want of even slight care, acting, or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even in attentive and thoughtless men never fail to take on their own property."

APPEARANCES OF COUNSEL

Jose Michael P. Operario for Sixto Inales, Ronald Salvacion & Dionisio Samen.

D E C I S I O N

LEONEN, *J.*:

The Office of the Ombudsman's finding on the absence of probable cause to file an information shall be binding, unless it is convincingly shown that this determination was tainted with grave abuse of discretion.

This Court resolves the Petition for Certiorari[1] filed by Danilo Oliveros y Ibañez (Oliveros), who assails the Office of the Ombudsman's September 12, 2011[2] and October 8, 2013[3] Orders dismissing his complaint for violation of Section 3(e) of Republic Act No. 3019, or the Anti-Graft and Corrupt Practices Act.

On March 12, 2005, Oliveros filed a Sinumpaang Salaysay against Dante M. Quindoza (Quindoza), Engineer Dionisio Samen (Engr. Samen), Ernie Lazo,[4] Sixto Inales, Oscar Igna, Ed Hernandez, Victorio Sunga, Ronald Salvacion, Angel Pineda, Donato Amado, Romeo Galuran, and Elmer Avanzado (collectively, respondents). He accused them of violating Section 3(e) of Republic Act No. 3019.[5]

Oliveros narrated that on July 1, 2003, around 20 men led by Engr. Samen arrived at his house and informed his wife to get all their belongings, as the house would be demolished.[6]

---

[1] *Rollo*, pp. 24-43.

[2] Id. at 56-62. The Order was penned by Graft Investigation & Prosecution Officer II Edwin B. Carabbacan, reviewed by Director Joaquin F. Salazar, concurred in by Assistant Ombudsman Rolando B. Zoleta, recommended for approval by Deputy Ombudsman for Luzon Francis H. Jardeleza, and was approved by Ombudsman Conchita Carpio Morales.

[3] Id. at 96-99. The Order was penned by Graft Investigation & Prosecution Officer III Jose Ronald M. Bersales and approved by Ombudsman Conchita Carpio Morales.

[4] At times written as "Hermi Lazo" in the *rollo*.

[5] *Rollo*, p. 26.

[6] Id. at 26-27.

When Oliveros's wife asked if they had a permit or court order, the engineer replied that they did not need a court order because "*may sarili silang batas*[.]"[7] According to Oliveros, Engr. Samen said that the demolition was through the order of Quindoza, the Bataan Economic Zone administrator.[8]

Oliveros's case was lodged with the Office of the Provincial Prosecutor of Bataan, which set the case for preliminary investigation and docketed it as I.S. No. 05-239.[9]

Respondents filed a Joint Counter-Affidavit,[10] arguing that Oliveros was guilty of forum shopping because his wife had earlier filed a similar complaint on July 31, 2003. This was docketed as Criminal Case No. 03-7760, before the Municipal Trial Court of Mariveles, Bataan.[11]

Respondents averred that in Criminal Case No. 03-7760, the Regional Trial Court of Bataan had already ruled that the Municipal Trial Court had no jurisdiction, as one of the accused occupied a position with Salary Grade 28, making the case fall within the Sandiganbayan's jurisdiction.[12] Thus, the case records were transmitted to the Office of the Ombudsman,[13] docketed as OMB-L-C-05-0613-F.[14]

For that same reason, respondents also claimed that the Office of the Provincial Prosecutor lacked jurisdiction over the case Oliveros filed.[15]

---

[7] Id. at 26.

[8] Id. at 27 and 34.

[9] Id. at 27.

[10] Id. at 46-48.

[11] Id. at 46.

[12] Id. at 47.

[13] Id.

[14] Id. at 52-53.

[15] Id. at 47.

In its April 25, 2007 Resolution, the Office of the Provincial Prosecutor recommended that an information be filed against respondents for violating Republic Act No. 3019 and Presidential Decree No. 1096, or the National Building Code. The case was then subjected to review by the Office of the Deputy Ombudsman for Luzon, docketed as OMB-L-C-07-0487-E.[16]

In a Review Action[17] issued on June 28, 2007, the Office of the Deputy Ombudsman for Luzon terminated Oliveros's case to avoid duplicity and conflicting findings in the two cases separately filed by the spouses. It disposed of the case without prejudice to the outcome of the other case, which was already forwarded to the Office of the Ombudsman for review.[18]

Oliveros moved to appeal[19] before the Office of the Ombudsman. The Motion to Appeal was treated as a Motion for Reconsideration of the Review Action.[20]

On September 12, 2011, the Office of the Ombudsman issued an Order[21] reversing the Office of the Provincial Prosecutor's recommendation and dismissing Oliveros's complaint for lack of probable cause.[22]

The Office of the Ombudsman ruled that respondents did not show manifest partiality, evident bad faith, or gross inexcusable negligence in demolishing Oliveros's house in the PEZA compound.[23]

---

[16] Id. at 27.

[17] Id. at 50-54.

[18] Id. at 46-47.

[19] Id. at 55.

[20] Id. at 56.

[21] Id. at 56-62.

[22] Id. at 61.

[23] Id. at 57-58.

The Office of the Ombudsman deemed the demolition in consonance with Section 14(i) of Republic Act No. 7916.[24] It also found that respondents complied with the required due notice through an April 9, 2003 demand letter sent to Oliveros.[25]

The Office of the Ombudsman also disagreed with the recommendation that an information be filed for violation of Section 301 of Presidential Decree No. 1096 for the demolition without a building permit.[26] It ruled that Section 14(i) of Republic Act No. 7916, on which the demolition hinged, does not require PEZA to obtain a demolition permit before demolishing structures within its jurisdiction.[27]

The Office of the Ombudsman further discussed:

---

[24] Id. at 58. An Act Providing For The Legal Framework And Mechanisms For The Creation, Operation, Administration, And Coordination Of Special Economic Zones In The Philippines , Creating For This Purpose, The Philippine Economic Zone Authority (PEZA), And For Other Purposes.

Republic Act No. 7916 (1995), sec. 14 provides:

SECTION 14. Powers and Functions of the Director General.— The director gneral shall be the overall coordinator of the policies, plans and programs of the ECOZONES. As such, he shall provide overall supervision over and general direction to the development and operations of these ECOZONES. He shall determine the structure and the staffing pattern and personnel complement of the PEZA and establish regional offices, when necessary, subject to the approval of the PEZA Board. In addition, he shall have the following specific powers and responsibilities:

. . . .

(i) To require owners of houses, buildings or other structures constructed without the necessary permit whether constructed on public or private lands, to remove or demolish such houses, buildings, structures within sixty (60) days after notice and upon failure of such owner to remove or demolish such house, building or structure within said period, the director general or his authorized representative may summarily cause its removal or demolition at the expense of the owner, any existing law, decree, executive order and other issuances or part thereof to the contrary notwithstanding[.]

[25] Id. at 59.

[26] Id.

[27] Id.

Moreover, R.A. No. 7916, being a particular law or specific law when it comes to houses, buildings or other structures constructed without the necessary permit within the PEZA is the more applicable law than P.D. 1096 which is a general law. In case of conflict between a specific and a general law, the specific law prevails.

Finally, under R.A. No. 7916, summary eviction or demolition is authorized despite laws, decrees, orders, and executive issuances to the contrary.[28]

On May 4, 2012, Oliveros moved for reconsideration, but his Motion was denied in the Office of the Ombudsman's October 8, 2013 Order.[29]

Aggrieved, Oliveros filed this Petition for Certiorari.[30]

On April 21, 2014, this Court required the Office of the Ombudsman and respondents to comment on the Petition.[31] The Office of the Ombudsman, as well as Engr. Samen, Inales, and Salvacion, filed their respective comments. This Court then required petitioner to submit the new address of one of the respondents, Ernie Lazo.[32]

On February 16, 2015, petitioner informed[33] this Court that respondent Ernie Lazo had retired three years prior and no longer resided in Mariveles, Bataan. He also stated that Quindoza retired, allegedly went to the United States in 2014, and had yet to return to the Philippines.[34]

---

[28] Id. at 60.

[29] Id. at 96-99.

[30] Id. at 24-43.

[31] Id. at 101.

[32] Id. at 183.

[33] Id. at 187-192.

[34] Id. at 188. On July 6, 2015, this Court noted petitioner's Manifestation/Compliance and deemed as served the April 21, 2014 and December 1, 2014 Resolutions sent to respondents Ernie Lazo, Oscar Igna, Ed Hernandez, Victorio Sunga, Angel Pineda, Donato Amado, Romeo Galuran, and Elmer Avanzado. This court dispensed with the comments of Ernie Lazo and Dante Quindoza (*see rollo*, p. 197).

On June 13, 2016, this Court required petitioner to provide the forwarding addresses of the remaining respondents who have not filed a comment.[35] Petitioner complied with the directive, as noted in the September 28, 2016 Resolution.[36]

On February 15, 2017,[37] this Court deemed as served copies of the September 28, 2016 Resolution sent to the remaining respondents. It also required petitioner anew to provide their correct addresses,[38] with which petitioner complied.[39]

On July 5, 2017,[40] this Court again required respondents Oscar Igna and Ed Hernandez to file a comment. When Ed Hernandez failed to comply, this Court issued a show-cause order, and when he still failed to do that, he was fined.[41] As for Oscar Igna, this Court again required petitioner to provide his current address, since the notice was returned unserved.[42]

Later, this Court learned that the show cause order for respondent Ed Hernandez was returned unserved, with a postal note saying that he was deceased. Thus, on November 19, 2018, this Court required petitioner to verify his death.[43] Petitioner later confirmed that Ed Hernandez had already died on November 4, 2017,[44] which this Court noted in the June 26, 2019 Resolution.[45]

---

[35] Id. at 201-202.

[36] Id. at 201-202.

[37] Id. at 245.

[38] Id.

[39] Id. at 258.

[40] Id.

[41] Id. at 272 and 280.

[42] Id. at 272.

[43] Id. at 283-284.

[44] Id. at 300.

[45] Id. at 312.

On September 18, 2019, this Court dispensed with the comments of respondents Oscar Igna, Victorio Sunga, Angel Pineda, Donato Amado, Romeo Galuran, and Elmer Avanzado.[46]

Before this Court, petitioner argues that the documentary evidence supports a finding of probable cause that respondents violated Section 3(e) of Republic Act No. 3019 and Presidential Decree No. 1096.[47]

In addition, petitioner claims that the demolition was illegal for not complying with the requirements for summary demolition under Section 14(i) of Republic Act No. 7916,[48] which provides that "the summary demolition should be caused or conducted by the director general or his [or her] authorized representative[.]"[49]

Petitioner points out that in the Demolition Order, the Director General at the time, Lilia B. De Lima, authorized respondent Quindoza, then Bataan Economic Zone administrator, to cause the demolition. Petitioner points out that since respondent Engr. Samen led the summary demolition, and not respondent Quindoza, the demolition was illegal. He argues that there was no evidence that the Director General authorized respondent Engr. Samen to conduct the summary demolition.[50]

Besides, petitioner posits, even if respondent Quindoza delegated the authority to respondent Engr. Samen, this would still be illegal, since the law does not allow the further delegation of authority to cause summary demolitions.[51]

Petitioner admits that Republic Act No. 7916 is the specific law when it comes to houses and other structures without permit inside the PEZA zone, and thus, prevails over Presidential Decree

---

[46] Id. at 316.

[47] Id. at 32.

[48] Id. at 34.

[49] Id.

[50] Id. at 34-35.

[51] Id.

No. 1096, a general law. However, he insists that since Republic Act No. 7916 is silent on the procedure for summary demolition, Presidential Decree No. 1096 must govern.[52]

For these reasons, petitioner argues that the Office of the Ombudsman gravely abused its discretion when it dismissed the case.[53]

On the other hand, the Office of the Ombudsman argues in its Comment[54] that a finding of probable cause is not reviewable by the courts unless grave abuse of discretion is sufficiently shown.[55] It also notes that petitioner raised issues that touch on factual findings, requiring a review of the evidence presented, which is improper in a certiorari petition.[56]

In their Comment,[57] respondents Samen, Sixto Inales, and Ronald Salvacion raise that petitioner did not state in this Petition when he received a copy of the September 12, 2011 Order, making it impossible to determine if he filed his Motion for Reconsideration on time.[58]

On the substantive issue, respondents maintain that the demolition under Section 14 of Republic Act No. 7916 does not require a building permit.[59] They also point out that petitioner's house was illegally erected, and was akin to a nuisance which could be summarily abated.[60]

This Court resolves the main issue of whether or not the Office of the Ombudsman gravely abused its discretion in dismissing the complaint based on lack of probable cause.

---

[52] Id. at 36.

[53] Id. at 36-37.

[54] Id. at 132-146.

[55] Id. at 139-142.

[56] Id.

[57] Id. at 148-152.

[58] Id. at 148.

[59] Id. at 150.

[60] Id.

Subsumed under this is the issue of whether the governing law in the demolition of structures within a PEZA territory is Republic Act No. 7916 or Presidential Decree No. 1096.

The Petition is dismissed.

The Office of the Ombudsman's finding on the absence of probable cause to file an information shall be binding, unless it is convincingly shown that such determination was tainted with grave abuse of discretion.[61]

The determination of probable cause entails an assessment of facts, which is a function of the Office of the Ombudsman. Moreover, the determination of probable cause is generally an executive function.[62] Thus, in the absence of grave abuse of discretion, courts should refrain from disturbing the findings of the Office of the Ombudsman, in keeping with the principle of separation of powers.[63]

Petitioner has failed to sufficiently establish his case. The Office of the Ombudsman did not commit grave abuse of discretion in not finding probable cause against respondents.

Petitioner's case relies on his argument that it is Presidential Decree No. 1096, or the National Building Code, and not Republic Act No. 7916[64] that must be applied in situations of a summary demolition of a structure within a PEZA-owned or administered area.

Section 14(i) of Republic Act No. 7916 provides:

SECTION 14. Powers and Functions of the Director General. — The director general shall be the overall coordinator of the policies,

---

[61] *Beltran and Sarmiento v. Sandiganbayan*, G.R. No. 201117, January 22, 2020, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66068> [Per J. Leonen, Third Division].

[62] Id.

[63] *Tupaz v. Office of the Deputy Ombudsman for the Visayas*, G.R. Nos. 212491-92, March 6, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65150> [Per J. Leonen, Third Division].

[64] Subsequently amended by Republic Act No. 8748 on June 1, 1999.

plans and programs of the ECOZONES. As such, he shall provide overall supervision over and general direction to the development and operations of these ECOZONES. He shall determine the structure and the staffing pattern and personnel complement of the PEZA and establish regional offices, when necessary, subject to the approval of the PEZA Board.

In addition, he shall have the following specific powers and responsibilities:

. . . .

(i) To require owners of houses, buildings or other structures constructed without the necessary permit whether constructed on public or private lands, to remove or demolish such houses, buildings, structures within sixty (60) days after notice and upon failure of such owner to remove or demolish such house, building or structure within said period, *the director general or his authorized representative may summarily cause its removal or demolition at the expense of the owner, any existing law, decree, executive order and other issuances or part thereof to the contrary notwithstanding*[.] (Emphasis supplied)

On the other hand, petitioner cites the following National Building Code provisions as applicable to this case:

SECTION 213. Penal Provisions. — It shall be unlawful for any person, firm or corporation, to erect, construct, enlarge, alter, repair, move, improve, remove, convert, demolish, equip, use, occupy, or maintain any building or structure or cause the same to be done contrary to or in violation of any provision of this Code.

Any person, firm or corporation who shall violate any of the provisions of this Code and/or commit any act hereby declared to be unlawful shall upon conviction, be punished by a fine of not more than twenty thousand pesos or by imprisonment of not more than two years or by both such fine and imprisonment: Provided, that in the case of a corporation firm, partnership or association, the penalty shall be imposed upon its officials responsible for such violation and in case the guilty party is an alien, he shall immediately be deported after payment of the fine and/or service of his sentence.

. . . .

SECTION 1108. Demolition. — (a) The work of demolishing any building shall not be commenced until all the necessary pedestrian protective structures are in place.

(b) The Building Official may require the permittee to submit plans, specifications and complete schedule of demolition. When so required, no work shall be done until such plans, specifications and schedule are approved by the Building Official.

Petitioner argues that when it comes to the manner of actual demolition of a particular building or structure, Presidential Decree No. 1096 becomes the special law and Republic Act No. 7916 is deemed as the general law, as the latter never mentions how a summary demolition of a house or structure inside the PEZA zone is to be made.[65]

This Court finds that there is no inconsistency with the provisions of Presidential Decree No. 1096 and Republic Act No. 7916, as held in *PEZA v. Carantes*.[66]

Carantes involved the issue of which between PEZA and the local building official had the authority to issue permits to build structures within the PEZA-owned or administered areas. In deciding the case, this Court discussed how PEZA assumes the power to enforce the National Building Code by virtue of Presidential Decree No. 1716.[67] This Court held:

P.D. No. 1716 further amended P.D. No. 66, the law creating the EPZA, by creating the PEZA. Section 11 of R.A. No. 7916 provides that the existing EPZA created under P.D. No. 66 shall evolve into and be referred to as the PEZA in accordance with the guidelines and regulations set forth in an executive order issued for the purpose.

Thus, on October 30, 1995, Executive Order No. 282 was enacted. Under Section 1 thereof, *all the powers, junctions and responsibilities of EPZA under P.D. No. 66, as amended, insofar as they are not*

---

[65] *Rollo*, p. 36.

[66] 635 Phil. 541 (2010) [Per J. Villarama, Third Division].

[67] Further Amending Presidential Decree No. 66 Dated November 20, 1972, Creating the Export Processing Zone Authority (1980).

inconsistent with the powers, functions and responsibilities of the PEZA, under R.A. No. 7916, shall be assumed and exercised by PEZA.

Among such powers is the administration and enforcement of the National Building Code of the Philippines in all zones and areas owned or administered by EPZA, as expressly provided in Section 6 of P.D. No. 1716:

> SEC. 6. The administration and enforcement of the provisions of Presidential Decree No. 1096, otherwise known as the National Building Code of the Philippines in all zones and areas owned or administered by the Authority shall be vested in the Administrator or his duly authorized representative. He shall appoint such EPZA qualified personnel as may be necessary to act as Building Officials who shall be charged with the duty of issuing Building Permits in the different zones. All fees and dues collected by the Building Officials under the National Building Code shall accrue to the Authority. . . .

This function, which has not been repealed and does not appear to be inconsistent with any of the powers and functions of PEZA under R.A. No. 7916, subsists. . . .

. . . .

By specific provision of law, it is PEZA, through its building officials, which has authority to issue building permits for the construction of structures within the areas owned or administered by it, whether on public or private lands. *Corollary to this, PEZA, through its director general may require owners of structures built without said permit to remove such structures within sixty (60) days. Otherwise, PEZA may summarily remove them at the expense of the owner of the houses, buildings or structures*.[68] (Emphasis supplied, citations omitted)

Thus, under the law, PEZA's director general and authorized representatives may summarily demolish structures within PEZA-owned or administered areas if constructed without a permit.

We likewise agree with the Office of the Ombudsman's finding that petitioner failed to establish that respondents exhibited

---

[68] *PEZA v. Carantes*, 635 Phil. 541, 551-553 (2010) [Per J. Villarama, Third Division].

manifest partiality, evident bad faith, or gross inexcusable negligence in demolishing petitioner's house inside the Bataan Economic Zone.

The elements for a finding of a violation of Section 3(e) of Republic Act No. 3019 are as follows:

(1) the offender is a public officer;
(2) the act was done in the discharge of the public officer's official, administrative or judicial functions;
(3) the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and
(4) the public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference.[69]

This Court has interpreted what are meant by manifest partiality, evident bad faith, or gross inexcusable negligence, which fall under the third element. In one case, it explained:

"Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are." "Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud." "Gross negligence has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property."[70] (Citations omitted)

Here, according to the Office of the Ombudsman, records showed that respondents complied with the due notice

---

[69] *Sison v. People*, 628 Phil. 573, 583 (2010) [Per J. Corona, Third Division].

[70] *Fonacier v. Sandiganbayan*, 308 Phil. 660, 693-694 (1994) [Per J. Vitug, En Banc].

requirement under Section 14(i) of Republic Act No. 7916. Moreover, the law does not require PEZA to obtain a demolition permit before structures within its jurisdiction could be demolished. There is also no showing that the respondents acted in an unjust and inhumane way in the demolition.

The Office of the Ombudsman's ruling that there was no finding of probable cause must be respected, without any showing of grave abuse of discretion. This Court has held:

> The Ombudsman has the discretion to determine whether a criminal case, given its attendant facts and circumstances, should be filed or not. The Ombudsman may dismiss the complaint should the Ombudsman find the complaint insufficient in form or substance, or the Ombudsman may proceed with the investigation if, in the Ombudsman's view, the complaint is in due form and substance. *Hence, the filing or non-filing of the information is primarily lodged within the "full discretion" of the Ombudsman.*[71] (Emphasis supplied, citations omitted)

Lastly, petitioner argues that the demolition was illegal because it was not the administrator himself who actually caused the demolition. It bears noting that petitioner had posited contradictory arguments when he said, on one hand, that Presidential Decree No. 1096 is the applicable law, and on the other, that respondents failed to comply with Section 14(i) of Republic Act No. 7916 on who the authorized person to lead the demolition is. In any case, he is mistaken.

Petitioner seemingly equates authority and its valid delegation with physical presence. This argument fails to persuade. Section 14 of Republic Act No. 7916 provides that either the director general or their authorized representatives can carry out the summary demolition. The records show that respondent Engr. Samen was acting under the orders of respondent Quindoza, the Bataan Economic Zone administrator, who is in turn supervised

---

[71] *Vergara v. Ombudsman*, 600 Phil. 26, 41 (2009) [Per J. Carpio, En Banc].

by the director general through a Demolition Order.[72] To insist that the administrator must be physically present in every demolition is to go beyond the law.

All told, petitioner has failed to show that the Office of the Ombudsman gravely abused its discretion.

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

SO ORDERED.

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

---

[72] *Rollo*, p. 67. Memorandum dated July 9, 2001, with the subject: "Demolition Order Re-illegally constructed buildings/houses inside the [Bataan Economic Zone]."

SECOND DIVISION

[G.R. No. 221411. September 28, 2020]

ITALKARAT 18, INC., *Petitioner, v.* **JURALDINE N. GERASMIO,** *Respondent.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CERTIORARI; THE FACT THAT A DECISION OF THE NLRC IS FINAL AND EXECUTORY DOES NOT MEAN THAT A SPECIAL CIVIL ACTION FOR CERTIORARI MAY NOT BE FILED WITH THE COURT OF APPEALS. ––** [F]inal and executory NLRC decisions may be subject of a petition for *certiorari*. It is precisely this final and executory nature of NLRC decisions that makes a special civil action of *certiorari* applicable to such decisions, considering that appeals from the NLRC to this Court were eliminated. x x x [W]e ruled in *Panuncillo v. CAP Philippines, Inc.* that even if the NLRC decision has become final and executory, the adverse party is not precluded from availing of the remedy of *certiorari* under Rule 65 of the Rules of Court, x x x Indeed, the doctrine of immutability of judgment is not violated when a party elevates a matter to the CA which the latter decided in favor of said party. Parenthetically, petitions for *certiorari* to the CA are more often than not filed after the assailed NLRC decisions have already become final and executory. It must be noted that under Article 229 [223] of the Labor Code, as amended, a decision of the NLRC already becomes final after ten (10) calendar days from receipt thereof by the parties; on the other hand, the reglementary period with respect to a petition for *certiorari* under Rule 65 of the Rules of Court is sixty (60) days.

2. **ID.; ID.; ID.; THE COURT OF APPEALS, IN THE EXERCISE OF ITS CERTIORARI JURISDICTION, CAN REVIEW THE FACTUAL FINDINGS AND LEGAL CONCLUSIONS OF THE NLRC. —** While it is true that this Court is not a trier of facts but a trier of laws, there exist exceptions to such axiom. Particularly in labor cases where there exists no appeal from the NLRC. In *Laya, Jr. v. Philippine Veterans Bank* we reiterated that the CA, in the exercise of its *certiorari* jurisdiction, can

review the factual findings or even the legal conclusions of the NLRC, x x x Indeed, in illegal dismissal cases, the burden of proof is on the employer in proving the validity of dismissal. However, the fact of dismissal, if disputed, must be duly proven by the complainant. x x x We have also clarified that there can be no question as to the legality or illegality of a dismissal if the employee has not discharged his burden to prove the fact of dismissal by substantial evidence[.]

3. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; ILLEGAL DISMISSAL; NEGATED BY FAILURE TO PROVE THAT THE RESIGNATION WAS INVOLUNTARY AND THAT THERE WAS CONSTRUCTIVE DISMISSAL. —** [I]f the fact of dismissal is disputed, it is the complainant who should substantiate his claim for dismissal and the one burdened with the responsibility of proving that he was dismissed from employment, whether actually or constructively. Unless the fact of dismissal is proven, the validity or legality thereof cannot even be an issue. In the present case, the fact of the matter is that it was Juraldine himself who resigned from his work, as shown by the resignation letter he submitted and the quitclaim that he acknowledged, and thus, he was never dismissed by the Company.

4. **ID.; ID.; SEPARATION PAY FOR RESIGNING EMPLOYEES; PROPRIETY THEREOF. —** As a general rule, the law does not require employers to pay employees that have resigned any separation pay, unless there is a contract that provides otherwise or there exists a company practice of giving separation pay to resignees. x x x In our jurisdiction, a contract is defined in Article 1305 of the Civil Code as a meeting of the minds. This means that a contract may exist in any mode, whether written or not. In this case, however, Juraldine utterly failed to show that he has a perfected contract with the Company regarding his separation pay. x x x [The affidavits of two former employees] are not sufficient in proving that the Company gives separation pay as a matter of practice especially given the evidence presented by the Company (final payslips of the two former employees) which paints a different picture.

APPEARANCES OF COUNSEL

Seno Law Office and Associates for petitioner.
Mark Elton C. Garrote for respondent.

D E C I S I O N

HERNANDO, *J.*:

This Petition for Review [on *Certiorari*],[1] filed under Rule 45 of the Rules of Court seeks to reverse and set aside the February 22, 2012 Decision[2] and September 30, 2015 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 04910.

The facts of the case are as follows:

On January 13, 2009, respondent Juraldine N. Gerasmio (Juraldine) filed a complaint for illegal dismissal, reinstatement, backwages, separation pay, declaration of the quitclaim and release as null and void, 13th month pay, litigation expenses, damages and attorney's fees, against petitioner Italkarat 18, Inc. (Company).[4]

Juraldine alleged that the Company hired him on June 1, 1990. In 1993, he was designated as the Maintenance Head and Tool and Die Maker until his dismissal on November 20, 2008 on the ground of serious business losses.[5] He claimed that during and prior to the last quarter of 2008, the Company had repeatedly informed its employees of its proposed retrenchment program because it was suffering from serious business losses.[6] In particular, Juraldine claimed that Noel San Pedro (San Pedro), the then Officer-In-Charge (OIC)/Manager of the Company, informed him sometime in November 2008

---

[1] *Rollo*, pp. 11-80.

[2] Id. at 125-137; penned by Associate Justice Gabriel T. Ingles and concurred in by Associate Justices Pampio A. Abarintos and Eduardo B. Peralta, Jr.

[3] CA *rollo*, pp. 573-574; penned by Associate Justice Gabriel T. Ingles and concurred in by Associate Justices Marilyn B. Lagura-Yap and Jhosep Y. Lopez.

[4] *Rollo*, p. 126.

[5] CA *rollo*, p. 39.

[6] Id. at 40.

that the Company was planning to retrench a substantial number of workers in the Maintenance and Tool and Die Section; and that if he opts to retire early, he will be given a sum of ₱170,000.00.[7] San Pedro then allegedly cautioned Juraldine that if he will not accept the offer to retire early, the Company would eventually retrench or terminate him from his employment, in which case, he might not even receive anything.[8]

In light of the foregoing, Juraldine executed and signed a resignation letter and quitclaim on November 20, 2008.[9] He was then informed to return on November 25, 2008 to get his check worth ₱170,000.00.[10] However, to his dismay, Juraldine was later informed by San Pedro that he would be receiving only the amount of ₱26,901.34.[11] Thus, Juraldine, through his lawyer, sent a letter dated November 25, 2008, essentially demanding the amount of ₱170,000.00 he was allegedly promised earlier. Since the Company did not respond, Juraldine filed the instant complaint for illegal dismissal.[12]

On the other hand, the Company essentially alleged that Juraldine voluntarily resigned from his job, thus, his claims are baseless. The Company admitted that it hired Juraldine as maintenance personnel on December 1, 1989. It further alleged that during the last year of his employment, Juraldine took leaves of absence in order to process his papers for a possible seaman's job.[13]

Moreover, the Company stated that on October 20, 2008, Juraldine tendered his resignation and demanded from the Company the payment of his separation pay on account of his

---

[7] Id.

[8] Id. at 41.

[9] Id.

[10] Id.

[11] Id. at 42.

[12] Id.

[13] Id.

long years of service.[14] On November 6, 2008 and on November 20, 2008 respectively, he executed and signed a waiver and quitclaim which shows, inter alia, the computation of his receivables.[15] He then signed the voucher for this purpose and thereafter received the check issued to him representing his last pay.[16] Surprisingly, he send a demand letter, through his lawyer, on November 28, 2008, for the payment of ₱170,000.00 in addition to the amount already received by him. The Company refused to pay him the additional amount for lack of basis in law and in fact.[17]

Ruling of the Labor Arbiter:

On April 3, 2009, the Labor Arbiter (LA) rendered a Decision[18] declaring the complainant to have been unlawfully dismissed. The dispositive portion thereof reads as follows:

> WHEREFORE, foregoing considered, judgment is hereby rendered DECLARING the complainant to have been unlawfully dismissed from his job in violation of his right to mandatory statutory due process, coupled with bad faith and malice aforethought to humiliate his lowly status in the society. Thus, the respondents are hereby ordered jointly and severally to reinstate the complainant to his previous work or its equivalent immediately from notice hereof under Article 223 in [relation] to Article 279 of the Labor Code, and to pay him of his partial back wages from December 2008 to the present in the amount of PHP53,456.00 at PHP13,364.00 per month; moral damages in the amount of PHP100,000.00; and exemplary damages in the amount of PHP50,000.00 each plus ten percent (10%) attorney's fees. Further, the respondents are hereby ordered jointly and severally to deposit the said amounts to the Cashier of this Arbitration Branch within ten (10) days from receipt hereof.

---

[14] Id. at 43.

[15] Id. at 91.

[16] Id.

[17] Id. at 44.

[18] Id. at 38-50.

SO ORDERED.[19]

The LA ruled that Juraldine was only forced to resign because of San Pedro's misrepresentation that he would be paid ₱170,000.00 as separation pay. The LA likewise noted that in his quitclaim, Juraldine still asserted his entitlement to the payment of whatever benefits that may be due him. In fine, the LA ruled that Juraldine was illegally dismissed.

Ruling of the National Labor Relations Commission (NLRC):

The Company appealed the Decision to the NLRC. Juraldine also interposed a partial appeal to the NLRC, questioning the non-inclusion of his separation pay in the LA Decision. On August 28, 2009, the NLRC granted the appeal of the Company, set aside and effectively reversed the LA's Decision dated April 3, 2009. Juraldine filed a motion for reconsideration but the same was denied by the NLRC in a Resolution dated October 30, 2009.[20]

The NLRC found that Juraldine voluntarily resigned from his job. It also noted that San Pedro could not have persuaded Juraldine to resign since the resignation happened on October 20, 2008 while the alleged promise of San Pedro was made on November 20, 2008, or one month after. Also, the NLRC found that Juraldine's quitclaim was valid and executed for a reasonable consideration.

The dispositive portion of the NLRC Decision reads as follows:

WHEREFORE, the challenged decision is SET ASIDE and a new one entered DISMISSING the complaint for lack of merit.

SO ORDERED.[21]

---

[19] Id. at 49-50.

[20] Id. at 36-37.

[21] Id. at 35.

Ruling of the Court of Appeals:

Aggrieved, Juraldine filed a Petition for *Certiorari* with the CA. In a Decision[22] dated February 22, 2012, the CA granted the Petition for *Certiorari* and found that the NLRC committed grave abuse of discretion. Thus, the CA reversed the NLRC Decision and reinstated the LA's Decision dated April 3, 2009.[23] The Company filed a motion for reconsideration but it was denied by the appellate court in a Resolution dated September 30, 2015.[24]

The CA found that Juraldine's resignation was not unconditional since he was demanding payment for his separation pay in accordance with the alleged company practice. The CA opined that Juraldine latched on San Pedro's promise that he would be paid ₱170,000.00 if he would resign. The appellate court further held that the quitclaim will not serve as a bar for Juraldine to demand the amount of ₱170,000.00 since he clearly stated therein that he is only executing the quitclaim because he was in need of money.

The dispositive portion of the CA Decision reads:

WHEREFORE, the petition is GRANTED. The assailed Decision and Resolution of the NLRC, are hereby REVERSED and SET ASIDE, and a new judgement is hereby rendered entitling petitioner to:

(1) [P]ayment of separation pay computed from December 1, 1989, petitioner's first day of employment up to November 20, 2008, at the rate of one month pay per year of service inclusive of allowances and other benefits and emoluments less the amount he already received;

(2) [A]s ordered by the Labor Arbiter, to pay petitioner moral damages in the amount of ₱100,000.00 and exemplary damages in the amount of ₱50,000.00;

---

[22] Id. at 31-35.

[23] Id. at 573-574.

[24] Id. at 194-195.

(3) [T]en percent (10%) attorney's fees based on the total amount of the awards under (2) and (3) above.

SO ORDERED.[25]

Hence, the Company filed the instant Petition for Review on *Certiorari* with this Court, raising the following issues:

1. WHETHER OR NOT THE [CA] COMMITTED ERROR WHEN IT DID NOT DISMISS THE PETITION FOR HAVING BEEN FILED AFTER THE NLRC DECISION HAD BECOME FINAL AND EXECUTORY.

2. WHETHER OR NOT THE [CA] COMMITTED ERROR WHEN IT RULED THAT THE RESIGNATION LETTER IS NOT UNCONDITIONAL AND THAT IT WAS CONDITIONED ON THE PAYMENT OF SEPARATION PAY IN ACCORDANCE WITH THE COMPANY POLICY AND THIS IS NOT SUPPORTED BY EVIDENCE.

3. WHETHER OR NOT THE [CA] COMMITTED ERROR WHEN IT RULED THAT SAN PEDRO PROMISED THAT GERASMIO X X X WOULD BE GIVEN A SEPARATION PAY IN THE AMOUNT EQUIVALENT TO FIFTEEN (15) DAYS SALARY FOR EVERY YEAR OF SERVICE, THE REASON WHY HE ACCEPTED [THE COMPANY'S] OFFER OF RESIGNATION AND EXECUTED AND SIGNED HIS RESIGNATION LETTER AND QUITCLAIM DESPITE NOT BEING SUPPORTED BY ANY EVIDENCE.

4. WHETHER OR NOT THE APPELLATE COURT COMMITTED ERROR WHEN IT RULED THAT GERASMIO IS ENTITLED TO SEPARATION PAY DESPITE THE FACT THAT THE CLAIM IS NOT SUPPORTED BY EVIDENCE AND THE RULING IS CONTRARY TO LAW.[26]

---

[25] *Rollo*, pp. 136-137.

[26] Id. at 43.

Our Ruling

The fact that a decision of the NLRC is final and executory does not mean that a special civil action for *certiorari* may not be filed with the CA.

The Company insists that the CA should have dismissed Juraldine's Petition for *Certiorari* because the NLRC Decision had already become final and executory.[27] In fact, according to the Company, an Entry of Judgment was already issued by the NLRC.[28]

Notwithstanding this, jurisprudence is replete with rulings that final and executory NLRC decisions may be subject of a petition for *certiorari*.[29] It is precisely this final and executory nature of NLRC decisions that makes a special civil action of *certiorari* applicable to such decisions, considering that appeals from the NLRC to this Court were eliminated.[30]

In *St. Martin Funeral Home v. National Labor Relations Commission*,[31] we have explained that:

> The Court is, therefore, of the considered opinion that ever since appeals from the NLRC to the Supreme Court were eliminated, the legislative intendment was that the special civil action of *certiorari* was and still is the proper vehicle for judicial review of decisions of the NLRC. The use of the word "appeal" in relation thereto and in the instances we have noted could have been a *lapsus plumae* because appeals by *certiorari* and the original action for *certiorari* are both modes of judicial review addressed to the appellate courts. The important distinction between them, however, and with which

---

[27] Id. at 44.

[28] Id.

[29] *Panuncillo v. CAP Philippines, Inc.*, 544 Phil. 256, 278 (2007).

[30] *St. Martin Funeral Home v. National Labor Relations Commission and Bienvenido Aricayos*, 356 Phil. 811, 816 & 823 (1998).

[31] Id.

the Court is particularly concerned here is that the special civil action of *certiorari* is within the concurrent original jurisdiction of this Court and the Court of Appeals; whereas to indulge in the assumption that appeals by *certiorari* to the Supreme Court are allowed would not subserve, but would subvert, the intention of Congress as expressed in the sponsorship speech on Senate Bill No. 1495.[32]

Consequently, we ruled in *Panuncillo v. CAP Philippines, Inc.*[33] that even if the NLRC decision has become final and executory, the adverse party is not precluded from availing of the remedy of *certiorari* under Rule 65 of the Rules of Court, to wit:

> In sum, while under the sixth paragraph of Article 223 of the Labor Code, the decision of the NLRC becomes final and executory after the lapse of ten calendar days from receipt thereof by the parties, the adverse party is not precluded from assailing it *via* Petition for *Certiorari* under Rule 65 before the Court of Appeals and then to this Court via a Petition for Review under Rule 45. x x x.[34]

Indeed, the doctrine of immutability of judgment is not violated when a party elevates a matter to the CA which the latter decided in favor of said party.[35]

Parenthetically, petitions for *certiorari* to the CA are more often than not filed after the assailed NLRC decisions have already become final and executory. It must be noted that under Article 229 [223] of the Labor Code, as amended, a decision of the NLRC already becomes final after ten (10) calendar days from receipt thereof by the parties; on the other hand, the reglementary period with respect to a petition for *certiorari* under Rule 65 of the Rules of Court is sixty (60) days.

Certainly, given that the special civil action for *certiorari* was filed within the reglementary period, the CA committed

---

[32] Id. at 823.

[33] *Supra*.

[34] Id. at 278.

[35] *Univac Development, Inc. v. Soriano*, 711 Phil. 516, 524 (2013).

no error and was acting in accordance with the law when it took cognizance of Juraldine's petition.

Absent any evidence that Juraldine was dismissed, the complaint for illegal dismissal should not have prospered.

The circumstances of this case necessitate a re-examination of the facts relating to Juraldine's alleged dismissal.

Juraldine argues that the Company's present petition should be dismissed for raising questions of fact and not law.[36]

While it is true that this Court is not a trier of facts but a trier of laws, there exist exceptions to such axiom. Particularly in labor cases where, as mentioned earlier, there exists no appeal from the NLRC.

In *Laya, Jr. v. Philippine Veterans Bank*[37] we reiterated that the CA, in the exercise of its *certiorari* jurisdiction, can review the factual findings or even the legal conclusions of the NLRC, to wit:

> Conformably with such observation made in *St. Martin Funeral Homes*, we have then later on clarified that the CA, in its exercise of its *certiorari* jurisdiction, can review the factual findings or even the legal conclusions of the NLRC, *viz.*:
>
> > In *St. Martin Funeral Home[s] v. NLRC*, it was held that the special civil action of *certiorari* is the mode of judicial review of the decisions of the NLRC either by this Court and the Court of Appeals, although the latter court is the appropriate forum for seeking the relief desired "in strict observance of the doctrine on the hierarchy of courts" and that, in the exercise of its power, the Court of Appeals can review the factual findings or the legal conclusions of the NLRC. The contrary rule in *Jamer* was thus overruled.

---

[36] *Rollo*, pp. 208-258.

[37] G.R. No. 205813, January 10, 2018.

There is now no dispute that the CA can make a determination whether the factual findings by the NLRC or the Labor Arbiter were based on the evidence and in accord with pertinent laws and jurisprudence.

The significance of this clarification is that whenever the decision of the CA in a labor case is appealed by petition for review on *certiorari*, the Court can competently delve into the propriety of the factual review not only by the CA but also by the NLRC. Such ability is still in pursuance to the exercise of our review jurisdiction over administrative findings of fact that we have discoursed on in several rulings, including *Aklan Electric Cooperative, Inc. v. National Labor Relations Commission*, where we have pointed out:

> While administrative findings of fact are accorded great respect, and even finality when supported by substantial evidence, nevertheless, when it can be shown that administrative bodies grossly misappreciated evidence of such nature as to compel a contrary conclusion, this Court had not hesitated to reverse their factual findings. Factual findings of administrative agencies are not infallible and will be set aside when they fail the test of arbitrariness.

The fact of dismissal must first be proven by Juraldine, especially considering the existence of a resignation letter signed by him.

Indeed, in illegal dismissal cases, the burden of proof is on the employer in proving the validity of dismissal. However, the fact of dismissal, if disputed, must be duly proven by the complainant.

We have held in *Machica v. Roosevelt Services Center, Inc.*:[38]

The rule is that one who alleges a fact has the burden of proving it; thus, petitioners were burdened to prove their allegation that respondents dismissed them from their employment. It must be

---

[38] 523 Phil. 199 (2006).

stressed that the evidence to prove this fact must be clear, positive and convincing. **The rule that the employer bears the burden of proof in illegal dismissal cases finds no application here because the respondents deny having dismissed the petitioners**.[39] (Emphasis and underscoring supplied)

We have also clarified that there can be no question as to the legality or illegality of a dismissal if the employee has not discharged his burden to prove the fact of dismissal by substantial evidence, to wit:

> It is true that in constructive dismissal cases, the employer is charged with the burden of proving that its conduct and action or the transfer of an employee are for valid and legitimate grounds such as genuine business necessity. However, it is likewise true that in constructive dismissal cases, **the employee has the burden to prove first the fact of dismissal by substantial evidence**. Only then when the dismissal is established that the burden shifts to the employer to prove that the dismissal was for just and/or authorized cause. The logic is simple — if there is no dismissal, there can be no question as to its legality or illegality.[40] (Emphasis and underscoring supplied)

Applying the abovementioned principles in the present case, Juraldine clearly has the burden of proving that he was dismissed by the Company, in light of the Company's allegation that he resigned voluntarily and was not dismissed. Hence, Juraldine must first prove that he was actually dismissed by the Company before the legality of such dismissal can even be raised as an issue.

However, even a cursory perusal of the evidence on record would show that Juraldine failed to prove the fact of dismissal. He relied primarily on his allegations that he was misled by the Company into resigning and that he was actually retrenched. These uncorroborated and self-serving allegations, especially considering the existence of a resignation letter and a quitclaim (both bearing Juraldine's signature), fall short of the evidence

---

[39] Id. at 209-210.

[40] *Galang v. Boie Takeda Chemicals, Inc.*, 790 Phil. 582, 599 (2016).

required under the law to discharge Juraldine's burden to prove that he was dismissed by the Company.

To illustrate the aforementioned point, in *Gemina, Jr. v. Bankwise, Inc.*,[41] we ruled that the employee had indeed failed to state circumstances substantiating his claim of constructive dismissal as the employee therein had not claimed to have suffered a demotion in rank or diminution in pay or other benefits. Instead, the said employee only claimed to have been subjected to several acts of harassment by several officers of the employer-company, including being asked to take a forced leave of absence, demanding back the employee's service vehicle, and delaying the release of employee's salaries and allowances in order to compel him to quit employment. Citing *Philippine Rural Reconstruction Movement (PRRM) v. Pulgar*,[42] we held:

"It is a well-settled rule, however, that **before the employer must bear the burden of proving that the dismissal was legal, the employee must first establish by substantial evidence the fact of his dismissal from service. Bare allegations of constructive dismissal, when uncorroborated by the evidence on record, cannot be given credence**.

In the instant case, the records are bereft of substantial evidence that will unmistakably establish a case of constructive dismissal. **An act, to be considered as amounting to constructive dismissal, must be a display of utter discrimination or insensibility on the part of the employer so intense that it becomes unbearable for the employee to continue with his employment.** Here, the circumstances relayed by Gemina were not clear-cut indications of bad faith or some malicious design on the part of Bankwise to make his working environment insufferable.

Moreover, Bankwise was able to address the allegation of harassment hurled against its officers and offered a plausible justification for its actions. x x x.

Finally, as regards Gemina's allegation that he was verbally being compelled to go on leave, enough it is to say that there was no evidence

---

[41] 720 Phil. 358 (2013).

[42] 637 Phil. 244 (2010).

presented to prove the same. There was not a single letter or document that would corroborate his claim that he was being forced to quit employment. He even went on leave in January 2003 and never claimed that it was prompted by the management's prodding but did so out of his own volition.

Without substantial evidence to support his claim, Gemina's claim of constructive dismissal must fail. It is an inflexible rule that a party alleging a critical fact must support his allegation with substantial evidence, for any decision based on unsubstantiated allegation cannot stand without offending due process."[43] (Emphasis and underscoring supplied)

Juraldine failed to prove that his resignation was involuntary and that he was constructively dismissed.

In *Gan v. Galderma Philippines, Inc.*,[44] we held that where the employee alleges that he involuntarily resigned due to circumstances in his employment that are tantamount to constructive dismissal, the employee must prove his allegations with particularity, to wit:

Since Gan submitted a resignation letter, **it is incumbent upon him to prove with clear, positive, and convincing evidence that his resignation was not voluntary but was actually a case of constructive dismissal; that it is a product of coercion or intimidation. He has to prove his allegations with particularity.**

Gan could not have been coerced. Coercion exists when there is a reasonable or well-grounded fear of an imminent evil upon a person or his property or upon the person or property of his spouse, descendants or ascendants. Neither do the facts of this case disclose that Gan was intimidated. x x x

x x x x

---

[43] Id. at 370-372.

[44] 701 Phil. 612 (2013).

> The instances of 'harassment' alleged by Gan are more apparent than real. Aside from the need to treat his accusations with caution for being self-serving due to lack of substantial documentary or testimonial evidence to corroborate the same, the acts of 'harassment,' if true, do not suffice to be considered as 'peculiar circumstances' material to the execution of the subject resignation letter.[45] (Emphasis and underscoring supplied)

Based on the foregoing discussion, it is therefore not enough for Juraldine to allege that he was threatened and thereafter misled to resign in order for the tribunals and courts to rule that he was constructively dismissed. Juraldine must prove with particularity the alleged acts of coercion and intimidation which led him to resign. This, Juraldine failed to do.

Furthermore, we observe that the evidence on record show that Juraldine had already intended to resign in 2008, even earlier than October. The evidence presented by the Company would show that Juraldine in fact requested for multiple leaves on various occasions, usually for processing of his papers for work abroad. Juraldine's allegation that the Company was already considering retrenching its employees during the last quarter of 2008 or earlier, which Juraldine would want to impress upon this Court to be the catalyst that prompted San Pedro to make the alleged offer of resignation to Juraldine, would not have made any difference in view of the fact that Juraldine was already in the process of applying for a job overseas or at the very least, intending to go abroad.

To summarize, if the fact of dismissal is disputed, it is the complainant who should substantiate his claim for dismissal and the one burdened with the responsibility of proving that he was dismissed from employment, whether actually or constructively. Unless the fact of dismissal is proven, the validity or legality thereof cannot even be an issue. In the present case, the fact of the matter is that it was Juraldine himself who resigned from his work, as shown by the resignation letter he submitted

---

[45] Id. at 640.

and the quitclaim that he acknowledged, and thus, he was never dismissed by the Company.

Juraldine is not entitled to separation pay.

As a general rule, the law does not require employers to pay employees that have resigned any separation pay, unless there is a contract that provides otherwise or there exists a company practice of giving separation pay to resignees.

Juraldine failed to prove that a contract exists between him and the Company.

In our jurisdiction, a contract is defined in Article 1305 of the Civil Code as a meeting of the minds.[46] This means that a contract may exist in any mode, whether written or not. In this case, however, Juraldine utterly failed to show that he has a perfected contract with the Company regarding his separation pay.

To prove that the Company owed him separation pay, Juraldine primarily relied on his resignation letter and the subsequent demand letter written by his lawyer. The CA incorrectly appreciated the resignation letter as one demanding for separation pay. The contents of the said resignation letter would reveal that Juraldine merely believed that he was entitled to separation pay and was not even demanding for a certain amount. In short, his resignation was irrevocable and is patently unconditional.

Juraldine, while he believed to be entitled to separation pay, never intended to revoke his resignation. In fact, as already mentioned, the supposed separation pay does not appear to be the primary reason why Juraldine tendered his resignation as the totality of circumstances would show that he was already intending to resign and work abroad even before San Pedro

---

[46] Art. 1305. A contract is a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service.

allegedly talked with him and even before the Company's supposed announcement made sometime in the last quarter of the year 2008 to retrench some workers.

Likewise, the subsequent demand letter appears to be the result of Juraldine's disappointment when the amount reflected in the check he received did not match his expectations, which were purely based on his own belief to what he was entitled to, and is a mere afterthought. It must be reiterated that he who asserts a fact must prove such fact through evidence. In this case, Juraldine merely presented his bare and self-serving allegations, which were actually belied by the totality of evidence on record. He did not even present anything that would evince that there was a contract between him and the Company regarding his separation pay.

Juraldine did not prove that there exists a Company practice wherein resignees were given separation pay.

Aside from contract, Juraldine alternatively argued that it was a company practice to give resignees separation pay. To prove his allegations, Juraldine relied on affidavits of two former employees of the Company. The Company, on the other hand, also presented affidavits of its own, accompanied with the final payslips of former employees who have resigned.

We have ruled that a company's practice of paying separation pay to resignees must be proven to exist as this is an exception to the general rule that employees who voluntarily resign are not entitled to separation pay.[47]

In this case, we agree with the NLRC's findings that there was no company practice. The evidence would show that the affidavits presented by Juraldine were made by former employees who were not in the same department or job position

---

[47] *Travelaire Tours Corporation v. National Labor Relations Commission*, 355 Phil. 932, 935 (1998).

as him. While we cannot hastily conclude that the affiants are perjuring themselves (it may be possible that they were indeed given separation pay), these affidavits are not sufficient in proving that the Company gives separation pay as a matter of practice especially given the evidence presented by the Company, which paints a different picture.

We are inclined to give more weight to the Company's affidavits as these were accompanied by the final payslips of former employees who have resigned, especially considering that at the time of resignation of one of these former employees, Gaylord Nebril, occupied the same job position as Juraldine when the latter resigned, which is maintenance director. This is compared to the job positions of Accountant and worker at the Lacquering and Wax Department held by Ms. Clarita A. Pangandayon and Ms. Evelyn A. Abella, respectively.[48]

In conclusion, considering that there was no dismissal involved in this case as Juraldine voluntarily resigned from work, his claims arising from his complaint for illegal dismissal must be denied. This includes his claim for separation pay as he failed to prove his entitlement thereto, either via contract or company practice.

WHEREFORE, the Petition for Review on *Certiorari* is hereby **GRANTED**. The February 22, 2012 Decision and September 30, 2015 Resolution of the Court of Appeals in CA-G.R. SP No. 04910, are **REVERSED** and **SET ASIDE**. The August 28, 2009 Decision of the National Labor Relations Commission is hereby **REINSTATED** and **AFFIRMED**.

SO ORDERED.

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

Delos Santos, J., on official leave.

Baltazar-Padilla, J., on leave.

---

[48] CA *rollo*, pp. 104-105.

THIRD DIVISION

[G.R. No. 227889. September 28, 2020]

GAYDEN A. SELOZA, *Petitioner, v.* **ONSHORE STRATEGIC ASSETS (SPV-AMC), INC.,** *Respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; *LITIS PENDENTIA*; THE PRESENCE OF ALL THE REQUISITES OF *LITIS PENDENTIA* WARRANTS THE DISMISSAL OF THE COMPLAINT. — All the requisites of *litis pendentia* are present here.

> First, there is substantial identity of parties. It is settled that absolute identity of parties is not required. At the minimum, the parties in both cases must represent the same interest. . . .
>
> Here, it is not disputed that respondent is the successor-in-interest of United Overseas Bank, which had assigned to it First World's loan obligations and real estate mortgage. Subsequently impleading respondent as an indispensable party in the case before the Housing and Land Use Regulatory Board showed that petitioner has acknowledged its privity of interest with United Overseas Bank. Thus, both cases have similar parties.
>
> Second, there is also identity of rights asserted and reliefs prayed for.
>
> . . .
>
> Here, the substance of each complaint petitioner filed confirms that his respective causes of action are founded on the same facts involving similar parties and their successors-in-interest. Since he also alleged the superiority of his unregistered right over the property, the Regional Trial Court cannot rule on the validity of the extrajudicial foreclosure without ruling on the validity of the real estate mortgage. Clearly, all the requisites of *litis pendentia* are present. Petitioner committed forum shopping, warranting the dismissal of the Complaint before the Regional Trial Court.

2. POLITICAL LAW; ADMINISTRATIVE LAW; PRESIDENTIAL DECREE NO. 957; HOUSING AND LAND USE REGULATORY BOARD (HLURB); HLURB'S JURISDICTION INCLUDES COMPLAINTS AGAINST UNSOUND REAL ESTATE BUSINESS PRACTICES. — In *Manila Banking Corporation v. Spouses Rabina*, this Court discussed the exclusive jurisdiction of the Housing and Land Use Regulatory Board, which includes complaints against unsound real estate business practices. . . .

In addition, this Court held that mortgaging properties that had been sold to a lot buyer without their knowledge and consent, as well as approval from the Housing and Land Use Regulatory Board, constitutes unsound real estate business practices. Without these requirements, the Housing and Land Use Regulatory Board is authorized to declare the mortgage void. . . .

3. REMEDIAL LAW; CIVIL PROCEDURE; FORUM-SHOPPING; SPLITTING OF A CAUSE OF ACTION; AS THE HLURB HAS THE EXCLUSIVE JURISDICTION TO ASCERTAIN THE VALIDITY OF THE MORTGAGE, THE FILING OF ANOTHER CASE BEFORE THE REGIONAL TRIAL COURT TO ANNUL THE EXTRAJUDICIAL FORECLOSURE AMOUNTS TO SPLITTING A CAUSE OF ACTION. — [I]n *Philippine National Bank v. Lim*, this Court affirmed the Housing and Land Use Regulatory Board's mandate to protect lot buyers despite a final judgment affirming the validity of the real estate mortgage.. . .

It is thus clear that the Housing and Land Use Regulatory Board has the exclusive jurisdiction to determine the validity of the mortgage executed by First World in favor of United Overseas Bank. Since it is empowered to cancel a portion of the mortgage pertaining to the subject property, petitioner had no reason to split his cause of action and bring the incidents of the extrajudicial foreclosure to the Regional Trial Court. As in *Lim*, should the Housing and Land Use Regulatory Board invalidate any portion of the mortgage, First World would be obliged under Section 25 of Presidential Decree No. 957 to redeem the property and issue its title to the lot buyer free from all encumbrances.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Villaraza & Angangco for respondent.

D E C I S I O N

LEONEN, *J.*:

A lot buyer may seek to annul a real estate mortgage before the Housing and Land Use Regulatory Board, which has exclusive jurisdiction over complaints of unsound real estate business practices. This, however, precludes one from seeking before the trial court an annulment of the extrajudicial foreclosure proceedings. Otherwise, as the second suit would arise from the same cause of action and parties as the first action, it would constitute forum shopping by way of *litis pendentia*.

This Court resolves the Petition for Review on Certiorari[1] filed by Gayden Seloza (Seloza) assailing the Decision[2] and Resolution[3] of the Court of Appeals, which affirmed the Regional Trial Court Orders[4] dismissing his Complaint because of *litis pendentia* and forum shopping.

On July 17, 2001, Seloza and First World Home Philippines, Inc. (First World) entered into a contract to sell a house and

---

[1] *Rollo*, pp. 12-23.

[2] Id. at 30-38. The April 22, 2016 Decision in CA-G.R. CV No. 104193 was penned by Associate Justice Noel G. Tijam (now a retired member of this Court) and concurred in by Associate Justices Francisco P. Acosta and Eduardo B. Peralta, Jr. of the Fourth Division of the Court of Appeals, Manila.

[3] Id. at 40-41. The October 19, 2016 Resolution was penned by Justice Noel G. Tijam and concurred in by Associate Justices Francisco P. Acosta and Eduardo B. Peralta, Jr. of the Fourth Division, Court of Appeals, Manila.

[4] Id. at 129-132 and 133. The Orders dated September 20, 2013 and September 30, 2014 in Civil Case No. 153-V-12 of the Regional Trial Court, Branch 75 of Valenzuela City were issued by Presiding Judge Lilia Mercedes Encarnacion A. Gepty.

lot[5] in Bignay, Valenzuela City, worth ₱580,750.00.[6] Seloza had long completed payment on December 30, 2004, but First World executed a deed of absolute sale on September 26, 2008, and failed to deliver the new title to Seloza.[7]

Unknown to Seloza, in 2002, First World had loaned ₱75 million from United Overseas Bank Philippines (United Overseas Bank).[8] To secure its loan obligations, on December 30, 2002, First World executed a real estate mortgage on several lots in its Valenzuela housing project, including the property that Seloza paid for.[9]

On January 30, 2006,[10] United Overseas Bank transferred its rights over all outstanding obligations of First World, including the real estate mortgage, to Onshore Strategic Assets (SPC-AMV), Inc. (Onshore).[11]

When First World failed to pay its loans, on February 14, 2012, Onshore had the real estate mortgage extrajudicially foreclosed.[12] On April 10, 2012, a Notice of Sheriffs Sale setting the auction sale of the mortgaged properties was issued and published in public places. The auction was held on May 11, 2012, with Onshore as the sole bidder. Thus, on May 18, 2012, a Certificate of Sale was issued in its favor. It was registered and annotated in Transfer Certificate of Title No. V-59286 on May 24, 2012.[13]

---

[5] Covered by Transfer Certificate of Title No. V-59286.

[6] *Rollo,* pp. 14 and 31.

[7] Id. at 14.

[8] Id. at 223.

[9] Id. at 31.

[10] Id. at 223.

[11] Id. at 31.

[12] Id. at 223.

[13] Id. at 224.

In May 2012, Seloza discovered that a certificate of sale of the property was issued to Onshore.[14]

In October 2012, Seloza filed a Complaint[15] before the Regional Trial Court, seeking to annul the extrajudicial foreclosure sale with prayer for preliminary injunction. He contended that his unregistered rights are superior to the registered mortgage of Onshore because First World failed to apprise him of the mortgage and the foreclosure proceedings.[16]

Onshore moved to dismiss the Complaint for failure to implead First World as an indispensable party.[17]

On November 12, 2012, Seloza and the other lot buyers in the housing project filed an Omnibus Motion to implead Onshore in a case[18] pending before the Housing and Land Use Regulatory Board. In that case, filed on September 16, 2011,[19] they assail the validity of the real estate mortgages that First World had executed, including the property that involved Seloza.

On September 20, 2013, the Regional Trial Court dismissed[20] Seloza's Complaint for forum shopping. It found the requisites of *litis pendentia* present: the case had identity of parties, rights asserted, and reliefs prayed for with the case before the Housing and Land Use Regulatory Board, such that judgment in one case would amount to *res judicata* in the other. It also found that both complaints were based on the superiority of Seloza's unregistered deed of sale over Onshore's right as the

---

[14] Id. at 53.

[15] Id. at 42-44. Docketed as Civil Case No. 153-V-12.

[16] Id. at 43-44.

[17] Id. at 225.

[18] Id. at 99-109. Entitled "Francisco Victoria, et al. v. First World Homes Phils., and United Overseas Bank Philippines," docketed as HLURB Case No. NCR REM 091611-14594.

[19] Id. at 480.

[20] Id. at 129-132.

assignee of the mortgage.[21] The dispositive portion of the Order reads:

> IN VIEW OF THE FOREGOING, the Motion to Dismiss and the Supplement thereto are hereby GRANTED. The instant case is hereby DISMISSED on the ground of *litis pendentia*.
>
> The prayer for the issuance of preliminary injunction is likewise denied for lack of merit.
>
> SO ORDERED.[22]

On September 30, 2014, the Regional Trial Court denied Seloza's Motion for Reconsideration.[23]

In its April 22, 2016 Decision,[24] the Court of Appeals affirmed the Regional Trial Court's ruling, disposing as follows:

> **ACCORDINGLY**, the instant appeal is **DENIED**. The Orders dated September 20, 2013 and September 30, 2014 of the Regional Trial Court (RTC), Branch 75 of Valenzuela City in Civil Case No. 1530-V-12 are hereby **AFFIRMED *in toto***.
>
> **SO ORDERED.**[25] (Emphasis in the original)

As with the lower court, the Court of Appeals found that all the requisites of *litis pendentia* were present.[26]

First, there was substantial identity of parties, since Seloza was one of the lot buyers who filed the case in the Housing and Land Use Regulatory Board against Onshore's predecessors-in-interest.[27]

---

[21] Id. at 131.

[22] Id. at 132

[23] Id. at 133.

[24] Id. at 30-38.

[25] Id. at 37.

[26] Id. at 35.

[27] Id.

Second, there was identity of causes of action and reliefs sought. The Court of Appeals found that both cases hinged on the validity of the real estate mortgage.[28] Thus, the same pieces of evidence would either establish both cases or fail to prove the cause of action. The validity of the foreclosure sale and the cancellation of the certificate of sale could not be determined without ruling on the validity of the real estate mortgage.[29]

Accordingly, for the third requisite, the Court of Appeals found that the judgment to be rendered by the Housing and Land Use Regulatory Board would amount to *res judicata* in the case before the trial court.[30]

In an October 19, 2016 Resolution,[31] the Court of Appeals denied Seloza's Motion for Reconsideration.

On November 19, 2016, Seloza filed this Petition[32] against Onshore.

In a February 6, 2017 Resolution,[33] this Court denied the Petition for failure to sufficiently show any reversible error in the assailed judgment to warrant the exercise of this Court's discretionary appellate jurisdiction.

On March 28, 2017, Seloza moved for reconsideration,[34] reiterating his argument that there was no identity of rights asserted and reliefs sought in the two cases. He argued that the judgment in the Housing and Land Use Regulatory Board case will not amount to *res judicata* in the Regional Trial Court case. Hence, there was no *litis pendentia* and forum shopping.

---

[28] Id. at 35-36.

[29] Id. at 36-37.

[30] Id. at 37.

[31] Id. at 40-41.

[32] Id. at 12-23. Seloza filed an earlier motion for extension to file petition for review, which this Court granted in a December 5, 2016 Resolution (*rollo*, p. 10).

[33] Id. at 208.

[34] Id. at 209-216.

On July 31, 2017, this Court granted petitioner's Motion and reinstated the Petition.[35] Respondent filed its Comment/Opposition on October 4, 2017,[36] and petitioner filed his Reply on September 7, 2018.[37]

Petitioner argues that the Court of Appeals erred in finding that there was *litis pendentia*,[38] as the second and third requisites are wanting.

On the second requisite, petitioner contends that the cause of action in the Housing and Land Use Regulatory Board case was founded on First World's execution of mortgage over his property without his knowledge and consent, in violation of Section 18 of Presidential Decree No. 957. He and the other lot buyers prayed to cancel the mortgage contract. On the other hand, the trial court case was based on the lack of notice in the foreclosure proceedings.[39] He prayed that the certificate of sale from the foreclosure proceedings, not the mortgage contract itself, be canceled.[40]

As for the third requisite, petitioner argues that the Housing and Land Use Regulatory Board would only rule on the validity of the mortgage contract. Regardless of its decision, the Regional Trial Court can validate or invalidate the foreclosure sale for lack of notice. Thus, judgment in one tribunal would not conflict with the judgment in another. There being no *litis pendentia*, petitioner insists that he did not commit forum shopping.[41]

For its part, respondent alleges that the Petition should be dismissed as it merely reiterated all its arguments already denied

---

[35] Id. at 217.

[36] Id. at 222-247.

[37] Id. at 476-495.

[38] Id. at 18.

[39] Id. at 18.

[40] Id. at 19.

[41] Id. at 20.

in the lower courts. Allegedly, petitioner did not raise new arguments warranting review under Rule 45 of the Rules of Court.[42]

Respondent asserts that the lower courts correctly found all the elements of *litis pendentia* present. It underscores that in his Complaint before the trial court, petitioner claimed that he was not aware of the mortgage contract and asserted the superiority of his right against Onshore. Thus, it argues that while the reliefs may be different, petitioner's causes of action in both cases hinge on the validity of the real estate mortgage.[43] Respondent also invokes *Goodland Company, Inc. v. Asia United Bank*,[44] which held that forum shopping exists when two cases are filed simultaneously, where one seeks to annul the extrajudicial foreclosure, and the other seeks to invalidate the real estate mortgage.[45]

Respondent further alleges that petitioner is guilty of splitting his cause of action, since both actions are premised on the same cause of action and essentially pray for the same relief.[46]

In his Reply, petitioner justifies the filing of the Petition since Rule 45 of the Rules of Court allows review of decisions that are contrary to law and applicable jurisprudence.[47]

He then alleges that his cause of action in the case before the Housing and Land Use Regulatory Board was based on unsound real estate practices under Presidential Decree No. 957, while respondent's extrajudicial foreclosure in 2012 was a supervening event assailed before the Regional Trial Court. Petitioner argues that this supervening event was a new

---

[42] Id. at 230-234.

[43] Id. at 239-241.

[44] 684 Phil. 391 (2012) [Per. J. Villarama, First Division].

[45] Rollo, p. 242.

[46] Id. at 244-245.

[47] Id. at 478.

and distinct cause of action that justifies his recourse to the Regional Trial Court.[48]

Finally, petitioner alleges that the Regional Trial Court does not have jurisdiction over violations of Presidential Decree No. 957. Similarly, he asserts that the Housing and Land Use Regulatory Board does not have jurisdiction to resolve matters of title, possession of real property, and any other interest in it. Thus, he maintains that *litis pendentia* does not lie.[49]

The following are the issues to be resolved:

First, whether or not *litis pendentia* exists in filing a complaint to annul the extrajudicial foreclosure proceedings while an action assailing the validity of the real estate mortgage is pending; and

Second, whether or not the Housing and Land Use Regulatory Board has jurisdiction to annul the extrajudicial foreclosure.

I

Forum shopping is a ground for dismissing a complaint under Rule 7, Section 5 of the Rules of Court:

> SECTION 5. *Certification against forum shopping*. — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

---

[48] Id. at 484-485 citing *Caina v. Court of Appeals*, 309 Phil. 241 (1994) [Per J. Davide, First Division].

[49] Id. at 489-491.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

In *City of Taguig v. City of Makati*,[50] this Court reiterated the various forms of forum shopping and their requisites:

Jurisprudence has recognized that forum shopping can be committed in several ways:

> (1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*).

Similarly, it has been recognized that forum shopping exists "where a party attempts to obtain a preliminary injunction in another court after failing to obtain the same from the original court."

The test for determining forum shopping is settled. In *Yap v. Chua, et al.*:

> To determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another; otherwise stated, the test for determining forum shopping is

---

[50] 787 Phil. 367 (2016) [Per J. Leonen, Second Division].

> whether in the two (or more) cases pending, there is identity of parties, rights or causes of action, and reliefs sought.

For its part, *litis pendentia* "refers to that situation wherein another action is pending between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious." For *litis pendentia* to exist, three (3) requisites must concur:

> The requisites of *litis pendentia* are: (a) the identity of parties, or at least such as representing the same interests in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other.

On the other hand, *res judicata* or prior judgment bars a subsequent case when the following requisites are satisfied:

> (1) the former judgment is final; (2) it is rendered by a court having *jurisdiction* over the subject matter and the parties; (3) it is a judgment or an order *on the merits*; (4) there is — between the first and the second actions — *identity* of parties, of subject matter, and of causes of action. . . .

These settled tests notwithstanding:

> Ultimately, what is truly important to consider in determining whether forum-shopping exists or not is the vexation caused the courts and parties-litigant by a party who asks different courts and/or administrative agencies to rule on the same or related causes and/or to grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different fora upon the same issue.[51] (Citations omitted)

Here, respondent echoes the Court of Appeals' ruling that all the requisites of *litis pendentia* are present. There was substantial identity of parties since respondent's predecessors-in-interest were parties in the cases before the Regional Trial Court and the Housing and Land Use Regulatory Board. There was also identity of causes of action because the resolution of

---

[51] Id. at 386-388.

each case is premised on the validity of the real estate mortgage executed by First World. Since the same issue will be passed upon in both cases, judgment in one will amount to *res judicata* in the other.[52]

Petitioner argues that there is no identity of rights asserted in the two cases. In the Housing and Land Use Regulatory Board case, his cause of action was based on First World's execution of mortgage without his knowledge and consent. In the Regional Trial Court case, his cause of action was based on the lack of notice of the foreclosure proceedings, and not the validity of the mortgage contract itself.[53]

We affirm the Court of Appeals' ruling. All the requisites of *litis pendentia* are present here.

First, there is substantial identity of parties. It is settled that absolute identity of parties is not required. At the minimum, the parties in both cases must represent the same interest.[54] In *Grace Park International Corporation v. Eastwest Banking Corporation*:[55]

> Anent the first requisite of forum shopping, "[t]here is identity of parties where the parties in both actions are the same, or there is privity between them, or they are successors-in-interest by title subsequent to the commencement of the action, litigating for the same thing and under the same title and in the same capacity. Absolute identity of parties is not required, shared identity of interest is sufficient to invoke the coverage of this principle. Thus, it is enough that there is a community of interest between a party in the first case and a party in the second case even if the latter was not impleaded in the first case."[56] (Citation omitted)

---

[52] *Rollo*, pp. 236-238.

[53] Id. at 18.

[54] *Buan v. Lopez*, 229 Phil. 65 (1986) [Per J. Narvasa, First Division].

[55] 791 Phil. 570 (2016) [Per J. Perlas-Bernabe, First Division].

[56] Id. at 578.

Here, it is not disputed that respondent is the successor-in-interest of United Overseas Bank, which had assigned to it First World's loan obligations and real estate mortgage.[57] Subsequently impleading respondent as an indispensable party in the case before the Housing and Land Use Regulatory Board showed that petitioner has acknowledged its privity of interest with United Overseas Bank. Thus, both cases have similar parties.

Second, there is also identity of rights asserted and reliefs prayed for.

Petitioner alleges that the complaints are different because the suit in the Housing and Land Use Regulatory Board pertains to the validity of the real estate mortgage, while the complaint before the Regional Trial Court pertains to the validity of the foreclosure proceedings.

In *Yap v. Chua*:[58]

> Hornbook is the rule that identity of causes of action does not mean absolute identity; otherwise, a party could easily escape the operation of *res judicata* by changing the form of the action or the relief sought. The test to determine whether the causes of action are identical is to ascertain whether the same evidence will sustain both actions, or whether there is an identity in the facts essential to the maintenance of the two actions. If the same facts or evidence would sustain both, the two actions are considered the same, and a judgment in the first case is a bar to the subsequent action. Hence, a party cannot, by varying the form of action or adopting a different method of presenting his case, escape the operation of the principle that one and the same cause of action shall not be twice litigated between the same parties or their privies. Among the several tests resorted to in ascertaining whether two suits relate to a single or common cause of action are: (1) whether the same evidence would support and sustain both the first and second causes of action; and (2) whether the defenses in one case may be used to substantiate the complaint in the other. Also fundamental is the test of determining

---

[57] *Rollo*, p. 223.

[58] 687 Phil. 392 (2012) [Per J. Reyes, Second Division].

whether the cause of action in the second case existed at the time of the filing of the first complaint.[59] (Citations omitted)

The substance, or the material allegations of the complaint, defines its cause of action:

Substance is that which is essential and is used in opposition to form. It is the most important element in any existence, the characteristic and essential components of anything, the main part, the essential import, and the purport. It means not merely subject of act, but an intelligible abstract or synopsis of its material and substantial elements, though it may be stated without recital of any details. It goes into matters which do not sufficiently appear or prejudicially affect the substantial rights of parties who may be interested therein and not to mere informalities.

As used in reference to substance of common-law actions, substance comprehends all of the essential or material elements necessary to sufficiently state a good cause of action invulnerable to attack by general demurrer.

Substance is one which relates to the material allegations in the pleading. It is determinative of whether or not a cause of action exists. It is the central piece, the core, and the heart constituting the controversy addressed to the court for its consideration. It is the embodiment of the essential facts necessary to confer jurisdiction upon the court.[60] (Citations omitted)

To determine whether two causes of action are identical, the material allegations in each complaint must be compared. The Complaint in the Regional Trial Court reads:

3. That in June 17, 2000, plaintiff made reservations over a house and lot located in Valenzuela View Housing Project, Barangay Bignay, Valenzuela City. Valenzuela Ville Housing Project is owned by First World Home Philippines, Inc.

4. On July 17, 2001 herein plaintiff and First World Home Philippines, Inc., through its president executed a Contract to Sell involving a

---

[59] Id. at 401-402.

[60] *Spouses Munsalud v. National Housing Authority*, 595 Phil. 750, 760-761 (2005) [Per J. Reyes, Third Division].

particular piece of land and the improvements thereon, designated as Block 15 Lot 02 and covered by Transfer Certificate of Title No. V-59286.

5. Plaintiff had religiously comply (sic) with the obligation to pay the monthly amortization of the agreed price for the subject unit. As of December 30, 2004, herein plaintiff has fully paid the agreed consideration.

6. That as matter of course, plaintiff demanded from First World Home Philippines, Inc. its' (sic) performance of contractual and statutory obligations, and more specifically for the delivery of a new Transfer Certificate of Title in the name of the plaintiff. For reasons known only to First World Home Philippines, Inc. at that time, plaintiff was just given a series of excuses which led to prolong[ed] agony on the part of the lot buyers.

7. That sometime in May 2012 plaintiff discovered that a Certificate of Sale arising from an Extrajudicial Foreclosure of Real Property was issued by Evarra Telen and Atty. Gemma Pelino as Sheriff IV and Clerk of Court VI & Ex Officio Sheriff, respectively, of the Regional Trial Court of Valenzuela City. Said certificate of sale awarded numerous Condominium Certificate of Titles and Transfer Certificates of Title to herein defendant Onshore Strategic Assets (SPV-AMC), Inc. being the highest bidder/buyer in the Foreclosure Sale.

8. To herein plaintiff['s] shock and consternation, Transfer Certificate of Title No. V-59286 covering Block 15 Lot 02 Valenzuela View Housing Project was included in the foreclosure sale and awarded to herein defendant Onshore Strategic Assets (SPV-AMC), Inc.

CAUSE OF ACTION

9. Perusal of the above-mentioned certificate of sale revealed that First World Home Phils., Inc. mortgaged the properties to United Overseas Bank of the Philippines on December 5, 2002. This fact is totally unknown to herein plaintiff.

10. That when plaintiff and other lot buyers similarly situated, verified the truthfulness and veracity of the certificate of sale, the fact of an impending eviction and deprivation of their property rights was made known to them.

11. Plaintiffs' unregistered rights over the property covered by TCT No. V-59286 are superior to the registered mortgage rights of defendant Onshore Strategic Assets (SPV-AMC), Inc.

12. That to allow defendant Onshore Strategic Assets (SPV-AMC) Inc. to take even constructive possession of the property subject matter of this case will cause irreparable and irreversible injury to herein plaintiff much more deprived him of his proprietary rights without due process of law.[61]

The substance of the Complaint before the Regional Trial Court is premised on petitioner's unregistered rights over the subject property which is allegedly superior to respondent's rights as an assignee of the mortgage.

Additionally, in his Position Paper, petitioner alleged that his rights as a lot buyer under Section 18 of Presidential Decree No. 957 were violated when First World mortgaged the lot to United Overseas Bank without informing him.[62] It reads:

Right of Gayden Seloza as a Lot Buyer

12. Gayden Seloza was not aware, not informed, and was not privy to the transaction entered into by FWHPI in mortgaging the lot with TCT V-59286 located in Valenzuela Heights Housing Project; which eventually led to its foreclosure, wherein the defendant was the highest bidder. Gayden Seloza was not even aware of the Extrajudicial Foreclosure Sale that had transpired.

13. At the time of the mortgage entered into by FWHPI, Gayden Seloza was already its buyer of a house and lot located at Valenzuela Heights Housing Project in the City of Valenzuela under TCT V-59286. TCT V-59286 was used by FWHPI to secure the said loan.

14. Section 18 of PD 957 provides:

> *Mortgages*. No mortgage on any unit or lot shall be made by the owner or developer without prior written approval of the Authority. Such approval shall not be granted unless it is shown that the proceeds of the mortgage loan shall be used for the development of the condominium or subdivision project and effective measures have been provided to ensure such utilization. The loan value of each lot or unit covered by the mortgage shall

---

[61] *Rollo*, pp. 42-44.

[62] Id. at 55-56.

> be determined and the buyer thereof, if any, shall be notified before the release of the loan. The buyer may, at his option, pay his installment for the lot or unit directly to the mortgagee who shall apply the payments to the corresponding mortgage indebtedness secured by the particular lot or unit being paid for, with a view to enabling said buyer to obtain title over the lot or unit promptly after final payment thereto[.]
>
> 15. Clear from the above-quoted provision of PD 957 [is] that FWHPI should inform Gayden Seloza of the mortgage of TCT V-59286 and his right to choose to give his monthly payments for the house and lot directly to the mortgagee to secure his title thereto upon full payment.
>
> 16. In this case, Gayden Seloza was not informed of the mortgage transaction nor was he informed of his right to pay directly to the mortgagee to secure his title over the house and lot he purchased upon full payment thereof.
>
> 17. Stated by the Supreme Court in one of the cases decided: The act of MDC in mortgaging the lot to petitioner, without the knowledge and consent of lot buyer-respondent spouses and without the approval of the HLURB, as required by P.D. 957, is not only an unsound real estate business practice but also highly prejudicial to them[.]
>
> 18. Gayden Seloza, in not knowing the existence of any mortgage over the lot which he bought from FWHPI, he was also not aware of the delinquencies of FWHPI in its payment for the loan. In fact, Gayden Seloza had no knowledge of the series of events which started from the void mortgage transaction entered into by FWHPI until prior to his discovery of the Certificate of Sale issued in favor of the defendant on May 2012.
>
> 19. It is only now, after the discovery in May 2012, which Gayden Seloza is acting and pursuing in trying to restore and exercise his right as lot buyer/owner in the land covered by TCT V-59286.[63] (Citations omitted)

Contrary to petitioner's contention, the Complaint before the Regional Trial Court is not assailing the extrajudicial foreclosure

---

[63] Id.

proceedings.[64] Scrutiny of his allegations revealed that his cause of action is premised on the validity of the real estate mortgage. The extrajudicial foreclosure was not a separate cause of action that justifies filing a new complaint.

On the other hand, the following are the material allegations in the complaint pending before the Housing and Land Use Regulatory Board:

> 1. Sometime on May 2011 some of the members went to the Registry of Deeds to process a Notice of *Lis Pendens* to their titles, however, for some other reason the registry of Deeds are denying their request, this prompted the officers of Valenzuela View Homeowners Association to trace back the titles.
>
> 2. On May 18, 2011 said officers went to the Registry of Deeds and requested for certified true copy of the Title V-58755, V-58756, V-58758 . . ., upon careful perusal of the said titles complainant notices that entry no. 10077-MORTGAGE – in favor to BANCO FILIPINO do not have an entry of cancellation, complainant double check (sic) their individual titles and noticed that the same entry no. 100777 was annotated, however it was annotated intended to different title V-5878, and upon verification we found out that said title was registered under the name of REXLON INDUSTRIES. . . .
>
> . . . .
>
> 4. To further understand what was the real story, on June 13, 2011 same officers went back to the Registry of Deed[s] and requested for the mother title T-8834, T-89498, T-83782 . . ., a careful perusal complainant notice (sic) that several encumbrances are annotated therein most of which have cancellation except for the entry no. 5004/ 14704 Certificate of Sale in favor of BANCO FILIPINO;
>
> . . . .
>
> 7. On the other hand on July 2011 complainant went to PagIbig Fund to clarify the issue and requested for a certificate of cancellation of the mortgage and the cancellation of the certificate of sale in favor to Banco Filipino should these annotations was already (sic) cancelled; yet, it has been 2 months and complainants haven't heard

---

[64] Id. at 18.

anything from them nor any certificate of cancellation was furnished to the complainant. . . .

. . . .

15. The fact that the respondent First World Homes Registration and License to Sell has been revoked by this office and proved that they have been engage (sic*)* with unsound realty practices, brought fear that the house and lot, complainant purchase to the above respondent from their hard earned money will gone (sic) astray. . . .

16. Now that Banco Filipino is no longer in business, and that its depositors hound the properties that remains (sic) on their possession, complainant (sic) apprehension is their tiny homes which they toil will be one of the assets that needs to be liquidated in order to patched up (sic) with its depositors.

. . . .

PRAYER

WHEREFORE, in the interest of justice and considering the explanation herein offered, it is respectfully prayed that respondent ONSHORE STRATEGIC ASSETS (SPV-AMC), INC. be impleaded as respondents in this instant case being an indispensable part; that the respondents be ordered to execute a certification of cancellation of mortgage and/or complainants are praying for issuance of Temporary Restraining Order in the event that an extrajudicial foreclosure will be executed and cease and desist order of paying monthly amortization to PagIbig be executed until the certificate of cancellation of mortgage will be secured.[65]

Petitioner clarifies that the Omnibus Motion filed in the Housing and Land Use Regulatory Board impleading respondent is a continuation of the original case. He points out that the causes of action there are: first, respondent's "unsound real estate practices"; and second, a "violation of Section 18 of Presidential Decree No. 957[.]"[66]

---

[65] Id. at 102-105.

[66] Id. at 481.

This case is similar to the string of cases involving Asia United Bank and Goodland Company, Inc., where a series of complaints were filed assailing the validity of third-party real estate mortgages over parcels of land in Laguna and Makati. After the first complaints had been filed in the respective trial courts in Laguna and Makati, succeeding complaints were also filed to enjoin the extrajudicial foreclosures of the allegedly fraudulent real estate mortgages.

In *Asia United Bank v. Goodland Company, Inc.*,[67] this Court held that the distinction between these complaints is illusory since they are based on the same cause of action, founded on the validity of the real estate mortgage:

> There can be no determination of the validity of the extrajudicial foreclosure and the propriety of injunction in the Injunction Case without necessarily ruling on the validity of the REM, which is already the subject of the Annulment Case. The identity of the causes of action in the two cases entails that the validity of the mortgage will be ruled upon in both, and creates a possibility that the two rulings will conflict with each other. This is precisely what is sought to be avoided by the rule against forum shopping.
>
> The substantial identity of the two cases remains even if the parties should add different grounds or legal theories for the nullity of the REM or should alter the designation or form of the action. The well-entrenched rule is that "a party cannot, by varying the form of action, or adopting a different method of presenting his case, escape the operation of the principle that one and the same cause of action shall not be twice litigated."
>
> The CA ruled that the two cases are different because the events that gave rise to them are different. The CA rationalized that the Annulment Case was brought about by the execution of a falsified document, while the Injunction Case arose from AUB's foreclosure based on a falsified document. The distinction is illusory. The cause of action for both cases is the alleged nullity of the REM due to its falsified or spurious nature. It is this nullity of the REM which Goodland sought to establish in the Annulment Case. It is also this nullity of

---

[67] 660 Phil. 504 (2011) [Per J. Del Castillo, First Division].

the REM which Goodland asserted in the Injunction Case as basis for seeking to nullify the foreclosure and enjoin the consolidation of title. Clearly, the trial court cannot decide the Injunction Case without ruling on the validity of the mortgage, which issue is already within the jurisdiction of the trial court in the Annulment Case.[68] (Citation omitted)

In *Goodland Company, Inc. v. Asia United Bank*,[69] this Court further clarified that since both cases have similar causes of action, the reliefs prayed for in the suit seeking injunction against the extrajudicial foreclosure are the expected consequences of the suit seeking to nullify the real estate mortgage:

> There can be no dispute that the prayer for relief in the two cases was based on the same attendant facts in the execution of REMs over petitioner's properties in favor of AUB. While the extrajudicial foreclosure of mortgage, consolidation of ownership in AUB and issuance of title in the latter's name were set forth only in the second case (Civil Case No. 06-1032), these were simply the expected consequences of the REM transaction in the first case (Civil Case No. 03-045). These eventualities are precisely what petitioner sought to avert when it filed the first case. Undeniably then, the injunctive relief sought against the extrajudicial foreclosure, as well as the cancellation of the new title in the name of the creditor-mortgagee AUB, were all premised on the alleged nullity of the REM due to its allegedly fraudulent and irregular execution and registration — the same facts set forth in the first case. In both cases, petitioner asserted its right as owner of the property subject of the REM, while AUB invoked the rights of a foreclosing creditor-mortgagee.[70]

Here, the substance of each complaint petitioner filed confirms that his respective causes of action are founded on the same facts involving similar parties and their successors-in-interest. Since he also alleged the superiority of his unregistered right over the property, the Regional Trial Court cannot rule on the validity of the extrajudicial foreclosure without ruling on the

---

[68] Id. at 515-516.

[69] 684 Phil. 391 (2012) [Per J. Villarama, First Division].

[70] Id. at 409-410.

validity of the real estate mortgage. Clearly, all the requisites of *litis pendentia* are present. Petitioner committed forum shopping, warranting the dismissal of the Complaint before the Regional Trial Court.

II

Petitioner insists that he did not commit forum shopping because he filed the complaints pursuant to the exclusive jurisdictions of the Housing and Land Use Regulatory Board and the Regional Trial Court. He alleges that his Complaint in the former is premised on a violation of Presidential Decree No. 957, and within its exclusive jurisdiction; meanwhile, his Complaint before the latter is based on "matters that involve title to, or possession of real property, or any interest therein"[71] over which the Housing and Land Use Regulatory Board does not have jurisdiction.[72]

We deny his contentions.

Petitioner claims that his Complaint before the Housing and Land Use Regulatory Board is based on the alleged violation of his right as a lot buyer when First World mortgaged the property. According to him, this constitutes unsound real estate business practices, which lies within the exclusive jurisdiction of the Housing and Land Use Regulatory Board.[73]

Section 18 of Presidential Decree No. 957 provides:

SECTION 18. *Mortgages*. — No mortgage on any unit or lot shall be made by the owner or developer without prior written approval of the Authority. Such approval shall not be granted unless it is shown that the proceeds of the mortgage loan shall be used for the development of the condominium or subdivision project and effective measures have been provided to ensure such utilization. The loan value of each lot or unit covered by the mortgage shall be determined and the buyer thereof, if any, shall be notified before the release of

---

[71] *Rollo*, p. 489.

[72] Id. at 486-491.

[73] Id. at 481.

the loan. The buyer may, at his option, pay his installment for the lot or unit directly to the mortgagee who shall apply the payments to the corresponding mortgage indebtedness secured by the particular lot or unit being paid for, with a view to enabling said buyer to obtain title over the lot or unit promptly after full payment thereof.

In *Manila Banking Corporation v. Spouses Rabina*,[74] this Court discussed the exclusive jurisdiction of the Housing and Land Use Regulatory Board, which includes complaints against unsound real estate business practices:

> The jurisdiction of the HLURB is well-defined. Thus, *Arranza v. BF Homes, Inc.* holds:
>
> > Section 3 of P.D. No. 957 empowered the National Housing Authority (NHA) with the "exclusive jurisdiction to regulate the real estate trade and business." On 2 April 1978, P.D. No. 1344 was issued to expand the jurisdiction of the NHA to include the following:
> >
> > > "Sec. 1. In the exercise of its function to regulate the real estate trade and business and in addition to its powers provided for in Presidential Decree No. 957, the National Housing Authority shall have exclusive jurisdiction to hear and decide cases of the following nature:
> > >
> > > A. Unsound real estate business practices;
> > >
> > > B. Claims involving refund and any other claims filed by subdivision lot or condominium unit buyer against the project owner, developer, dealer, broker or salesman; and
> > >
> > > C. Cases involving specific performance of contractual and statutory obligations filed by buyers of subdivision lot or condominium unit against the owner, developer, broker or salesman."
> >
> > Thereafter, the regulatory and quasi-judicial functions of the NHA were transferred to the Human Settlements Regulatory Commission (HSRC) by virtue of Executive Order No. 648 dated 7 February 1981. Section 8 thereof specifies the functions of

---

[74] 594 Phil. 422 (2008) [Per J. Carpio Morales, Second Division].

> the NHA that were transferred to the HSRC including the authority to hear and decide "cases on unsound real estate business practices; claims involving refund filed against project owners, developers, dealers, brokers or salesmen and cases of specific performance." Executive Order No. 90 dated 17 December 1986 renamed the HSRC as the Housing and Land Use Regulatory Board (HLURB).[75] (Citation omitted)

In addition, this Court held that mortgaging properties that had been sold to a lot buyer without their knowledge and consent, as well as approval from the Housing and Land Use Regulatory Board, constitutes unsound real estate business practice. Without these requirements, the Housing and Land Use Regulatory Board is authorized to declare the mortgage void:

> ***The act of MDC in mortgaging the lot to petitioner, without the knowledge and consent of lot buyer-respondent spouses and without the approval of the HLURB, as required by P.D. 957, is not only an unsound real estate business practice but also highly prejudicial to them.***
>
> *The jurisdiction of the HLURB to regulate the real estate trade is broad enough to include jurisdiction over complaints for annulment of mortgage*. To disassociate the issue of nullity of mortgage and lodge it separately with the liquidation court would only cause inconvenience to the parties and would not serve the ends of speedy and inexpensive administration of justice as mandated by the laws vesting quasi-judicial powers in the agency.
>
> Petitioner's argument that the mortgage does not fall under the prohibition in Section 18 of P.D. 957 since the loan obligation of MDC was contracted to finance its purchase of other real properties and not for the development of the subdivision project does not lie.
>
> . . . .

---

[75] Id. at 432-433.

As observed in *Far East Bank and Trust Co. v Marquez*, Section 18 of P.D. 957 is a prohibitory law and acts committed contrary to it are void.

> Concededly, P.D. 957 aims to protect innocent lot buyers. Section 18 of the decree directly addresses the problem of fraud committed against buyers when the lot they have contracted to purchase, and which they have religiously paid for, is mortgaged without their knowledge. The avowed purpose of P.D. 957 compels the reading of Section 18 as prohibitory — acts committed contrary to it are void. Such construal ensures the attainment of the purpose of the law; to protect lot buyers so they do not end up still homeless despite having fully paid for their home lots with their hard earned cash.[76] (Emphasis supplied, citations omitted)

Similarly, in *Philippine National Bank v. Lim*,[77] this Court affirmed the Housing and Land Use Regulatory Board's mandate to protect lot buyers despite a final judgment affirming the validity of the real estate mortgage. In that case, Rina Lim entered into a contract to sell for Unit 48C of the Vista de Loro Condominium. She filed a complaint before the Housing and Land Use Regulatory Board assailing the validity of the mortgage for being prejudicial to her interest and for lacking approval from the Board. This Court partially upheld the Board's invalidation of the mortgage, though only as to Unit 48C of the Vista de Loro Condominium:

> The jurisdiction of the HLURB to regulate the real estate trade is broad enough to include jurisdiction over complaints for annulment of mortgage. This is pursuant to the intent of P.D. No. 957 to protect hapless buyers from the unjust practices of unscrupulous developers which may constitute mortgages over condominium projects *sans* the knowledge of the former and the consent of the HLURB.
>
> . . . .

---

[76] Id. at 433-434.

[77] 702 Phil. 461 (2013) [Per J. Reyes, First Division].

In *Far East Bank*, we sustained the HLURB when it declared the mortgage entered into between the subdivision developer and the bank as unenforceable against the lot buyer. However, we were categorical that the HLURB acted beyond bounds when it nullified the mortgage covering the entire parcel of land, of which the lot subject of the buyer's complaint is merely a part.

In the case now before us, while it is within Lim's right to file a complaint before the HLURB to protect her right as a condominium unit buyer, she has no standing to seek for the complete nullification of the subject mortgage. She has an actionable interest only over Unit 48C of Cluster Dominiko of Vista de Loro, no more and no less.

Further, notwithstanding the existence of the subject mortgage, Section 25 of P.D. No. 957 affords Lim the remedy of redemption. Under the said section, PALI shall be compelled to redeem from PNB at least the portion of the mortgage corresponding to Unit 48C within six months from the issuance of CCT No. 408 to Lim. Thereafter, PALI should deliver to Lim her title over the condominium unit free from all liens and encumbrances.[78] (Citations omitted)

It is thus clear that the Housing and Land Use Regulatory Board has the exclusive jurisdiction to determine the validity of the mortgage executed by First World in favor of United Overseas Bank. Since it is empowered to cancel a portion of the mortgage pertaining to the subject property, petitioner had no reason to split his cause of action and bring the incidents of the extrajudicial foreclosure to the Regional Trial Court. As in *Lim*, should the Housing and Land Use Regulatory Board invalidate any portion of the mortgage, First World would be obliged under Section 25[79] of Presidential Decree No. 957 to

---

[78] Id. at 481-483.

[79] Presidential Decree No. 957 (1976), sec. 25 states:

SECTION 25. *Issuance of Title*. — The owner or developer shall deliver the title of the lot or unit to the buyer upon full payment of the lot or unit. No fee, except those required for the registration of the deed of sale in the Registry of Deeds, shall be collected for the issuance of such title. In the event a mortgage over the lot or unit is outstanding at the time of the issuance of the title to the buyer, the owner or developer shall redeem the mortgage or the corresponding portion thereof within six months from

redeem the property and issue its title to the lot buyer free from all encumbrances.

WHEREFORE, the Petition is **DENIED**. The April 22, 2016 Decision and October 19, 2016 Resolution of the Court of Appeals in CA-G.R. CV No. 104193, which affirmed the Regional Trial Court's dismissal of the Complaint filed by petitioner Gayden Seloza on the basis of *litis pendentia* and forum shopping, are **AFFIRMED**.

SO ORDERED.

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

---

such issuance in order that the title over any fully paid lot or unit may be secured and delivered to the buyer in accordance herewith.

SECOND DIVISION

[G.R. No. 249289. September 28, 2020]

JOSEPH SAYSON *y* PAROCHA, *Petitioner*, *v.* **PEOPLE OF THE PHILIPPINES,** *Respondent*.

SYLLABUS

1. **CRIMINAL LAW; DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS. —** In a successful prosecution for offenses involving Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165, as amended, the following elements must concur: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug.

2. **ID.; ID.; CHAIN OF CUSTODY PROCEDURE TO ESTABLISH THE IDENTITY OF THE DANGEROUS DRUG WITH MORAL CERTAINTY. —** It is essential that the identity of the dangerous drug be established with moral certainty. To achieve this, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photographing of the seized items be conducted immediately after seizure and confiscation. The law further requires that the inventory and photographing be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (a) if prior to the amendment of RA 9165 by RA 10640, a representative from the media and the Department of Justice (DOJ), and any elected public official; or (b) if after the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service (NPS) or the media.

3. **ID.; ID.; ID.; SAVING CLAUSE IN CASE OF NON-COMPLIANCE; RULE ON WITNESS REQUIREMENT. —** In cases where strict compliance with the chain of custody

> procedure is not possible, the seizure and custody of the seized items will not be rendered void if the prosecution satisfactorily proves that there is justifiable ground for the deviation, *and* the integrity and evidentiary value of the seized items are properly preserved. Non-compliance with the witness requirement may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of the required witnesses, albeit the latter failed to appear. x x x The sheer allegation that the police officers tried to contact the mandatory witnesses but that no one arrived cannot be deemed reasonable enough to justify a deviation from the mandatory directives of the law. As aforesaid, mere claims of unavailability, absent a showing that actual and serious attempts were employed to contact the required witnesses, are unacceptable as they fail to show that genuine and sufficient efforts were exerted by police officers.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Office of the Solicitor General for respondent.

R E S O L U T I O N

INTING, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] seeking to annul and set aside the Decision[2] dated March 14, 2019 and the Resolution[3] dated September 12, 2019 of the Court of Appeals (CA) in CA-G.R. CR No. 40713 which affirmed the Decision[4] dated September 8, 2017 of Branch 228, Regional

---

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

[2] *Id.* at 38-49; penned by Associate Justice Danton Q. Bueser with Associate Justices Mariflor P. Punzalan Castillo and Rafael Antonio M. Santos, concurring.

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

[4] *Id.* at 74-90; penned by Presiding Justice Mitushealla R. Manzanero-Casiño.

Trial Court (RTC), Quezon City in Criminal Case No. R-QZN-08049 to 50-CR[5] finding Joseph Sayson *y* Parocha (petitioner) guilty beyond reasonable doubt of violating Section 11, Article II of Republic Act No. (RA) 9165, as amended, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, but acquitting him of the charge of violating Section 5, Article II of the same Act.

The Antecedents

Petitioner was charged in two separate Informations with the offenses of Illegal Sale and Illegal Possession of Dangerous Drugs, respectively defined and penalized under Sections 5 and 11, Article II of RA 9165, as amended. The accusatory portions of the two Informations read:

Criminal Case No. 16-08049

That on or about the 25th day of July 2016, in Quezon City, Philippines, the said accused, not being authorized by law to possess any dangerous drug, did then and there willfully unknowingly have in his possession and control five (5) heat sealed transparent plastic sachets containing:

1) 0.02 gram of white crystalline substance with marking JS-FL-1-07-25-16;
2) 0.03 gram of white crystalline substance with marking JS-FL-2-07-25-16;
3) 0.03 gram of white crystalline substance with marking JS-FL-3-07-25-16;
4) 0.02 gram of white crystalline substance with marking JS-FL-4-07-25-16;
5) 0.02 gram of white crystalline substance with marking JS-FL-5-07-25-16;

All in aggregate weigh of zero point twelve (0.12) gram of Methamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.

---

[5] *Id.* at 38-39.

Criminal Case No. 16-08050

That on or about the 25th day of July 2016, in Quezon City, Philippines, the said accused, not being authorized by law to sell, dispense, deliver, transport or distribute and dangerous drug, did then and there wilfully, unlawfully and knowingly sell, dispense, deliver, transport, distribute or act as a broker in the said transaction one (1) heat sealed transparent plastic sachet containing 0.02 (zero point zero two) gram of Methamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.[6]

Version of the Prosecution

On July 25, 2016, acting on the information received from a confidential informant, members of Police Station 11, Quezon City formed a buy-bust team and successfully conducted a buy-bust operation against petitioner at ROTC Hunters, Tatalon, Quezon City. During the buy-bust operation, one sachet of suspected *shabu* was recovered from him. When the police officers arrested and frisked petitioner, they recovered five more sachets of suspected *shabu* from his possession. Because a crowd gathered at the place of arrest, Police Officer I Florante Lacob, one of the members of the buy-bust team, brought the confiscated items to the *Barangay* Hall of Tatalon, Quezon City for the marking and inventory. *Ex-Officio* Conrado M. Manalo (Manalo), who was then the duty desk officer at the *barangay* hall, witnessed the marking and inventory. Subsequently, the police officers brought petitioner and the seized items to the police station. Thereafter, the police officers brought the confiscated items to the crime laboratory where, after examination, their contents tested positive for methamphetamine hydrochloride or *shabu*, a dangerous drug.[7]

---

[6] As culled from the Decision dated March 14, 2019 of the Court of Appeals, *id.* at 38-39.

[7] *Id.* at 39-40.

Version of the Defense

In defense, petitioner denied the accusations against him. He claimed that at the time of the incident, he was in his Ate Rose's house waiting for his nephew, CJ Abdul, when five police officers suddenly showed up, frisked him and his neighbors, and searched the area. Thereafter, the police officers brought him and his neighbors to the police station where they were forced to confess their alleged drug activities.[8]

Ruling of the RTC

On September 8, 2017, the RTC rendered a Decision[9] finding petitioner guilty of violating Section 11, Article II of RA 9165, as amended, sentencing him to suffer the indeterminate penalty of twelve (12) years and one (1) day to fourteen (14) years imprisonment, and ordering him to pay a fine of ₱300,000.00.[10] The RTC, however, acquitted petitioner of the charge of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165, as amended, for failure of the prosecution to prove his guilt beyond reasonable doubt.

Ruling of the CA

Aggrieved, petitioner appealed to the CA. In a Decision[11] dated March 14, 2019, the CA affirmed *in toto* the RTC ruling. The CA held that: (1) all the elements of Illegal Possession of Dangerous Drugs were proven; (2) the marking of the seized items at the *barangay* hall was justified as a crowd was causing a commotion at the crime scene; and (3) the buy-bust team exerted earnest efforts to contact the required witnesses to the marking and inventory, however, none came.[12]

---

[8] *Id.* at 40-41.

[9] *Id.* at 74-90.

[10] *Id.* at 89.

[11] *Id.* at 38-49.

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

Dissatisfied, petitioner moved for reconsideration, but the CA denied it in a Resolution[13] dated September 12, 2019.

Hence, the instant petition.

The issue is whether the CA erred in affirming petitioner's conviction for Illegal Possession of Dangerous Drugs.

The Court's Ruling

The petition is meritorious.

In a successful prosecution for offenses involving Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165, as amended, the following elements must concur: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug.[14]

It is essential that the identity of the dangerous drug be established with moral certainty.[15] To achieve this, 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.[16] As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photographing of the seized items be conducted immediately after seizure and confiscation.[17]

The law further requires that the inventory and photographing be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel,

---

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

[14] *People v. Dela Cruz*, G.R. No. 238212, January 27, 2020. Citations omitted.

[15] *People v. Santos*, G.R. No. 243627, November 27, 2019.

[16] See *People v. Año*, 828 Phil. 439, 448 (2018). See also *People v. Viterbo*, 739 Phil. 593, 601 (2014) and *People v. Alagarme*, 754 Phil. 449, 459-460 (2015).

[17] See *People v. Gabunada*, G.R. No. 242827, September 9, 2019.

as well as certain required witnesses, namely: (a) if prior to the amendment of RA 9165 by RA 10640,[18] a representative from the media and the Department of Justice (DOJ), and any elected public official; or (b) if after the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service (NPS) or the media.[19]

In cases where strict compliance with the chain of custody procedure is not possible, the seizure and custody of the seized items will not be rendered void if the prosecution satisfactorily proves that there is justifiable ground for the deviation, *and* the integrity and evidentiary value of the seized items are properly preserved.[20] Non-compliance with the witness requirement may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of the required witnesses, albeit the latter failed to appear.[21]

In *People v. Santos*,[22] the Court held that mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.

In *People v. Gabunada*,[23] the Court explained that these considerations anent the witness requirement "*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*

---

[18] Entitled "An Act to Further Strengthen the Anti-Drug Campaign of the Government, Amending for the Purpose Section 21 of Republic Act No. 9165, Otherwise Known as the 'Comprehensive Dangerous Drugs Act of 2002,'" approved on July 15, 2014, and became effective on August 7, 2014.

[19] *People v. Gabunada*, *supra* note 17.

[20] See *People v. Almorfe*, 631 Phil. 51, 60 (2010).

[21] *People v. Gabunada*, *supra* note 17.

[22] *People v. Santos*, *supra* note 15.

[23] *People v. Gabunada*, *supra* note 17.

time of his arrest — to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule."[24]

In the present case, the witness requirement under RA 10640 which became effective on August 7, 2014, applies because the offense was allegedly committed on July 25, 2016. Records show that the requisite inventory was in the presence only of Manalo, the duty desk officer at the *Barangay* Hall of Tatalon, Quezon City. For obvious reasons, there was a total lack of compliance with the witness requirement.

The sheer allegation that the police officers tried to contact the mandatory witnesses but that no one arrived cannot be deemed reasonable enough to justify a deviation from the mandatory directives of the law. As aforesaid, mere claims of unavailability, absent a showing that actual and serious attempts were employed to contact the required witnesses, are unacceptable as they fail to show that genuine and sufficient efforts were exerted by police officers.

In view of the foregoing, the Court is constrained to rule that the integrity and evidentiary value of the items purportedly seized from petitioner, which constitute the *corpus delicti* of the crime charged, have been compromised. Hence, his conviction must be overturned.

WHEREFORE, the petition is **GRANTED**. The Decision dated March 14, 2019 and the Resolution dated September 12, 2019 of the Court of Appeals in CA-G.R. CR No. 40713 are hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioner Joseph Sayson *y* Parocha is **ACQUITTED** of Illegal Possession of Dangerous Drugs under Section 11, Article II of Republic Act No. 9165, as amended.

The Director of the Bureau of Corrections, Muntinlupa City is **ORDERED** to: (a) cause the immediate release of petitioner

---

[24] *Id.*, citing *People v. Crispo, et al.*, 828 Phil. 416, 436 (2018).

Joseph Sayson *y* Parocha 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*) and *Hernando, JJ.*, concur.

Delos Santos, J., on official leave.

Baltazar-Padilla, J., on leave.

THIRD DIVISION

[G.R. No. 251693. September 28, 2020]

JODY C. SALAS, *ex rel* Person Deprived of Liberty (PDL) RODOLFO C. SALAS, *Petitioner, v.* **HON. THELMA BUNYI-MEDINA, Presiding Judge of the Regional Trial Court of the City of Manila, Branch 32, JCINSP. LLOYD GONZAGA, Warden of the Manila City Jail Annex, and all those taking orders, instructions and directions from him,** *Respondents*.

SYLLABUS

1. REMEDIAL LAW; SPECIAL PROCEEDINGS; CONSTITUTIONAL LAW; BILL OF RIGHTS; WRIT OF *HABEAS CORPUS*; NATURE AND PURPOSE OF; *HABEAS CORPUS* IS A CHALLENGE TO UNLAWFUL CUSTODY. — *Habeas corpus* plays a vital role in protecting constitutional rights. It is "a proceeding against some person who has the immediate custody of the party detained, with the power to produce the body of such party before the court or judge, that he may be liberated if no sufficient reason is shown to the contrary." *Habeas corpus* does not compensate for past wrongful incarceration, nor does it punish the State for imposing it. Instead, it is a challenge to unlawful custody, and when the writ issues it prevents further illegal custody. . . .

In this jurisdiction, *habeas corpus* is acknowledged as "a high prerogative writ, known to the common law, the great object of which is the liberation of those who may be imprisoned without sufficient cause." Its primary purpose is to inquire into all manner of involuntary restraint as distinguished from voluntary, and to relieve a person therefrom if such restraint is illegal. It is therefore a writ of inquiry intended to test the circumstances under which a person is detained. Under the Constitution, the privilege of the writ of *habeas corpus* shall not be suspended except in cases of invasion or rebellion, when the public safety requires it.

2. ID.; ID.; ID.; ID.; ID.; A WRIT OF *HABEAS CORPUS* IS NOT A WRIT OF ERROR, BUT AN INQUIRY INTO THE VALIDITY

OF THE PROCEEDING OR JUDGMENT UNDER WHICH THE PERSON HAS BEEN RESTRAINED OF LIBERTY. — An application for a writ of *habeas corpus* may be made through a petition filed before this Court or any of its members, the Court of Appeals (CA) or any of its members in instances authorized by law, or the RTC or any of its presiding judges. The court or judge grants the writ and requires the officer or person having custody of the person allegedly restrained of liberty to file a return of the writ. A hearing on the return of the writ is then conducted. The inquiry on a writ of *habeas corpus* is addressed, not to errors committed by a court within its jurisdiction, but to the question of whether the proceeding or judgment under which the person has been restrained is a complete nullity. The concern is not merely whether an error has been committed in ordering or holding the petitioner in custody, but whether such error is sufficient to render void the judgment, order, or process in question.

3. ID.; ID.; ID.; CRIMINAL PROCEDURE; JUDICIAL PROCESS, DEFINED. — [F]or all its broad, latitudinarian even, scope, the range of inquiry in a *habeas corpus* application is considerably narrowed, where the detention complained of may be traced to judicial action. In *Malaloan v. Court of Appeals*, this Court defined judicial process in the following manner:

> Invariably, a judicial process is defined as a writ, *warrant*, subpoena, or other formal writing issued by authority of law; also the means of accomplishing an end, including judicial proceedings, or all writs, *warrants*, summonses, and *orders* of courts of justice or judicial officers. It is likewise held to include a writ, summons, or order issued in a judicial proceeding to acquire jurisdiction of a person or his property, to expedite the cause or enforce the judgment, or a writ; *warrant*, mandate, or other process issuing from a court of justice.

4. ID.; ID.; ID.; ID.; A WRIT OF *HABEAS CORPUS* WILL NOT BE ISSUED WHEN THE PERSON'S DETENTION IS BY VIRTUE OF A LAWFUL PROCESS SUCH AS A VALID WARRANT OF ARREST; CASE AT BAR. — The rule is that if a person alleged to be restrained of his liberty is in custody of an officer under process issued by a court or judge or by

virtue of a judgment or order of a court of record the writ of *habeas corpus* will not be allowed. This is bolstered by Rule 102, Section 4: . . .

Accordingly, there have been instances when *habeas corpus* was denied on the ground that the persona seeking relief were detained by virtue of a lawful process.

. . .

In the present case, it was clearly averred by petitioner that an Information for 15 filing of criminal charges which were docketed as Criminal Case Nos. 08-262163 (formerly H-1581) and 14-306533 to 14-306546 before Branch 32 of the RTC of Manila. Thereafter, Judge Bunyi-Medina issued a Warrant of Arrest by virtue of which Rodolfo was arrested at his home in Angeles-City, Pampanga. Likewise, a Commitment Order was issued by the RTC directing Rodolfo's detention at the Manila City Jail. These issuances are hallmarks of judicial process. The restraint on Rodolfo's liberty was lawful from the very beginning. It cannot be inquired into through *habeas corpus*.

It bears repetition to state at this juncture that *habeas corpus* does not lie where the person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court which had jurisdiction to issue the same. Rodolfo is, therefore, not entitled to the writ of *habeas corpus*.

5. ID.; ID.; ID.; ID.; BAIL; A PETITION FOR *HABEAS CORPUS* SHALL BE DISMISSED ON GROUND OF MOOTNESS WHEN THE DETAINED PERSON IS ALREADY GRANTED TEMPORARY LIBERTY UNDER HIS BAIL BOND; CASE AT BAR. — [T]his Court had already granted petitioner's alternative prayer for bail in favor of Rodolfo, upon the posting of a bond with the RTC. Jurisprudence holds that the release, whether permanent or temporary, of a detained person renders the petition for *habeas corpus* moot and academic, unless there are restraints attached to his release which precludes freedom of action. Apart from the bail bond requirement, no restriction to Rodolfo's freedom of action was attached to the grant of his provisional liberty. Indeed, if the respondents are no longer detaining or restraining the applicant or the person in whose behalf the petition is filed, the petition should be dismissed.

6. ID.; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; THE RIGHT TO A PRELIMINARY INVESTIGATION IS NOT SUBJECT TO THE SAME DUE PROCESS REQUIREMENTS THAT MUST BE PRESENT DURING TRIAL PROPER. — A preliminary investigation is defined as an inquiry or proceeding for the purpose of determining whether there is sufficient ground to engender a well-founded belief that a crime cognizable by the [RTC] has been committed and that the respondent is probably guilty thereof, and should be held for trial. The investigation is advisedly called preliminary, because it is yet to be followed by the trial proper in a court of law. Consequently, it is not subject to the same due process requirements that must be present during trial.

7. ID.; ID.; ID.; AN APPLICATION FOR A WRIT OF *HABEAS CORPUS* IS A WRONG REMEDY TO CHALLENGE THE REGULARITY OF A PRELIMINARY INVESTIGATION. — It is therefore clear that because a preliminary investigation is not a proper trial, the rights of parties therein depend on the rights granted to them by law and these cannot be based on whatever rights they believe they are entitled to or those that may be derived from the phrase "due process of law." Once the information is filed in court, the court acquires jurisdiction of the case and any motion to dismiss the case or to determine the accused's guilt or innocence rests within the sound discretion of the court. It is established that the issue of whether or not probable cause exists for the issuance of warrants for the arrest of the accused is a question of fact, determinable as it is from a review of the allegations in the Information, the Resolution of the Investigating Prosecutor, including other documents and/or evidence appended to the Information.

Verily, these matters lie squarely within the ambit of the RTC, in consonance with the principle of hierarchy of courts which dictates that direct recourse to this Court is allowed only to resolve questions of law, notwithstanding the invocation of paramount or transcendental importance of the action. The Supreme Court is not a trier of facts and, as discussed earlier, *habeas corpus* is a summary remedy the purpose of which is merely to inquire if the individual seeking such relief is "illegally deprived of his freedom of movement or placed under some form of illegal restraint."

8. ID.; ID.; POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT AGAINST DOUBLE JEOPARDY; POLITICAL OFFENSE DOCTRINE; THE DETERMINATION OF WHETHER THE MURDER CHARGES ARE DEEMED ABSORBED IN THE PRIOR CONVICTION FOR REBELLION AND WOULD PLACE THE ACCUSED IN DOUBLE JEOPARDY IS A FACTUAL ISSUE THAT MUST BE RESOLVED BY THE LOWER COURTS. — [I]t would be improper for this Court to order the dismissal of the murder charges against Rodolfo on the pretext that the same are already deemed absorbed in his prior conviction for rebellion and, resultantly, place him in double jeopardy.

The political nature or motive behind a crime is not presumed. Neither is it readily accepted as an uncontroverted fact upon the mere assertion of an accused. . . .

. . .

In *Ocampo v. Judge Abando, et al.*, which involves the prosecution of the same Criminal Case Nos. 08-262163 (formerly H-1581) and 14-306533 to 14-306546, this Court declared that the defense that a crime was committed in furtherance of a political end must be raised and proven before the trial court. Thus:

> Under the political offense doctrine, "common crimes, perpetrated in furtherance of a political offense, are divested of their character as 'common' offenses and assume the political complexion of the main crime of which they are mere ingredients, and, consequently, cannot be punished separately from the principal offense, or complexed with the same, to justify the imposition of a graver penalty.". . .

. . .

Certainly, the determination as to whether the killings of the 15 individuals whose remains were unearthed at Inopacan, Leyte, were motivated by a political end is a question that must be seasonably raised and proven by Rodolfo as a defense before the trial court. It is not this Court's function to analyze or weigh the evidence (which tasks belong to the trial court as the trier of facts and to the appellate court as the reviewer of facts) that Rodolfo may adduce to discharge his burden of proof.

LEONEN, *J., concurring opinion*:

1. REMEDIAL LAW; SPECIAL PROCEEDINGS; WRIT OF *HABEAS CORPUS*; CRIMINAL PROCEDURE; ILLEGAL DETENTION DUE TO MISTAKEN IDENTITY; *HABEAS CORPUS* IS ALLOWED, DESPITE THE ISSUANCE OF JUDICIAL PROCESS, WHEN THE PERSON DETAINED IS NOT THE PERSON NAMED IN THE WARRANT OF ARREST. — [I]n general, *habeas corpus* is indeed not the proper remedy to inquire into the illegal detention of a person under judicial process. However, there are extraordinary circumstances where it may be the only viable remedy.

For instance, in *In re: Salibo v. Warden*, *habeas corpus* was allowed, despite the issuance of judicial process, because the deprivation of liberty was due to mistaken identity. In that case, Datukan Malang Salibo was arrested by virtue of a warrant against a "Butukan S. Malang," one of the many accused allegedly involved in the Maguindanao massacre. Considering that Datukan Malang Salibo sufficiently proved that he was not the "Butukan S. Malang" named in the arrest warrant, this Court held that Datukan Malang Salibo was being illegally deprived of liberty.

2. CRIMINAL LAW; COMPLEX CRIMES; REBELLION; HERNANDEZ DOCTRINE; POLITICAL OFFENSE, DEFINED; THE *HERNANDEZ* DOCTRINE THAT A COMMON CRIME COMMITTED IN FURTHERANCE OF REBELLION IS ABSORBED IN THE REBELLION CHARGE, NOT A GROUND FOR THE DISMISSAL OF THE CHARGES FOR THE COMMON CRIME. — I reiterate my concurrence in *Ocampo v. Judge Abando* regarding the non-applicability of the *Hernandez* doctrine. *Ocampo*, like the present case, involves the prosecution of the leaders of the Communist Party of the Philippines/New People's Army/National Democratic Front of the Philippines that allegedly implemented "Operation Venereal Disease." There, this Court held that the *Hernandez* doctrine – a doctrine stating that a common crime committed in furtherance of rebellion is absorbed in the rebellion charge – is not a ground for the dismissal of the charges for the common crime, at least at the prosecutor level.

. . . .

Then in the landmark case of *People v. Hernandez*, this court defined the term, political offense:

> In short, **political crimes are those directly aimed against the political order, as well as such common crimes as may be committed to achieve a political purpose. The decisive factor is the intent or motive**. If a crime usually regarded as common, like homicide, is perpetrated for the purpose of removing from the allegiance "to the Government the territory of the Philippines Islands or any part thereof," then **said offense becomes stripped of its "common" complexion, inasmuch as, being part and parcel of the crime of rebellion, the former acquires the political character of the latter**.

APPEARANCES OF COUNSEL

Free Legal Assistance Group for petitioner.
Office of the Solicitor General for respondents.

D E C I S I O N

GAERLAN, *J.*:

This resolves the petition[1] for the issuance of a writ of *habeas corpus* under Rule 102 of the Rules of Court, as amended, filed by petitioner Jody C. Salas (petitioner) on behalf of his father, Rodolfo C. Salas (Rodolfo) who was arrested on charges of 15 counts of murder in Criminal Case Nos. 08-262163 (formerly H-1581) and 14-306533 to 14-306546, pending with Branch 32 of the Regional Trial Court (RTC) of Manila.

Antecedents

The 1992 conviction of Rodolfo for the crime of rebellion

By virtue of an Amended Information dated October 24, 1986, Rodolfo, along with other members of the Communist

---

[1] *Rollo*, pp. 9-30.

Party of the Philippines – New People's Army (CPP-NPA), was indicted for the crime of rebellion. The accusatory portion reads as follows:

> That in or about 1968 and for some time before said year and continuously thereafter until the present time, in the City of Manila and elsewhere in the Philippines, the Communist Party of the Philippines, its military arm, the New People's Army, its mass infiltration network, the National Democratic Front with its other subordinate organizations and fronts, have, under the direction and control of said organizations' leaders, among whom are the aforementioned accused, and with the aid, participation or support of members and followers whose whereabouts and identities are still unknown, risen publicly and taken arms throught [sic] the country against the Government of the Republic of the Philippines for the purpose of overthrowing the present Government, the seat of which is in the City of Manila, or of removing from the allegiance to that government and its laws, the country's territory or part of it;
>
> That from 1970 to the present, the above-named accused in their capacities as leaders of the aforenamed organizations, in conspiracy with, and in support of the cause of, the organizations aforementioned, engaged themselves in war against the forces of the government, destroying property or committing serious violence, and other acts in pursuit of their unlawful purpose, such as:
>
> 1. Conducting armed raid, sorties and ambushes against police, constabulary and army detachments as well as against innocent civilians in such places as Larap, Camarines Norte; Subic, Zambales; Dinalupihan, Bataan; and Tondo, Manila;
>
> 2. Undertaking the so-called 'Operation Agaw Armas' all over the country, including the Metro Manila area, as a consequence of which, victims are mercilessly killed simply for the purpose of obtaining possession of their firearms;
>
> 3. Infiltrating and, by falsehood and deception, manipulating legitimate organizations to work for the success of the rebellion;
>
> 4. Negotiating with foreign sources/suppliers for the supply of arms to the New People's Army as amply exposed by the arrival in Isabela in July 1972 of the vessel 'M/V KARAGATAN' from foreign shores, fully loaded with arms;

That despite the advent of a new regime occasioned by the February 1986 revolution, the aforenamed organizations, through the leadership of the accused who, in open contempt of the new government's policy of reconciliation and, in a determined effort to overthrow the government and to install a new social and political order in our society, persisted and continued in their depredations against the forces of the government and innocent civilians causing death and destruction, which include, among others, the following:

1. Simultaneous raid/attack on the INP Station and Kadiwa Center at Atimonan, Quezon and the INP Station at Plaridel, Quezon on March 16, 1986;

2. Raid/attack on the Pagsanjan, Laguna INP Station on April 12, 1986;

3. Ambuscade of troopers at Brgy. Matacon, Polangui, Albay on April 18, 1986;

4. Ambuscade of troopers at Brgy. Aquiquican, Gattaran, Cagayan on April 24, 1986 resulting in the death of Col. Sudiacal, PA and newsmen Willie Vicoy and Pete Mabazza;

5. Ambuscade of troopers at Villa Principe, Gumaca, Quezon on June 30, 1986;

6. Ambuscade of troopers at Vintar, Ilocos Norte on July 20, 1986;

7. Ambuscade of troopers at Brgy. Cinco, Sarrat, Ilocos Norte on August 24, 1986;

8. Liquidation of Capt. Cecilio Palada and companion at Gate I, Camp Aguinaldo, Quezon City on September 10, 1986;

9. Kidnapping and liquidation of Col. Rex Baquiran at Brgy. Amacian, Pinukpuk, Kalinga-Apayao on September 13, 1986;

10. Ambuscade of troopers at Maria Aurora, Aurora Province on September 14, 1986 resulting in the death of Lt. Col. Constancio Lasatan and others;

11. Raid/attack on PC Detachment at San Francisco, Kalian, San Pablo City on September 17, 1986;

12. Ambuscade of troopers at Balagtas, Bulacan on September 24, 1986 resulting in the death of Lt. Col. Angel Lansang.

CONTRARY TO L AW.[2]

The case, docketed as Criminal Case No. 86-48926, was raffled to Branch 12 of the RTC of Manila, which was presided by Judge Procoro J. Donato.

It bears noting that the foregoing charge involves rebellion as defined and penalized by Articles 134 and 135 of the Revised Penal Code as amended by Presidential Decree (P.D.) No. 1834,[3] which prescribed the penalty of *reclusion perpetua* to death. In the course of the trial, Rodolfo – who was already in detention at the time of the filing of the Information and did not obtain provisional liberty through bail – entered into a plea bargaining agreement with the prosecution. Rodolfo pleaded guilty to rebellion under Executive Order No. 187,[4] which repealed P.D. No. 1834 and reinstated the lesser penalty of six (6) years and one (1) day to twelve (12) years of *prision mayor*. The said agreement was embodied in Rodolfo and the prosecution's Joint Manifestation and Motion (After Plea Bargaining)[5] dated May 9, 1991.

Thus, in its May 10, 1991 Decision, the RTC rendered a judgment of conviction against Rodolfo, *viz.*:

WHEREFORE, in the light of the foregoing considerations, the Court finds the accused, RODOLFO SALAS alias Commander Bilog/ Henry, guilty beyond reasonable doubt of the crime of REBELLION,

---

[2] Id. at 32-35.

[3] INCREASING THE PENALTIES FOR THE CRIME OF REBELLION, SEDITION, AND RELATED CRIMES, AND AMENDING FOR THIS PURPOSE ARTICLES 135, 136, 140, 141, 142, 143, 144, 146 AND 147 OF THE REVISED PENAL CODE AND ADDING SECTION 142-B THERETO.

[4] REPEALING PRESIDENTIAL DECREES NOS. 38, 942, 970, 1735, 1834, 1974, AND 1996 AND ARTICLES 142-A AND 142-B of the REVISED PENAL CODE AND RESTORING ARTICLES 135, 136, 137, 138, 140, 141, 143, 144, 146, 147, 177, 178, AND 179 TO FULL FORCE AND EFFECT AS THEY EXISTED BEFORE SAID AMENDATORY DECREES.

[5] *Rollo*, pp. 43-46.

as defined in Article 134 and penalized under Article 135, Revised Penal Code, as amended by Executive Order No. 187, and as charged in the Amended Information, and, accordingly, hereby sentences him to suffer the penalty of SIX (6) YEARS and ONE (1) DAY of prision mayor, with the accessory penalties provided for by law; to pay a fine of SIX THOUSAND (₱6,000.00) PESOS without subsidiary imprisonment in case of insolvency; and to pay one-third (1/3) of the costs.

In the service of his sentence, the accused (who appears to have been arrested on September 29, 1985 but brought under the jurisdiction of this Court on October 2, 1986) shall be credited with the full time during which he underwent preventive imprisonment provided he voluntarily agreed in writing to abide by the same disciplinary rules imposed upon convicted prisoners; otherwise, he shall be credited to only four-fifths (4/5) thereof x x x.

SO ORDERED.[6]

Rodolfo served the foregoing sentence in full and was released in 1992.

The filing of charges for multiple counts of murder against Rodolfo and his subsequent arrest and incarceration

On August 26, 2006, a mass grave with at least 67 skeletal remains[7] was discovered by the 43rd Infantry of the Philippine Army at Sitio Mt. Sapang Dako, Barangay Kaulisihan, Inopacan, Leyte. It is believed that the said remains belong to victims of the CPP-NPA's "Operation Venereal Disease" which spanned from 1982 until 1992. Among these remains, 15 were identified by forensic experts and their relatives.

---

[6] Id. at 41-42.

[7] "Mass grave with 67 skeletal remains discovered in Leyte," September 3, 2006 <https://www.philstar.com/cebu-news/2006/09/03/356217/mass-grave-67-skeletal-remains-discovered-leyte> (visited on July 22, 2020).

Following the conduct of a preliminary investigation on the case in I.S. No. 06-116, the Office of the Provincial Prosecutor of Leyte issued a Resolution[8] dated February 16, 2007 recommending the filing of murder charges against Rodolfo and 37 other leaders of the CPP-NPA. Accordingly, on February 20, 2007, Rodolfo and his co-accused were formally indicted for 15 counts of murder in an Information,[9] the accusatory portion of which states:

> That on or about the months of May and June 1985, or for sometime prior or subsequent thereto, at Sitio Mt. Sapang Dako, Brgy. Kaulisihan, in the Municipality of Inopacan, Province of Leyte, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, being members of the Central, Regional, and Provincial Committees, Arresting, Investigating and/or Execution Teams/Groups of the CPP-NPA, conspiring, confederating and helping one another, with intent to kill, employing treachery, evident premeditation, and taking advantage of their superior strength, did then and there willfully, unlawfully and feloniously, abduct, torture, strike and hit with blunt instruments, stab with the use of bladed weapon such as "kutsilyo" and shoot with different kinds and caliber of unlicensed firearms, 1). Juanita Aviola, 2). Concepcion Aragon, 3). Gregorio Eras, 4). Teodoro Recones, Jr., 5). Restituto Ejoc, 6). Rolando Vasquez, 7). Junior Miyapis, 8). Crispin Dalmacio, 9). Zacarias Casil, 10). Pablo Daniel, 11). Romeo Tayabas, 12). Domingo Napoles, 13). Ciriaco Daniel, 14). Crispin Prado, and 15). Ereberto Prado, which the accused provided themselves for the purpose thereby inflicting upon them, injuries, gunshot and stab wounds which caused the instantaneous death of 1). Juanita Aviola, 2). Concepcion Aragon, 3). Gregorio Eras, 4). Teodoro Recones, Jr., 5). Restituto Ejoc, 6). Rolando Vasquez, 7). Junior Miyapis, 8). Crispin Dalmacio, 9). Zacarias Casil, 10). Pablo Daniel, 11). Romeo Tayabas, 12). Domingo Napoles, 13). Ciriaco Daniel, 14). Crispin Prado, and 15). Ereberto Prado, buried them in a mass grave at Sitio Mr. Sapang Dako, Brgy. Kaulisihan, Inopacan, Leyte, which was only discovered and unearthed on August 26, 2006, to the damage and prejudice of their respective heirs.

---

[8] *Rollo*, pp. 47-53.

[9] Id. at 120-123.

CONTRARY TO LAW.[10]

In an Order[11] dated June 12, 2008, the venue of the trial of the case was transferred from Branch 18 of the RTC of Hilongos, Leyte to the RTC of Manila. The case was docketed as Criminal Case Nos. 08-262163 (formerly H-1581) and 14-306533 to 14-306546 before Branch 32 of the RTC of Manila, which is currently presided by respondent Judge Thelma Bunyi-Medina (Judge Bunyi-Medina). Thereafter, on August 28, 2019, Judge Bunyi-Medina issued a Warrant of Arrest[12] against all of the accused in the said case.

On February 18, 2020, at around 5:30 a.m., more or less, Rodolfo was arrested by law enforcement authorities at his residence in Angeles City, Pampanga. As attested by a Certificate of Detention[13] dated February 19, 2020, he was detained at the Philippine National Police detention facility at Camp Olivas, San Fernando, Pampanga. By virtue of a Commitment Order[14] dated February 20, 2020, Rodolfo was then transferred to the Manila City Jail Annex in Taguig City of which respondent JCInsp. Lloyd Gonzaga (JCInsp. Gonzaga) is the Warden.

Hence, the present recourse which petitioner filed on behalf of Rodolfo on March 2, 2020. On even date, this Court rendered a Resolution[15] ordering that the writ of *habeas corpus* be issued in favor of Rodolfo.

In his verified Return of the Writ,[16] JCInsp. Gonzaga, through the Office of the Solicitor General, informed this Court that on March 2, 2020, Rodolfo was ordered to be transferred to the Manila City Jail in Sta. Cruz, Manila.

---

[10] Id. at 121-122.

[11] Id. at 130.

[12] Id. at 131.

[13] Id. at 132.

[14] Id. at 54.

[15] Id. at 55-56.

[16] Id. at 76-97.

On March 12, 2020, oral arguments were conducted, with the person of Rodolfo being presented before this Court. We then resolved Rodolfo's application for the issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction, as well as his alternative prayer for bail. Thus:

> In a similar case pending in the Regional Trial Court, bail was granted to Saturnino Ocampo in G.R. No. 176830.
>
> Acting on these prayers and without prejudice to the final resolution in this case, the Court resolves to:
>
> 1. DENY petitioner, application for the issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction for lack of merit;
> 2. GRANT petitioner's alternative application for bail; and
> 3. ORDER the provisional release of RODOLFO C. SALAS in Criminal Case Nos. 08-262163 (formerly H-1581) and 14-306533 to 14-306546, upon posting of a cash bond of Two Hundred Thousand Pesos (₱200,000.00) in the Regional Trial Court of Manila, unless he is being detained for some other lawful cause.
>
> SO ORDERED.[17]

In view of the parties' submission of their memoranda amplifying the arguments in support of their respective postures, the case is now ripe for resolution.

Issues

1. Whether or not the instant petition for the issuance of a writ of *habeas corpus* lies as the proper remedy for Rodolfo; and
2. Whether or not jeopardy attaches, considering the prior conviction of Rodolfo for the crime of rebellion the penalty for which he had already fully served.

---

[17] Id. at 202.

Arguments

Petitioner's Arguments

Petitioner excoriates the filing of the murder charges against his father. He contends that *habeas corpus* is the proper remedy to redress the State's violation of Rodolfo's constitutional rights to due process and against double jeopardy. Rodolfo was never notified of the preliminary investigation in the murder case. Likewise, the 1991 plea bargaining agreement that Rodolfo entered into with the prosecution and approved by the trial court expressly states:

> (2-e) That both accused will be covered by the mantle of protection of the HERNANDEZ-ENRILE political offense doctrine against being charged and prosecuted for any common crime allegedly committed in furtherance of rebellion or surversion [sic]; x x x[18]

Rodolfo having already served his sentence for rebellion and having duly repaid his debt to society, he can no longer be charged with murder because the said crime is deemed absorbed in rebellion – a principle that had long been settled by the Court in *People v. Hernandez*[19] and *Ponce-Enrile v. Judge Salazar*.[20] Thus, Rodolfo's criminal prosecution for multiple counts of murder gravely infringes his constitutional right against double jeopardy.

Furthermore, there is no plain and speedy remedy to address Rodolfo's predicament other than *habeas corpus*. To pursue other remedies before the trial court would amount to additional time for Rodolfo to languish in jail.

Respondents' Arguments

Respondents claim that Rodolfo's arrest and subsequent detention were effected through a lawful process which enjoys

---

[18] Id. at 45.

[19] 99 Phil. 515 (1956).

[20] 264 Phil. 593 (1990).

the presumption of regularity. The petition violates the principle of hierarchy of courts for bypassing the remedies that are readily available before the RTC.

Moreover, the political offense doctrine is inapplicable unless and until Rodolfo is able to prove that the acts of murder were committed in furtherance of a political end. Such must be raised as a defense during trial and evidence in support thereof duly presented before the court *a quo*. This is a factual issue that lies beyond the province of *habeas corpus*.

Ruling of the Court

We dismiss the petition.

The writ of habeas corpus is not the proper remedy to obtain the release of persons detained by virtue of a judicial process

The writ of *habeas corpus*, the "most celebrated writ in the English law,"[21] is a procedural device for subjecting executive, judicial, or private restraints on liberty to judicial scrutiny.[22] It is the great and efficacious writ, in all manner of illegal confinement[23] which serves as a swift and imperative remedy in all cases of illegal restraint or confinement.[24] *Habeas corpus* is, at its core, an equitable remedy[25] which, when properly issued, supersedes all other writs.[26] It is the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action.[27]

---

[21] *United States v. Hayman*, 342 U.S. 205 (1952) citing 3 Blackstone Commentaries 129.

[22] *Peyton v. Rowe*, 391 U.S. 54 (1968).

[23] *Harris v. Nelson*, 394 U.S. 286 (1969).

[24] *Braden v. 30th Judicial Circuit Court*, 410 U.S. 484 (1973).

[25] *Schlup v. Delo*, 513 U.S. 298 (1995).

[26] *Perky v. Browne*, 105 Fla. 631 (Fla. 1932).

[27] *Murray v. Carrier*, 477 U.S. 478 (1986).

Habeas corpus plays a vital role in protecting constitutional rights.[28] It is "a proceeding against some person who has the immediate custody of the party detained, with the power to produce the body of such party before the court or judge, that he may be liberated if no sufficient reason is shown to the contrary."[29] *Habeas corpus* does not compensate for past wrongful incarceration, nor does it punish the State for imposing it. Instead, it is a challenge to unlawful custody, and when the writ issues it prevents further illegal custody.[30] Thus, in *Fay v. Noia*:[31]

> x x x Although in form the Great Writ is simply a mode of procedure, its history is inextricably intertwined with the growth of fundamental rights of personal liberty. For its function has been to provide a prompt and efficacious remedy for whatever society deems to be intolerable restraints. Its root principle is that in a civilized society, government must always be accountable to the judiciary for a man's imprisonment: if the imprisonment cannot be shown to conform with the fundamental requirements of law, the individual is entitled to his immediate release. x x x

In this jurisdiction, *habeas corpus* is acknowledged as "a high prerogative writ, known to the common law, the great object of which is the liberation of those who may be imprisoned without sufficient cause."[32] Its primary purpose is to inquire into all manner of involuntary restraint as distinguished from voluntary, and to relieve a person therefrom if such restraint is illegal.[33] It is therefore a writ of inquiry intended to test the circumstances under which a person is detained.[34] Under the

---

[28] *Slack v. McDaniel*, 529 U.S. 473 (2000).

[29] *Wales v. Whitney*, 114 U.S. 564 (1885).

[30] *Lindh v. Murphy*, 521 U.S. 320 (1997).

[31] *Fay v. Noia*, 372 U.S. 391 (1963).

[32] *Gumabon v. Director of the Bureau of Prisons*, 147 Phil. 362, 367-368 (1971).

[33] *In the Matter of the Petition for Habeas Corpus of Datukan Malang Salibo v. Warden, Quezon City Jail Annex, et al.*, 757 Phil. 630, 644 (2015).

[34] *Go v. Dimagiba*, 499 Phil. 445, 456 (2005).

Constitution, the privilege of the writ of *habeas corpus* shall not be suspended except in cases of invasion or rebellion, when the public safety requires it.[35]

In *Villavicencio v. Lukban*,[36] this Court, speaking through Justice Malcolm, decreed:

> A prime specification of an application for a writ of *habeas corpus* is restraint of liberty. The essential object and purpose of the writ of *habeas corpus* is to inquire into all manner of involuntary restraint as distinguished from voluntary, and to relieve a person therefrom if such restraint is illegal. Any restraint which will preclude freedom of action is sufficient.[37]

An application for a writ of *habeas corpus* may be made through a petition filed before this Court or any of its members, the Court of Appeals (CA) or any of its members in instances authorized by law, or the RTC or any of its presiding judges. The court or judge grants the writ and requires the officer or person having custody of the person allegedly restrained of liberty to file a return of the writ. A hearing on the return of the writ is then conducted.[38] The inquiry on a writ of *habeas corpus* is addressed, not to errors committed by a court within its jurisdiction, but to the question of whether the proceeding or judgment under which the person has been restrained is a complete nullity. The concern is not merely whether an error has been committed in ordering or holding the petitioner in custody, but whether such error is sufficient to render void the judgment, order, or process in question.[39]

In *Caballes v. Court of Appeals*,[40] this Court had occasion to exhaustively discuss the nature of the writ of *habeas corpus*, to wit:

---

[35] 1987 CONSTITUTION, Article III, Section 15.

[36] 39 Phil. 778 (1919).

[37] Id. at 790-791.

[38] *Salibo v. Warden, Warden, Quezon City Jail Annex*, supra.

[39] *Abellana v. Hon. Paredes*, G.R. No. 232006, July 10, 2019.

[40] 492 Phil. 410 (2005).

A petition for the issuance of a writ of *habeas corpus* is a special proceeding governed by Rule 102 of the Rules of Court, as amended. In *Ex Parte Billings*, it was held that *habeas corpus* is that of a civil proceeding in character. It seeks the enforcement of civil rights. Resorting to the writ is not to inquire into the criminal act of which the complaint is made, but into the right of liberty, notwithstanding the act and the immediate purpose to be served is relief from illegal restraint. The rule applies even when instituted to arrest a criminal prosecution and secure freedom. When a prisoner petitions for a writ of *habeas corpus*, he thereby commences a suit and prosecutes a case in that court.

Habeas corpus is not in the nature of a writ of error; nor intended as substitute for the trial court's function. It cannot take the place of appeal, certiorari or writ of error. The writ cannot be used to investigate and consider questions of error that might be raised relating to procedure or on the merits. The inquiry in a *habeas corpus* proceeding is addressed to the question of whether the proceedings and the assailed order are, for any reason, null and void. The writ is not ordinarily granted where the law provides for other remedies in the regular course, and in the absence of exceptional circumstances. Moreover, *habeas corpus* should not be granted in advance of trial. The orderly course of trial must be pursued and the usual remedies exhausted before resorting to the writ where exceptional circumstances are extant. In another case, it was held that *habeas corpus* cannot be issued as a writ of error or as a means of reviewing errors of law and irregularities not involving the questions of jurisdiction occurring during the course of the trial, subject to the caveat that constitutional safeguards of human life and liberty must be preserved, and not destroyed. It has also been held that where restraint is under legal process, mere errors and irregularities, which do not render the proceedings void, are not grounds for relief by *habeas corpus* because in such cases, the restraint is not illegal.

Habeas corpus is a summary remedy. It is analogous to a proceeding *in rem* when instituted for the sole purpose of having the person of restraint presented before the judge in order that the cause of his detention may be inquired into and his statements final. The writ of *habeas corpus* does not act upon the prisoner who seeks relief, but upon the person who holds him in what is alleged to be the unlawful authority. Hence, the only parties before the court are the petitioner (prisoner) and the person holding the petitioner in custody, and the only question to be resolved is whether the

custodian has authority to deprive the petitioner of his liberty. The writ may be denied if the petitioner fails to show facts that he is entitled thereto *ex merito justicias*.

A writ of *habeas corpus*, which is regarded as a "palladium of liberty" is a prerogative writ which does not issue as a matter of right but in the sound discretion of the court or judge. It is, however, a writ of right on proper formalities being made by proof. Resort to the writ is to inquire into the criminal act of which a complaint is made but unto the right of liberty, notwithstanding the act, and the immediate purpose to be served is relief from illegal restraint. The primary, if not the only object of the writ of *habeas corpus ad subjuciendum* is to determine the legality of the restraint under which a person is held.[41]

Prescinding from the foregoing, it is apparent that the writ of *habeas corpus* is not without its limits. For all its broad, latitudinarian even, scope, the range of inquiry in a *habeas corpus* application is considerably narrowed, where the detention complained of may be traced to judicial action.[42] In *Malaloan v. Court of Appeals*,[43] this Court defined judicial process in the following manner:

Invariably, a judicial process is defined as a writ, *warrant*, subpoena, or other formal writing issued by authority of law; also the means of accomplishing an end, including judicial proceedings, or all writs, *warrants*, summonses, and *orders* of courts of justice or judicial officers. It is likewise held to include a writ, summons, or *order* issued in a judicial proceeding to acquire jurisdiction of a person or his property, to expedite the cause or enforce the judgment, or a writ, *warrant*, mandate, or other process issuing from a court of justice.[44]

The rule is that if a person alleged to be restrained of his liberty is in custody of an officer under process issued by a

---

[41] Id. at 421-423.

[42] *Ventura v. People*, G.R. No. L-46576, November 6, 1978.

[43] 302 Phil. 273 (1994).

[44] Id. at 285-286.

court or judge or by virtue of a judgment or order of a court of record the writ of *habeas corpus* will not be allowed.[45] This is bolstered by Rule 102, Section 4:

> Sec. 4. *When writ not allowed or discharge authorized.* — If it appears that the person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court or judge or by virtue of a judgment or order of a court of record, and that the court or judge had jurisdiction to issue the process, render the judgment, or make the order, the writ shall not be allowed; or if the jurisdiction appears after the writ is allowed, the person shall not be discharged by reason of any informality or defect in the process, judgment, or order. Nor shall anything in this rule be held to authorize the discharge of a person charged with or convicted of an offense in the Philippines, or of a person suffering imprisonment under lawful judgment.

Accordingly, there have been instances when *habeas corpus* was denied on the ground that the persons seeking relief were detained by virtue of a lawful process.

In *IBP v. Hon. Enrile*,[46] three lawyers were arrested after a Preventive Detention Action was issued against them by President Marcos, thereby prompting the filing of a *habeas corpus* petition before this Court. While the petition was being heard, an Information for rebellion was filed against the said lawyers, and a Warrant of Arrest was ordered issued by the RTC. We dismissed the petition on the ground of mootness because their detention was placed under the auspices of a judicial process. Thus:

> As contended by respondents, the petition herein has been rendered moot and academic by virtue of the filing of an Information against them for Rebellion, a capital offense, before the Regional Trial Court of Davao City and the issuance of a Warrant of Arrest against them. The function of the special proceeding of *habeas corpus* is to inquire into the legality of one's detention. Now that the detained attorneys' incarceration is by virtue of a judicial order in relation to

---

[45] *Barredo v. Hon. Vinarao*, 555 Phil. 823, 828 (2007).

[46] 223 Phil. 561 (1985).

criminal cases subsequently filed against them before the Regional Trial Court of Davao City, the remedy of *habeas corpus* no longer lies. The Writ had served its purpose.[47]

Similarly, in *Velasco v. CA*,[48] a warrant of arrest was issued against Lawrence Larkins (Larkins), in a case for violation of *Batas Pambansa* (B.P.) Blg. 22, by Judge Manuel Padolina (Judge Padolina) of Branch 162 of the RTC of Pasig City. Pending the enforcement of the said warrant, a complaint-affidavit for rape was filed against Larkins before the National Bureau of Investigation (NBI). Thereafter, agents of the NBI arrested Larkins and detained him at the Detention Cell of the NBI, Taft Avenue, Manila.

Larkins posted bail in his B.P. Blg. 22 case, which resulted in Judge Padolina issuing an order recalling the warrant and arrest and directing his release. The NBI, however, refused to release him. Thereafter, an Information for rape was filed against Larkins before Branch 71 of the RTC of Antipolo City, presided by Judge Felix S. Caballes. Larkins filed a motion for bail, alleging that his warrantless arrest at the hands of the NBI was illegal, to no avail. Thus, he filed a petition for *habeas corpus* and *certiorari* with the CA, which the appellate court granted.

On review, We ruled that Larkins was not entitled to *habeas corpus* because the illegality of his warrantless arrest was cured by the filing of an Information against him:

> Even if the arrest of a person is illegal, supervening events may bar his release or discharge from custody. What is to be inquired into is the legality of his detention as of, at the earliest, the filing of the application for a writ of *habeas corpus*, for even if the detention is at its inception illegal, it may, by reason of some supervening events, such as the instances mentioned in Section 4 of Rule 102, be no longer illegal at the time of the filing of the application. Among such supervening events is the issuance of a judicial process preventing the discharge of the detained person. x x x

---

[47] Id. at 576.

[48] 315 Phil. 757 (1995).

Another is the filing of a complaint or information for the offense for which the accused is detained, as in the instant case. By then, the restraint of liberty is already by virtue of the complaint or information and, therefore, the writ of *habeas corpus* is no longer available. Section 4 of Rule 102 reads in part as follows: "Nor shall anything in this rule be held to authorize the discharge of *a person charged* with . . . an offense in the Philippines."

x x x x

Hence, even granting that Larkins was illegally arrested, still the petition for a writ of *habeas corpus* will not prosper because his detention has become legal by virtue of the filing before the trial court of the complaint against him and by the issuance of the 5 January 1995 order.[49]

Furthermore, in *Mangila v. Judge Pangilinan, et al.*,[50] Anita Mangila (Mangila) was arrested following the issuance of a warrant of arrest by Judge Heriberto M. Pangilinan of the Municipal Trial Court in Cities (MTCC) of Puerto Princesa City for seven counts of syndicated estafa. Assailing the regularity of the warrant of arrest, Mangila sought relief before the CA by filing a petition for *habeas corpus* which was, however, denied because it is not the proper remedy therefor. We affirmed the ruling of the CA, thus:

Under Section 6(b) of Rule 112 of the Revised Rules of Criminal Procedure, the investigating judge could issue a warrant of arrest during the preliminary investigation even without awaiting its conclusion should he find after an examination in writing and under oath of the complainant and the witnesses in the form of searching questions and answers that a probable cause existed, and that there was a necessity of placing the respondent under immediate custody in order not to frustrate the ends of justice. In the context of this rule, Judge Pangilinan issued the warrant of arrest against Mangila and her cohorts. Consequently, the CA properly denied Mangila's petition for habeas corpus because she had been arrested and detained by virtue of the warrant issued for her arrest by Judge Pangilinan, a judicial officer undeniably possessing the legal authority to do so.

---

[49] Id. at 768-773.

[50] 714 Phil. 204 (2013).

x x x x

With Mangila's arrest and ensuing detention being by virtue of the order lawfully issued by Judge Pangilinan, the writ of habeas corpus was not an appropriate remedy to relieve her from the restraint on her liberty. This is because the restraint, being lawful and pursuant to a court process, could not be inquired into through habeas corpus.[51]

In the present case, it was clearly averred by petitioner that an Information for 15 filing of criminal charges which were docketed as Criminal Case Nos. 08-262163 (formerly H-1581) and 14-306533 to 14-306546 before Branch 32 of the RTC of Manila. Thereafter, Judge Bunyi-Medina issued a Warrant of Arrest by virtue of which Rodolfo was arrested at his home in Angeles City, Pampanga. Likewise, a Commitment Order was issued by the RTC directing Rodolfo's detention at the Manila City Jail. These issuances are hallmarks of judicial process. The restraint on Rodolfo's liberty was lawful from the very beginning. It cannot be inquired into through *habeas corpus*.

It bears repetition to state at this juncture that *habeas corpus* does not lie where the person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court which had jurisdiction to issue the same.[52] Rodolfo is, therefore, not entitled to the writ of *habeas corpus*.

At any rate, this Court had already granted petitioner's alternative prayer for bail in favor of Rodolfo, upon the posting of a bond with the RTC. Jurisprudence holds that the release, whether permanent or temporary, of a detained person renders the petition for *habeas corpus* moot and academic, unless there are restraints attached to his release which precludes freedom of action.[53] Apart from the bail bond requirement, no restriction to Rodolfo's freedom of action was attached to the grant of his provisional liberty. Indeed, if the respondents are no longer

---

[51] Id. at 211-212.

[52] *Atty. Serapio v. Sandiganbayan (Third Division)*, 444 Phil. 499, 551 (2003).

[53] *Lucien Tran Van Nghia v. Hon. Liwag*, 256 Phil. 771, 775 (1989).

detaining or restraining the applicant or the person in whose behalf the petition is filed, the petition should be dismissed.[54]

And even if this Court were to consider the merits of the instant petition, it is premature to declare that Rodolfo was deprived of his right to due process during the preliminary investigation of the murder case, or that his indictment for multiple counts of murder is a political offense which is deemed included in his previous conviction for rebellion and is therefore violative of his constitutional right against double jeopardy.

Habeas corpus is not the proper remedy to question the regularity of a preliminary investigation; the right to such investigation is statutory at best and not constitutional

A preliminary investigation is defined as an inquiry or proceeding for the purpose of determining whether there is sufficient ground to engender a well-founded belief that a crime cognizable by the [RTC] has been committed and that the respondent is probably guilty thereof, and should be held for trial.[55] The investigation is advisedly called preliminary, because it is yet to be followed by the trial proper in a court of law.[56] Consequently, it is not subject to the same due process requirements that must be present during trial.[57] In *Lozada v. Hernandez, etc., et al.*:[58]

It has been said time and again that a preliminary investigation is not properly a trial or any part thereon but is merely preparatory

---

[54] *In the Matter of the Petition for Habeas Corpus of Eufrania E. Veluz v. Villanueva, et al.*, 567 Phil. 63, 68-69 (2008).

[55] *Sen. Estrada v. Office of the Ombudsman, et al.*, 751 Phil. 821, 894 (2015).

[56] *Callo-Claridad v. Esteban, et al.*, 707 Phil. 172, 184 (2013).

[57] *Reyes v. Office of the Ombudsman, et al.*, 810 Phil. 106, 119 (2017).

[58] 92 Phil. 1051 (1953).

thereto, its only purpose being to determine whether a crime had been committed and whether there is probably cause to believe the accused guilty thereof. (U.S. *v.* Yu Tuico, 34 Phil. 209; People *v.* Badilla, 48 Phil. 716). The right to such investigation is not a fundamental right guaranteed by the constitution. At most, it is statutory. (II Moran, Rules of Court, 1952 ed., p. 673). And rights conferred upon accused persons to participate in preliminary investigation concerning themselves depend upon the provisions of law by which such rights are specifically secured, rather than upon the phrase "due process of law." (U.S. *v.* Grant and Kennedy, 18 Phil. 122).[59]

It is therefore clear that because a preliminary investigation is not a proper trial, the rights of parties therein depend on the rights granted to them by law and these cannot be based on whatever rights they believe they are entitled to or those that may be derived from the phrase "due process of law."[60] Once the information is filed in court, the court acquires jurisdiction of the case and any motion to dismiss the case or to determine the accused's guilt or innocence rests within the sound discretion of the court.[61] It is established that the issue of whether or not probable cause exists for the issuance of warrants for the arrest of the accused is a question of fact, determinable as it is from a review of the allegations in the Information, the Resolution of the Investigating Prosecutor, including other documents and/or evidence appended to the Information.[62]

Verily, these matters lie squarely within the ambit of the RTC, in consonance with the principle of hierarchy of courts which dictates that direct recourse to this Court is allowed only to resolve questions of law, notwithstanding the invocation of paramount or transcendental importance of the action.[63] The

---

[59] Id. at 1053.

[60] *P/Insp. Artillero v. Deputy Ombudsman Casimiro, et al.*, 686 Phil. 1055, 1072 (2012).

[61] *Sec. De Lima, et al. v. Reyes*, 776 Phil. 623, 649 (2016).

[62] *Sen. De Lima v. Judge Guerrero, et al.*, 819 Phil. 616, 691 (2017).

[63] *Gios-Samar, Inc. v. Department of Transportation and Communications*, G.R. No. 217158, March 12, 2019.

Supreme Court is not a trier of facts[64] and, as discussed earlier, *habeas corpus* is a summary remedy[65] the purpose of which is merely to inquire if the individual seeking such relief is "illegally deprived of his freedom of movement or placed under some form of illegal restraint."[66]

It is too early to make a pronouncement on the existence of double jeopardy as against Rodolfo

Then, too, it would be improper for this Court to order the dismissal of the murder charges against Rodolfo on the pretext that the same are already deemed absorbed in his prior conviction for rebellion and, resultantly, place him in double jeopardy.

The political nature or motive behind a crime is not presumed. Neither is it readily accepted as an uncontroverted fact upon the mere assertion of an accused. In *People v. Gempes*:[67]

> x x x Since this is a matter that lies peculiarly with their knowledge and since moreover this is an affirmative defense, the burden is on them to prove, or at least to state, which they could easily do personally or through witnesses, that they killed the deceased in furtherance of the resistance movement. x x x[68]

In *Ocampo v. Judge Abando, et al.*,[69] which involves the prosecution of the same Criminal Case Nos. 08-262163 (formerly H-1581) and 14-306533 to 14-306546, this Court declared that the defense that a crime was committed in furtherance of a political end must be raised and proven before the trial court. Thus:

---

[64] *Heirs of Teresita Villanueva v. Heirs of Petronila Mendoza*, 810 Phil. 172, 177-178 (2017).

[65] *Caballes v. Court of Appeals*, supra note 40 at 421-422.

[66] *Abellana v. Hon. Paredes*, supra note 39.

[67] 83 Phil. 267 (1949).

[68] Id.

[69] 726 Phil. 441 (2014).

Under the political offense doctrine, "common crimes, perpetrated in furtherance of a political offense, are divested of their character as 'common' offenses and assume the political complexion of the main crime of which they are mere ingredients, and, consequently, cannot be punished separately from the principal offense, or complexed with the same, to justify the imposition of a graver penalty."

Any ordinary act assumes a different nature by being absorbed in the crime of rebellion. Thus, when a killing is committed in furtherance of rebellion, the killing is not homicide or murder. Rather, the killing assumes the political complexion of rebellion as its mere ingredient and must be prosecuted and punished as rebellion alone.

However, this is not to say that public prosecutors are obliged to consistently charge respondents with simple rebellion instead of common crimes. No one disputes the well-entrenched principle in criminal procedure that the institution of criminal charges, including whom and what to charge, is addressed to the sound discretion of the public prosecutor.

But when the political offense doctrine is asserted as a defense in the trial court, it becomes crucial for the court to determine whether the act of killing was done in furtherance of a political end, and for the political motive of the act to be conclusively demonstrated.

Petitioners aver that the records show that the alleged murders were committed in furtherance of the CPP/NPA/NDFP rebellion, and that the political motivation behind the alleged murders can be clearly seen from the charge against the alleged top leaders of the CPP/NPA/NDFP as co-conspirators.

We had already ruled that the burden of demonstrating political motivation must be discharged by the defense, since motive is a state of mind which only the accused knows. The proof showing political motivation is adduced during trial where the accused is assured an opportunity to present evidence supporting his defense. It is not for this Court to determine this factual matter in the instant petitions.[70]

Certainly, the determination as to whether the killings of the 15 individuals whose remains were unearthed at Inopacan, Leyte, were motivated by a political end is a question that must be seasonably raised and proven by Rodolfo as a defense before

---

[70] Id. at 466-468.

the trial court. It is not this Court's function to analyze or weigh the evidence (which tasks belong to the trial court as the trier of facts and to the appellate court as the reviewer of facts)[71] that Rodolfo may adduce to discharge his burden of proof.

A Final Note

This Court is not unmindful of Rodolfo's perceived persecution for a crime which he believes he has already paid for. We cannot, however, disregard the desire of society and, more importantly, the families of the 15 victims who were summarily executed and unceremoniously discarded in a mass grave in Inopacan, Leyte, to obtain justice for these abhorrent acts some 35 years ago.

In the same vein, We cannot countenance petitioner's assertion that the remedies before the RTC – such as the filing of a motion to quash the complaint or information under Rule 117, Section 3, or filing a motion for reinvestigation – do not offer sufficient and adequate relief, or that Judge Bunyi-Medina will not be able to resolve Rodolfo's motions, should he file the same, with dispatch. This Court will never be at the forefront of casting doubts and aspersions on the performance of our judges. We maintain our faith that the officers of the court are tirelessly working in ensuring "the effective enforcement of substantive rights through the orderly and speedy administration of justice."[72]

For indeed, as Martin Luther King, Jr. once said, "The arc of the moral universe is long, but it bends towards justice."

WHEREFORE, the petition is **DISMISSED**.

SO ORDERED.

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

Leonen, J. (*Chairperson*), concurs with separate opinion.

---

[71] *Far Eastern Surety and Insurance Co., Inc. v. People,* 721 Phil. 760, 769 (2013).

[72] *Santos v. Court of Appeals, et al.*, 275 Phil. 894, 898 (1991).

CONCURRING OPINION

LEONEN, *J.*:

I concur with the opinion of my esteemed colleague, Associate Justice Samuel H. Gaerlan. I add the following to his well-written piece.

First, in general, *habeas corpus* is indeed not the proper remedy to inquire into the illegal detention of a person under judicial process. However, there are extraordinary circumstances where it may be the only viable remedy.

For instance, in *In re: Salibo v. Warden*,[1] *habeas corpus* was allowed, despite the issuance of judicial process, because the deprivation of liberty was due to mistaken identity. In that case, Datukan Malang Salibo was arrested by virtue of a warrant against a "Butukan S. Malang," one of the many accused allegedly involved in the Maguindanao massacre. Considering that Datukan Malang Salibo sufficiently proved that he was not the "Butukan S. Malang" named in the arrest warrant, this Court held that Datukan Malang Salibo was being illegally deprived of liberty.

In allowing the release of Datukan Malang Salibo, this Court pronounced:

> It is true that a writ of habeas corpus may no longer be issued if the person allegedly deprived of liberty is restrained under a lawful process or order of the court. The restraint then has become legal, and the remedy of habeas corpus is rendered moot and academic. . . .
>
> . . . .
>
> [I]nstead of availing themselves of the extraordinary remedy of a petition for habeas corpus, persons restrained under a lawful process or order of the court must pursue the orderly course of trial and exhaust the usual remedies. This ordinary remedy is to file a motion to quash the information or the warrant of arrest.

---

[1] 757 Phil. 630 (2015) [Per J. Leonen, Second Division].

At any time before a plea is entered, the accused may file a motion to quash complaint or information based on any of the grounds enumerated in Rule 117, Section 3 of the Rules of Court[.]

. . . .

In filing a motion to quash, the accused "assails the validity of a criminal complaint or information filed against him [or her] for insufficiency on its face in point of law, or for defects which are apparent in the face of the information." If the accused avails himself or herself of a motion to quash, the accused "hypothetical[ly] admits the facts alleged in the information." "Evidence aliunde or matters extrinsic from the information are not to be considered."

"If the motion to quash is based on an alleged defect of the complaint or information which can be cured by amendment, the court shall order [the] amendment [of the complaint or information]." If the motion to quash is based on the ground that the facts alleged in the complaint or information do not constitute an offense, the trial court shall give the prosecution "an opportunity to correct the defect by amendment." If after amendment, the complaint or information still suffers from the same defect, the trial court shall quash the complaint or information.

. . . .

However, . . . [p]etitioner Salibo was not arrested by virtue of any warrant charging him of an offense. He was not restrained under a lawful process or an order of a court. He was illegally deprived of his liberty, and, therefore, correctly availed himself of a Petition for Habeas Corpus.

The Information and Alias Warrant of Arrest issued by the Regional Trial Court, Branch 221, Quezon City in *People of the Philippines v. Datu Andal Ampatuan, Jr., et al.*, charged and accused Butukan S. Malang, not Datukan Malang Salibo, of 57 counts of murder in connection with the Maguindanao Massacre.

Furthermore, petitioner Salibo was not validly arrested without a warrant. . . .

. . . .

It is undisputed that petitioner Salibo presented himself before the Datu Hofer Police Station to clear his name and to prove that he

is not the accused Butukan S. Malang. When petitioner Salibo was in the presence of the police officers of Data Hofer Police Station, he was neither committing nor attempting to commit an offense. The police officers had no personal knowledge of any offense that he might have committed. Petitioner Salibo was also not an escapee prisoner.

The police officers, therefore, had no probable cause to arrest petitioner Salibo without a warrant. They deprived him of his right to liberty without due process of law, for which a petition for habeas corpus may be issued.

. . . .

Petitioner Salibo's proper remedy is not a Motion to Quash Information and/or Warrant of Arrest. None of the grounds for filing a Motion to Quash Information apply to him. Even if petitioner Salibo filed a Motion to Quash, the defect he alleged could not have been cured by mere amendment of the Information and/or Warrant of Arrest. Changing the name of the accused appearing in the Information and/or Warrant of Arrest from "Butukan S. Malang" to "Datukan Malang Salibo" will not cure the lack of preliminary investigation in this case.

A motion for reinvestigation will not cure the defect of lack of preliminary investigation. The Information and Alias Warrant of Arrest were issued on the premise that Butukan S. Malang and Datukan Malang Salibo are the same person. There is evidence, however, that the person detained by virtue of these processes is not Butukan S. Malang but another person named Datukan Malang Salibo.

Petitioner Salibo presented in evidence his Philippine passport, his identification card from the Office on Muslim Affairs, his Tax Identification Number card, and clearance from the National Bureau of Investigation all bearing his picture and indicating the name "Datukan Malang Salibo." None of these government-issued documents showed that petitioner Salibo used the alias "Butukan S. Malang."

Moreover, there is evidence that petitioner Salibo was not in the country on November 23, 2009 when the Maguindanao Massacre occurred.

A Certification from the Bureau of Immigration states that petitioner Salibo departed for Saudi Arabia on November 7, 2009 and arrived in the Philippines only on December 20, 2009. A Certification from

Saudi Arabian Airlines attests that petitioner Salibo departed for Saudi Arabia on board Saudi Arabian Airlines Flight SV869 on November 7, 2009 and that he arrived in the Philippines on board Saudi Arabian Airlines SV870 on December 20, 2009.[2] (Citations omitted)

Second, I reiterate my concurrence in *Ocampo v. Judge Abando*[3] regarding the non-applicability of the *Hernandez* doctrine. *Ocampo*, like the present case, involves the prosecution of the leaders of the Communist Party of the Philippines/New People's Army/National Democratic Front of the Philippines that allegedly implemented "Operation Venereal Disease." There, this Court held that the *Hernandez* doctrine[4] – a doctrine stating that a common crime committed in furtherance of rebellion is absorbed in the rebellion charge – is not a ground for the dismissal of the charges for the common crime, at least at the prosecutor level.

In *Ocampo*, I added the following points to call for a more nuanced interpretation of what constitutes rebellion, so as to prevent violations of human rights carried out under the pretext of armed conflict:

> We survey the evolution of the political offense doctrine to provide better context.
>
> As early as 1903, this court distinguished common crimes from crimes committed in furtherance of a political objective. In *United States v. Lardizabal*, the accused, Commanding Officer of Filipino insurgents, ordered the execution of an American prisoner before retreating from the enemy. We said in this case that the accused's act falls under the Amnesty Proclamation of 1902, thus:
>
> > . . . [the execution] was not an isolated act such as a "political offense committed during the insurrection pursuant to orders issued by the civil or military insurrectionary authorities," but was a measure which, whether necessary or not, was inherent in the military operations for the preservation of the troops

---

[2] Id. at 648-658.

[3] 726 Phil. 441 (2014) [Per C.J. Sereno, En Banc].

[4] Also called the "political offense doctrine."

> commanded by him and of which he was the supreme officer on that island. ***It was an act which, while from the standpoint of military law might be regarded as one of cruelty, was at the same time one depending absolutely upon the discretion of an officer in charge of a command for securing the safety of the troops under his control and constitutes no other offense than that of sedition, within which term the war itself is included by the letter and spirit of the proclamation***.

In *United States v. Pacheco*, two men selling English dictionaries within the Dagupan area were abruptly abducted and killed by the accused and his men. Witnesses testified that it was presumed by the accused that the salesmen were American spies because the dictionaries being sold were written in English. This court observed:

> It does not appear from the record that the aggressors were impelled to kill the deceased by any motive other than that the latter were suspected of being spies and, therefore, traitors to the revolutionary party to which the defendants belonged. From the foregoing statement of facts, it may therefore be said that **the two murders prosecuted herein were of a political character** and the result of internal political hatreds between Filipinos, the defendants having been insurgents opposed to the constituted government.
>
> The case has to do with two crimes for which, under the penal law, the severest punishment has always been inflicted. However, considering the circumstances under which these crimes were committed and the fact that the sovereign power in these Islands, in view of the extraordinary and radical disturbance which, during the period following the year 1896, prevailed in and convulsed this country, and **prompted by the dictates of humanity and public policy, has deemed it advisable to blot out even the shadow of a certain class of offenses, decreeing full pardon and amnesty to their authors** — an act of elevated statesmanship and timely generosity, more political than judicial in its nature, intended to mitigate the severity of the law — it is incumbent upon us, in deciding this case, to conform our judgment to the requirements and conditions of the decree so promulgated.

Then in the landmark case of *People v. Hernandez*, this court defined the term, political offense:

> In short, **political crimes are those directly aimed against the political order, as well as such common crimes as may be committed to achieve a political purpose. The decisive factor is the intent or motive**. If a crime usually regarded as common, like homicide, is perpetrated for the purpose of removing from the allegiance "to the Government the territory of the Philippines Islands or any part thereof," then **said offense becomes stripped of its "common" complexion, inasmuch as, being part and parcel of the crime of rebellion, the former acquires the political character of the latter**.

This court in *Hernandez* first clarified whether common crimes such as murder, arson, and other similar crimes are to be complexed with the main crimes in the Revised Penal Code. Thus:

> . . . national, as well as international, laws and jurisprudence overwhelmingly favor the proposition that **common crimes, perpetrated in furtherance of a political offense, are divested of their character as "common" offenses and assume the political complexion of the main crime of which they are mere ingredients, and, consequently, cannot be punished separately from the principal offense, or complexed with the same, to justify the imposition of a graver penalty**.

Article 48 of the Revised Penal Code covering complex crimes provides:

> Art. 48. *Penalty for complex crimes*. — When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period.

The *Hernandez* ruling was then affirmed by this court in subsequent cases, such as *Enrile v. Salazar*. It is worthy to note, however, that in "affirming" the doctrine in *Hernandez*, this court in *Enrile* said:

> It may be that in the light of contemporary events, the act of rebellion has lost that quintessentially quixotic quality that justifies the relative leniency with which it is regarded and punished by law, that present-day rebels are less impelled by love of country than by lust for power and have become no better than mere terrorists to whom nothing, not even the sanctity of human life, is allowed to stand in the way of their ambitions. ***Nothing so underscores this aberration as the rash***

> ***of seemingly senseless killings, bombings, kidnappings and assorted mayhem so much in the news these days, as often perpetrated against innocent civilians as against the military, but by and large attributable to, or even claimed by so-called rebels to be part of, an ongoing rebellion.***
>
> It is enough to give anyone pause — and the Court is no exception — that not even the crowded streets of our capital City seem safe from such unsettling violence that is disruptive of the public peace and stymies every effort at national economic recovery. ***There is an apparent need to restructure the law on rebellion, either to raise the penalty therefor or to clearly define and delimit the other offenses to be considered as absorbed thereby, so that it cannot be conveniently utilized as the umbrella for every sort of illegal activity undertaken in its name***. The Court has no power to effect such change, for it can only interpret the law as it stands at any given time, and what is needed lies beyond interpretation. Hopefully, Congress will perceive the need for promptly seizing the initiative in this matter, which is properly within its province.

However, other cases declined to rule that all other crimes charged in the Information are absorbed under alleged political offenses. In *Misolas v. Panga*, this court ruled:

> Neither would the doctrines enunciated by the Court in *Hernandez* and *Geronimo*, [sic] and *People v. Rodriguez* [107 Phil. 659] save the day for petitioner.
>
> In *Hernandez*, the accused were charged with the complex crime of rebellion with murder, arson and robbery while in Geronimo, the information was for the complex crime of rebellion with murder, robbery and kidnapping. In those two cases[,] the Court held that aforestated common crimes cannot be complexed with rebellion as these crimes constituted the means of committing the crime of rebellion. These common crimes constituted the acts of "engaging in war" and "committing serious violence" which are essential elements of the crime of rebellion [See Arts. 134-135, Revised Penal Code] and, hence, are deemed absorbed in the crime of rebellion. Consequently, the accused can be held liable only for the single crime of rebellion.
>
> On the other hand, in *Rodriguez*, the Court ruled that since the accused had already been charged with rebellion, he can

no longer be charged for illegal possession of firearms for the same act of unauthorized possession of firearm on which the charge of rebellion was based, as said act constituted the very means for the commission of rebellion. Thus, the illegal possession of the firearm was deemed absorbed in the crime of rebellion.

However, in the present case, petitioner is being charged specifically for the qualified offense of illegal possession of firearms and ammunition under P.D. 1866. HE IS NOT BEING CHARGED WITH THE COMPLEX CRIME OF SUBVERSION WITH ILLEGAL POSSESSION OF FIREARMS. NEITHER IS HE BEING SEPARATELY CHARGED FOR SUBVERSION AND FOR ILLEGAL POSSESSION OF FIREARMS. Thus, the rulings of the Court in *Hernandez, Geronimo* and *Rodriguez* find no application in this case.

In *Baylosis v. Chavez, Jr.*, this court held that:

. . . The Code allows, for example, separate prosecutions for either murder or rebellion, although not for both where the indictment alleges that the former has been committed in furtherance of or in connection with the latter. Surely, whether people are killed or injured in connection with a rebellion, or not, the deaths or injuries of the victims are no less real, and the grief of the victims' families no less poignant.

Moreover, it certainly is within the power of the legislature to determine what acts or omissions other than those set out in the Revised Penal Code or other existing statutes are to be condemned as separate, individual crimes and what penalties should be attached thereto. The power is not diluted or improperly wielded simply because at some prior time the act or omission was but an element or ingredient of another offense, or might usually have been connected with another crime.

The interdict laid in *Hernandez, Enrile* and the other cases cited is against attempts to complex rebellion with the so called "common" crimes committed in furtherance, or in the course, thereof; this, on the authority alone of the first sentence of Article 48 of the Revised Penal Code. Stated otherwise, the ratio of said cases is that Article 48 cannot be invoked as the basis for charging and prosecuting the complex crime of rebellion with murder, etc., for the purpose of obtaining imposition of

> the penalty for the more serious offense in its maximum period (in accordance with said Art. 48). ***Said cases did not — indeed they could not and were never meant to — proscribe the legislative authority from validly enacting statutes that would define and punish, as offenses sui generis crimes which, in the context of Hernandez, et al., may be viewed as a complex of rebellion with other offenses. There is no constitutional prohibition against this, and the Court never said there was.*** What the Court stated in said cases about rebellion "absorbing" common crimes committed in its course or furtherance must be viewed in light of the fact that at the time they were decided, there were no penal provisions defining and punishing, as specific offenses, crimes like murder, etc. committed in the course or as part of a rebellion. This is no longer true, as far as the present case is concerned, and there being no question that PD 1866 was a valid exercise of the former President's legislative powers.

It is not our intention to wipe out the history of and the policy behind the political offense doctrine. What this separate opinion seeks to accomplish is to qualify the conditions for the application of the doctrine and remove any blanket application whenever political objectives are alleged. The remnants of armed conflict continue. Sooner or later, with a victor that emerges or even with the success of peace negotiations with insurgent groups, some form of transitional justice may need to reckon with different types of crimes committed on the occasion of these armed uprisings. Certainly, crimes that run afoul the basic human dignity of persons must not be tolerated. This is in line with the recent developments in national and international law.[5] (Citations omitted, emphasis in the original)

It bears repeating here what I had said before in *Ocampo*:

The rebel, in his or her effort to assert a better view of humanity, cannot negate himself or herself. Torture and summary execution of enemies or allies are never acts of courage. They demean those who sacrificed and those who gave their lives so that others may live justly and enjoy the blessings of more meaningful freedoms.

Torture and summary execution — in any context — are shameful, naked brutal acts of those who may have simply been transformed

---

[5] Id. at 473-478.

into desperate cowards. Those who may have suffered or may have died because of these acts deserve better than to be told that they did so in the hands of a rebel.[6]

IN VIEW OF THE FOREGOING, I vote to **DISMISS** the Petition for *Habeas Corpus*.

---

[6] Id. at 496-497.

EN BANC

[A.C. No. 12030. September 29, 2020]

LOURDES E. ELANGA and NILO ELANGA represented by their Attorneys-in-Fact EVELYN E. VELOSO and MELLY ELANGA, *Complainants*, *v.* **ATTY. RUTILLO B. PASOK,** *Respondent*.

SYLLABUS

1. LEGAL ETHICS; DISCIPLINE OF LAWYERS; DEFECT IN THE NOTARIZATION OF COMPLAINT. — [A]ssuming that the [Complainant] Elangas did not personally appear before the notary public, such defect is not fatal to the Complaint's validity. In line with this, Section 11, Rule 139-B of the Rules of Court states: **SEC. 11.** *Defects*. – No defect in a complaint, notice, answer, or in the proceeding or the Investigator's Report shall be considered as substantial unless the Board of Governors, upon considering the whole record, finds that such defect has resulted or may result in a miscarriage of justice, in which event the Board shall take such remedial action as the circumstances may warrant, including invalidation of the entire proceedings. The alleged defect in the notarization of the Complaint could not be considered substantial and did not result in a miscarriage of justice since Atty. Pasok was able to fully participate in the proceedings before the IBP. Atty. Pasok did not submit proof to substantiate his allegations. Additionally, there is a presumption of regularity in the performance of duty by the notary public that he notarized the Complaint in accordance with the rules, absent clear and convincing proof to the contrary.

2. ID.; 2004 RULES OF NOTARIAL PRACTICE; A NOTARY PUBLIC IS DISQUALIFIED FROM NOTARIZING A DOCUMENT WHERE HE WILL GAIN FROM THE PROCEEDS THEREOF. — Atty. Pasok notarized the document evidencing the Real Estate Mortgage and received part of the proceeds thereof as expressly stated in the Agreement, specifically in the amounts of ₱162,178.03 and ₱23,782.00. By notarizing the mortgage document and subsequently receiving part of the proceeds thereof, Atty. Pasok violated Rule 4, Section 3 of the 2004 Rules of Notarial Practice which states: SEC. 3.

Disqualifications. – A notary public is disqualified from performing a notarial act if he: x x x x (b) will receive, as a direct or indirect result, any commission, fee, advantage, right, title, interest, cash, property, or other consideration, except as provided by these Rules and by law[.]

3. ID.; CODE OF PROFESSIONAL RESPONSIBILITY, LAWYER'S OATH AND THE 2004 RULES ON NOTARIAL PRACTICE; VIOLATIONS IN CASE AT BAR WARRANT THE PENALTY OF FIVE (5) YEARS SUSPENSION FROM THE PRACTICE OF LAW AND DISQUALIFICATION AS NOTARY PUBLIC FOR FIVE (5) YEARS. — "[T]he quantum of proof necessary for a finding of guilt in a disbarment case is substantial evidence or that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion. The complainant has the burden of proving his allegations against respondents." In the case at bench, the Elangas proved with substantial evidence that Atty. Pasok committed several infractions pertaining to his participation in relevant documents concerning the opposing parties not only as a retained counsel but also as a notary public, and which involved monetary considerations which he improperly received. In light of these circumstances, the Court finds that Atty. Pasok violated Rules 1.01, 1.02 and 1.03 of Canon 1 as well as Rule 16.01 of Canon 16 of the CPR, x x x Likewise, he violated the Lawyer's Oath when he did not conduct himself as a lawyer according to the best of his knowledge and discretion with all good fidelity to the courts as well as to his clients. Considering the totality of the circumstances in the present case, We find it apt to modify the recommendation of the OBC by increasing the penalty of suspension to five (5) years from the practice of law upon Atty. Pasok effective upon receipt of this Resolution for violating the Lawyer's Oath, Rules 1.01, 1.02 and 1.03, Canon 1, Rule 16.01, Canon 16 of the CPR, and Section 3, Rule 4 of the 2004 Rules on Notarial Practice, as well as revocation of his current notarial commission, if any, and disqualification from being commissioned as notary public for five (5) years.

APPEARANCES OF COUNSEL

Clarissa A. Castro for complainants.

D E C I S I O N

HERNANDO, *J.*:

This is a Complaint[1] for disbarment filed by complainants Lourdes E. Elanga (Lourdes) and Nilo E. Elanga (Nilo) against respondent Atty. Rutillo B. Pasok (Atty. Pasok) before the Integrated Bar of the Philippines Commission on Bar Discipline (IBP-CBD) for alleged violation of the Lawyer's Oath and the Code of Professional Responsibility (CPR).

The Facts:

Atty. Pasok is the legal counsel of the plaintiffs[2] in Civil Case No. 204 against the Elangas for Partition, Recovery of Ownership and Possession, Accounting and Share, Attorney's Fees and Damages pending before Branch 15 of the Regional Trial Court (RTC) of Cotabato City.[3] Lourdes is the eldest sister of the plaintiffs and Nilo is her son.[4]

The clients of Atty. Pasok alleged that the Elangas failed to deliver a copy of the Original Certificate of Title No. V-2044 which is in their possession after Nilo redeemed the lot from the Development Bank of the Philippines (DBP). Conversely, Lourdes and Nilo argued that the plaintiffs did not reimburse them for the redemption of the lot.

In a March 25, 2002 Decision,[5] Branch 15 of the RTC of Cotabato City required the clients of Atty. Pasok to reimburse Nilo the amount of ₱162,178.03 representing the redemption

---

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

[2] Heirs of Deceased Spouses Gregorio Erazo, Sr. and Felomina Esgrina, namely: Catalina Erazo Dela Gracia, Rosario Erazo Baladiang, Herman Erazo, Florentino Erazo, Rebecca Erazo Esteral, Narcisa Erazo Esteral, Gregorio Erazo, Jr. and Francisco Erazo; id. at 19.

[3] *Rollo*, Vol. I, p. 3.

[4] Id. at 245.

[5] Id. at 19-20.

price plus interest, penalties, as well as damages and attorney's fees. On appeal, the Court of Appeals deleted the awards for damages, attorney's fees, and appearance fees.[6] The said decision became final and executory.[7] Despite failing to settle their obligation, the plaintiffs still demanded for the delivery of the copy of the title of the property.[8] As impressed upon the Court, the said civil case is still in the execution stage.

Relevantly, Lourdes and Nilo alleged that during the pendency of Civil Case No. 204, Atty. Pasok entered into a series of transactions involving the subject lot under litigation, *viz.*:

a.) [Notarization] of a Deed of Extra-Judicial Partition[9] dated 7 May 1999 which complainant Lourdes Elanga denied having signed, hence [the] allegation of forgery and falsification;

b.) [Notarization] of a Real Estate Mortgage[10] dated 8 October 2001, without the knowledge and consent of complainants [Lourdes and Nilo Elanga as well as the trial court];

c.) Agreement[11] dated 8 October 2001 signed by respondent [Atty. Pasok] with his clients indicating the receipt of the proceeds of the said mortgage [in the amounts of ₱23,782.00 and ₱162,178.03];

d.) Promissory Note[12] dated 8 October 2001 notarized by respondent [Atty. Pasok relative] to the above stated Real Estate Mortgage[;]

---

[6] Id. at 106-114; docketed as CA-G.R. CV No. 79925; Decision dated June 29, 2010 penned by Associate Angelita A. Gacutan and concurred in by Associate Justices Rodrigo F. Lim, Jr. and Nina G. Antonio-Valenzuela.

[7] Id. at 389.

[8] Id. at 3-4, 53.

[9] Id. at 21-23.

[10] Id. at 26-28.

[11] Id. at 29.

[12] Id. at 30.

e.) Receipt [by] respondent [Atty. Pasok] of the amount of ₱23,782.00 from the proceeds of the above stated Real Estate Mortgage transaction;

f.) Alleged retention by respondent [Atty. Pasok] of ₱162,178.03, the amount paid by complainant Nilo Elanga to redeem the subject lot from the bank.[13]

In his Answer,[14] Atty. Pasok denied falsifying the signature of Lourdes in the Deed of Extra-Judicial Partition.[15] He claimed that his clients and the Elangas met with him personally because they have settled their differences. During the meeting, they executed the Deed of Extra-Judicial Partition in anticipation of the urgent sale of the subject lot.[16] He countered that the Elangas refused to deliver the copy of the title of the lot and to receive the reimbursement from the plaintiffs.[17] In addition, he admitted that he prepared and notarized the Deed of Extra-Judicial Partition, and that Lourdes signed the said document personally before him.[18] Likewise, he averred that he received the amount of ₱23,782.00 from his clients as reimbursement for his transportation expenses.[19]

Notably, in a Joint Affidavit[20] dated October 4, 2012, Atty. Pasok's clients stated that they paid him ₱23,782.00 as part of his attorney's fees.[21]

In their Reply,[22] the Elangas contended that Atty. Pasok allowed his clients to mortgage the subject property without

---

[13] *Rollo*, Vol. II, p. 855.

[14] *Rollo*, Vol. I, pp. 32-68.

[15] Id. at 36.

[16] Id. at 51.

[17] Id. at 55.

[18] Id. at 59, 179.

[19] Id. at 60-62, 181-182.

[20] Id. at 91-94.

[21] Id. at 92.

[22] Id. at 153-161.

their (Elangas) conformity despite his knowledge that Civil Case No. 204 was still pending and even notarized the document evidencing the mortgage and received a portion of the proceeds of the mortgage.[23]

Report and Recommendation of the IBP:

In a Report and Recommendation[24] dated February 26, 2014, the Investigating Commissioner[25] of the IBP-CBD found that Atty. Pasok violated the provisions of the CPR and the Lawyer's Oath, as follows:

> x x x [R]espondent's participation as a notary public in the execution of Real Estate Mortgage x x x of the property subject of litigation without the knowledge and consent of the petitioners and of the Court; and this despite his knowledge that the TITLE of the property is in [the] possession of the petitioners; the preparation and execution of an Agreement dated October 8, 2002 x x x simultaneous with the execution of the Real Estate Mortgage wherein he allowed Francisco Erazo to get the share of Lourdes Elanga without minding the fact that Francisco Erazo (respondent's client), and Lourdes Elanga are opposing parties in Civil Case No. 204, thus, it was impossible for Francisco to represent Lourdes; that respondent notarized the Real Estate Mortgage even without the signatures of Lourdes Elanga (co-owner of the property) and Nilo Elanga; that respondent together with his clients, received the amount of ₱400,000.00 out of the said Real Estate Mortgage transaction wherein [Atty. Pasok] received the amount of ₱23,782.00 as stated [in the] said Agreement; and that respondent retained the amount of ₱162,178.03, wherein said amount [was] not [turned over to] herein complainants [Lourdes and Nilo] (defendants in the civil case) nor said amount was consigned to the court.[26]

The Investigating Commissioner recommended that Atty. Pasok be reprimanded.[27]

---

[23] Id. at 155-156, 202-203.

[24] Id. at 245-250.

[25] Suzette A. Mamon.

[26] *Rollo*, Vol. I, p. 248.

[27] Id. at 249-250.

In Resolution[28] No. XXI-2015-149, the IBP-BOG adopted the findings of the Investigating Commissioner with modification as to the recommended penalty in that Atty. Pasok should be suspended from the practice of law for one (1) year. The IBP-BOG found that Atty. Pasok violated Rules 1.01, 1.02 and 1.03 of Canon 1 of the CPR as well as the Lawyer's Oath.

Aggrieved, Atty. Pasok filed a Motion for Reconsideration[29] which the IBP-BOG denied in its Resolution[30] No. XXI-2017-865.

Undeterred, Atty. Pasok filed a Petition for Review[31] assailing the IBP-BOG's Resolutions before the Court which We referred to the Office of the Bar Confidant (OBC) for its evaluation, report and recommendation.

Report and Recommendation of the OBC:

In a Report and Recommendation[32] dated July 18, 2019, the OBC recommended the suspension of Atty. Pasok from the practice of law for three (3) years given that he committed several infractions.

The OBC found Atty. Pasok's participation as a notary public in the Deed of Extra-Judicial Partition and the Deed of Real Estate Mortgage highly improper considering that he knew that the copy of the title was still with the Elangas and that they (Elangas) did not sign the said documents. Similarly, the OBC found that Atty. Pasok was being dishonest when he signed an Agreement allowing one of his clients (Francisco Erazo) to receive Lourdes's share even if they were opposing parties in a pending civil case.[33]

---

[28] Id. at 244.

[29] Id. at 251-279.

[30] *Rollo*, Vol. II, pp. 407-408.

[31] Id. at 419-505.

[32] Id. at 855-857.

[33] Id.

Also, the OBC found as inappropriate and irregular Atty. Pasok's receipt of ₱23,782.00 and ₱162,178.03 from the proceeds of the mortgage agreement which he himself notarized.

Taking these into account, the OBC found that Atty. Pasok had fallen short of the high standard of morality, honesty, integrity and fair dealing required of him as a lawyer. Atty. Pasok used his knowledge of the law to secure undue gains for himself even when he knew that the practice of law is imbued with public interest and that he has duties to his clients, his fellow lawyers, the courts, and the public to act in accordance with the law.[34]

The Ruling of the Court

The Court adopts the findings of the OBC but modifies its recommended penalty to suspension from the practice of law for five (5) years, revocation of his current notarial commission, if any, and disqualification from being commissioned as notary public for five (5) years.

Atty. Pasok argues that the instant Complaint was not properly notarized.[35] He asserts that Lourdes was ill and bedridden in Sultan Kudarat during the execution of the Complaint and that Nilo could not have personally appeared before the notary public whose office is in Malabon City. Moreover, he claims that the attorneys-in-fact of the Elangas who permanently reside in Marilao, Bulacan, could have brought the prepared Complaint to Sultan Kudarat for Lourdes and Nilo to sign; thus, the same was not personally signed and sworn to before the notary public in Malabon City.[36]

Moreover, Atty. Pasok avers that the IBP-BOG did not clearly state the facts and its reasons for increasing the penalty to a

---

[34] Id.

[35] See *Rollo*, Vol. I, p. 11.

[36] *Rollo*, Vol. II, pp. 444-446.

one-year suspension, contrary to Section 12, Rule 139-B[37] of the Rules of Court.[38] In the same manner, Atty. Pasok argues that the Investigating Commissioner's Report and Recommendation tackled issues which were not raised in the Complaint.[39]

Our Ruling

Atty. Pasok's contentions fail to persuade.

Atty. Pasok's claim of irregularity in the notarization of the instant Complaint is speculative at best and not supported by proof. His arguments were pure conjectures and unverified. Moreover, he did not convincingly demonstrate that it was absolutely impossible for the Elangas to appear before the notary public in Malabon City. In any case, assuming that the Elangas did not personally appear before the notary public, such defect is not fatal to the Complaint's validity. In line with this, Section 11, Rule 139-B of the Rules of Court states:

SEC. 11. *Defects*. - No defect in a complaint, notice, answer, or in the proceeding or the Investigator's Report shall be considered as substantial unless the Board of Governors, upon considering the whole record, finds that such defect has resulted or may result in a

---

[37] **SEC. 12.** *Review and decision by the Board of Governors*. - (a) Every case heard by an investigator shall be reviewed by the IBP Board of Governors upon the record and evidence transmitted to it by the Investigator with his report. The decision of the Board upon such review shall be in writing and shall clearly and distinctly state the facts and the reasons on which it is based. It shall be promulgated within a period not exceeding thirty (30) days from the next meeting of the Board following the submittal of the Investigator's report.

(b) If the Board, by the vote of a majority of its total membership, determines that the respondent should be suspended from the practice of law or disbarred, it shall issue a resolution setting forth its findings and recommendations which, together with the whole record of the case, shall forthwith be transmitted to the Supreme Court for final action.

x x x x

[38] *Rollo*, Vol. II, pp. 450-452.

[39] Id. at 469-470.

miscarriage of justice, in which event the Board shall take such remedial action as the circumstances may warrant, including invalidation of the entire proceedings.[40]

The alleged defect in the notarization of the Complaint could not be considered substantial and did not result in a miscarriage of justice since Atty. Pasok was able to fully participate in the proceedings before the IBP. Atty. Pasok did not submit proof to substantiate his allegations. Additionally, there is a presumption of regularity[41] in the performance of duty by the notary public that he notarized the Complaint in accordance with the rules, absent clear and convincing proof to the contrary.

Likewise, we are not convinced with Atty. Pasok's contention that the IBP-BOG did not explain the basis for its recommendation to increase the penalty to a suspension of one year. The IBP-BOG specifically indicated in its Resolution that it approved the Report and Recommendation of the Investigating Commissioner and thereby made the same an integral part of Resolution No. XXI-2015-149.[42] Moreover, the IBP-BOG clearly stated in the same Resolution that Atty. Pasok violated Canon 1, Rules 1.01, 1.02 and 1.03 of the CPR, hence, it recommended the penalty of one (1)-year suspension from the practice of law. Such ratiocination, however brief, suffices since the Investigating Commissioner already adequately provided the details in the Report and Recommendation which the IBP-BOG expressly adopted. Besides, the resolutions of the IBP-BOG are only recommendatory and always subject to the Court's review.[43] Thus, the IBP-BOG's Resolution cannot be deemed as a final decision in this administrative case since the Court

---

[40] RULES OF COURT, Rule 139-B, § 11.

[41] *See Lozano v. Fernandez*, G.R. No. 212979, February 18, 2019 citing *Heirs of Spouses Liwagon v. Heirs of Spouses Liwagon*, 748 Phil. 675, 686 (2014).

[42] *Rollo*, Vol. I, p. 244.

[43] *Heirs of Tan, Sr. v. Beltran*, 805 Phil. 1, 7 (2017) citing *Spouses Williams v. Enriquez*, 722 Phil. 102, 109 (2013).

is vested with the power to either affirm, modify or reverse the IBP-BOG's Resolutions.

Atty. Pasok further argues that the Report and Recommendation tackled issues which were not raised in the Complaint.[44] This argument is bereft of merit. Suffice it to state that the Court has the authority to look into relevant issues pursuant to its disciplinary power,[45] especially when the important details were provided in the Complaint and the subsequent pleadings of both parties. Here, we find that the Complaint sufficiently raised the pertinent issues which needed to be resolved.

With regard to the substantive issues, the Elangas[46] alleged that Atty. Pasok allowed the mortgage[47] and even notarized the document evidencing the same despite knowing the pendency of Civil Case No. 204 and that the copy of the title of the subject lot was in the Elangas' possession. Purportedly, Lourdes and Nilo were likewise not made aware of the mortgage as they alleged that the signature of Lourdes was forged. Furthermore, Atty. Pasok allowed Francisco to receive Lourdes's share from the proceeds of the mortgage despite knowing that Francisco and Lourdes were opposing parties in the civil case. To make matters worse, the Agreement[48] provided that Atty. Pasok received ₱23,782.00 as part of the proceeds of the mortgage transaction. Undeniably, Atty. Pasok's receipt of part of the proceeds of the mortgage is highly irregular. Additionally, the Agreement was signed only by the plaintiffs and Atty. Pasok. Lourdes's signature is noticeably absent as supposedly, her brother Francisco, would receive her share. Yet, there was no proof presented showing that Lourdes actually agreed to this arrangement.

---

[44] *Rollo*, Vol. II, pp. 469-470.

[45] *See OCA v. Judge Paderanga*, 505 Phil. 143, 154 (2005).

[46] *Rollo*, Vol. I, pp. 209-210.

[47] Id. at 26-28.

[48] Id. at 29.

Moreover, in the same Agreement, Atty. Pasok also received ₱162,178.03 from the proceeds of the mortgage supposedly for delivery and deposit to DBP to facilitate the release of the owner's copy of the title of the subject lot. This is questionable given that the said amount should be given to the Elangas and not to DBP since the Elangas already redeemed the subject lot from DBP. Curiously, though, according to Catalina Erazo Dela Gracia (one of Atty. Pasok's clients), in her Affidavit[49] dated October 15, 2015, they (the plaintiffs) gave the said amount to the Sheriff to turn over to Lourdes and Nilo. Since the Elangas refused to receive the same, the money was returned to Catalina and not to Atty. Pasok as alleged by Lourdes and Nilo. Nevertheless, regardless of who actually received the money, it was improper for Atty. Pasok to be among the recipients of the proceeds of the mortgage.

To stress, Atty. Pasok notarized the document evidencing the Real Estate Mortgage and received part of the proceeds thereof as expressly stated in the Agreement, specifically in the amounts of ₱162,178.03 and ₱23,782.00. By notarizing the mortgage document and subsequently receiving part of the proceeds thereof, Atty. Pasok violated Rule 4, Section 3 of the 2004 Rules of Notarial Practice which states:

> SEC. 3. Disqualifications. - A notary public is disqualified from performing a notarial act if he:
>
> x x x x
>
> (b) will receive, as a direct or indirect result, any commission, fee, advantage, right, title, interest, cash, property, or other consideration, except as provided by these Rules and by law; x x x[50]

Otherwise stated, Atty. Pasok was disqualified from notarizing the Real Estate Mortgage document since he will directly or indirectly gain from the mortgage's proceeds, as he in fact did thereafter.

---

[49] Id. at 296-297.

[50] 2004 Rules on Notarial Practice, A.M. No. 02-8-13-SC, July 6, 2004, Rule 4, § 3.

The Elangas consistently asserted that Lourdes's signature in the Deed of Extra-Judicial Partition was forged. To prove this claim, they asked for Lourdes's signatures in relevant documents to be professionally examined. Notwithstanding this, they insisted that Atty. Pasok allowed Lourdes's signature to be forged in the said document.[51] The Court will have to refrain from resolving this contention since "[d]isbarment proceedings based on falsification or forgery of public documents should not be the occasion to establish the falsification or forgery. Such bases should first be duly and competently established either in criminal or civil proceedings appropriate for that purpose."[52]

"[T]he quantum of proof necessary for a finding of guilt in a disbarment case is substantial evidence or that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion. The complainant has the burden of proving his allegations against respondents."[53] In the case at bench, the Elangas proved with substantial evidence that Atty. Pasok committed several infractions pertaining to his participation in relevant documents concerning the opposing parties not only as a retained counsel but also as a notary public, and which involved monetary considerations which he improperly received.

In light of these circumstances, the Court finds that Atty. Pasok violated Rules 1.01, 1.02 and 1.03 of Canon 1 as well as Rule 16.01 of Canon 16 of the CPR, as follows:

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

---

[51] *Rollo*, Vol. I, pp. 337-338, 344-345.

[52] *Flores-Salado v. Atty. Villanueva, Jr.*, 796 Phil. 40, 43 (2016).

[53] *Vantage Lighting Philippines, Inc. v. Diño, Jr.*, A.C. Nos. 7389 & 10596, July 2, 2019 citing *Cabas v. Sususco*, 787 Phil. 167, 174 (2016), as cited in *Reyes v. Nieva*, 794 Phil. 360, 379 (2016).

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

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

Rule 1.03 – A lawyer shall not, for any corrupt motive or interest, encourage any suit or proceeding or delay any man's cause.

x x x x

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

Rule 16.01 – A lawyer shall account for all money or property collected or received for or from the client.

Likewise, he violated the Lawyer's Oath[54] when he did not conduct himself as a lawyer according to the best of his knowledge and discretion with all good fidelity to the courts as well as to his clients.

Considering the totality of the circumstances in the present case, We find it apt to modify the recommendation of the OBC by increasing the penalty of suspension to five (5) years from the practice of law upon Atty. Pasok effective upon receipt of this Resolution for violating the Lawyer's Oath, Rules 1.01, 1.02 and 1.03, Canon 1, Rule 16.01, Canon 16 of the CPR, and Section 3, Rule 4 of the 2004 Rules on Notarial Practice,[55] as

---

[54] I, x x x do solemnly swear that I will maintain allegiance to the Republic of the Philippines, I will support its Constitution and obey the 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 or willingly promote or sue any groundless, false, or unlawful suit, nor 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 this voluntary obligation without any mental reservation or purpose of evasion. So help me God.[54] (Emphasis supplied)

[55] See *Agustin v. Laeno*, A.C. No. 8124, March 19, 2019; *Muntuerto, Jr. v. Duyongco*, A.C. No. 12289, April 2, 2019.

well as revocation of his current notarial commission, if any, and disqualification from being commissioned as notary public for five (5) years.

The infraction which Atty. Pasok committed as a notary public merits a revocation of his incumbent commission, if any, and a disqualification from being commissioned as a notary public for five (5) years. Withal, Atty. Pasok should bear in mind that "[l]awyers commissioned as notaries public are mandated to discharge with fidelity the duties of their offices, such duties being dictated by public policy and impressed with public interest."[56] Indeed, Atty. Pasok's "failure to properly perform his duty as a notary public resulted not only in damage to those directly affected by the notarized document, but also in undermining the integrity of the office of a notary public and in degrading the function of notarization."[57] Therefore, taking all of Atty. Pasok's transgressions as a whole, it is but appropriate that a suspension from the practice of law for five (5) years be imposed upon him.

WHEREFORE, for violating the Lawyer's Oath as well as the Code of Professional Responsibility, Atty. Rutillo B. Pasok is **SUSPENDED** from the practice of law for five (5) years effective upon receipt of this Decision with a **STERN WARNING** that a repetition of the same or similar acts shall be dealt with more severely. He is likewise found guilty of violating the 2004 Rules on Notarial Practice; thus, his present notarial commission, if presently commissioned, is **REVOKED** and he is **DISQUALIFIED** from reappointment as notary public for a period of five (5) years. He is ordered to **ACCOUNT** for the amounts of ₱162,178.03 as well as ₱23,782.00 that he received from the proceeds of the real estate mortgage with the obligation to **RETURN** the entire amount to his clients.

---

[56] *Orola v. Baribar*, A.C. No. 6927, March 14, 2018 citing *Agbulos v. Viray*, 704 Phil. 1, 9 (2013).

[57] *Bartolome v. Basilio*, 771 Phil. 1, 10 (2015).

Respondent is **DIRECTED** to file a Manifestation to this 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 the personal record of Atty. Rutillo B. Pasok as an attorney; to the Integrated Bar of the Philippines; and to the Office of the Court Administrator for dissemination to all courts throughout the country for their guidance and information.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Leonen, Gesmundo, Carandang, Lazaro-Javier, Inting, Zalameda, Lopez, and *Gaerlan, JJ.*, concur.

Caguioa and *Delos Santos, JJ.*, on official leave.

Baltazar-Padilla, J., on leave.

EN BANC

[A.M. No. 16-03-29-MTCC. September 29, 2020]

IN RE: ALLEGED CIVIL SERVICE EXAMINATIONS IRREGULARITY OF MR. VILLAMOR D. BAUTISTA, CASHIER I, AND MS. ERLINDA T. BULONG, CLERK IV, OFFICE OF THE CLERK OF COURT, BOTH OF THE MUNICIPAL TRIAL COURT IN CITIES, SANTIAGO CITY, ISABELA

[A.M. No. 17-01-16-MTCC. September 29, 2020]

IN RE: ANONYMOUS COMPLAINT AGAINST DOCKET CLERK ERLINDA BULONG, OFFICE OF THE CLERK OF COURT, MUNICIPAL TRIAL COURT IN CITIES, SANTIAGO CITY, ISABELA

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT NO. 9416; CIVIL SERVICE EXAMINATION; CHEATING, DEFINED; ANY FORM OF CHEATING IN CIVIL SERVICE EXAMINATIONS IS ILLEGAL AND UNLAWFUL; CASE AT BAR. — Republic Act No. 9416 has declared "any form of cheating in civil service examinations" to be **illegal and unlawful.** Specifically, Section 3 (b) defines cheating, to wit:

> (b) Cheating — refers to any act or omission before, during or after any civil service examination that will directly or indirectly undermine the sanctity and integrity of the examination such as, but not limited to, the following:
>
> (1) Impersonation;
>
> xxx
>
> (7) Possession and or use of fake certificate of eligibility; xxx

These are the acts being attributed to Bautista and Bulong. Both deny the charges and claim lack of knowledge of the irregularity, but the evidence, nonetheless, bears out their guilt.

2. ID.; ID.; ID.; ID.; IMPERSONATION OR SUBSTITUTION IN CIVIL SERVICE EXAMINATIONS; CASE AT BAR. — An examination of the picture seat plan which bears the name of Bautista clearly shows the picture of a person different from the person whose picture appears in Bautista's PDS. The signature used by Bautista in his PDS is also unmistakably different from the signature that appears on the picture seat plan.

Bautista never explained these glaring discrepancies. Instead, Bautista relies only on denial. However, "[i]t is well-settled that denial is an inherently weak defense. To be believed, it must be buttressed by strong evidence of non-culpability; otherwise, such denial is purely self-serving and is with no evidentiary value."

3. ID.; ID.; ID.; ID.; ID.; THE OFFENSE OF IMPERSONATION CANNOT PROSPER WITHOUT THE CONSENT OF THE PERSON BEING IMPERSONATED; CASE AT BAR. — Bulong never even claimed that she took the exam herself, explaining that she had gained her civil service eligibility as a member of a cultural minority. She, however, has not given a sufficient explanation why her name, signature, and birthday appeared in the picture seat plan. Instead, Bulong accuses her husband and his mistress of conspiring against her.

. . .

Bulong did not present any evidence to support this claim. Neither did she explain why they devised the scheme against her. Moreover, if there was indeed such a scheme, Bulong never informed the CSC, her superiors in the MTCC, or even this Court, of this plot.

As the Court has previously noted, "[i]n the offense of impersonation, there are always two persons involved. The offense cannot prosper without the active participation of both persons." That she claimed the test results as her own further convinces the Court that the plot was known to Bulong.

4. ID.; ID.; ID.; ID.; REMEDIAL LAW; EVIDENCE; AUTHENTICATION AND PROOF OF DOCUMENTS; PUBLIC DOCUMENTS AS EVIDENCE; THE CIVIL SERVICE COMMISSION'S "PICTURE SEAT PLAN" OF THE CAREER SERVICE SUB-PROFESSIONAL EXAMINATION IS A PUBLIC DOCUMENT WHICH IS ADMISSIBLE IN EVIDENCE

WITHOUT NEED OF PROOF OF ITS AUTHENTICITY AND DUE EXECUTION. — [N]oteworthy is that neither Bautista nor Bulong disputed the authenticity of the picture seat plan.

The records of the CSC are "presumed correct and made in the regular course of official business." In particular, the Court has recognized the picture seat plan as "a public document which is admissible in evidence without need of proof of its authenticity and due execution." As such, "the entries thereof made in the course of official duty are *prima facie* evidence of the facts stated therein."

5. ID.; ID.; ID.; ID.; ID.; PRESUMPTIONS; THE CIVIL SERVICE COMMISSION PERSONNEL WHO ADMINISTERED THE CIVIL SERVICE EXAMINATION ARE PRESUMED TO HAVE REGULARLY PERFORMED THEIR OFFICIAL DUTIES. — The Court has also upheld the presumption of regularity in the performance of official duties of the CSC personnel, thus:

> Those government employees who prepared the [picture seat plan] and who supervised the conduct of the Career Service Sub-Professional Examination xxx, enjoy the presumption that they regularly performed their duties and this presumption cannot be disputed by mere conjectures and speculations.

Both Bautista and Bulong failed to overcome the presumption of regularity in administering the civil service exam. They also did not present any proof to counter the CSC's documentary evidence.

6. ID.; ID.; ID.; ID.; DISHONESTY; KNOWINGLY USING A FALSE CERTIFICATE OF CIVIL SERVICE ELIGIBILITY FOR ONE'S OWN ADVANTAGE IS DISHONESTY, WHICH WARRANTS THE PENALTY OF DISMISSAL FROM SERVICE; CASE AT BAR. — Bautista and Bulong have not satisfactorily explained why they claimed the results of the exams in their PDS. If it is true that they have no knowledge of the irregularity on taking the exam, they should not have claimed these results in their PDS knowing the same to be false information.

Even if the Court were inclined to believe they were not party to the irregularity, it does not overturn the fact that they knowingly used the false Certificate of Eligibility for their own advantage.

On this matter, the law and CSC rules are clear: "the use of a false certificate of eligibility constitutes an act of dishonesty under civil service rules warranting the penalty of dismissal." The same acts also "resulted to the prejudice of the government and the public in general," which the Court will never countenance.

7. ID.; ID.; ID.; ID.; ID.; FALSIFICATION OF PUBLIC DOCUMENTS; CLAIMING THE RESULTS OF THE CIVIL SERVICE EXAMINATION THAT ONE DID NOT TAKE AND REFLECTING THE SAME IN THE PERSONAL DATA SHEET (PDS) IS DISHONESTY AND FALSIFICATION OF OFFICIAL DOCUMENT; CASE AT BAR. — In claiming the results of the civil service exam **they did not take** as their own and reflecting the same in their PDS, Bautista and Bulong committed Dishonesty and Falsification of Official Document. Falsification of the PDS is considered a "dishonest act related to [their] employment" and "shows lack of integrity or a disposition to defraud, cheat, deceive or betray and an intention to violate the truth."

8. ID; ID.; ID.; ID.; ID.; GRAVE MISCONDUCT; GRAVE OFFENSES WARRANT THE PENALTY OF DISMISSAL FROM THE SERVICE; CASE AT BAR. — Bautista and Bulong are both guilty of Serious Dishonesty, Grave Misconduct, and Falsification of Official Document. These are all grave offenses, making them unfit to remain as public servants and employees of the judiciary.

By their acts, Bautista and Bulong "failed to take heed of the Code of Conduct for Court Personnel, which regards all court personnel as sentinels of justice expected to refrain from any act of impropriety." The Court has always maintained that Judiciary employees are required to strictly and faithfully adhere to the highest degree of ethical conduct. In failing to do so, Bautista and Bulong have forfeited their place in its esteemed halls.

9. ID.; ID.; ID.; ID.; ID.; THE PENALTY OF DISMISSAL SHALL NOT CARRY WITH IT THE FORFEITURE OF ACCRUED LEAVE BENEFITS. — While the OCA recommended the forfeiture of Bautista's leave credits from the time of his employment in the judiciary because he was not qualified for the position, the Court, however, finds no legal basis for the

same. In *Cabanatan v. Molina*, where a sheriff of the Regional Trial (RTC) was dismissed from the service, the Court, in ordering the forfeiture of therein respondent's retirement benefits, **except his accrued leave credits,** applied by analogy, Rule 140, Section 11(1) of the Rules of Court on the discipline of judges and justices of the Sandiganbayan and the Court of Appeals [:] . . .

. . .

The Court also notes that in previous cases of Dishonesty committed through falsification of civil service eligibility, impersonation, or falsification of the PDS, where the penalty imposed is dismissal from the service with forfeiture of all retirement benefits, the Court explicitly excludes accrued leave benefits from such forfeiture.

D E C I S I O N

***PER CURIAM*:**

Before the Court are two administrative complaints for Grave Misconduct, Dishonesty, and Falsification of Public Documents against two employees of the Office of the Clerk of Court, Municipal Trial Court in Cities (MTCC), Santiago City, Isabela: Villamor D. Bautista (Bautista), Cashier I, and Erlinda Bulong (Bulong), Docket Clerk.

Antecedents

In a letter[1] dated 28 January 2016, the Civil Service Commission (CSC) referred to the Office of the Court Administrator (OCA) the results of its investigation into alleged serious dishonesty committed by Bautista and Bulong.

The charges stem from irregularities in taking the civil service exam. Bautista supposedly took the civil service exam on 19 June 1997 in Quezon City, while Bulong took the exam on 24 May 1998 in Tuguegarao City, Cagayan. However, the CSC found discrepancies when it compared the photos in their Personal

[1] *Rollo* (A.M. No. 16-03-29-MTCC), pp. 2-3.

Data Sheets (PDS) to their photos in the picture seating plan during their respective exams.

Meanwhile, the OCA received an anonymous complaint[2] proffering the same allegations against Bulong.

The OCA directed Bautista and Bulong to comment on the CSC's report.[3] In his Comment,[4] Bautista denied the charge and maintained that he has been serving the Judiciary faithfully since 1997. On the other hand, Bulong denied the allegation saying that she did not take the civil service exam but instead availed of the "cultural minority eligibility" since she was an *Ybanag*.[5]

In a Resolution[6] dated 20 March 2017, the Court ordered the complaints to be consolidated and referred to Executive Judge Alexander De Guzman for investigation, report, and recommendation.[7]

In his Report,[8] Judge De Guzman found Bautista and Bulong administratively liable. First, Judge De Guzman found that there was indeed another person who took the civil service exam in Bulong's name, but she denied knowing that person. She also denied taking the civil service exam, but admitted reflecting the results thereof in her PDS, making it appear that she did take and pass the exam. She claimed that she made a mistake and pleaded for mercy since she did not use the same to apply for a promotion.

Second, Judge De Guzman held that Bautista failed to substantiate his claim that he personally took the exam and

---

[2] Docketed as A.M. No. 17-01-16-MTCC.

[3] *Rollo* (A.M. No. 16-03-29-MTCC), p. 36.

[4] *Id.* at 55-56.

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

[6] *Rollo* (A.M. No. 17-01-16-MTCC), pp. 4-5.

[7] *Rollo* (A.M. No. 16-03-29-MTCC), p. 60.

[8] *Id.* at 67-68.

submitted his own picture for that purpose. Judge De Guzman found Bautista's explanation for why the picture of another person appears in the picture seat plan to be insubstantial. The investigating judge noted that Bautista cannot deny the identity of the person who took the exam because he himself knew the person to be Romeo Gatcheco, former sheriff of Branch 1, MTCC Santiago City.

Findings of the Office of the Court Administrator

The OCA adopted Judge De Guzman's findings and recommendation.[9] The OCA found that while Bulong admitted that she did not take the civil service exam and claimed to not know who actually did take it, she still claimed the result as her own. It was noted that the test result is reflected in Bulong's PDS. The OCA also brushed aside Bulong's claim that the irregularity is part of a plot concocted by her husband's mistress, who supposedly has relatives in the CSC.

As to Bautista, the OCA held that his denials were unsupported by any corroborating testimony. The OCA also rejected Bautista's claim that he did not know the person whose picture appears in the picture seat plan, noting that even Judge De Guzman recognized that person as a former Santiago City MTCC employee; hence, Bautista's former co-worker.[10]

The OCA averred that while neither Bautista nor Bulong used the falsified civil service eligibility for promotion, both "enjoyed their respective permanent positions without the requisite eligibility."[11]

The OCA recommended that Bautista and Bulong be found guilty of Grave Misconduct, Dishonesty, and Falsification of Public Documents, and dismissed from the service with forfeiture

---

[9] *Id.* at 97-101.

[10] *Id.* at 99.

[11] *Id.* at 100.

of retirement benefits and disqualification from government employment.[12]

Further, the OCA also recommended the forfeiture of Bautista's accrued leave credits from the day of his appointment as Cashier I (09 December 1997) until the present because he was ineligible for the position.

Issue

The lone issue now before the Court is whether Bautista and Bulong are guilty of Grave Misconduct, Dishonesty, and Falsification of Public Documents.

Ruling of the Court

The Court adopts the findings and recommendation of the OCA.

Republic Act No. 9416[13] has declared "any form of cheating in civil service examinations" to be **illegal and unlawful**. Specifically, Section 3 (b) defines cheating, to wit:

> (b) Cheating — refers to any act or omission before, during or after any civil service examination that will directly or indirectly undermine the sanctity and integrity of the examination such as, but not limited to, the following:
>
> (1) Impersonation;
>
> x x x
>
> (7) Possession and or use of fake certificate of eligibility; x x x

These are the acts being attributed to Bautista and Bulong. Both deny the charges and claim lack of knowledge of the irregularity, but the evidence, nonetheless, bears out their guilt.

---

[12] *Id.* at 101.

[13] An Act Declaring as Unlawful Any Form of Cheating in Civil Service Examinations, Unauthorized Use and Possession of Civil Service Commission (CSC) Examination-Related Materials, and Granting the CSC Exclusive Jurisdiction Over These Cases Including Those Committed by Private Individuals (2007).

An examination of the picture seat plan[14] which bears the name of Bautista clearly shows the picture of a person different from the person whose picture appears in Bautista's PDS.[15] The signature used by Bautista in his PDS[16] is also unmistakably different from the signature that appears on the picture seat plan.[17]

Bautista never explained these glaring discrepancies. Instead, Bautista relies only on denial. However, "[i]t is well-settled that denial is an inherently weak defense. To be believed, it must be buttressed by strong evidence of non-culpability; otherwise, such denial is purely self-serving and is with no evidentiary value."[18]

No such evidence was offered by Bautista. On the contrary, the evidence shows that the person whose picture appears on the picture seat plan is Bautista's former co-worker, and someone known enough within the Santiago City MTCC for Judge De Guzman himself to recognize. Bautista did not deny this fact; indeed, he did not even address this important point in his explanation.

Interesting, too, is that Bautista never proffered evidence to support his claim that he took the exam himself. The only conclusion is that such exonerating evidence does not exist.

On the other hand, Bulong's claim of her own lack of knowledge fails to persuade. It is noteworthy that the signature on the picture seat plan appears to be similar to Bulong's signature on her PDS. Likewise, the person who signed the picture seat

---

[14] *Rollo* (A.M. No. 16-03-29-MTCC), p. 32.

[15] *Id.* at 28.

[16] *Id.*

[17] *Id.* at 32.

[18] *Anonymous Complaint dated May 3, 2013, Re: Fake Certificates of Civil Service Eligibility of Ragel, et al.*, A.M. No. 14-10-314-RTC, 28 November 2017.

plan gave the exact same date as her birthday. Yet, the photo[19] that appears on the picture seat plan is of a person indubitably different from the person whose picture appears in Bulong's PDS.[20]

Bulong never even claimed that she took the exam herself, explaining that she had gained her civil service eligibility as a member of a cultural minority.[21] She, however, has not given a sufficient explanation why her name, signature, and birthday appeared in the picture seat plan. Instead, Bulong accuses her husband and his mistress of conspiring against her.

Pinning the blame on a nefarious plot by a wayward husband and his mistress is not even new. In *Office of the Court Administrator v. Bermejo*,[22] the offender employed the same tired tactic to evade liability. The Court in that case noted that Bermejo was unable to explain how her husband and his mistress could have manipulated the CSC personnel and persuade another person to take the exam in her name.

Needless to say, the Court was not swayed then and it is not swayed now.

Bulong did not present any evidence to support this claim. Neither did she explain why they devised the scheme against her. Morever, if there was indeed such a scheme, Bulong never informed the CSC, her superiors in the MTCC, or even this Court, of this plot.

As the Court has previously noted, "[i]n the offense of impersonation, there are always two persons involved. The offense cannot prosper without the active participation of both persons."[23] That she claimed the test results as her own further convinces the Court that the plot was known to Bulong.

---

[19] *Rollo* (A.M. No. 16-03-29-MTCC), p. 34.

[20] *Id.* at 30.

[21] *Id.* at 30.

[22] A.M. No. P-05-2004, 14 March 2008.

[23] *Re: Civil Service Examination Irregularity (Impersonation) of Ms. Elena T. Valderoso, Cash Clerk II, Office of the Clerk of Court, Municipal*

Also noteworthy is that neither Bautista nor Bulong disputed the authenticity of the picture seat plan.

The records of the CSC are "presumed correct and made in the regular course of official business."[24] In particular, the Court has recognized the picture seat plan as "a public document which is admissible in evidence without need of proof of its authenticity and due execution."[25] As such, "the entries thereof made in the course of official duty are *prima facie* evidence of the facts stated therein."[26]

The Court has also upheld the presumption of regularity in the performance of official duties of the CSC personnel, thus:

> Those government employees who prepared the [picture seat plan] and who supervised the conduct of the Career Service Sub-Professional Examination xxx, enjoy the presumption that they regularly performed their duties and this presumption cannot be disputed by mere conjectures and speculations.[27]

Both Bautista and Bulong failed to overcome the presumption of regularity in administering the civil service exam. They also did not present any proof to counter the CSC's documentary evidence.

More importantly, Bautista and Bulong have not satisfactorily explained why they claimed the results of the exams in their PDS. If it is true that they have no knowledge of the irregularity on taking the exam, they should not have claimed these results in their PDS knowing the same to be false information.

Trial Court in Cities, Antipolo City, A.M. No. P-16-3423, February 16, 2016.

[24] *Dumduma v. CSC*, G.R. No. 182606, 04 October 2011.

[25] *CSC v. Vergel de Dios*, G.R. No. 203536, 04 February 2015.

[26] *Office of the Court Administrator v. Bermejo*, A.M. No. P-05-2004, 14 March 2008. *Supra at note 22*.

[27] *CSC v. Vergel de Dios, supra at note 25*, citing *Donato v. CSC Regional Office 1*, G.R. No. 165788, 07 February 2007.

Even if the Court were inclined to believe they were not party to the irregularity, it does not overturn the fact that they knowingly used the false Certificate of Eligibility for their own advantage.[28]

On this matter, the law and CSC rules are clear: "the use of a false certificate of eligibility constitutes an act of dishonesty under civil service rules warranting the penalty of dismissal."[29] The same acts also "resulted to the prejudice of the government and the public in general,"[30] which the Court will never countenance.

In claiming the results of the civil service exam **they did not take** as their own and reflecting the same in their PDS, Bautista and Bulong committed Dishonesty and Falsification of Official Document. Falsification of the PDS is considered a "dishonest act related to [their] employment"[31] and "shows lack of integrity or a disposition to defraud, cheat, deceive or betray and an intention to violate the truth."

Finally, the court agrees with the OCA's recommendation on the penalty to be imposed on the transgressing employees.

Section 9 of R.A. No. 9416 states:

SECTION 9. Administrative Liability. — Any person found administratively liable under any of the acts mentioned above, shall be liable for serious dishonesty and grave misconduct and shall be dismissed from the service with all the accessory penalties for government employees. Nongovernment employees found administratively liable shall be perpetually barred from entering government service and from taking any government examination.

---

[28] *See Re: Alleged Illegal Acquisition of a Career Service Eligibility of Ma. Aurora P. Santos,* A.M. No. 05-5-05-CA, 27 January 2006.

[29] *Id.*

[30] *See Re: Complaint of the Civil Service Commission, Cordillera Administrative Region, Baguio City against Rita S. Chulyao,* A.M. No. P-07-2292, 28 September 2010.

[31] *Re: Anonymous Letter Complaint v. Judge Samson,* A.M. No. MTJ-16-1870, 06 June 2017.

Meanwhile, the 2017 Rules on Administrative Cases in the Civil Service (RAACCS)[32] makes the following classification of offenses:

> Rule 10
> ADMINISTRATIVE OFFENSES AND PENALTIES
>
> **Section 50. *Classification of Offenses.*** Administrative offenses with corresponding penalties are classified into grave, less grave and light, depending on the depravity and effect on the government service.
>
> A. The following grave offenses shall be punishable by dismissal from the service:
>
> 1. **Serious dishonesty**;
> 2. Gross Neglect of Duty;
> 3. **Gross Misconduct**;
> 4. Being Notoriously Undesirable;
> 5. Conviction of Crime Involving Moral Turpitude;
> 6. **Falsification of Official Document**;
>
> x x x (Emphasis supplied.)

Bautista and Bulong are both guilty of Serious Dishonesty, Grave Misconduct, and Falsification of Official Document. These are all grave offenses, making them unfit to remain as public servants and employees of the judiciary.[33]

By their acts, Bautista and Bulong "failed to take heed of the Code of Conduct for Court Personnel, which regards all court personnel as sentinels of justice expected to refrain from any act of impropriety."[34] The Court has always maintained that Judiciary employees are required to strictly and faithfully adhere to the highest degree of ethical conduct. In failing to do so, Bautista and Bulong have forfeited their place in its esteemed halls.

---

[32] CSC Resolution No. 1701077, 03 July 2017. Emphasis supplied. See also *Re: Alleged Dishonesty and Falsification of Civil Service Eligibility of Mr. Samuel R. Ruñez, Jr.*, A.M. No. 2019-18-SC, 28 January 2020.

[33] *Bartolata v. Julaton*, A.M. No. P-02-1638, 06 July 2006.

[34] *CSC v. Longos*, A.M. No. P-12-3070, 11 March 2014.

While the OCA recommended the forfeiture of Bautista's leave credits from the time of his employment in the judiciary because he was not qualified for the position, the Court, however, finds no legal basis for the same. In *Cabanatan v. Molina*,[35] where a sheriff of the Regional Trial Court (RTC) was dismissed from the service, the Court, in ordering the forfeiture of therein respondent's retirement benefits, **except his accrued leave credits**,[36] applied by analogy, Rule 140, Section 11 (1) of the Rules of Court on the discipline of judges and justices of the Sandiganbayan and the Court of Appeals, to wit:

SEC. 11. *Sanction*. — A. If the respondent is guilty of a serious charge,[37] any of the following sanctions may be imposed:

1. Dismissal from the services, forfeiture of all or part of the benefits as the Court may determined, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations, **Provided, however, that the forfeiture of benefits shall in no case include accrued leave credits**;

x x x x (Emphasis supplied.)

The Court also notes that in previous cases[38] of Dishonesty committed through falsification of civil service eligibility, impersonation, or falsification of the PDS, where the penalty imposed is dismissal from the service with forfeiture of all retirement benefits, the Court explicitly excludes accrued leave benefits from such forfeiture.

WHEREFORE, the foregoing premises considered, the Court finds:

---

[35] A.M. No. P-01-1520, 21 November 2001.

[36] See *also CSC v. Sta. Ana*, A.M. No. P-03-1696, 30 April 2003 and *CSC v. Hadji Ali*, A.M. No. SCC-08-11-P, 18 June 2013.

[37] SEC. 8. *Serious charges*. — Serious charges include:

x x x

2. Dishonesty x x x

[38] See *Momongan v. Sumayo*, A.M. No. P-10-2767, 12 April 2011; *CSC v. Longos*, A.M. No. P-12-3070, 11 March 2014; *Bartolata v. Julaton*, A.M. No. P-02-1638, 06 July 2006; *Re: Alleged Dishonesty and Falsification of Civil Service Eligibility of Mr. Samuel R. Ruñez, Jr., supra at note 32;*

(1) Villamor D. Bautista, Cashier I, Office of the Clerk of Court, Municipal Trial Court in Cities, Santiago City, Isabela **GUILTY** of Grave Misconduct, Dishonesty, and Falsification of Public Documents. He is **DISMISSED** from the service, with **FORFEITURE** of all retirement benefits, excluding accrued leave credits, with disqualification to re-employment in the government or any of its subdivisions, instrumentalities, or agencies, including government-owned or controlled corporations, and without prejudice to any criminal and/or civil liability in a proper action; and

(2) Erlinda Bulong, Docket Clerk, Office of the Clerk of Court, Municipal Trial Court in Cities, Santiago City, Isabela **GUILTY** of Grave Misconduct, Dishonesty, and Falsification of Public Documents. She is **DISMISSED** from the service, with **FORFEITURE** of all retirement benefits, excluding accrued leave credits, and with prejudice to re-employment in the government or any of its subdivisions, instrumentalities, or agencies, including government-owned or controlled corporations, and without prejudice to any criminal and/or civil liability in a proper action.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Leonen, Gesmundo, Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, Lopez, and *Gaerlan, JJ.,* concur.

Caguioa, Delos Santos, and *Baltazar-Padilla, JJ.,* on leave.

Anonymous Complaint dated May 3, 2013, Re: Fake Certificates of Civil Service Eligibility of Ragel, et al., A.M. No. 14-10-314-RTC, 28 November 2017, *supra at note 18*; *Re: Civil Service Examination Irregularity (Impersonation) of Ms. Elena T. Valderoso,* A.M. No. P-16-3423, 16 February 2016, *supra at note 23*; *Dumduma v. CSC*, G.R. No. 182606, 04 October 2011, *supra at note 24*; *Office of the Court Administrator v. Bermejo, supra at note 22*; *Bartolata v. Julaton, supra at note 33*; and *Re: Alleged Illegal Acquisition of a Career Service Eligibility of Ma. Aurora P. Santos, supra at note 28.*

EN BANC

[A.M. No. 20-06-18-MCTC. September 29, 2020]

RE: FINAL REPORT ON THE FINANCIAL AUDIT CONDUCTED IN THE MUNICIPAL CIRCUIT TRIAL COURT, VALLADOLID-SAN ENRIQUE-PULUPANDAN, NEGROS OCCIDENTAL

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; CLERKS OF COURT; DUTIES AS CUSTODIANS OF COURT FUNDS AND REVENUES; DELAYED COMPLIANCE IN CASE AT BAR WARRANTS THE IMPOSITION OF ₱50,000 FINE. — Being the custodians of court funds and revenues, clerks of court have always been reminded of their duty to immediately deposit the various funds received by them to the authorized government depositories pursuant to Administrative Circular No. 35-2004, as amended, dated August 20, 2004; and to timely submit their Monthly Report of Collections, Deposits, and Withdrawals conformably with OCA Circular No. 113-2004 dated September 16, 2004. For the delayed deposit of his judiciary collections and the late submission of his financial reports, Negroprado was indubitably remiss in his duties as branch Clerk of Court II of the MCTC. x x x [T]he Court ADOPTS the recommendation of the OCA that Negroprado must be held administratively liable by a Fine. [The Court] imposes upon him the Fine of ₱50,000.00, to be deducted from the withheld salaries to be released to him.

R E S O L U T I O N

INTING, *J.*:

For consideration is the Final Report[1] dated January 16, 2020 on the financial audit conducted on the books of accounts of Mr. George E. Santos (Santos), Mr. Ignacio D. Denila (Denila),

---

[1] See Memorandum dated January 31, 2020, *rollo*, pp. 1-10.

and Mr. John O. Negroprado (Negroprado) of the Municipal Circuit Trial Court (MCTC), Valladolid-San Enrique-Pulupandan, Negros Occidental.

For reference, the table below shows the designation, accountability period, and status of employment of Santos, Denila, and Negroprado:

Accountable Officer	Designation	Accountability Period	Status of Employment
Santos	Court Interpreter/ Officer-in-Charge (OIC)	1 September 1991 to 31 October 1994; and 1 September 2001 to 30 April 2003	Retired-Compulsorily effective 24 November 2012.
Denila	Clerk of Court II	1 November 1994 to 31 August 2001	Resigned effective 30 April 2003.
Negroprado	Clerk of Court II	1 May 2003 to 30 April 2013	Still in the service[2]

The financial audit was conducted due to Negroprado's failure to submit his monthly financial reports over the following funds maintained by the MCTC: (1) Fiduciary Fund (FF); (2) Sheriff's Trust Fund; (3) Judiciary Development Fund (JDF); (4) Special Allowance for the Judiciary Fund (SAJF); (5) Mediation Fund (MF); and (6) Clerk of Court General Fund-Old (COCGF-Old) and General Fund-New. This resulted in the withholding of his salaries effective April 24, 2009 and his exclusion from the payroll beginning January 2010 to the present.

A. For the FF

The audit of the Court's FF account showed a balance of ₱342,100.00 as of April 30, 2013. However, the balance of the Court's FF account in the Land Bank of the Philippines (LBP),

[2] *Id.* at 1.

Bacolod Branch, Savings Account No. 0421-2704-73 was only ₱89,600.00 disclosing a shortage of ₱252,500.00 *viz.*:

Total Collections (May 1, 2006 to April 30, 2013)	₱1,390,023.50
Less: Valid Withdrawals (same period)	1,047,923.50
Unwithdrawn Fiduciary Fund as of April 30, 2013	₱ 342,100.00
Total Unwithdrawn Fiduciary Fund as of 30 April 2013	₱ 342,100.00
Less: LBP-Bacolod Branch under Savings Account No. 0421-2704-73 as of April 30, 2013	105,155.80
Less: Unwithdrawn Interest	15,555.80
Adjusted Bank Balance	₱ 89,600.00
Balance of Accountability	₱ 252,500.00[3]

The accountability of ₱252,500.00 pertains to Mr. Negroprado which was only settled on January 3, 2019.

B. For the JDF

A financial audit of the JDF also disclosed a shortage of ₱71,932.50 as shown in the table below:

Total Collections (September 1, 1991 to April 30, 2013)	₱281,180.06
Less: Total Remittance (same period)	209,247.56
Balance of Accountability	₱ 71,932.50[4]

The breakdown of the ₱71,932.50 JDF shortage is as follows:

---

[3] *Id.* at 3. Underscoring omitted.

[4] *Id.* at 4.

Accountable Officer	Period Covered	Collections	Deposits	Balance of Accountability (over remittance)
Santos	9/1991 to 10/1994	₱ 8,285.00	₱ 5,490.00	₱ 2,795.00
Restitution-10/9/2008			2,795.00	(2,795.00)
	9/2001 to 4/ 2003	₱ 7,876.00	₱ 7,770.00	106.00
Restitution-10/9/2008			780.00	(780.00)
		₱ 16,161.00	₱ 16,835.00	₱ (674.00)
Denila	11/1994 to 8/2001	₱ 29,152.00	₱ 49,850.00	₱ (20,698.00)
		₱ 29,152.00	₱ 49,850.00	₱ (20,698.00)
Negroprado	5/2003 to 5/2008	₱ 154,775.16	₱ 118,094.76	₱ 36,680.40
Restitution-6/25/2008			10,000.00	(10,000.00)
	6/2008 to 4/2013	81,091.90	14,467.80	66,624.10
Total		₱ 235,867.06	₱ 142,562.56	₱ 93,304.50
Grand Total		₱ 281,180.06	₱ 209,247.56	71,932.50[5]

As could be gleaned from the foregoing, Denila and Santos had excess remittances on the JDF Account. The over remittance made by Denila in the amount of ₱20,698.00 and the ₱674.00 over remittance made by Santos were intended to be deposited to the COCGF-Old. While Denila and Santos had excess remittances, Negroprado incurred a shortage in the amount of ₱93,304.50 which he restituted only on January 3, 2019.

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

C. For the SAJF

The audit of the SAJF likewise disclosed that Negroprado had an accountability balance of ₱152,105.50, to wit:

Total collections (April 1, 2004 to April 30, 2013)	₱	468,425.42
Less: Total Remittances		316,319.92
Balance of Accountability	₱	152,105.50[6]

On January 3, 2019 and November 5, 2019, Negroprado deposited the amount of ₱152,105.30 and ₱0.20, respectively, to settle his accountability on the SAJF account.

D. For the MF

The audit further disclosed that Negroprado incurred an accountability balance of ₱44,000.00 in the MF, to wit:

Total Collections (October 1, 2005 to April 30, 2013)	₱	71,500.00
Less: Total Remittance		27,500.00
Balance of Accountability	₱	44,000.00[7]

The ₱44,000.00 shortage on the MF was only settled by Negroprado on January 3, 2019.

E. For the COCGF-Old

The audit of the COCGF-Old showed that Denila, Santos, and Negroprado had an accountability balance of ₱21,478.00 on the account.

After examination, it was discovered that ₱20,698.00 of the ₱21,478.00 shortage was due to Denila's excess deposit to the

---

[6] *Id.* at 5.

[7] *Id.* at 6.

JDF. Also, Santos' ₱647.00 shortage in the COCGF-Old was also due to his over remittance to the JDF. While Denila and Santos' accountabilities were merely due to their inadvertent excess remittances to the JDF account, Negroprado actually incurred shortage on the COCGF-Old account in the amount of ₱106.00 which he restituted on July 19, 2019.

Collectively, Negroprado incurred shortages on the various judiciary funds in the sum of ₱542,015.80.

On December 4, 2015, Negroprado submitted to Atty. Gilda A. Sumpo, then Chief Judicial Staff Officer, Accounting Division, Financial Management Office (FMO), Office of the Court Administrator (OCA), his explanation that he was forced to use the collections of the Court to sustain the needs of his family. He added that due to his low take-home pay, he incurred loans from the Supreme Court Loan Association and the Government Service Insurance System to pay off his loans for the hospitalization of his three minor children due to dengue fever.

Recommendation of the OCA

In the Memorandum dated January 31, 2020, the OCA found Negroprado to have violated Administrative Circular No. 35-2004, as amended, dated August 20, 2004, and OCA Circular No. 113-2004 dated September 16, 2004. The OCA recommended that Negroprado be fined with the amount of ₱25,000.00 and with a stern warning that a repetition of the same offense will be dealt with more severely.

The OCA, likewise, recommended that the FMO, OCA be directed to: release the withheld salaries and allowances of Negroprado; and deduct therefrom the Fine of ₱25,000.00.

The Court's Ruling

Time and again, the Court has stressed that the behavior of all employees and officials involved in the administration of justice — from judges to the most junior clerks — is circumscribed

with a heavy responsibility. Their conduct must be guided by strict propriety and decorum at all times.[8]

OCA Circular No. 113-2004 dated September 16, 2004 mandates that the Monthly Reports of Collections and Deposits for the JDF, SAJ, and FF should be sent not later than the 10th day of each succeeding month to the Chief Accountant, Accounting Division, FMO, OCA.

Moreover, Administrative Circular No. 35-2004, as amended, dated August 20, 2004 requires that the daily collections of funds in the Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court, MCTC, Shari'a District Court and Shari'a Circuit Court should be deposited everyday with the nearest LBP branch, or if depositing daily is not possible, deposits for the fund shall be at the end of every month, provided, however, that whenever collections for the fund reach ₱500.00, it shall be deposited immediately even before the period above-mentioned.

Being a court personnel holding the position Clerk of Court II, Negroprado was expected to comply with the foregoing circulars by faithfully submitting his monthly reports and by remitting his judiciary collections accordingly. However, Negroprado failed to do so. Record shows that Negroprado incurred shortages on his FF, JDF, SAJF, and MF collections on the following amounts:

1) FF collections from May 1, 2006 to April 30, 2013 in the sum of ₱252,500;
2) JDF collections from May 2003 to April 2013 in the sum of ₱93,304.50;
3) SAJF collections from April 1, 2004 to April 30, 2013 in the sum of ₱152,105.50;
4) MF collections from October 1, 2005 to April 30, 2013 in the sum of ₱44,000.

The above shortages were restituted by Negroprado on January 3, 2019. Also, Negroprado incurred a ₱106.00 shortage on his

---

[8] *Atty. Bacbac-Del Isen v. Molina*, 761 Phil. 596, 605 (2015).

COCGF-Old collections from May 2003 to November 10, 2003. He was able to restitute it on July 19, 2019.

Being the custodians of court funds and revenues, clerks of court have always been reminded of their duty to immediately deposit the various funds received by them to the authorized government depositories pursuant to Administrative Circular No. 35-2004,[9] as amended, dated August 20, 2004; and to timely submit their Monthly Report of Collections, Deposits, and Withdrawals conformably with OCA Circular No. 113-2004[10] dated September 16, 2004. For the delayed deposit of his judiciary collections and the late submission of his financial reports, Negroprado was indubitably remiss in his duties as branch Clerk of Court II of the MCTC.

When asked to explain, Negroprado readily admitted that he was forced to use the collections of the Court to sustain the needs of his family. He added that due to his low take-home

---

[9] As culled from the Memorandum dated January 31, 2020, *id*. at 8-9:

"In the RTC, MeTC, MTCC, MTC, MCTC, SDC and SCC. – The daily collections for the Fund in these courts shall be deposited everyday with the nearest LBP branch, or if depositing daily is not possible, deposits for the Fund shall be at the end of every month, provided, however, that whenever collections for the Fund reach ₱500.00, the same shall be deposited immediately even before the period above-indicated."

[10] Office of the Court Administrator Circular No. 113-2004 provides:

1. The Monthly Reports of Collections and Deposits for the Judiciary Development Fund (JDF), Special Allowance for the Judiciary (SAJ) and Fiduciary Fund (FF) shall be:

1.1. Certified correct by the Clerk of Court
1.2. Duly subscribed and sworn to before the Executive/Presiding Judge
1.3. Sent not later than the 10th day of each succeeding month to —

The Chief Accountant
Accounting Division
Financial Management Office
Office of the Court Administrator
Supreme Court of the Philippines
Taft Avenue, Ermita
Manila

pay, he incurred loans from the Supreme Court Loan Association and the Government Service Insurance System to pay off his loans for the hospitalization of his three minor children due to dengue fever. For this, the OCA recommended that Negroprado be fined with ₱25,000.00 and be sternly warned that a repetition of the same offense will be dealt with more severely.

In determining the applicable penalty, the Court had, in the past, mitigated the administrative penalties imposed on erring judicial officers and employees. This is consistent with the precedent where this Court refrained from imposing the actual administrative penalties prescribed by law or regulation in the presence of mitigating factors.[11]

In *Office of the Court Administrator v. Former Clerk of Court Jamora, et al.*,[12] Clerk of Court Angelita A. Jamora was found liable for her failure to timely deposit her judiciary collections. She explained that the delay in the restitution of her shortages in the sum of ₱124,267.60 were caused by financial difficulties. She explained that she was the sole income earner of her family because her husband had a disability, and that they had four children who were still studying. Observing that it was her first administrative case; that she fully restituted the amounts involved; and that she held two positions at the same time, the Court tempered its decision and reduced her penalty to a fine of ₱10,000.00.

Likewise, in *Office of the Court Administrator v. Viesca*[13] *(Viesca)*, Clerk of Court II Remedios R. Viesca was found liable for Gross Neglect of Duty, Grave Misconduct, and Serious Dishonesty because she misappropriated her judiciary collections in the aggregate amount of ₱529,738.50, and for her non-submission of her monthly financial reports. Notably, the Court, upon motion for reconsideration, lowered down her penalty from

---

[11] See *Office of the Court Administrator v. Former Clerk of Court Jamora, et al.*, 698 Phil. 610, 614 (2012).

[12] *Id.*

[13] 819 Phil. 582 (2017).

dismissal to a fine of ₱50,000.00 through the application of the following mitigating circumstances: (1) 34 years of government service; (2) that she was already 68 years old; (3) remorse by fully cooperating with the audit team during the investigation of her infractions; and (4) full restitution of the total amount of shortage.

Indeed, while the Court is duty-bound to sternly wield a corrective hand to discipline its errant employees and to weed out those who are undesirable, the Court also has the discretion to temper the harshness of its judgment with mercy,[14] especially in this time where employment and the economy face catastrophe because of the pandemic.

In this case, the Court takes into consideration Negroprado's full restitution of his collections leaving no outstanding accountabilities. The Court also notes that he fully cooperated with the audit team during the investigation of his infractions by submitting his Monthly Report of Collections, Deposits, and Withdrawals without any irregularities, tampering, or falsifications. To the Court's mind, these acts amount to remorse and taking full responsibility for the infractions he committed, and thus, may be duly appreciated in imposing a penalty.

All told, for Negroprado's failure to immediately deposit the various judiciary funds received by him, in violation of Administrative Circular No. 35-2004, as amended; and for his failure to timely submit his Monthly Report of Collections, Deposits, and Withdrawals, in contravention of OCA Circular No. 113-2004, the Court ADOPTS the recommendation of the OCA that Negroprado must be held administratively liable by a Fine. However, the Court finds the recommended Fine of ₱25,000.00 insufficient and instead imposes upon him the Fine of ₱50,000.00, conformably with *Viesca*, to be deducted from the withheld salaries to be released to him.

---

[14] *Office of the Court Administrator v. Judge Chavez, et al.*, 815 Phil. 41, 46 (2017), citing *Judge Baculi v. Ugale*, 619 Phil. 686, 692 (2009).

WHEREFORE, the Court **RESOLVES** to **ADOPT** and **APPROVE** the recommendation of the Office of the Court Administrator with **MODIFICATION** in that a **FINE** of ₱50,000.00 be imposed on Mr. John O. Negroprado, Clerk of Court II of the Municipal Circuit Trial Court, Valladolid-San Enrique-Pulupandan, Negros Occidental, with a **STERN WARNING** that a repetition of the same or similar acts shall be dealt with more severely.

The Finance Division, Financial Management Office, Office of the Court Administrator is **DIRECTED** to deduct the fine of ₱50,000.00 from the withheld salaries to be released to Mr. John O. Negroprado.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Leonen, Gesmundo, Hernando, Carandang, Lazaro-Javier, Zalameda, Lopez, and *Gaerlan, JJ.*, concur.

Caguioa and *Delos Santos, JJ.*, on official leave.

Baltazar-Padilla, J., on leave.

EN BANC

[G.R. No. 241257. September 29, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **BRENDO P. PAGAL *a.k.a.* "DINDO",** *Accused-Appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; WHERE THE COURT OF APPEALS DID NOT AFFIRM EITHER THE CONVICTION OR PENALTY IMPOSED BY THE REGIONAL TRIAL COURT BUT INSTEAD ORDERED A REMAND, THE PROPER REMEDY TO ASSAIL THE COURT OF APPEALS' DECISION IS BY WAY OF AN APPEAL BY *CERTIORARI* UNDER RULE 45. — [Accused-appellant] filed a notice of appeal pursuant to Sec. 13(c), Rule 124 of the 2000 Revised Rules of Court, as amended by A.M. No. 00-5-03-SC . . . .

Here, the CA Decision annulled and set aside the RTC conviction and ordered the remand of the case to the RTC for further proceedings. Notably, the assailed CA Decision did not affirm the conviction or the penalty imposed by the RTC. Thus, Sec. 13(c), Rule 124 is not applicable to the case at bench.

Instead, accused-appellant should have filed an appeal by *certiorari* under Rule 45 of the Rules of Civil Procedure to assail the CA Decision pursuant to Sec. 3(e), Rule 122 of the 2000 Revised Rules, which expressly provides that "[e]xcept as provided in the last paragraph of Sec. 13, Rule 124, all other appeals to the Supreme Court shall be by petition for review on *certiorari* under Rule 45."

. . . It is an oft-repeated rule that appeals of criminal cases shall be brought to the Court by filing a petition for review on *certiorari* under Rule 45 of the Rules of Court except when the CA imposed a penalty of *reclusion perpetua* or life imprisonment, in which case the appeal shall be made by a mere notice of appeal before the CA. . . .

2. CRIMINAL LAW; MURDER; MURDER REMAINS A CAPITAL OFFENSE DESPITE PROSCRIPTION AGAINST THE IMPOSITION OF DEATH AS A PUNISHMENT. — Accused-

appellant was charged with murder, defined and penalized under Article 248 of the Revised Penal Code (*RPC*). Murder is punishable by *reclusion perpetua* to death, making said crime a capital offense.

It must be noted that murder remains a capital offense despite the proscription against the imposition of death as a punishment. In *People v. Albert*, the Court ruled that "in case death was found to be the imposable penalty, the same would only have to be reduced to *reclusion perpetua* in view of the prohibition against the imposition of the capital punishment, but the nature of the offense of murder as a capital crime, and for that matter, of all crimes properly characterized as capital offenses under the Revised Penal Code, was never tempered to that of a non-capital offense."

Thus, when accused-appellant pleaded guilty during his arraignment, he pleaded to a capital offense.

3. REMEDIAL LAW; CRIMINAL PROCEDURE; PLEA OF GUILTY TO A CAPITAL OFFENSE; THREE-FOLD DUTY OF THE TRIAL COURT. — [A]t present, [under Section 3, Rule 116 of the 2000 Revised Rules of Criminal Procedure], the three (3)-fold duty of the trial court in instances where the accused pleads guilty to a capital offense is as follows: (1) conduct a searching inquiry, (2) require the prosecution to prove the accused's guilt and precise degree of culpability, and (3) allow the accused to present evidence on his behalf.

4. ID.; ID.; ID.; ID.; SEARCHING INQUIRY; THE SEARCHING INQUIRY MUST FOCUS ON (1) THE VOLUNTARINESS OF THE PLEA AND (2) THE FULL COMPREHENSION OF THE CONSEQUENCES OF THE PLEA. — The searching inquiry requirement means more than informing cursorily the accused that he faces a jail term but also, the exact length of imprisonment under the law and the certainty that he will serve time at the national penitentiary or a penal colony. The searching inquiry of the trial court must be focused on: (1) the voluntariness of the plea, and (2) the full comprehension of the consequences of the plea.

. . .

Further, a searching inquiry must not only comply with the requirements of Sec. 1, par. (a), of Rule 116 but must also expound

on the events that actually took place during the arraignment, the words spoken and the warnings given, with special attention to the age of the accused, his educational attainment and socio-economic status as well as the manner of his arrest and detention, the provision of counsel in his behalf during the custodial and preliminary investigations, and the opportunity of his defense counsel to confer with him. These matters are relevant since they serve as trustworthy indices of his capacity to give a free and informed plea of guilt. Lastly, the trial court must explain the essential elements of the crime he was charged with and its respective penalties and civil liabilities, and also direct a series of questions to defense counsel to determine whether he has conferred with the accused and has completely explained to him the meaning of a plea of guilty. This formula is mandatory and absent any showing that it was followed, a searching inquiry cannot be said to have been undertaken.

5. ID.; ID.; ID.; ID.; ID.; PLEA OF GUILTY TO A CAPITAL OFFENSE WITHOUT THE BENEFIT OF A SEARCHING INQUIRY OR AN INEFFECTUAL INQUIRY RESULTS TO AN IMPROVIDENT PLEA OF GUILTY. — [A] plea of guilty to a capital offense without the benefit of a searching inquiry or an ineffectual inquiry, as required by Sec. 3, Rule 116 of the 2000 Revised Rules, results to an *improvident plea of guilty*. It has even been held that the failure of the court to inquire into whether the accused knows the crime with which he is charged and to fully explain to him the elements of the crime constitutes a violation of the accused's fundamental right to be informed of the precise nature of the accusation against him and a denial of his right to due process.

This requirement is a reminder that judges must be cautioned against the demands of sheer speed in disposing of cases for their mission, after all, and as has been time and again put, is to see that justice is done.

6. ID.; ID.; ID.; ID.; WHERE THE ACCUSED PLEADS GUILTY TO A CAPITAL OFFENSE, THE PROSECUTION MUST STILL PROVE THE ACCUSED'S GUILT AND PRECISE DEGREE OF CULPABILITY; RATIONALE THEREOF. — [I]t is imperative that the trial court requires the presentation of evidence from the prosecution to enable itself to determine the precise participation and the degree of culpability of the accused in the perpetration of the capital offense charged.

The reason behind this requirement is that the plea of guilt alone can never be sufficient to produce guilt beyond reasonable doubt. It must be remembered that a plea of guilty is only a supporting evidence or secondary basis for a finding of culpability, the main proof being the evidence presented by the prosecution to prove the accused's guilt beyond reasonable doubt. Once an accused charged with a capital offense enters a plea of guilty, a regular trial shall be conducted just the same as if no such plea was entered. The court cannot, and should not, relieve the prosecution of its duty to prove the guilt of the accused and the precise degree of his culpability by the requisite quantum of evidence. The reason for such rule is to preclude any room for reasonable doubt in the mind of the trial court, or the Supreme Court on review, as to the possibility that the accused might have misunderstood the nature of the charge to which he pleaded guilty, and to ascertain the circumstances attendant to the commission of the crime which may justify or require either a greater or lesser degree of severity in the imposition of the prescribed penalties.

7. ID.; ID.; ID.; ID.; IN PLEAS OF GUILTY TO A CAPITAL OFFENSE, ACCUSED MUST BE GIVEN REASONABLE OPPORTUNITY TO PRESENT EVIDENCE. — The third duty imposed on the trial court by the 2000 Revised Rules is to allow the accused to present exculpatory or mitigating evidence on his behalf in order to properly calibrate the correct imposable penalty. This duty, however, does not mean that the trial court can compel the accused to present evidence. Of course, the court cannot force the accused to present evidence when there is none. The accused is free to waive his right to present evidence if he so desires.

8. ID.; ID.; ID.; ID.; ID.; WAIVER OF AN ACCUSED'S RIGHT TO PRESENT EVIDENCE; GUIDELINES. — Consistent with the policy of the law, the Court has issued guidelines regarding the waiver of the accused of his right to present evidence under this rule, thus:

> Henceforth, to protect the constitutional right to due process of every accused in a capital offense and to avoid any confusion about the proper steps to be taken when a trial court comes face to face with an accused or his counsel who wants to waive his client's right to present evidence and be heard, **it shall be the unequivocal duty of the trial court to observe, as a**

> **prerequisite to the validity of such waiver, a procedure akin to a "searching inquiry" as specified in *People v. Aranzado* when an accused pleads guilty**. . . .

9. ID.; ID.; ID.; THE CONVICTION OF AN ACCUSED FOR A CAPITAL OFFENSE SHALL BE BASED PRINCIPALLY ON THE EVIDENCE PRESENTED BY THE PROSECUTION, NOT MERELY ON THE PLEA OF GUILT. — [T]he plea of guilty of an accused cannot stand in place of the evidence that must be presented and is called for by Sec. 3 of Rule 116. Trial courts should no longer assume that a plea of guilty includes an admission of the attending circumstances alleged in the information as they are now required to demand that the prosecution prove the exact liability of the accused. The requirements of Sec. 3 would become idle and fruitless if we were to allow conclusions of criminal liability and aggravating circumstances on the dubious strength of a presumptive rule.

As it stands, the conviction of the accused shall be based principally on the evidence presented by the prosecution. The improvident plea of guilty by the accused becomes secondary.

10. ID.; ID.; ID.; CONVICTIONS INVOLVING IMPROVIDENT PLEAS ARE AFFIRMED IF SUPPORTED BY PROOF BEYOND REASONABLE DOUBT; OTHERWISE, THE CONVICTION IS SET ASIDE AND THE CASE REMANDED FOR RE-TRIAL. — [C]onvictions involving improvident pleas are affirmed if the same are supported by proof beyond reasonable doubt. Otherwise, the conviction is set aside and the case remanded for re-trial when the conviction is predicated solely on the basis of the improvident plea of guilt, meaning that the prosecution was unable to prove the accused's guilt beyond reasonable doubt. Thus:

> **As in the case of an improvident plea of guilty**, an invalid waiver of the right to present evidence and be heard ***per se* does not work to vacate a finding of guilt in the criminal case and enforce an automatic remand thereof to the trial court**. In *People v. Molina*, **to warrant the remand of the case it must also be proved that as a result of such irregularity there was inadequate representation of facts by either the prosecution or the defense during the trial** . . . .
>
> Conversely, **where facts are adequately represented in the criminal case and no procedural unfairness or**

> **irregularity has prejudiced either the prosecution or the defense as a result of the invalid waiver, the rule is that the guilty verdict may nevertheless be upheld where the judgment is supported beyond reasonable doubt by the evidence on record**. Verily, in such a case, it would be a useless ritual to return the case to the trial court for further proceedings.

11. ID.; ID.; ID.; ID.; ID.; THE COURT HAS CONSISTENTLY CHOSEN TO SET ASIDE CONVICTIONS BASED SOLELY ON AN IMPROVIDENT PLEA OF GUILTY AND REMAND THE CASE TO THE LOWER COURT FOR FURTHER PROCEEDINGS. — [W]here the conviction is predicated solely on the basis of an improvident plea of guilty, this Court has consistently chosen to set aside said conviction and, instead, remand the case to the lower court for further proceedings. This was the ruling in an unbroken line of jurisprudence. "Further proceedings" usually entails re-arraignment and reception of evidence from both the prosecution and the defense in compliance with Sec. 3, Rule 116.

12. ID.; ID.; ID.; ID.; ID.; ID.; REMAND OF THE CASE IS JUSTIFIED WHEN UNDUE PREJUDICE WAS BROUGHT ABOUT BY THE IMPROVIDENT PLEA OF GUILTY. — Jurisprudence has developed in such a way that cases are remanded back to the trial court for re-arraignment and re-trial when undue prejudice was brought about by the improvident plea of guilty. The Court explains this course of action in *People v. Abapo*, *viz*:

> We are not unmindful of the rulings of this Court to the effect that the manner by which the plea of guilt was made, whether improvidently or not, loses its legal significance where the conviction is based on the evidence proving the commission by the accused of the offense charged. However, after a careful examination of the records of this case, we find that the improvident plea of guilt of the accused-appellant has affected the manner by which the prosecution conducted its presentation of the evidence. The presentation of the prosecution's case was lacking in assiduity and was not characterized with the meticulous attention to details that is necessarily expected in a prosecution for a capital offense. . . . [T]he prosecution did not discharge its obligation as seriously as it would

have had there been no plea of guilt on the part of the accused, x x x[.]

13. ID.; ID.; ID.; WHERE THE PROSECUTION FAILED TO ESTABLISH THE GUILT OF AN ACCUSED DESPITE REASONABLE OPPORTUNITY TO DO SO, THE ACCUSED IS ENTITLED TO AN ACQUITTAL AND REMAND IS IMPROPER. — Here, the Court cannot sustain the conviction as there is nothing in the records that would show the guilt of accused-appellant. Neither is it just to remand the case. This is not a situation where the prosecution was wholly deprived of the opportunity to perform its duties under the 2000 Revised Rules to warrant a remand. . . .

The records also do not disclose that the improvident plea of guilty jeopardized the presentation of evidence by the prosecution, to the prejudice of either the prosecution or accused-appellant.

Therefore, in instances where an improvident plea of guilt has been entered and the prosecution was given reasonable opportunity to present evidence to establish the guilt of the accused but failed to do so, the accused is entitled to an acquittal, if only to give rise to the constitutionally guaranteed right to due process and the presumption of innocence.

. . .

. . . To allow a re-trial would reward the prosecution for its inefficiency and nonfeasance. Justice and fairness dictate that accused-appellant be acquitted; lest, the Court would, wittingly or unwittingly, place the accused-appellant at a distinct disadvantage, a position that fairness would never allow.

. . .

. . . No special consideration should be allotted the prosecution for its failure. *In dubio pro reo*. When in doubt, rule for the accused.

14. ID.; ID.; ID.; ID.; SUBMISSION OF CASE FOR DECISION BY PROSECUTION IS AN IMPLIED DECLARATION THAT IT IS READY FOR THE TRIAL COURT TO RENDER ITS DECISION ON THE BASIS OF THE OFFERED EVIDENCE; THE FACT THAT THE DEFENSE JOINED THE PROSECUTION IN ITS SUBMISSION OF THE CASE FOR RESOLUTION SHOULD NOT BE TAKEN AGAINST THE ACCUSED-APPELLANT. — By submitting the case for decision, the

prosecution impliedly declared that it is ready for the trial court to render its decision on the basis of the offered evidence....

The fact that the defense joined the prosecution in its submission of the case for resolution should not be taken against accused-appellant. "In criminal cases, the prosecution has the *onus probandi* of establishing the guilt of the accused. *Ei incumbit probatio non qui negat*. He who asserts – not he who denies – must prove. The burden must be discharged by the prosecution on the strength of its own evidence, not on the weakness of that for the defense."

15. ID.; ID.; ID.; ID.; INSTITUTIONAL DELAY; SUBMISSION OF THE CASE FOR RESOLUTION BELIES ANY CLAIM OF INSTITUTIONAL DELAY. — While the Court agrees that institutional delay is a matter which must be addressed and that such institutional delay must not be taken against the State, We are of the opinion that the instant case does not involve any evidence of institutional delay. The prosecution had reasonable opportunity to manifest to the trial court that its failure to present evidence on the hearing dates provided to it was due to any institutional delay. It did not do so. Instead of pursuing any of the remedies allowed by law for it to present evidence, the prosecution chose to move for submission of the case for resolution of the trial court. This belies any claim of institutional delay.

16. ID.; ID.; ID.; ID.; IMPROVIDENT PLEA OF GUILT; AN APPEAL FROM THE JUDGMENT OF CONVICTION SHOWS THE ACCUSED'S UNAWARENESS OF THE CONSEQUENCES OF THE PLEA OF GUILT. — The fact that accused-appellant maintained his plea of guilt is of no consequence. His plea does not merit any weight and should not be considered by this Court in arriving at its resolution of the instant case.

Foremost, such plea was improvidently made. Accused-appellant did not have the benefit of the guidance of a searching inquiry. Thus, his plea cannot be legally considered as having been voluntarily made and with full comprehension of the consequences of such plea.

The strongest evidence to support accused-appellant's improvident plea is the fact that after the judgment of conviction had been rendered, accused-appellant appealed the case before the CA to have his conviction overturned. This shows that he

is unaware of the consequences of his plea. Further, it belies any and all claims that he is resolute in the maintenance of his plea of guilt. If he is truly resolute in his guilty plea, he should not have appealed his conviction. This, however, is not the case.

17. ID.; ID.; ID.; ID.; FAILURE TO WITHDRAW A GUILTY PLEA IS NOT EVIDENCE OF GUILT. — [T]o construe the silence and lack of action to withdraw his guilty plea as an evidence of his guilt would not only read too much on such omission but rather run afoul against the right of the accused-appellant to remain silent. To be sure, to require or even expect the accused-appellant to act in a particular way lest he be adjudged guilty would not only make his right to be silent, but also the presumption of innocence, an empty constitutional promise.

18. ID.; ID.; ID.; ID.; EVIDENCE TO SUPPORT CONVICTION OR EVEN A RE-TRIAL SHOULD BE BASED ON EVIDENCE ON RECORD. — [T]he recommendation to remand is not based on any evidence on record but on assumptions, surmises and conjectures that are inferred from evidence *aliunde*. Evidence to support conviction or even re-trial should be based on evidence on record; otherwise, it would violate the due process rights of the accused, particularly, the presumption of innocence. A court that would lend its imprimatur to this act would be at a loss, for "***indeed, the sea of suspicion has no shore, and the court that embarks upon it is without rudder or compass***."

19. ID.; ID.; ID.; ID.; IN THE ABSENCE OF INCULPATORY EVIDENCE AMOUNTING TO PROOF BEYOND REASONABLE DOUBT, THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE PREVAILS. — While, indeed, the function of the Court is to ferret out the truth, equally important is the mandate of the Court to put primacy on constitutional safeguards of human life and liberty. . . . Settled is the rule that "x x x courts will only consider as evidence that which has been formally offered." This "x x x ensures the right of the adverse party to due process of law, for, otherwise, the adverse party would not be put in the position to timely object to the evidence, as well as to properly counter the impact of evidence not formally offered." In the absence of inculpatory evidence amounting to proof beyond reasonable doubt, the Court is mandated by the constitutional presumption of innocence to acquit accused-appellant.

20. ID.; ID.; ID.; ID.; MERE FAILURE OF THE PROSECUTION TO PROVE ACCUSED-APPELLANT'S GUILT BEYOND REASONABLE DOUBT CANNOT BE USED AS RATIONALE FOR A REMAND. — In *Molina*, and *Murillo*, the evidence presented by the prosecution, uncontested and untested by the defense, could have resulted in the conviction of the accused therein. However, the failure of the defense to mount the proper legal defense on behalf of therein accused cast serious doubts on the evidence presented by the prosecution.

. . .

The prosecution's failure, on the other hand, cannot be said to have been due to the plea of guilty made by accused-appellant. There is no specific conduct or specific utterance that would lend credence to such conclusion. The mere failure of the prosecution, absent any proof of the whys and hows, cannot be used as rationale for a remand. This is especially true because the prosecution was not lacking in any opportunity to raise any justifying reasons for its failure. Thus, to remand the case absent such proof would be to unduly favor the State at the expense of the accused.

21. ID.; ID.; ID.; ID.; AN INVALID ARRAIGNMENT DOES NOT AUTOMATICALLY RESULT IN THE REMAND OF THE CASE; IT IS A GROUND FOR ACQUITTAL. — [I]t would be a mistake to assume or conclude that an invalid arraignment automatically results in a remand of the case.

In *[People v.] Ong*, the Court . . . decided the case on its merits despite a determination of an invalid arraignment. . . . the Court therein acquitted the two accused.

. . .

. . . [I]n *People v. Crisologo,* the Court . . . decided the case on the merits . . . did not order the remand of the case despite the invalid arraignment but, rather, acquitted the accused.

On the basis of the foregoing, and by reason of parity, it is respectfully submitted that an invalid arraignment does not automatically result in the remand of the case. While it is true that a judgment of conviction cannot stand on an invalid arraignment, a judgment of acquittal may proceed from such invalid arraignment. The invalid arraignment itself is ground for acquittal.

22. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO A SPEEDY DISPOSITION OF CASES. — Sec. 16, Article III of the 1987 Constitution guarantees the constitutional right to speedy disposition of cases. It provides that "[a]ll persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies."

Initially embodied in Sec. 16, Article IV of the 1973 Constitution, the aforesaid constitutional provision is one of three (3) provisions mandating speedier dispensation of justice. It guarantees the right of all persons to 'a speedy disposition of their case'; **includes within its contemplation the periods before, during and after trial**, and affords broader protection than Sec. 14(2), which only guarantees the right to a speedy trial. It is more embracing than the protection under Article VII, Sec. 15, which covers only the period after the submission of the case. The present constitutional provision applies to civil, criminal and administrative cases.

23. ID.; ID.; ID.; ID.; A REMAND OF A CASE INVOLVING AN INCIDENT THAT OCCURRED 12 YEARS AGO WOULD BE PREJUDICAL TO THE ACCUSED, AS HIS DEFENSE WOULD LIKELY BE IMPAIRED DUE TO THE PASSAGE OF TIME. — It is respectfully submitted that the resulting delay in the disposition of the instant case, if the proposal to remand is earned out, would be prejudicial to accused-appellant. As mentioned, accused-appellant was charged with murder in the year 2009. The incident involving the death of Selma occurred in 2008. He has been languishing in jail since 2009 and he will continue to be incarcerated during the period of the re-trial. At this point in time, accused-appellant has been incarcerated for more or less eleven (11) years. To require that he undergo re-trial, when the failure of the prosecution to prove his guilt beyond reasonable doubt was through no fault of his, is unreasonably oppressive.

. . .

As a practical point, it must also be noted that the incident involving the death of Selma occurred in 2008. More than twelve (12) years has passed since then. The likelihood of the prosecution witnesses remembering with certainty the events surrounding the incident is miniscule. Any defense witness would also likely have a hard time recalling the events surrounding that fateful day. Thus, the defense would likely

be impaired due to the passage of time. This is prejudicial to accused-appellant.

24. ID.; ID.; ID.; ID.; REMAND OF THE CASE FOR RE-TRIAL WOULD GIVE RISE TO VIOLATION OF THE ACCUSED'S RIGHT OF SPEEDY DISPOSITION OF CASES. — As things stand right now, there was no violation of accused-appellant's right to speedy disposition of cases. A violation would arise only when the Court adopts the position of the other Members of the Court to remand the case for re-trial. Such act of the Court is the triggering mechanism which would give rise to the violation of accused-appellant's right to speedy disposition of cases. In other words, there is no waiver of the right to speedy disposition of cases as yet because there is no violation of the right as of now. Therefore, accused-appellant could not have validly waived his right to speedy disposition of cases.

25. REMEDIAL LAW; CRIMINAL PROCEDURE; ELEMENTS OF A GOOD DECISION IN A CRIMINAL CASE; THE ABSENCE IN THE FALLO OF THE SPECIFIC CRIME THAT THE ACCUSED WAS CONVICTED OF IS AN INEXCUSABLE MISTAKE. — In *Velarde v. Social Justice Society*, the Court stated the essential elements of a good decision. Particularly, "[i]n a criminal case, the disposition should include a finding of innocence or guilt, **the specific crime committed**, the penalty imposed, the participation of the accused, the modifying circumstances if any, and the civil liability and costs. . . .

Thus, the glaring absence in the *fallo* of the specific crime accused-appellant was convicted for by the trial court is so egregious and shocking that it appalls the sensibilities of the Court. At its core, the RTC Decision on which the conviction rests, and on which basis accused-appellant has been imprisoned for the past years, lacks a definitive statement as to what crime accused-appellant was being imprisoned for. Worse, what makes the error more atrocious is the fact that even on appeal, the appellate court failed to notice such basic and inexcusable mistake.

26. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; THE BILL OF RIGHTS TAKES PRECEDENCE OVER THE RIGHT OF THE STATE TO PROSECUTE. — [J]ustice cannot be achieved at the expense of trampling on accused-appellant's constitutional rights to due process, presumption of innocence, and speedy disposition of cases. In that case, justice would not be justice at all. For while "[t]he sovereign

power has the inherent right to protect itself and its people from vicious acts which endanger the proper administration of justice; hence, the State has every right to prosecute and punish violators of the law," "***in the hierarchy of rights, the Bill of Rights takes precedence over the right of the State to prosecute, and when weighed against each other, the scales of justice tilt towards the former.***"

27. REMEDIAL LAW; CRIMINAL PROCEDURE; PLEA OF GUILTY TO CAPITAL OFFENSES; GUIDELINES. — For the guidance of the bench and the bar, this Court adopts the following guidelines concerning pleas of guilty to capital offenses:

1. AT THE TRIAL STAGE. When the accused makes a plea of guilty to a capital offense, the trial court must strictly abide by the provisions of Sec. 3, Rule 116 of the 2000 Revised Rules of Criminal Procedure. In particular, it must afford the prosecution an opportunity to present evidence as to the guilt of the accused and the precise degree of his culpability. Failure to comply with these mandates constitute grave abuse of discretion.

a. In case the plea of guilty to a capital offense is supported by proof beyond reasonable doubt, the trial court shall enter a judgment of conviction.

b. In case the prosecution presents evidence but fails to prove the accused's guilt beyond reasonable doubt, the trial court shall enter a judgment of acquittal in favor of the accused.

c. In case the prosecution fails to present any evidence despite opportunity to do so, the trial court shall enter a judgment of acquittal in favor of the accused.

In the above instance, the trial court shall require the prosecution to explain in writing within ten (10) days from receipt its failure to present evidence. Any instance of collusion between the prosecution and the accused shall be dealt with to the full extent of the law.

2. AT THE APPEAL STAGE:

d. When the accused is convicted of a capital offense on the basis of his plea of guilty, whether improvident or not, and proof beyond reasonable doubt was established, the judgment of conviction shall be sustained.

e. When the accused is convicted of a capital offense solely on the basis of his plea of guilty, whether improvident or not, without proof beyond reasonable doubt because the prosecution was not given an opportunity to present its evidence, or was given the opportunity to present evidence but the improvident plea of guilt resulted to an undue prejudice to either the prosecution or the accused, the judgment of conviction shall be set aside and the case remanded for re-arraignment and for reception of evidence pursuant to Sec. 3, Rule 116 of the 2000 Revised Rules of Criminal Procedure.

f. When the accused is convicted of a capital offense solely on the basis of a plea of guilty, whether improvident or not, without proof beyond reasonable doubt because the prosecution failed to prove the accused's guilt despite opportunity to do so, the judgment of conviction shall be set aside and the accused acquitted.

Said guidelines shall be applied prospectively.

PERALTA, *C.J.*, *concurring opinion*:

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PLEA OF GUILTY TO A CAPITAL OFFENSE;IMPROVIDENT PLEA OF GUILT; AN EXCEPTION TO THE REMAND DIRECTIVE IS WHERE THE PROSECUTION WAS GIVEN THE OPPORTUNITY TO PRESENT EVIDENCE TO PROVE THE GUILT OF THE ACCUSED, BUT FAILED TO DO SO FOR NO JUSTIFIABLE REASON, AND IN SUCH A CASE, THE ACCUSED SHOULD BE ACQUITTED. — While I concede that a conviction for a capital offense when based solely on an improvident plea of guilt must always be set aside, I believe that a remand of the criminal case should not be ordered *ipso facto* as a matter of course. In tune to what the *ponencia* advances, I venture that an exception to the remand directive should be made in instances where the prosecution was previously given the opportunity to present evidence to prove the guilt of the accused but failed to do so for no justifiable reason. I submit that, in such instances, it actually becomes the duty of the appellate court to render a judgment of acquittal in favor of the accused.

2. ID.; ID.; ID.; A GUILTY PLEA CAN NEVER ON ITS OWN JUSTIFY A CONVICTION. — [U]nder our current rules of procedure, a guilty plea—*whether improvident or not*—can never on its own justify a conviction for a capital offense. This is the unequivocal import of Section 3 of Rule 116 of the 2000 Revised Rules of Criminal Procedure: . . .

. . .

The second duty of the trial court under Section 3 of Rule 116 confirms a subsisting obligation on the part of the prosecution to present evidence and prove the guilt of the accused charged of a capital offense—notwithstanding the latter's guilty plea. Indeed, by the provision, such *onus* of the prosecution remains *even if* the trial court had already fulfilled its first duty, and *even if* the plea of guilty by the accused was determined to have been voluntarily and intelligently taken by the latter.

. . . [I]n cases involving capital offenses, the accused's conviction or acquittal will still have to depend on whether the prosecution is able to discharge its burden of proving the guilt of the accused beyond reasonable doubt. Accordingly, it is only when the prosecution is able to do so that the trial court would be justified in rendering a judgment of conviction. Otherwise, the accused—in spite of his plea of guilt—must be acquitted consistent with the constitutional presumption of innocence.

3. ID.; ID.; ID.; THE PROSECUTION'S RELIANCE ON THE PLEA OF GUILTY AND THE PERCEIVED DETRIMENTAL EFFECT THEREOF ON HOW IT PRESENTS ITS CASE SHOULD NEVER BE CONSIDERED AS A VALID GROUND FOR REMAND OF THE CASE. — [T]he prosecution can never be justified into letting a plea of guilt to a capital offense adversely affect the manner by which it presents its evidence. Under our rules, the prosecution is expected, nay obligated, to present evidence and prove the guilt of an accused charged of capital offense with all seriousness, zeal and fervor, whatever the plea entered by the accused. The prosecution's reliance on a plea of guilty and the perceived detrimental effect thereof on how it presents its case, therefore, should never be considered as a valid ground for remand.

LEONEN, *J., concurring opinion*:

1. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; PROOF BEYOND REASONABLE DOUBT MUST BE ESTABLISHED IN CRIMINAL PROCEEDINGS, AND ITS ABSENCE WARRANTS THE ACQUITTAL OF THE ACCUSED. — A basic, ineluctable precept underlies all criminal proceedings: that the prosecution carries the burden of proving an accused's guilt beyond reasonable doubt. Its case must rise on its own merits, not trusting on the weakness of the defense. This is a matter of due process. The prosecution's failure to discharge its burden necessarily negates the accused's criminal liability.

2. ID.; CRIMINAL PROCEDURE; POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT OF THE ACCUSED TO DUE PROCESS; FAILURE TO PROVE GUILT BEYOND REASONABLE DOUBT ENTITLES THE ACCUSED TO AN ACQUITTAL. — The 1987 Constitution provides benchmarks that define how trial should be conducted. These are all designed to serve the accused's right to due process. They also confirm the prosecution's duty to secure a conviction through its own decorous, prompt, and disciplined efforts. . . .

Article III, Section 14(1) articulates the demand of due process. Meanwhile, Section 14(2) spells out the prosecution's duty to establish guilt beyond reasonable doubt. It also identifies norms that serve the general, overarching principles of due process and guilt having to be shown by the prosecution itself: first, the right of an accused "to be heard by [him/her]self and counsel"; second, the need for an accused "to be informed of the nature and cause of the accusation against him [or her]"; third, the imperative of "a speedy, impartial, and public trial"; fourth, the right "to meet the witnesses face to face"; and fifth, the right "to have compulsory process to secure the attendance of witnesses and the production of evidence in his [or her] behalf."

These normative benchmarks are confirmed in Rule 115 of the Revised Rules of Criminal Procedure, which provides for an accused's rights during trial.

Ultimately, even when trial conforms to all of the Constitution's normative benchmarks, and the accused's rights during trial are respected, acquittal will ensue for as long as the prosecution is unable to establish guilt beyond reasonable doubt. This is the logical consequence of lack of proof beyond reasonable doubt despite the prosecution's potentially best efforts.

3. ID.; ID.; ID.; ID.; ID.; ID.; DELAYS AND MISSTEPS BEFORE OR DURING TRIAL ARE FATAL TO THE CONTINUED PURSUIT OF CRIMINAL CASES. — Jurisprudence has considered the effects of the prosecution's utter and abject inability to discharge its function in the midst of trial. When it is manifest that the prosecution—despite its competence and all reasonable opportunity being afforded to it—has all but abandoned its duty to prove an accused's guilt, it becomes unjust for one to continue to stand trial, or otherwise be put in jeopardy of having to be made criminally liable. "The Bill of Rights provisions of the 1987 Constitution were precisely crafted to expand substantive fair trial rights and to protect citizens from procedural machinations which tend to nullify those rights."

This unjustness—borne not by the fault of the accused, but of those who should be dutifully pursuing the case against the accused—has led this Court to rule that delays and missteps not only during trial, but even in stages preceding trial proper, are fatal to the continued pursuit of criminal cases.

4. ID.; ID.; ID.; ID.; ID.; ID.; TO GIVE THE PROSECUTION A SECOND CHANCE DESPITE ITS DEMONSTRATED NEGLIGENCE IS TO GIVE IT AN UNFAIR ADVANTAGE, AND TO DISREGARD THE ACCUSED'S RIGHTS TO DUE PROCESS AND TO PRESUMPTION OF INNOCENCE. — The prosecution's lackadaisical attitude was what led to its failure to establish its case. It had its chance and blew it. To give the prosecution a second chance despite its demonstrated negligence would be unfairly generous to it. It would give it an unfair advantage, an opportunity to win a case that it had lost on its own.

More than being overly generous to the prosecution, it would be a violation of accused-appellant's right to due process and to be deemed innocent unless the prosecution is able to establish his guilt beyond reasonable doubt. It would be a dangerous precedent that will, in the future, enable cavalier prosecution at the expense of our cherished civil liberties.

5. ID.; ID.; ID.; ID.; ID.; ID.; WHICHEVER WAY THE ACCUSED PLEADS, THE PRESUMPTION OF INNOCENCE AND THE PROSECUTION'S BURDEN OF PROOF REMAIN. — I echo the *ponencia*'s words that "the conviction of the accused shall be based solely on the evidence presented by the prosecution. The improvident plea of guilty by the accused is

negligible." Whichever way the accused pleads during arraignment, their right to be presumed innocent—along with the prosecution's concomitant duty to establish guilt beyond reasonable doubt—remains. The nature of a criminal proceeding as one where the burden of proof lies in the prosecution is not altered by the plea that the accused makes.

6. ID.; ID.; ID.; ID.; ID.; PLEAS; IMPROVIDENT PLEA OF GUILT; IMPROVIDENT PLEAS SHOULD BE VIEWED WITH DISTRUST, NOT AS AN OPPORTUNITY FOR THE PROSECUTION TO REBUILD ITS CASE BY REMANDING THE CASE TO THE TRIAL COURT. — Some members of this Court maintain that the improvidence of accused-appellant's guilty plea should entail the remand of the case to the trial court. I maintain reservations to this. It is a potentially dangerous proposition that amounts to our justice system turning a blind eye to the inherently unjust, even possibly outright damning, manner by which the accused are induced to declare their guilt. Consistent with due process and the prosecution's burden, improvident pleas should be viewed with immense distrust, not as an opportunity for the prosecution to reset its game plan.

. . .

The members of this Court who urge a remand also assert that it will address a potential miscarriage of justice suffered by the prosecution. I take exception to giving the prosecution here a chance to rebuild its case owing to how its strategy or vigor may have been affected by accused-appellant's plea. I reiterate that its duty to establish guilt beyond reasonable doubt remained the same regardless of the plea entered by accused-appellant. The constitutional imperative is not weakened by an accused's posture.

. . .

The potential miscarriage of justice suffered by an accused wrongly convicted is far greater than that which lackadaisical prosecution stands to suffer. This is granting that it can even be called a "miscarriage of justice" on the part of negligent prosecution. Our Bill of Rights is a bundle of protections adopted with the intent of guarding against the State's excesses. The State has immense resources and unparalleled competencies at its disposal. Against these, individuals can only count on the State's temperance and forthrightness. In discharging its judicial function, this Court must see to the protection of individuals, rather than the inordinate enabling of government when it must face the consequences if its own indolence.

7. ID.; ID.; ID.; PRELIMINARY INVESTIGATION AND TRIAL ARE DISTINCT PROCESSES; THE PROSECUTION'S CASE SHOULD STAND ON ITS OWN DURING TRIAL.— Attention has also been called to the material adduced during the preliminary investigation. However, it is dangerous for this Court to make an independent consideration of what transpired in and what was adduced during the prior stage of preliminary investigation, when its real task is to appraise the consequences of the how the trial itself was conducted. Although related, preliminary investigation and trial are distinct processes. In this regard, as the *ponencia* notes, "there is nothing in the [case] records that would show the guilt of accused-appellant."The prosecution's case should stand on its own during trial. For this Court to go out of its way to bring into the equation what transpired during preliminary investigation—particularly at this late juncture—runs the risk of this Court making itself a surrogate for the prosecution, where it is already making its own case to convict accused-appellant.

If at all, the supposed strength of inculpatory matters considered during preliminary investigation only makes things worse for the prosecution, whose abject inaction during trial was blatant. If, indeed, there had been a solid case against accused-appellant as adduced during preliminary investigation, it is more damning that the prosecution bungled its chance at the proper opportunity to demonstrate its case to the trial court.

CAGUIOA, *J.*, *concurring opinion*:

1. REMEDIAL LAW; CRIMINAL PROCEDURE; EVIDENCE, JUDICIAL ADMISSION; PLEA OF GUILTY TO A CAPITAL OFFENSE; A GUILTY PLEA TO A CAPITAL OFFENSE IS NOT A JUDICIAL ADMISSION WHICH REQUIRES NO FURTHER PROOF. — [T]he rules make it mandatory for the prosecution to present evidence to prove the guilt of the accused and the precise degree of his culpability. This means that even as the accused had admitted to the commission of the crime and enters a voluntary and informed plea of guilty, the prosecution is still charged with the onus of proof to establish his guilt beyond reasonable doubt. **An accused charged with a capital offense cannot therefore be convicted based on his guilty plea alone.** A plea of guilty is only a supporting evidence or secondary basis for a finding of culpability, the main proof being the evidence presented by

the prosecution to prove the accused's guilt beyond reasonable doubt. **Once an accused charged with a capital offense enters a plea of guilty, a regular trial shall be conducted just the same as if no guilty plea was entered.** Thus, a guilty plea to a capital offense is not and cannot be considered a judicial admission which requires no further proof. . . .

2. ID.; ID.; ID.; ID.; ID.; EXTRAJUDICIAL CONFESSION; LIKE A GUILTY PLEA IN A CAPITAL OFFENSE, AN EXTRAJUDICIAL CONFESSION IS NOT A SUFFICIENT GROUND FOR CONVICTION. — An extrajudicial confession takes place prior to the start of the trial. The concern on whether the accused fully understands the consequences of his guilty plea does not come into play. Similar to a guilty plea in a capital offense, an extrajudicial confession (for any offense) is not a sufficient ground for conviction. An extrajudicial confession only forms a *prima facie* case against an accused. To sustain a conviction, the prosecution must first establish that the extrajudicial confession is admissible, and that the same is corroborated by evidence of *corpus delicti*.

3. ID.; ID.; PLEA OF GUILTY; SEARCHING INQUIRY; ARRAIGNMENT; A DEFECTIVE SEARCHING INQUIRY THAT RESULTS IN AN IMPROVIDENT PLEA IS DISTINCT FROM AN INVALID ARRAIGNMENT. — [A] defective searching inquiry which results in an improvident plea under Section 3, Rule 116 of the 2000 Revised Rules of Criminal Procedure is distinct from an invalid arraignment under Section 1, Rule 116. Arraignment is the formal mode and manner of implementing the constitutional right of an accused to be informed of the nature and cause of the accusation against him. The purpose of arraignment is to apprise the accused of the possible loss of freedom, even of his life, depending on the nature of the crime imputed to him, or at the very least to inform him of why the prosecuting arm of the State is mobilized against him. On the other hand, a searching inquiry is conducted to inquire into the voluntariness and full comprehension by the accused of the consequences of his guilty plea. It entails more than informing the accused that he faces a jail term, but also the exact length of imprisonment under the law and the certainty that he will serve time at the national penitentiary or a penal colony. This is because an accused often pleads guilty in the hope of a lenient treatment, or upon bad advice, or because of promises

of the authorities or parties of a lighter penalty should he admit guilt or express remorse. Verily, the purpose of an arraignment is different from that of a searching inquiry. Arraignment is aimed at informing the accused of the charges against him or her so that he or she can properly prepare his or her defense while the conduct of a searching inquiry (after the accused pleads guilty) is intended to remove any erroneous impression of the accused that a lighter penalty will be meted out if he or she pleads guilty.

4. ID.; ID.; ID.; ID.; ID.; AN INVALID ARRAIGNMENT NECESSARILY RESULTS IN AN IMPROVIDENT PLEA, BUT DOES NOT ALWAYS PRECEDE AN IMPROVIDENT PLEA. — While an invalid arraignment necessarily results in an improvident plea since an accused cannot enter a proper plea unless he or she understands the charges against him or her, the reverse is not true: an improvident plea is not always preceded by an invalid arraignment. It may happen that an accused was informed of the nature and cause of the accusation against him or her but nonetheless enters an improvident guilty plea because he or she mistakenly believes that he or she will get a lighter sentence by doing so. Hence, the principle that a conviction cannot stand on an invalid arraignment (because it amounts to a violation of the constitutional right of the accused to be informed of the nature and cause of the accusation against him or her) does not invariably apply to instances where an accused makes an improvident guilty plea.

5. ID.; ID.; ID.; ID.; THE ABSENCE OF SEARCHING INQUIRY DOES NOT AUTOMATICALLY INVALIDATE THE PROCEEDINGS AND REQUIRE THE REMAND OF A CASE TO THE TRIAL COURT. — [T]he absence of the first requirement, as in this case — where there is no proof that an inquiry as to the voluntariness of the plea of guilty was conducted by the judge — does not automatically render the criminal proceedings defective and invalid, which would necessitate a remand of the case to the trial court. . . . [T]he requirement under the rules that the prosecution prove beyond reasonable doubt the guilt of the accused in instances where the latter pleads guilty to a capital offense ***is*** the safeguard against an improvident plea. Regardless of the improvident plea of the accused, there should be on record evidence to determine whether the accused is guilty beyond reasonable doubt — as the prosecution is required to

present such evidence under the rules. The remand then of the case based solely on the improvident guilty plea of the accused would effectively be a retrial of the case: . . . — a useless and impractical exercise that is unfair and oppressive to both the prosecution and the accused.

6. ID.; ID.; ID.; AN ACCUSED WHO MADE AN IMPROVIDENT PLEA MUST BE ACQUITTED IF THE PROSECUTION FAILED TO ESTABLISH GUILT BEYOND REASONABLE DOUBT. — [A]s it stands, **in capital offenses, there is effectively no difference between a plea of guilty or not guilty — that is, in both instances, the prosecution is required to present evidence to prove the guilt of the accused beyond reasonable doubt.** An accused who made an improvident plea of guilty may nonetheless be found guilty of the crime charged if, independent of the improvident plea, the evidence adduced by the prosecution establishes his guilt beyond reasonable doubt. In the same vein, **an accused who made an improvident plea must perforce be acquitted if the prosecution failed to establish his guilt beyond reasonable doubt.**

7. ID.; ID.; ID.; CONSTITUTIONAL LAW; RIGHTS OF AN ACCUSED; PRESUMPTION OF INNOCENCE; REGARDLESS OF THE GUILTY PLEA TO A CAPITAL OFFENSE, AN ACCUSED IS PRESUMED INNOCENT UNTIL PROVEN GUILTY. — [T]he basic right of an accused to be presumed innocent until proven guilty applies even after he or she enters a guilty plea to a capital offense. . . .

. . .

. . . Regardless of the plea of the accused, the prosecution is required to prove his or her guilt with proof beyond reasonable doubt. A guilty plea is merely a supporting evidence in favor of the prosecution. Hence, if the prosecution fails to present proof beyond reasonable doubt for any reason whatsoever, the accused should be acquitted — regardless of his or her guilty plea.

8. ID.; ID.; ID.; IMPROVIDENT PLEA OF GUILT; THE REMAND OF A CASE FOR RE-TRIAL MAY BE ALLOWED ONLY WHEN THE PROSECUTION WAS COMPLETELY DEPRIVED OF ITS RIGHT TO PRESENT EVIDENCE AND WHEN UNDUE PREJUDICE IS CAUSED TO THE ACCUSED. — [T]he Court should only remand cases for retrial in situations when the

prosecution was **completely deprived** of its right to present evidence ***and*** when **undue prejudice is caused to the accused**.

9. ID.; ID.; ID.; ID.; ID.; IN THE LATTER EXCEPTION, AN ACCUSED IS GUARANTEED THE RIGHT TO COUNSEL AND TO BE HEARD BEFORE BEING CONDEMNED. — [T]he latter exception is in recognition of the inherent imbalance in our criminal justice system with the scales tipped against the accused:

> The presence and participation of counsel in criminal proceedings should never be taken lightly. Even the most intelligent or educated man may have no skill in the science of the law, particularly in the rules of procedure, and, without counsel, he may be convicted not because he is guilty but because he does not know how to establish his innocence. The right of an accused to counsel is guaranteed to minimize the imbalance in the adversarial system where the accused is pitted against the awesome prosecutory machinery of the State. Such right proceeds from the fundamental principle of due process which basically means that a person must be heard before being condemned.

The imbalance is even greater when an accused pleads guilty to a capital offense. Since the accused has already admitted the crime, the defense is left with the task of mitigating the consequences of the guilty plea. This is when counsel of the accused is called upon to be more vigilant and protective of the rights of his client.

10. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT OF AN ACCUSED TO SPEEDY TRIAL; PREJUDICE CAUSED TO AN ACCUSED BY THE DELAY IN THE PROCEEDINGS. — One of the factors used in determining whether there is a violation of the accused's right to speedy trial is the prejudice to the accused caused by the delay in the proceedings. Prejudice is determined through its effect on three interests of the accused that the right to a speedy trial is designed to protect, which are: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired. **Of these, the most serious is the last because the**

inability of a defendant to adequately prepare his case skews the fairness of the entire system.

11. ID.; ID.; ID.; ID.; ID.; TO REMAND A CASE TO THE TRIAL COURT AFTER NINE YEARS AND COMPEL AN ACCUSED TO UNDERGO NEW TRIAL IS TO AGGRAVATE FURTHER THE PREJUDICE TO THE ACCUSED CAUSED BY THE DELAY IN THE TRIAL OF THE CASE. — To now remand the case to the trial court (***after nine years that this case has languished on appeal***) and compel Pagal to undergo essentially a new trial, through no fault of his own, and to allow the prosecution another chance, would only further aggravate the prejudice to Pagal caused by the delay in the trial of his case. Here, since the prosecution did not present any evidence, the defense saw no need to present evidence of its own. Remanding the case would mean that Pagal would have to build his defense evidence all over again almost a decade after the trial court convicted him. Indeed, **the objective of the right to speedy trial is to assure that an innocent person may be free from the anxiety and expense of litigation or, if otherwise, of having his guilt determined within the shortest possible time compatible with the presentation and consideration of whatsoever legitimate defense he may interpose. This looming unrest as well as the tactical disadvantages carried by the passage of time should be weighed against the State and in favor of the individual.**

12. REMEDIAL LAW; CRIMINAL PROCEDURE; PLEA OF GUILTY TO A CAPITAL OFFENSE; TRIAL COURTS ARE ENJOINED TO STRICTLY ABIDE BY THE PROVISIONS OF SECTION 3, RULE 116. — Rather than revising Section 3, Rule 116, I agree with the *ponencia* in instead enjoining trial courts to strictly abide by the provisions of the said rule.

Indeed, justice is served not only when the guilty is convicted or the innocent acquitted. Justice is served when trials are fair and both parties are afforded due process. Technical rules serve a purpose. Every rule has the objective of a more efficient and effective judicial system. The three requirements in Section 3, Rule 116 ensures that both parties are afforded fairness and due process. These requirements aid in striking a balance between the State's right to prosecute crimes and the constitutional rights of the accused, which the courts are duty-bound to protect.

PERLAS-BERNABE*, J., dissenting opinion*:

1. REMEDIAL LAW; CRIMINAL PROCEDURE; ARRAIGNMENT. — In criminal proceedings, an arraignment has been regarded as an integral requirement of procedural due process. . . .

Particularly, an arraignment is **"the formal mode and manner of implementing the constitutional right of an accused to be informed of the nature and cause of the accusation against him."** In *Borja v. Mendoz*a, the Court has highlighted that "[a]n arraignment x x x [is] **indispensable** as the means 'for bringing the accused into court and notifying him of the cause he is required to meet.'"

2. ID.; ID.; ID.; A VALID ARRAIGNMENT IS IMPORTANT FOR AN ACCUSED TO ADEQUATELY PREPARE HIS DEFENSE; AN INVALID ARRAIGNMENT IS A FATAL DEFECT IN THE CRIMINAL PROCEEDINGS. — Since the arraignment is meant to formally inform the accused of the essential details of the charge against him, a valid arraignment is also important for the accused to adequately prepare his defense. The groundwork for the defense stems from the accused's preliminary understanding of the import and consequences of the charge against him. Case laws states that "the right of an accused to be informed of the precise nature of the accusation leveled at him x x x is, therefore, really an avenue for him to be able to hoist the necessary defense in rebuttal thereof." . . .

Without a valid arraignment, therefore, the accused's ability to defend himself is tainted; hence, an invalid arraignment must be considered as a fatal defect in the criminal proceedings.

3. ID.; ID.; PLEA OF GUILTY TO A CAPITAL OFFENSE; DUTIES OF THE TRIAL COURT IN CASE OF GUILTY PLEA TO A CAPITAL OFFENSE. — The importance of a valid arraignment gains additional nuance when the accused pleads guilty to a capital offense. As mentioned, Section 3, Rule 116 requires that on such occasion, the trial court judge must first conduct a searching inquiry into the voluntariness and full comprehension of the accused of his plea of guilty to a capital offense. In addition, trial court judges are enjoined to require the prosecution to present evidence to prove the guilt of the accused and the precise degree of his culpability; and to ask

the accused to present evidence in his behalf and allow him to do so if he so desires.

4. ID.; ID.; ID.; ID.; SEARCHING INQUIRIES; RATIONALE AND PURPOSE. — The rationale behind this special rule on searching inquiries is that "courts must proceed with more care where the possible punishment is in its severest form, namely death, for the reason that the execution of such a sentence is irrevocable and experience has shown that innocent persons have at times pleaded guilty. The primordial purpose is to avoid improvident pleas of guilt on the part of an accused where grave crimes are involved since he might be admitting his guilt before the court and thus forfeit his life and liberty without having fully understood the meaning, significance and consequence of his plea."

5. ID.; ID.; ID.; ID.; ID.; FOCUS OF SEARCHING INQUIRIES. — While the Rules of Criminal Procedure do not specify the actual matters that must be addressed during this searching inquiry, the Court, in several cases, has laid down the following guidelines that trial court judges must observe in this respect. . . .

Ultimately, however, "[t]he bottom line of the rule is that the plea of guilt must be **based on a free and informed judgment**. Thus the searching inquiry of the trial court must be focused on: (1) **the voluntariness of the plea**, and (2) the full comprehension of the consequences of the plea. The questions of the trial court [must] show the voluntariness of the plea of guilt of the [accused] [and that] the questions demonstrate appellant's full comprehension of the consequences of his plea."

6. ID.; ID.; ID.; IMPROVIDENT PLEA OF GUILT; NO VALID JUDGMENT CAN BE RENDERED UPON AN INVALID ARRAIGNMENT; A REMAND OF THE CASE IS IN ORDER SO THAT THE ARRAIGNMENT MAY BE CONDUCTED PROPERLY AND THE TRIAL COURT MAY RENDER A VALID JUDGMENT. — Recent cases convey that a conviction based solely on an improvident plea of guilt **shall be set aside and the case remanded for further proceedings**. This notwithstanding, some of these cases interestingly show that despite an improvident plea, a judgment of conviction may be sustained if the prosecution is nonetheless able to present ample evidence independent from the improvident guilty plea. To my

mind, these more recent cases appear to gloss over the older line of jurisprudence which soundly holds that "**no valid judgment can be rendered upon an invalid arraignment.**"

. . .

. . . [A]n invalid arraignment constitutes a fatal defect in the criminal proceedings precluding the trial court from making a valid judgment, whether of acquittal or conviction. On the contrary, I maintain reservations with the more recent cases which still uphold a judgment of conviction if there is evidence to sustain such finding, notwithstanding the improvident plea of guilt by the accused. As I see it, a trial court will not even be able to properly arrive at any determination of guilt if the arraignment is, in the first place, defective. This is because **an invalid arraignment impairs the understanding of the accused of the nature and cause of the accusation against him to which his defense strategy depends**. In turn, an impaired defense effectively plays into the relative strength of the prosecution's evidence since an accused who does not understand the charge against him may very well leave the prosecution's allegations unrebutted or evidence unobjected. The lack of rebuttal and objection consequently plays a role in the trial court's calibration of the evidence, and leads to a judgment of conviction that is tainted. In the end, any finding of guilt beyond reasonable doubt to sustain a conviction will be clouded by the irregularity of the arraignment, . . .

In fact, I add that not only does an invalid arraignment impair the defense, but, in some cases, may likewise affect the prosecution's strategy and vigor in presenting its case. **Hence, in my view, a judgment of acquittal can neither be made**.

. . .

. . . [A] miscarriage of justice may result from an improvident plea of guilt. Hence, a remand of the case is in order so that the arraignment may be conducted properly and in turn, for the trial court to render a valid judgment.

7. ID.; ID.; ID.; ID.; ID.; ID.; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT OF THE ACCUSED TO A SPEEDY DISPOSITION OF CASES; FAILURE TO SEASONABLY RAISE THE SAID RIGHT PRECLUDES THE ACCUSED FROM RELYING THEREON AS A GROUND TO DISMISS THE CASE. — Notably, should there be any inordinate delay borne from the remand, the ground for dismissal is violation of the accused's

right to speedy disposition which is a ground for dismissal tantamount to an acquittal. However, based on the records, this ground was never raised. In this regard, jurisprudence provides that the "[f]ailure to seasonably raise the right to speedy trial precludes the accused from relying thereon as a ground to dismiss the case. He is deemed to have slept on his rights by not asserting the right to speedy disposition at the earliest possible opportunity."

8. ID.; ID.; ID.; ID.; ID.; SUGGESTED SOLUTION TO CODIFY THE SEARCHING INQUIRY GUIDELINES AND RELEVANT PROCEDURES. — [W]hile I do recognize that a doctrinal directive to remand upon an improvident plea of guilt purports a policy of "resetting" the proceedings and hence may promote inexpediency, the underlying considerations are not merely procedural but are substantive in nature and thus, cannot be simply ignored for expediency's sake. The solution to this concern may lie, however, in the Court revisiting the current procedural framework and identify gaps that need to be bridged. In this light, I join the call . . . to codify the proper searching inquiry guidelines and other relevant procedures that trial court judges must follow whenever an accused pleads guilty to a capital offense. In addition, I suggest that the consequences of the failure to comply with these procedures - with respect to the criminal proceedings, and maybe, even as to disciplinary sanctions as to the mishandling judge - should be explicitly provided for proper guidance. Further, I propose that the Court look into crafting a procedure to account for findings of improvident guilty pleas at the latter stage of the case but at the same time, preserving the proceedings already conducted. In this regard, the crucial consideration is that the parties are given the opportunity to consider any change in legal strategy upon the accused's proper understanding of the nature and cause of the accusation against him as embodied in a valid plea.

LAZARO-JAVIER, *J.*, *dissenting opinion*:

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PLEA OF GUILTY TO A CAPITAL OFFENSE; DUTIES OF THE TRIAL COURT; DUTY OF THE PROSECUTION TO PROVE THE ACCUSED'S GUILT AND PRECISE DEGREE OF CULPABILITY; ATTENDANCE OF THE PROSECUTION WITNESSES

SHOULD BE COMPELLED. — I have **my doubts** that the **subpoenas were properly served** upon the prosecution witnesses in the manner subpoenas are to be served - in the **same manner as the personal or if proper substituted service** of summons. I cannot fathom that even a government witness, Dr. Regunda Uy, would have refused to heed her subpoena.

Nonetheless, even if the prosecution witnesses had been properly served the subpoenas, [I]f the trial judge and the trial prosecutor were **both minded about the duty of the prosecution** to prove the guilt of appellant beyond a reasonable doubt, the trial prosecutor should have sought, and the trial judge ought to have obliged, **coercive measures to compel** the attendance of the prosecution witnesses under Section 8 and Section 9 of Rule 23, *Rules of Court.*

The foregoing **duty** of the prosecution is a **duty** that the trial court cannot relieve the prosecution of. This **duty encompasses** the trial prosecutor's obligation to bring the prosecution witnesses to the court **by all means necessary**. As the Court has said a number of times, "[t]he court **cannot, and should not, relieve the prosecution of its duty** to prove the guilt of the accused and the precise degree of his culpability by the requisite quantum of evidence."

Hence, just as the trial court cannot simply accede to a motion to dismiss a pending case by the prosecution, the **waiver** of evidence by the prosecution **cannot and should not be taken lightly** by the trial court.

2. ID.; ID.; ID.; ID.; ID.; WAIVER OF PRESENTATION OF EVIDENCE; THE PROSECUTION'S WAIVER TO PRESENT ITS EVIDENCE MUST BE TESTED FOR ITS VALIDITY AND FAIRNESS. — There is **no reason** why the Court should *not* require of the public prosecution service the **same standards for determining the validity of its carte blanche waiver** to present its evidence **without even a single verified information** from its witnesses why they would no longer be attending any of the trial dates at all. The **reason** lies in the fact that the prosecution and punishment or correction of criminal offenders is a vital concern of the State, vital to its very existence. The interests of the people should **not** be sacrificed or jeopardized by the ignorance, negligence or malicious conduct of its prosecutors.

Further, the **duty of the prosecution** to present evidence is backstopped by the **correlative duty of the court to inquire** from the prosecution about its evidence. The court is **not a mere rubber-stamp** of whatever the prosecution wishes to do in litigating its case. The **waiver** must be tested for its validity and fairness, as explained above, and **ought to conform** to similarly situated proceedings where the court **has to intervene** by searching questions.

3. ID.; ID.; ID.; REMAND OF A CASE; THE REMAND OF A CASE IS DEMANDED WHEN THERE IS UTTER ABSENCE OF FACTS APPROPRIATE TO THE LEVEL OF PROSECUTIONAL DILIGENCE. — As in ***Bodoso***, the **remand** of the instant case to the trial court is **demanded** not by the inadequate **but by the utter absence** of facts appropriate to the level of prosecutorial diligence vis-a-vis the nature and gravity of the crime. The remand is for the **purposes** of **receiving the prosecution evidence**, as it appears that the subpoenas were **not properly served in the same manner as summonses, and if properly served, of imposing coercive measures** that had not been resorted to compel the attendance of prosecution witnesses and thereupon **conducting the second searching inquiry** to explain the waiver of prosecution evidence.

4. ID.; ID.; ID.; SEARCHING INQUIRY; WHERE THE PROSECUTION FAILS TO PRESENT EVIDENCE, A SECOND SEARCHING INQUIRY SHOULD BE CONDUCTED. — [A]ny accused's guilty plea should at least be a **curiosity centerpiece** in a criminal case, especially one involving a capital crime. It should rise to the level of an inculpatory evidence when it is adamantly adhered to **despite a faulty** searching inquiry. The guilty plea may not and **at present** will not constitute proof beyond a reasonable doubt, **but in instances where the prosecution fails to present evidence, it is imperative that the prosecution and its witnesses should be subjected to a *second searching inquiry,*** *with the same zealousness and strictness as the first searching inquiry*, **to determine the why's and wherefore's for their absences.**

5. ID.; ID.; ID.; ID.; IMPROVIDENT PLEA; AN IMPROVIDENT PLEA OF GUILT RENDERS THE ENTIRE PROCEEDINGS VOID AND WARRANTS THE REMAND OF THE CASE. — [T]he guilty plea here was **improvident**. As such, it voided the entire proceedings from arraignment until conviction. . . . [A]

void arraignment does **not** exist in law, and without an arraignment, **all proceedings** from that point onward are **also void**.

. . . [T]he Court invariably ruled that an arraignment is void where the accused entered an improvident plea of guilt, sans any clear showing that the trial court has adequately discharged its duty of conducting the requisite searching inquiry. An invalid arraignment means there is no arraignment at all. Without a valid arraignment, there can be no valid proceedings, let alone, a valid judgment of conviction or acquittal by the trial court, the Court of Appeals, or even the Supreme Court.

. . .

. . . It means, therefore, that the proceedings before the trial court ought to start all over again.

6. ID.; ID.; ID.; ID.; ID.; CONVICTION BASED ON IMPROVIDENT GUILTY PLEA IS SET ASIDE UNLESS THERE IS SUFFICIENT EVIDENCE ON RECORD TO SUSTAIN IT; IN THE ABSENCE OF ANY EVIDENCE FOR THE PROSECUTION, THE CASE OUGHT TO BE REMANDED TO THE TRIAL COURT. — [A]n improvident plea of guilt would not at all times warrant the remand of a case to the trial court. For when there is sufficient evidence on record to sustain a verdict of conviction independent of the admission of guilt, the manner in which the plea of guilt is made loses legal significance. . . .

But the case here is different. The case records are bereft of any evidence from the prosecution. Evidently, there was no basis for appellant's conviction other than his improvident plea of guilt. The exception enunciated in *Gumimba*, therefore, is inapplicable here. Instead, the Court ought to apply the general rule and remand the case to the trial court.

7. ID.; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULAR PERFORMANCE OF DUTY; SUCH PRESUMPTION CANNOT BE INVOKED IF THERE IS A DEMONSTRATION OF IRREGULARITY. — The prosecution **cannot be accorded** the **presumption of regularity** for the simple reason that the prosecution did not discharge its duty under Section 3, Rule 116. This is an **irregularity** that precludes the invocation of the presumption. As has been said, it is fundamental that the **presumption of regularity cannot be invoked** if there is *a* **demonstration of irregularity**.

As well, a presumption is an inference on the existence of a fact not actually known, and **arises from its usual connection with another that is known,** or a conjecture based on past experience as to what course of human affairs ordinarily takes. The **presumption of regularity cannot arise** from a **vacuum** but must be made from **particular known facts**.

8. ID.; CRIMINAL PROCEDURE; THE PROSECUTION AND TRIAL COURT'S ERRORS OR FAILURE TO ABIDE BY THE PERTINENT RULES DOES NOT JUSTIFY THE ACQUITTAL OF AN ACCUSED. — Appellant's outright acquittal impresses a **dangerous precedent**. This outcome seems to suggest that **acquittal** is the **recompense** for appellant and the **penalty** for the court and the State's failure to abide by Section 3 of Rule 116. While there may be consequences or sanctions that ought to be imposed upon the court and the State for their respective errors in applying Section 3 and some recognition for appellant being at the receiving end of these errors, I **do not think** that *acquittal* is the proper remedy for this purpose. At the end of the day, we **cannot not recognize** that **there are real and named victims** in this case for which acquittal would truly be an **unfair outcome**.

9. ID.; ID.; EVIDENCE; JUDICIAL ADMISSIONS; PLEA OF GUILT; RULE ON GUILTY PLEA OUGHT TO BE REVISITED; A PROPERLY MADE GUILTY PLEA IS A JUDICIAL ADMISSION THAT MAY SERVE AS A SUBSTITUTE FOR LEGAL EVIDENCE. — [T]he rule on guilty plea ought to be revisited, specifically the requirement that the prosecution **still prove the guilt** of an accused, besides his or her precise degree of culpability. The Court must **do away with this requirement** in instances **where the prosecution is left hanging with no prosecution evidence *after the determination of probable cause***. Of course, **at the start**, there **must have been some evidence against an accused**, because otherwise, no criminal case would have been instituted to begin with.

The proposal is motivated by, first, the **heavy evidentiary weight** carried by a guilty plea **not improvidently made** as it is really a **judicial admission** in the most formal and solemn manner. Judicial admissions are a substitute for legal evidence at trial, and waive or dispense with the production of evidence as well as the actual proof of facts by conceding for the purpose of litigation the truthfulness of the fact alleged by the adverse party.

10. ID.; ID.; ID.; ID.; ID.; EXTRAJUDICIAL CONFESSION; IF AN EXTRAJUDICIAL CONFESSION COULD RESULT IN A FINDING OF GUILT, A GUILTY PLEA SHOULD BE ACCORDED EQUAL, IF NOT GREATER, EVIDENTIARY WEIGHT. — Indeed, if an **extrajudicial confession** could result in a finding of guilt beyond reasonable doubt, I see no reason why a guilty plea should not be accorded equal if not greater evidentiary weight. The **adversarial nature** of the proceedings where an **extrajudicial confession** is introduced as evidence should **not** make a **guilty plea** less desirable and weighty than an extrajudicial confession. So long as it is **not improvidently made**, a **guilty plea** is always a **judicial admission** that **cannot be ignored** especially *when the prosecution loses the evidence it was earlier able to muster in filing the criminal case.*

The proposal is also motivated by the underlying **injustice** of dismissing a criminal case and acquitting an accused despite the guilty plea because the prosecution can no longer summon the evidence it had at the beginning of the criminal case.

ZALAMEDA, *J., dissenting opinion*:

1. REMEDIAL LAW; CRIMINAL PROCEDURE; REMAND OF THE CASE; REMAND OF THE CASE IS NECESSARY TO DETERMINE THE ACCUSED'S SUPPOSED CULPABILITY. — Terminating this case without any factual determination of accused-appellant's culpability, although ostensibly logical, hardly vindicates her death and the consequent disturbance of peace it has caused to her family and the community.

As will further be explained below, my vote to remand the case to the trial court should not be construed as an advocacy for or against accused- appellant, but rather a sincere submission to have the case re-evaluated to determine his supposed authorship of his sister-in-law's death.

. . .

I dissent to dismiss the case and acquit accused-appellant for the following reasons:

First, it appears that the arraignment of accused-appellant was highly irregular. It has not been established that the trial court performed its duty under Sec. 3 of Rule 116 of the Rules of Court. . . .

Second, it is uncontested that the prosecution failed to present evidence establishing the elements of the crime and accused-appellant's guilt. . . .

. . .

Third, accused-appellant maintained his plea of guilt throughout the reading of the allegations in the Information, and even after his counsel explained the consequences of his plea of guilt. . . .

Fourth, there appears to be a good reason to hold accused-appellant for trial. While our rules state that the record of the preliminary investigation does not form part of the record of the case in the trial court, I was constrained to look into the proceedings before the investigating prosecutor given the lack of formally offered evidence during trial. . . .

. . .

. . . A reading of the case records reveals that the cause for the postponement of the prosecution's presentation of evidence was the absence of Selma's widower and private complainant, Angelito. It is not far-fetched to consider that Angelito's absences were based upon his reliance on his own brother's admission of guilt. He could have surmised that his testimony is inconsequential or unnecessary in view of accused-appellant's plea.

2. ID.; ID.; PLEA OF GUILTY; PROVISIONAL DISMISSAL OF A CASE POSTPONED SEVERAL TIMES IS PREFERRED THAN NONCHALANTLY SUBMITTING THE CASE FOR DECISION BASED ON THE ACCUSED'S PLEA OF GUILT. — Provisional dismissal is a halfway measure which allows the prosecution to maintain a case, which is at a standstill due to the absence or unavailability of the complainant, and temporarily relieves the accused of the burdens of the trial. It is a mechanism to balance the sovereign right of the State to prosecute crimes with the inherent right of the accused to be protected from the unnecessary burdens of criminal litigation.

. . .

In the case at bar, the trial was postponed several times because of Angelito's absence; thus, it would have been more prudent for the prosecution, upon the consent of accused-appellant, to have the case provisionally dismissed.

Verily, prosecutors differ from other legal practitioners in that they advocate for the interests of the State aggrieved by

the commission of crime. Representing the State, however, does not grant them boundless powers to arbitrarily persecute people, nor justify a lackadaisical approach in case of occupational difficulties. Ultimately, prosecutors aid the court in its mandate to dispense justice, even to the accused. In this case, instead of nonchalantly submitting the case for decision on the basis of accused-appellant's plea of guilt, the prosecution should have at least sought provisional dismissal of the case as full and equal recognition of the interests of both the State and accused-appellant.

3. ID.; ID.; BENCH WARRANT; THE JUDGE MAY ISSUE A BENCH WARRANT TO COMPEL THE ATTENDANCE OF A WITNESS WHO FAILS TO ATTEND COURT HEARINGS DESPITE A SUBPOENA. — Courts are empowered by our procedural rules with tools to ensure the full and orderly determination of the merits of the case. Upon the failure of a witness to attend court hearings, judges have the power to issue a bench warrant to compel the witness' attendance. A bench warrant is a writ issued directly by a judge to a law-enforcement officer, especially for the arrest of a person who has been held in contempt, has disobeyed a subpoena, or has to appear for a hearing or trial. Jurisprudence dictates that the primary requisite for a bench warrant to be issued is that the absent-party was duly informed of the hearing date but unjustifiably failed to attend so.

. . .

. . . [T]he trial judge should have been more discerning and pro-active by assisting the prosecution in securing its witnesses' attendance before hastily terminating the trial, and convicting the accused. . . .

4. ID.; ID.; COURTS SHOULD AFFORD THE PROSECUTION A REAL OPPORTUNITY TO VENTILATE ITS ACCUSATIONS THROUGH THE USE OF AUTHORIZED COURT PROCESS TO COMPEL PRODUCTION OF EVIDENCE. — It is in view of these realities of public litigation that I referred to this Court's opinion in *Cagang v. Sandiganbayan*. I believe that it is worthwhile to be cognizant of these difficulties so that the courts and litigants can minimize lapses and ensure that trial is conducted properly. Being part of the five (5) pillars of the criminal justice system, the prosecution and the court's cooperation and harmonious interaction is vital to the orderly administration of justice. Necessarily, courts, within ethical limits,

should afford the prosecution a real opportunity to ventilate its accusations through the use of authorized court processes to compel production of evidence. After all, the State is also entitled to due process in criminal cases, that is, a fair opportunity to prosecute and convict.

5. ID.; ID.; PLEA OF GUILTY TO A CAPITAL OFFENSE; CONVICTION PREDICATED SOLELY ON AN IMPROVIDENT PLEA WARRANTS REMAND OF THE CASE TO THE TRIAL COURT FOR FURTHER PROCEEDINGS. — [W]here the plea of guilt to a capital offense has adversely influenced or impaired the presentation of the prosecution's case, the remand of the case to the trial court for further proceedings is imperative. Compared to the acquittal of accused-appellant, further proceedings would ensure that the interests of the both the prosecution and defense are duly considered and weighed. Allowing the accused-appellant to re-plead, with a definite showing that measures were undertaken to ensure that he understood the charge and the possible consequences of his plea, would also allow the trial court to determine if the accused-appellant had factual basis for his admission of guilt.

. . .

. . . Philippine jurisprudence has been consistent in remanding the case to the trial courts for further proceedings should the appellate courts find that the conviction was predicated solely on an improvident plea. . . . Here, where it appears that accused-appellant may have entered an improvident plea, among others, should not be treated as an exception.

6. ID.; ID.; ID.; ID.; ARRAIGNMENT; NECESSITY OF RETAKING OF ACCUSED'S PLEA. — The retaking of the accused-appellant's plea is necessary since arraignment is a formal procedure in a criminal prosecution "to afford an accused due process." An arraignment is the means of implementing the constitutional right of an accused to be informed of the nature and cause of the accusation against him. Actual arraignment is an element of due process, and is imperative for the accused to be fully aware of possible loss of freedom. Procedural due process requires that the accused be arraigned so that he may be informed as to why he was indicted and what penal offense he has to face, to be convicted only on a showing that his guilt is shown beyond reasonable doubt with full opportunity to disprove the evidence against him.

7. ID.; ID.; ID.; DUTIES OF THE TRIAL COURT; SEARCHING INQUIRY; THE GUIDELINES IN CONDUCTING SEARCHING INQUIRY SHOULD BE INCORPORATED IN THE RULES. — [T]his Court's pronouncement in *People v. Gambao* stating the guidelines to be observed by the trial court in conducting a "searching inquiry" should be incorporated in our rules on criminal procedure, . . .

8. ID.; ID.; ID.; PROPOSED RULES TO BE INCORPORATED IN THE RULES ON CRIMINAL PROCEDURE IN CASES OF A VALID PLEA OF GUILT. — In outline form, I thus propose the following be integrated in our Rules on Criminal Procedure in cases of valid plea of guilt:

> *Plea of guilty to a capital offense; sentencing procedure* – When the accused pleads guilty to a capital offense or those crimes punishable by *reclusion perpetua* and life imprisonment, and only if the court is satisfied of the voluntariness, comprehension and factual basis of the plea, the court shall:
>
> 1. require the prosecutor to-
> a) summarize the prosecution's case;
> b) identify in writing any offense that the prosecutor proposes should be taken into consideration in sentencing;
> c) provide information relevant to sentence, including—
> i. any previous conviction of the accused, and the circumstances where relevant,
> ii. any statement of the effect of the offense on the victim, the victim's family or others; and
> d) identify any other matter relevant to sentence, including—
> i. the legislation applicable,
> ii. any sentencing guidelines, or case law applicable,
> iii. aggravating and mitigating circumstances affecting the accused's culpability.
>
> 2. Clarify from the accused the factual basis of the plea, specifically whether:
> a) the accused wants to be sentenced on the basis of the facts agreed with the prosecutor; or
> b) in the absence of such agreement, the accused wants to be sentenced on the basis of different facts to those proposed by the prosecution.

3. Before passing sentence, the court must give the accused an opportunity to introduce evidence relevant to sentence.

4. Should the court be satisfied that the guilt of the accused be established by proof beyond reasonable doubt, the trial court shall convict him of the appropriate offense. Otherwise, the court shall enter a judgment of acquittal.

5. When the court has taken into account all the evidence, information and any report available, the court shall sentence the accused, and must-

    a) explain the factual and legal basis for the sentence;

    b) explain to the accused its effect, and the consequences of failing to comply with any order or payment of civil liability.

Plea of guilty to non-capital offense; reception of evidence, discretionary. — When the accused pleads guilty to a non-capital offense, the court may receive evidence from the parties to determine the penalty to be imposed.

The court may require the prosecution to:

a) summarize the prosecution's case;
b) identify any offense to be taken into consideration in sentencing;
c) provide information relevant to sentence, including any statement of the effect of the offense on the victim, the victim's family or others; and
d) where it is likely to assist the court, identify any other matter relevant to sentence, including—
    i. the legislation applicable,
    ii. any sentencing guidelines, or case law applicable,
    iii. aggravating and mitigating circumstances affecting the accused's culpability.

Record of proceedings. — A verbatim record of the proceedings of arraignment should be made and preserved.

LOPEZ, *J., dissenting opinion*:

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; PLEA OF GUILTY TO A CAPITAL OFFENSE; AN IMPROVIDENT PLEA OF GUILT WARRANTS THE REMAND OF THE CASE TO THE TRIAL COURT FOR APPROPRIATE PROCEEDINGS. —** [T]he improvident plea of guilt warrants the remand of this case to the trial court for appropriate proceedings. The absence of a searching inquiry as required under Section 3, Rule 116 of the 2000 Revised Rules of Criminal Procedure, and the accused's subsequent appeal indicate that the plea of guilty may not have been voluntarily and intelligently made. . . . [T]he accused should be re-arraigned to enter a proper plea so the court may render a valid verdict.

2. **ID.; ID.; ID.; DUTIES OF THE TRIAL COURT; IT IS DERELICTION OF DUTY WHEN THE TRIAL COURT ALLOWED THE CASE *NOLLE PROSEQUI*. —** [E]ven assuming that the plea of guilty is proper, I submit that the case should still be remanded because the trial court committed an error or abuse of discretion when it allowed *nolle prosequi* amounting to dereliction of duty. Notably, once an information has been filed, any disposition of the case, whether it results in dismissal, conviction, or acquittal of the accused, rests in the sound discretion of the trial court. The only limitation is that the accused's substantial rights must not be impaired, and the State should not be deprived of due process. Considering that there was already a plea of guilty, the trial court should have directed the prosecution, under pain of contempt, to prove the *corpus delicti* and to require the presentation of the victim's death certificate, the autopsy report, and the investigation report, which are all readily available. These documentary pieces of evidence, coupled with the accused's confession, may satisfy the required quantum of evidence to secure a conviction, at least for the crime of homicide, assuming that no eyewitness can be presented to the court.

3. **ID.; ID.; ID.; CONSTITUTIONAL LAW; RIGHTS OF THE ACCUSED; PRESUMPTION OF INNOCENCE; RIGHT TO A SPEEDY TRIAL; WHEN A PLEA OF GUILTY IS**

VOLUNTARILY AND INTELLIGENTLY MADE, THE PRESUMPTION OF INNOCENCE IS ALREADY REBUTTED, AND IN A SUCH CASE, THE RIGHT TO SPEEDY TRIAL IS NO LONGER MATERIAL. — It is my humble view that when an accused pleaded guilty, and the trial court is satisfied that it is voluntarily and intelligently made, meaning it is not improvident, the accused's presumption of innocence **is already rebutted**. A plea of guilty is an admission of the material facts alleged in the information and must be considered a judicial confession of guilt. A free and voluntary confession of guilt with full comprehension of its significance should be considered as evidence of high order because no person of a normal mind will deliberately admit to a crime unless prompted by truth and conscience. As such, the State and the private offended parties become interested in the proper sentencing of the accused. The ascertainment of the appropriate penalty is for the benefit of both the accused and the State. The right to a speedy trial or speedy disposition of the case is no longer material because the accused deserves to be serving his sentence. If there is any delay, the same cannot be considered prejudicial to the accused but on the State who is the real victim entitled to retribution for the crime committed. It must be stressed that the State also deserves due process for the speedy punishment of the accused.

4. ID.; ID.; ID.; JUSTICE IS BETTER SERVED IF THE CASE IS REMANDED AND THE ACCUSED IS CONVICTED OF THE PROPER OFFENSE. — Accordingly, the remand of this case is proper to afford the State its right to penalize the accused based on the crime he voluntarily pleaded. The crime of homicide, which does not *per se* require reception of evidence in cases of a plea of guilty, is considered subsumed as a lesser offense to the crime of murder. Yet, a conviction for the lesser offense may not be a commensurate penalty or punishment for the crime that the accused has confessed. Justice is better served if the accused will be convicted for the proper offense. The State does not deserve conviction for a lesser offense, worse an acquittal of the accused.

DELOS SANTOS, *J., dissenting opinion*:

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PLEA OF GUILTY TO A CAPITAL OFFENSE; DUTIES OF THE TRIAL COURT; SEARCHING INQUIRY; WHERE THE PRELIMINARY INVESTIGATION WAS MARRED BY A NUMBER OF IRREGULARITIES, A REMAND OF THE CASE FOR A SECOND OR FURTHER SEARCHING INQUIRY IS NECESSARY. — [U]nder Rule 116, Section 3 of the Rules of Court, the trial court has a three (3)-fold duty in instances where the accused pleads guilty to a capital offense, including the duty to: (1) conduct a *searching inquiry*; (2) require the prosecution to prove the accused's guilt and the accused's precise degree of culpability; and (3) allow the accused to present evidence in his behalf. . . .

In the case at bar, it has not been clearly established that the RTC performed its duty under the 1987 Constitution and the Rules of Court. . . . Considering that the preliminary investigation conducted on accused was marred by a number of irregularities, I respectfully believe that there should have been at least a second or further *searching inquiry* conducted by the RTC and the accused, who pleaded guilty to the capital offense, should be not acquitted solely on the basis of the failure of the prosecution to produce evidence of guilt beyond reasonable doubt. In this case, a further *searching inquiry* is proper to ensure that the criminal due process requirements under the 1987 Constitution are observed. Any acquittal which does not meet the requirements of the 1987 Constitution is inoperative.

. . .

Accordingly, a remand to the RTC is clearly necessary in this case to allow the RTC to properly carry out the *searching inquiry* and implement the provisions of Article III, Section 14 of the 1987 Constitution. The remand in this case will correct any potential improvident plea by accused. . . . The accused must clearly be re-arraigned.

2. ID.; ID.; ID.; WHERE THE PROSECUTION UNDULY RELIED ON THE ACCUSED'S PLEA OF GUILT AND THE SAME ADVERSELY INFLUENCED THE PRESENTATION OF EVIDENCE, A REMAND OF THE CASE FOR FURTHER PROCEEDINGS IS IMPERATIVE. — [I]t is highly likely that

the absence of the key witness was prompted by accused's plea of guilt. Given his relationship with accused, the key witness would surely have considered his testimony as inconsequential considering that accused had already entered his plea of guilt. In *People v. Besonia*, the Court ruled that where the prosecution unduly relied on accused's plea of guilt and that the said plea had already adversely influenced or impaired the presentation of the prosecution's evidence, the remand to the RTC for further proceedings is already imperative.

3. ID.; ID.; ID.; THE RULE ON THE CONDUCT OF A SEARCHING INQUIRY IN CASES WHERE AN ACCUSED PLEADS GUILTY TO A CAPITAL OFFENSE MUST BE REVISITED; GUIDELINES TO BE ADOPTED. — Indeed, the rule on the conduct of a searching inquiry when an accused pleads guilty to a capital offense must also be revisited. Following the Court's ruling in *People v. Gambao*, the specific guidelines on how judges shall conduct a *searching inquiry* must also be adopted. As pointed out by Justice Zalameda and by the Court in *Gambao*, the United States' Federal Rules of Criminal Procedure provides valuable guidance on this matter. . . .

GAERLAN, *J., dissenting opinion*:

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PLEA OF GUILTY TO A CAPITAL OFFENSE; DUTIES OF THE TRIAL COURT; FAILURE TO COMPLY THEREWITH RESULTING TO AN IMPROVIDENT PLEA OF GUILTY TO A CAPITAL OFFENSE WARRANTS A REMAND OF THE CASE FOR RE-ARRAIGNMENT AND FURTHER PROCEEDINGS. — [I]t is established that Section 3, Rule 116 is mandatory. Based on this rule, there are three conditions that the trial court should comply with in order to forestall the entry of an improvident plea of guilty by the accused. . . .

Now in a plethora of cases where the trial court failed to comply with these requisites resulting to the accused making an improvident plea of guilty to a capital offense, this Court has repeatedly remanded the case to the trial court for re-arraignment and further proceedings.

2 ID.; ID.; ID.; CONVICTION BASED SOLELY ON AN IMPROVIDENT PLEA OF GUILT; INADEQUATE

REPRESENTATION OF FACTS BY THE PROSECUTION AND DEFENSE DURING THE TRIAL JUSTIFIES THE REMAND OF THE CASE TO THE TRIAL COURT. — In the instant case, after appellant's plea of guilty to the crime of Murder, the prosecution failed to present any evidence to support his guilt. The appellant's counsel likewise opted to forego the presentation of the defense evidence. With the submission of the case for decision, the trial court convicted appellant for murder based solely on his improvident plea of guilt.

. . . [D]ue to appellant's improvident plea of guilt there was inadequate representation of facts by the prosecution and defense during the trial. Such irregularity resulted to unfairness and complete miscarriage of justice in the handling of the proceedings *a quo*. This, in the words of this Court in the *Molina* and *Murillo* cases, justifies the remand of the criminal case to the trial court.

3. ID.; ID.; ID.; ID.; ID.; THE PROSECUTION SHOULD BE GIVEN ANOTHER CHANCE TO PRESENT ITS CASE AND PROVE THE ALLEGATIONS IN THE INFORMATION, INCLUDING ANY ATTENDING CIRCUMSTANCES, TO DETERMINE THE PROPER PENALTY TO BE IMPOSED. — The trial court judge was guilty of negligence in his duty of ensuring that due process is observed despite a voluntary plea of guilt on the part of the appellant. . . .

Accordingly, . . . in compliance with the mandatory character of Section 3, Rule 116, the appellant should be given the opportunity to make a proper plea after ensuring that he is duly informed of the crime charged against him and the consequences of admitting to the commission thereof. Equally important, the prosecution should likewise be given another chance to present its case and prove the allegations in the information, including the qualifying, mitigating or aggravating circumstances, if any. It is important to note that these attending circumstances, if duly proven, will then determine the proper penalty to be imposed.

4. ID.; ID.; ID.; ID.; ID.; IT IS ONLY WHEN THE PROSECUTION FAILS TO PROVE GUILT BEYOND REASONABLE DOUBT THAT THE ACCUSED MAY BE ACQUITTED OF THE CRIME CHARGED. — Needless to state, despite appellant's voluntary plea of guilt, the prosecution must and should prove the

appellant's guilt, for the crime charged and the precise degree of his culpability. If the prosecution fails to prove appellant's guilt beyond reasonable doubt for the crime of murder, or any other crime in connection thereto, then and only then may appellant be acquitted of the crime charged.

5. ID.; ID.; ID.; ID.; ACQUITTING AN ACCUSED DUE TO THE TRIAL COURT'S NON-COMPLIANCE WITH THE RULES AND ITS DUTIES WILL DEPRIVE THE VICTIMS AND THEIR KINS OF DUE PROCESS. — [A]cquitting the appellant due to the trial court's failure to strictly comply with the rules on voluntary plea of guilt in capital offenses, particularly its failure to oblige the prosecution to present its evidence, will prejudice the victim and her kin who will be deprived of due process. They should not be made victims again, this time of the trial court who refused to diligently comply with the pertinent rules.

From all the foregoing, I humbly submit that due to the court *a quo*'s failure to comply diligently with the rules, a re-arraignment and re-trial is in order. With all due respect, instead of acquitting the appellant, the case should, therefore, be remanded to the trial court.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

GESMUNDO, *J.*:

"For there is but one essential justice which cements society, and one law which establishes this justice. This law is right reason, which is the true rule of all commandments and prohibitions. Whoever neglects this law, whether written or unwritten, is necessarily unjust and wicked."[1]

— Marcus Tullius Cicero

---

[1] Marcus Tullius Cicero, *On the Laws*, Seton University (last visited September 29, 2020), http://pirate.shu.edu/~knightna/westcivl/cicero.htm.

"In addition, the Court remains mindful of the fact that the State possesses vast powers and has immense resources at its disposal. Indeed, as the Court held in Secretary of Justice v. Lantion, the individual citizen is but a speck of particle or molecule vis-à-vis the vast and overwhelming powers of government and his only guarantee against oppression and tyranny are his fundamental liberties under the Bill of Rights which shield him in times of need."[2]

This is an *appeal* from the Decision[3] promulgated on May 8, 2018 by the Court of Appeals *(CA)* in CA-G.R. CR-HC No. 01521, which annulled and set aside the October 5, 2011 Order[4] of the Regional Trial Court of Hilongos, Leyte, Branch 18 *(RTC)* that found Brendo P. Pagal *(accused-appellant)* guilty beyond reasonable doubt of murder solely based on his plea of guilty. Accused-appellant was sentenced to suffer the penalty of *reclusion perpetua*. On appeal, the CA did not rule on the merits of the case but remanded it to the RTC for further proceedings.

The Antecedents

Accused-appellant was indicted under an Information dated July 10, 2009, the delictual allegations of which reads:

That on or about December 15, 2008, in Brgy. Esperanza, Matalom, Leyte, within the jurisdiction of this Honorable Court, the said accused, with intent to kill, did then and there, [willfully], unlawfully, feloniously, with treachery and taking advantage of superior strength, without any justifiable reason whatsoever, stabbed Selma Pagal, with a sharp bladed weapon, wounding her at the back penetrating the chest, thereby causing [her] direct and immediate death.

CONTRARY TO LAW.[5]

---

[2] *People v. Solar*, G.R. No. 225595, August 6, 2019.

[3] *Rollo*, pp. 4-11; penned by Associate Justice Gabriel T. Robeniol with Associate Justices Gabriel T. Ingles and Marilyn B. Lagura-Yap, concurring.

[4] Records, pp. 60-62; penned by Judge Ephrem S. Abando.

[5] Id. at 10.

During his arraignment on August 20, 2009, accused-appellant pleaded "*guilty*" to the crime charged. The RTC found the plea to be voluntary and with full understanding of its consequences. Thus, it directed the prosecution to present evidence to prove the guilt of accused-appellant and to determine the exact degree of his culpability in accordance with Section 3,[6] Rule 116[7] of the 2000 Revised Rules of Criminal Procedure *(2000 Revised Rules)*.[8]

In its August 20, 2009 Order, the RTC, in specific recognition of the duties imposed by Sec. 3 of Rule 116, stated that "WHEREFORE, premise considered and in consonance to the rules as to the plea of guilty to the capital offense, let the trial and presentation of first prosecution witness to determine the culpability of the accused on May 5, 2010 at 8:30 o'clock in the morning session of this Court."[9] On February 24, 2010, it issued a subpoena to Angelito Pagal, Cesar Jarden,[10] and Emelita Calupas to appear and testify before it on the said date.[11]

On November 22, 2010, the RTC issued another subpoena directed to Angelito Pagal to appear before it on February 22, 2011 at 8:30 in the morning.[12] This was received by a certain Malima Pagal and Angelito Pagal on December 15, 2010.[13]

---

[6] SECTION 3. Plea of Guilty to Capital Offense; Reception of Evidence. — When the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and shall require the prosecution to prove his guilt and the precise degree of culpability. The accused may present evidence in his behalf.

[7] Entitled *Arraignment and Plea*.

[8] *Rollo*, p. 5.

[9] Records, p. 22.

[10] Referred to as "Jardin" in some parts of the records.

[11] Records, pp. 24, 26 and 28.

[12] Id. at 35 and 39.

[13] Id. at 39.

On January 12, 2011, Subpoena/Warrant Server SPO1 Antonino R. Cabal PNP certified that the subpoena was duly served and received.[14]

In the February 22, 2011 Order, the RTC noted that "[s]upposed witness is Angelito P. Pagal who was subpoenaed by this court and properly served upon his person. However, his absence is very conspicuous to this court. The prosecution is so desirous to present prosecution witnesses to determine the culpability of the accused who readily pleaded guilty to the crime charged, requested that other witnesses be subpoenaed for them to testify in court in the event that Angelito Pagal could not come to court on the next setting."[15] It then set the trial and presentation of any prosecution witness on May 11, 2011 at 8:30 in the morning. It ordered a repeat subpoena be issued to Angelito Pagal, Cesar G. Jarden and Jaimelito Calupas.[16]

The repeat subpoena was issued to said prosecution witnesses on March 4, 2011. Included in the subpoena was Dr. Radegunda Uy, RHU, LGU, Matalom, Leyte.[17] This was duly received by all four (4) subpoenaed witnesses as indicated in the receiving copy.[18] On April 11, 2011, Subpoena/Warrant Server SPO1 Antonino R. Cabal PNP certified that the subpoena was duly served and received by all four subpoenaed witnesses.[19]

In its May 11, 2011 Order, the RTC once more noted that "[t]he prosecution is serious enough to prove the degree of culpability of the accused Brendo Pagal who pleaded guilty to the crime charged of murder but for several times there were absences made by the prosecution witness despite proper service of subpoena or notices. The prosecution on this situation requested

---

[14] Id. (back of the page).

[15] Id. at 41.

[16] Id.

[17] Id. at 43.

[18] Id. at 46.

[19] Id. (back of the page).

for a resetting and in the event no prosecution witness would appear and testify, this case is submitted to the x x x discretion of this court inviting the degree of culpability."[20] The RTC then set the trial and presentation of prosecution witnesses on July 20, 2011 at 8:30 o'clock in the morning. It sent another repeat subpoena to Angelito Pagal, Cesar Jarden, and Dr. Radegunda Uy.[21] On June 8, 2011, the RTC issued the repeat subpoena to said three witnesses and also included Jaimelito Calupas therein.[22] This was received by Angelito Pagal, Elesia Jarden on behalf of Cesar Jarden, "Teresita" Calopay on behalf of Jaimelito Calupas, and by Dr. Radegunda Uy as shown by the receiving copy.[23]

In its July 20, 2011 Order, the RTC stated that "[t]he prosecution after having exerted its effort to present any prosecution witness in determining the degree of culpability of the accused who pleaded guilty to the crime charged, has no one to be presented. On this matter, the prosecution now submitted the case for decision and as joined by the defense who has also no witness to be presented."[24]

As detailed above, none of the prosecution witnesses appeared and testified on the scheduled hearing dates of November 17, 2010; February 22, 2011; May 11, 2011; and July 20, 2011 for the presentation of the prosecution's evidence despite repeat subpoenas duly issued and received by them. The defense chose not to present any evidence in view of the prosecution's non-presentation. Both the prosecution and the defense moved for the submission of the case for decision.[25]

---

[20] Id. at 48.

[21] Id.

[22] Id. at 50.

[23] Id. at 52.

[24] Id. at 54.

[25] *Rollo*, p. 5.

The Ruling of the RTC

In its October 5, 2011 Order, the RTC found accused-appellant guilty beyond reasonable doubt based solely on his plea of guilty. It stated that accused-appellant maintained his plea despite being apprised that he will be sentenced and imprisoned on the basis thereof.[26]

The dispositive portion of the RTC Order[27] reads:

WHEREFORE, in view of the foregoing, accused BRENDO P. PAGAL alyas "DINDO" is hereby found **GUILTY** beyond reasonable doubt and sentenced to suffer the imprisonment of **RECLUSION PERPETUA**. And to pay the heirs of SELMA PAGAL ₱50,000.00 as indemnification and ₱50,000.00 as moral damages.

In the service of his sentence, accused is hereby credited with the full time of his preventive imprisonment if he agreed to abide by the same disciplinary rules imposed upon convicted prisoners, otherwise, he will only be entitled to 4/5 of the same.

SO ORDERED.[28]

Accused-appellant appealed the RTC Order to the CA and raised this singular error committed by the lower court, *viz.*:

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED SOLELY ON THE BASIS OF THE LATTER'S PLEA OF GUILT AND DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[29]

The Ruling of the CA

The CA annulled and set aside the October 5, 2011 Order of the RTC and remanded the case for further proceedings in

---

[26] CA *rollo*, pp. 39-40.

[27] It must be noted that the dispositive portion did not identify the felony to which the accused was found guilty of.

[28] CA *rollo*, p. 40.

[29] Id. at 29.

accordance with the guidelines to be observed in the proper conduct of a searching inquiry as required by Sec. 3, Rule 116 of the 2000 Revised Rules.[30]

The CA held that the RTC failed to comply with the requirements of Sec. 3, Rule 116 regarding the treatment of a plea of guilty to a capital offense, particularly the conduct of a searching inquiry into accused-appellant's voluntariness and full comprehension of the consequences of his plea. Also, the CA observed that the prosecution's evidence was insufficient to sustain a judgment of conviction independent of the plea of guilty. In fact, the CA noted that the prosecution did not present any evidence; thus, it remanded the case to the RTC with a directive that it follow the mandate of Sec. 3, Rule 116.[31]

Hence, this recourse.

The Petition Before the Court

On September 26, 2018, the Court issued a Resolution[32] to the parties that they could file their respective supplemental briefs, if they so desired, within thirty (30) days from notice. Both parties manifested that they would adopt their respective briefs before the CA.

Accused-appellant maintains that the RTC erred in convicting him on the sole basis of his guilty plea despite the failure of the prosecution to prove his guilt beyond reasonable doubt. He points to the fact that the prosecution was given numerous opportunities to present its evidence yet still failed to do so. He emphasizes that there is no evidence in support of his conviction except for his guilty plea. Considering that the prosecution failed to prove his guilt, the RTC should have dismissed *motu proprio* the action on the basis of insufficiency of evidence. He cites the case of *People v. Janjalani (Janjalani)*,[33] where the Court

---

[30] *Rollo*, p. 11.

[31] *Id.* at 7-11.

[32] *Id.* at 22-23.

[33] 654 Phil. 148 (2011).

stated that "[c]onvictions based on an improvident plea of guilt are set aside only if such plea is the sole basis of the judgment."[34] He concludes that since his conviction was based solely on his improvident plea of guilt, the RTC should have acquitted him. Lastly, he also invokes the equipoise rule: since neither the prosecution nor the defense presented any evidence, the law should be tilted in his favor.[35]

The Ruling of the Court

Accused-appellant's arguments are meritorious.

This Court sets aside the CA's order of remand. Dictates of constitutionally guaranteed fundamental rights mandate this course of action.

Accused-appellant availed of the wrong remedy

Procedurally, it must be noted that accused-appellant availed of the wrong remedy in questioning the May 8, 2018 CA Decision before this Court.

He filed a notice of appeal pursuant to Sec. 13(c), Rule 124 of the 2000 Revised Rules of Court, as amended by A.M. No. 00-5-03-SC, which provides:

SECTION 13. Certification or Appeal of Cases to Supreme Court. —

x x x x

(c) **In cases where the Court of Appeals imposes *reclusion perpetua*, life imprisonment or a lesser penalty**, it shall render and enter judgment imposing such penalty. **The judgment may be appealed to the Supreme Court by notice of appeal filed with the Court of Appeals**.

Here, the CA Decision annulled and set aside the RTC conviction and ordered the remand of the case to the RTC for further proceedings. Notably, the assailed CA Decision did not

---

[34] Id. at 161.

[35] CA *rollo*, pp. 29-38.

affirm the conviction or the penalty imposed by the RTC. Thus, Sec. 13(c), Rule 124 is not applicable to the case at bench.

Instead, accused-appellant should have filed an appeal by *certiorari* under Rule 45 of the Rules of Civil Procedure to assail the CA Decision pursuant to Sec. 3(e), Rule 122 of the 2000 Revised Rules, which expressly provides that "[e]xcept as provided in the last paragraph of Sec. 13, Rule 124, all other appeals to the Supreme Court shall be by petition for review on *certiorari* under Rule 45."

Accordingly, the remedy available to accused-appellant to question the CA Decision is an appeal by *certiorari* under Rule 45 of the Rules of Civil Procedure. It is an oft-repeated rule that appeals of criminal cases shall be brought to the Court by filing a petition for review on *certiorari* under Rule 45 of the Rules of Court except when the CA imposed a penalty of *reclusion perpetua* or life imprisonment, in which case the appeal shall be made by a mere notice of appeal before the CA.[36] Evidently, accused-appellant availed of the wrong remedy when it filed a notice of appeal to question the May 8, 2018 CA Decision.

Nonetheless, this Court, in the interest of substantial justice, shall treat the instant ordinary appeal as an appeal by *certiorari* so as to resolve the substantive issues with finality.

The evolution of the duty of trial courts in instances where the accused pleaded guilty to a capital offense

Accused-appellant was charged with murder, defined and penalized under Article 248 of the Revised Penal Code *(RPC)*. Murder is punishable by *reclusion perpetua* to death, making said crime a capital offense.[37]

---

[36] *Arambulo v. People*, G.R. No. 241834, July 24, 2019.

[37] SECTION 6. *Capital offense, defined*. — A capital offense is an offense which, under the law existing at the time of its commission and of the application for admission to bail, may be punished with death. (Rule 114, Revised Rules on Criminal Procedure)

It must be noted that murder remains a capital offense despite the proscription against the imposition of death as a punishment.[38] In *People v. Albert*,[39] the Court ruled that "in case death was found to be the imposable penalty, the same would only have to be reduced to *reclusion perpetua* in view of the prohibition against the imposition of the capital punishment, but the nature of the offense of murder as a capital crime, and for that matter, of all crimes properly characterized as capital offenses under the Revised Penal Code, was never tempered to that of a non-capital offense."[40]

Thus, when accused-appellant pleaded guilty during his arraignment, he pleaded to a capital offense. Sec. 3, Rule 116 of the 2000 Revised Rules is relevant, *viz.*:

> SECTION 3. *Plea of guilty to capital offense; reception of evidence*. — When the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and [shall] require the prosecution to prove his guilt and the precise degree of culpability. The accused may present evidence in his behalf.

Interestingly, the rule encapsulated in Sec. 3, Rule 116 was not the rule prior to the advent of the 1985 Rules on Criminal Procedure. The evolution of the rule reveals a dichotomy which the Court now addresses. The development of the rule, as well as jurisprudence, dictates a just resolution of the case.

Even prior to the adoption of the 1940 Rules of Court, jurisprudence has had to grapple with instances where an accused pleaded guilty to a capital offense. In such instances, the Court maintained a policy of restraint in rendering judgment on the sole basis of such plea.

---

[38] *People v. Albert*, 321 Phil. 500, 508 (1995).

[39] Id.

[40] Id. at 508.

As early as 1903, in *U.S. v. Patala*,[41] the Court cautioned against the acceptance of pleas of guilty and opined that the trial judge should freely exercise his discretion in allowing pleas of guilty to be withdrawn if the accused does not fully realize the probable effects of his admission:

> The pleas of "guilty" and "not guilty" as accepted in American law were unknown to the Spanish law. Under the Spanish law there was what was called "judicial confession," whereby the accused admitted the commission of the act alleged in the complaint, but by so doing the defendant did not attempt to characterize the act as criminal, as is the case with a defendant who pleads "guilty" under American law. It also appears that there are no words in the Tagalog or Visayan dialects which can express exactly the idea conveyed by the English word "guilty." In a case of homicide, for instance, when the question is put to the defendant in either of these two dialects as to whether he is guilty or not guilty, he is asked whether he killed the deceased or not. If he answers that he did kill the deceased, he merely admits that he committed the material act which caused the death of the deceased. He does not, however, understand it to be an admission on his part that he has no defense and must be punished. The case at bar serves to illustrate this fact. Under these circumstances, we are of opinion that the trial judge should freely exercise his discretion in allowing the plea of "guilty" to be withdrawn; indeed, he must, on his own motion, order that it be withdrawn if, in his opinion, the accused does not fully realize the probable effect of his admission.[42]

Again, in the 1917 case of *U.S. v. Jamad (Jamad)*,[43] this Court noted that "[n]otwithstanding the plea of 'guilty,' several witnesses were examined, under the well-settled practice in this jurisdiction which contemplates the taking of additional evidence in cases wherein pleas of 'guilty' are entered to complaints or information charging grave crimes, and more

---

[41] 2 Phil. 752 (1903).

[42] Id. at 755.

[43] 37 Phil. 305 (1917).

especially crimes for which the prescribed penalty is death."[44] Hence, the following guidelines were adopted:

> We may say then, in response to the request for a ruling on this subject by the Attorney-General:
>
> (1) The essence of the plea of guilty in a criminal trial is that the accused, on arraignment, admits his guilt freely, voluntarily, and with full knowledge of the consequences and meaning of his act, and with a clear understanding of the precise nature of the crime or crimes charged in the complaint or information.
>
> (2) Such a plea of guilty, when formally entered on arraignment, is sufficient to sustain a conviction of any offense charged in the information, even a capital offense, without the introduction of further evidence, the defendant having himself supplied the necessary proof.
>
> (3) There is nothing in the law in this jurisdiction which forbids the introduction of evidence as to the guilt of the accused, and the circumstances attendant upon the commission of the crime, after the entry of a plea of "guilty."
>
> (4) Having in mind the danger of the entry of improvident pleas of "guilty" in criminal cases, the prudent and advisable course, especially in cases wherein grave crimes are charged, is to take additional evidence as to the guilt of the accused and the circumstances attendant upon the commission of the crime.
>
> (5) The better practice would indicate that, when practicable, such additional evidence should be sufficient to sustain a judgment of conviction independently of the plea of guilty, or at least to leave no room for reasonable doubt in the mind of either the trial or the appellate court as to the possibility of a misunderstanding on the part of the accused as to the precise nature of the charges to which he pleaded guilty.
>
> (6) Notwithstanding what has been said, it lies in the sound judicial discretion of the trial judge whether he will take evidence or not in any case wherein he is satisfied that a plea of "guilty" has been entered by the accused, with full knowledge of the meaning and consequences of his act.

---

[44] Id. at 307-308.

(7) But in the event that no evidence is taken, this court, if called upon to review the proceedings had in the court below, may reverse and send back for a new trial, if, on the whole record, a reasonable doubt arises as to whether the accused did in fact enter the plea of "guilty" with full knowledge of the meaning and consequences of the act.[45]

From the foregoing, it is evident that this jurisdiction places a premium on ensuring that an accused pleading guilty to a grave crime understands his plea and the possible consequences thereof. Further, this Court expressly recognized the wisdom in receiving evidence in such cases despite the fact that Sec. 31[46] of General Order No. 58[47] contemplated the reception of evidence only in cases where a plea of not guilty has been entered.

---

[45] Id. at 317-318.

[46] SECTION 31. The plea of not guilty having been entered, the trial must proceed in the following order:

1. The counsel for the United States must offer evidence in support of the charges.
2. The defendant or his counsel may offer evidence in support of the charges.
3. The parties may then respectively offer rebutting testimony, but rebutting testimony only, unless the court, in furtherance of justice, permit them to offer new and additional evidence bearing upon the main issue in question.
4. When the introduction of testimony shall have been concluded, unless the case is submitted to the court without argument, the counsel for the United States must open the argument, the counsel for the defence must follow, and the counsel for the United States may conclude the same. The argument by either counsel may be oral or written, or partly oral and partly written, but only the written arguments, or such portions of the same as may be in writing shall be preserved in the records of the case.

[47] CODE OF CRIMINAL PROCEDURE OF THE PHILIPPINE ISLANDS, April 23, 1900.

The *Jamad* guidelines became the standard for trial courts when confronted with similar circumstances. It must be noted, however, that the reception of evidence in cases where the accused pleads guilty remained discretionary on the part of the trial court. In fact, convictions solely on the basis of a plea of guilty were upheld by this Court.

In *U.S. v. Burlado*,[48] this Court affirmed therein accused's conviction for the crime of qualified theft on the strength of his plea of guilty. The Court explained that "[a] plea of guilty, when formally entered on arraignment, is sufficient to sustain a conviction of any offense charged in the information without the introduction of further evidence, the defendant himself having supplied the necessary proof by his plea of guilty. (*United States v. Dineros*, 18 Phil. 566 (1911); *United States v. Jamad*, 37 Phil. 305 (1917).) ***The defendant having admitted his guilt of the facts charged in the complaint, the only question left for decision is the penalty***."[49]

The 1940 Rules of Court, the earliest progenitor of the 2000 Revised Rules, extended the same level of protection. Sec. 5, Rule 114 of the 1940 Rules of Court reads:

> SECTION 5. *Plea of Guilty — Determination of Punishment*. — Where the defendant pleads guilty to a complaint or information, if the court accepts the plea and has discretion as to the punishment for the offense, it may hear witnesses to determine what punishment shall be imposed.[50]

The 1964 version of the Rules of Court reproduced this section *verbatim*.[51] Thus, when an accused pleads guilty to a capital offense, the court may hear witnesses for purposes of determining

---

[48] 42 Phil. 72 (1921).

[49] Id. at 74. (emphasis supplied)

[50] 1940 RULES OF COURT, Rule 114. The provision was lifted from Section 229, Criminal Proc. Of the American Law Institute, per Moran, *Comments on the Rules of Court*, Rev. Ed. 1952, Vol. II, p. 829.

[51] 1964 RULES OF COURT, Rule 118, Sec. 5.

the punishment to be imposed; the guilt of the accused was a forgone conclusion. The rule seemed to institutionalize *Jamad* as shown by the discretionary nature of the hearing.

Accordingly, in *People v. Ng Pek*,[52] this Court stated that "[t]he record shows that when the case was called for the arraignment of the accused on November 3, 1947, the accused waived his right to be assisted by counsel and then and there entered the plea of guilty. ***That plea necessarily foreclosed the right of the accused to defend himself and left the court with no other alternative than to impose the penalty prescribed by law.***"[53]

In the same breath, the Court, in *People v. Santa Rosa*,[54] upheld the conviction of therein accused for illegal possession of a firearm due to his plea of guilty. It stated that "[t]he general rule is that 'a plea of guilty when formally entered on arraignment is sufficient to sustain a conviction of any offense charged in the information without the introduction of further evidence, the defendant himself having supplied the necessary proof by his plea of guilty.'"[55]

Finally, in *People v. Acosta*,[56] which involved the imposition of the supreme penalty of death for the crime of robbery with homicide, this Court upheld the conviction and penalty imposed and stated that:

"x x x the essence of the plea of guilty in a criminal trial is that the accused, on arraignment, admits his guilt freely, voluntarily and with full knowledge of the consequences and meaning of his act, and with a clear understanding of the precise nature of the crime charged in the information; that when formally entered, such a plea is sufficient to sustain a conviction of any offense charged in the

---

[52] 81 Phil. 562 (1948).

[53] Id. at 563.

[54] 88 Phil. 487 (1951).

[55] Id. at 489. (emphasis supplied)

[56] 98 Phil. 642 (1956).

information, even a capital offense, without the introduction of further evidence, the defendant having himself supplied the necessary proof; and that while it may be prudent and advisable in some cases, especially where grave crimes are charged, to take additional evidence as to the guilt of the accused and the circumstances attendant upon the commission of the crime nevertheless it lies in the sound discretion of the court whether to take evidence or not in any case where it is satisfied that the plea of guilty has been entered by the accused with full knowledge of the meaning and consequences of his act. (citations omitted)"[57]

Clearly, to this point, the reception of evidence when an accused pleads guilty depended on the sound discretion of the trial court.

However, the 1985 Rules on Criminal Procedure *(1985 Rules)* introduced a paradigm shift to the formerly discretionary role of trial courts when an accused pleads guilty to a capital offense. The 1985 version of the rule,[58] as amended, reads:

SECTION 3. *Plea of Guilty to Capital Offense; Reception of Evidence*. — When the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and require the prosecution to prove his guilt and the precise degree of culpability. The accused may also present evidence in his behalf. (5a, R-118)

The 2000 Revised Rules retained the salient points of the 1985 amendment. Hence, at present, the three (3)-fold duty of the trial court in instances where the accused pleads guilty to a capital offense is as follows: (1) conduct a searching inquiry, (2) require the prosecution to prove the accused's guilt and precise degree of culpability, and (3) allow the accused to present evidence on his behalf.

The present rules formalized the requirement of the conduct of a searching inquiry as to the accused's voluntariness and full comprehension of the consequences of his plea. Further,

---

[57] Id. at 644-645.

[58] 1985 RULES ON CRIMINAL PROCEDURE, Rule 116.

it made mandatory the reception of evidence in cases where the accused pleads guilty to a capital offense. Most importantly, the present rules require that the prosecution prove beyond reasonable doubt the guilt of the accused. Evidently, starting with the 1985 Rules, the accused may no longer be convicted for a capital offense on the sole basis of his plea of guilty.

The Court acknowledged the paradigm shift in *People v. Lagarto*,[59] thus:

> Section 5, Rule 118 of the old Rules of Court provides that "Where the defendant pleads guilty to a complaint or information, if the trial court accepts the plea and has discretion as to the punishment for the offense, it may hear witnesses to determine what punishments shall be imposed." The trial court in a criminal case may sentence a defendant who pleads guilty to the offense charged in the information, without the necessity of taking testimony. *(US vs. Talbanos, 6 Phil. 541)*. Yet, it is advisable for the trial court to call witnesses for the purpose of establishing the guilt and the degree of culpability of the defendant. *(People vs. Comendador, supra)* **The present Revised Rules of Court, however, decrees that where the accused pleads guilty to a capital offense, it is now mandatory for the court to require the prosecution to prove the guilt of the accused and his precise degree of culpability, with the accused being likewise entitled to present evidence to prove, *inter alia*, mitigating circumstances** (See *People vs. Camay*, 152 SCRA 401; Section 3, Rule 116 of Rules of Court).[60] (emphasis supplied)

It is equally important to note that the 1985 Rules retained the directive that the reception of evidence in cases where the accused pleads guilty to a non-capital offense is discretionary on the part of the trial court. This is encapsulated in Sec. 4, Rule 116 of the 1985 Rules.[61] The 2000 Revised Rules adopted Sec. 4, Rule 116 of the 1985 Rules *verbatim*.

---

[59] 274 Phil. 11 (1991).

[60] Id. at 18-19.

[61] SECTION 4. *Plea of Guilty to Non-Capital Offense; Reception of Evidence, Discretionary*. — When the accused pleads guilty to a non-capital offense, the court may receive evidence from the parties to determine the penalty to be imposed. (5a, R-118)

Considering the mandatory nature of Sec. 3, Rule 116 of the 2000 Revised Rules, this Court, in *People v. Gambao (Gambao)*,[62] restated the duties of the trial court when the accused pleads guilty to a capital offense as follows:

(1) to conduct a searching inquiry into the voluntariness and full comprehension of the consequences of the plea of guilt,

(2) to require the prosecution to still prove the guilt of the accused and the precise degree of his culpability, and

(3) to inquire whether or not the accused wishes to present evidence in his behalf and allow him to do so if he desires.[63]

Gambao also explained the rationale for these duties, thus:

Courts must proceed with more care where the possible punishment is in its severest form, namely death, for the reason that the execution of such a sentence is irreversible. ***The primordial purpose is to avoid improvident pleas of guilt on the part of an accused where grave crimes are involved since he might be admitting his guilt before the court and thus forfeiting his life and liberty without having fully understood the meaning, significance and consequence of his plea. Moreover, the requirement of taking further evidence would aid this Court on appellate review in determining the propriety or impropriety of the plea***.[64] (emphasis supplied)

For a better understanding of these duties, a closer look is in order.

The essence of the requirement of the conduct of a searching inquiry is the ascertainment of the accused's voluntariness and full comprehension of the consequences of his plea

The searching inquiry requirement means more than informing cursorily the accused that he faces a jail term but also, the

---

[62] 718 Phil. 507 (2013).

[63] Id. at 520-521.

[64] Id. at 521.

exact length of imprisonment under the law and the certainty that he will serve time at the national penitentiary or a penal colony.[65] The searching inquiry of the trial court must be focused on: (1) the voluntariness of the plea, and (2) the full comprehension of the consequences of the plea.[66]

Not infrequently indeed, an accused pleads guilty in the hope of lenient treatment, or upon bad advice, or because of promises of the authorities or parties of a lighter penalty should he admit guilt or express remorse. It is the duty of the judge to see to it that the accused does not labor under these mistaken impressions.[67]

A searching inquiry likewise compels the judge to content himself reasonably that the accused has not been coerced or placed under a state of duress — and that his guilty plea has not therefore been given improvidently — either by actual threats of physical harm from malevolent quarters or simply because of his, the judge's, intimidating robes.[68]

Further, a searching inquiry must not only comply with the requirements of Sec. 1, par. (a), of Rule 116 but must also expound on the events that actually took place during the arraignment, the words spoken and the warnings given, with special attention to the age of the accused, his educational attainment and socio-economic status as well as the manner of his arrest and detention, the provision of counsel in his behalf during the custodial and preliminary investigations, and the opportunity of his defense counsel to confer with him. These matters are relevant since they serve as trustworthy indices of his capacity to give a free and informed plea of guilt. Lastly, the trial court must explain the essential elements of the crime he was charged with and its respective penalties and civil liabilities, and also direct a series of questions to defense counsel to

---

[65] *People v. Francisco*, 649 Phil. 729, 740 (2010).

[66] *People v. Nuelan*, 419 Phil. 160, 173 (2001).

[67] Id. at 175.

[68] *People v. Dayot*, 265 Phil. 669, 677 (1990).

determine whether he has conferred with the accused and has completely explained to him the meaning of a plea of guilty. This formula is mandatory and absent any showing that it was followed, a searching inquiry cannot be said to have been undertaken.[69]

Simply, the requirement ensures that the plea of guilty was voluntarily made and that the accused comprehends the severe consequences of his plea. This means asking a myriad of questions which would solicit any indication of coercion, misunderstanding, error, or fraud that may have influenced the decision of the accused to plead guilty to a capital offense.

Thus, in every case where the accused enters a plea of guilty to a capital offense, especially when he is ignorant with little or no education, the proper and prudent course to follow is to take such evidence as are available and necessary in support of the material allegations of the information, including the aggravating circumstances therein enumerated, not only to satisfy the trial judge himself but also to aid the Supreme Court in determining whether the accused really and truly understood and comprehended the meaning, full significance, and consequences of his plea.[70] In particular, trial courts are mandated to conduct the searching inquiry, thus:

> Although there is no definite and concrete rule as to how a trial judge must conduct a "searching inquiry," we have held that the following guidelines should be observed:
>
> 1. Ascertain from the accused himself
>
> a. how he was brought into the custody of the law;
>
> b. whether he had the assistance of a competent counsel during the custodial and preliminary investigations; and
>
> c. under what conditions he was detained and interrogated during the investigations. This is intended to rule out

---

[69] *People v. Molina*, 423 Phil. 637, 649-650 (2001). (citations omitted)

[70] *People v. Nadera, Jr.*, 381 Phil. 484, 498 (2000).

the possibility that the accused has been coerced or placed under a state of duress either by actual threats of physical harm coming from malevolent quarters or simply because of the judge's intimidating robes.

2. Ask the defense counsel a series of questions as to whether he had conferred with, and completely explained to, the accused the meaning and consequences of a plea of guilty.

3. Elicit information about the personality profile of the accused, such as his age, socio-economic status, and educational background, which may serve as a trustworthy index of his capacity to give a free and informed plea of guilty.

4. Inform the accused the exact length of imprisonment or nature of the penalty under the law and the certainty that he will serve such sentence. For not infrequently, an accused pleads guilty in the hope of a lenient treatment or upon bad advice or because of promises of the authorities or parties of a lighter penalty should he admit guilt or express remorse. It is the duty of the judge to ensure that the accused does not labor under these mistaken impressions because a plea of guilty carries with it not only the admission of authorship of the crime proper but also of the aggravating circumstances attending it, that increase punishment.

5. Inquire if the accused knows the crime with which he is charged and fully explain to him the elements of the crime which is the basis of his indictment. Failure of the court to do so would constitute a violation of his fundamental right to be informed of the precise nature of the accusation against him and a denial of his right to due process.

6. All questions posed to the accused should be in a language known and understood by the latter.

7. The trial judge must satisfy himself that the accused, in pleading guilty, is truly guilty. The accused must be required to narrate the tragedy or reenact the crime or furnish its missing details.[71]

---

[71] *People v. Gambao*, 718 Phil. 507, 521-522 (2013).

Corollary to this duty, a plea of guilty to a capital offense without the benefit of a searching inquiry or an ineffectual inquiry, as required by Sec. 3, Rule 116 of the 2000 Revised Rules, results to an *improvident plea of guilty*. It has even been held that the failure of the court to inquire into whether the accused knows the crime with which he is charged and to fully explain to him the elements of the crime constitutes a violation of the accused's fundamental right to be informed of the precise nature of the accusation against him and a denial of his right to due process.[72]

This requirement is a reminder that judges must be cautioned against the demands of sheer speed in disposing of cases for their mission, after all, and as has been time and again put, is to see that justice is done.[73]

The plea of guilt made by the accused does not relieve the prosecution of the duty to prove the guilt of the accused beyond reasonable doubt

On account of the amendment of the 1964 Rules of the Court, the second duty of the trial court, to require the prosecution to present evidence of the guilt of the accused beyond reasonable doubt, has become mandatory. Hence, it is imperative that the trial court requires the presentation of evidence from the prosecution to enable itself to determine the precise participation and the degree of culpability of the accused in the perpetration of the capital offense charged.[74]

The reason behind this requirement is that the plea of guilt alone can never be sufficient to produce guilt beyond reasonable doubt. It must be remembered that a plea of guilty is only a supporting evidence or secondary basis for a finding of culpability, the main proof being the evidence presented by the prosecution

---

[72] Id. at 522.

[73] *People v. Dayot, supra* note 68 at 678.

[74] *People v. De Luna*, 255 Phil. 893, 901 (1989).

to prove the accused's guilt beyond reasonable doubt. Once an accused charged with a capital offense enters a plea of guilty, a regular trial shall be conducted just the same as if no such plea was entered. The court cannot, and should not, relieve the prosecution of its duty to prove the guilt of the accused and the precise degree of his culpability by the requisite quantum of evidence. The reason for such rule is to preclude any room for reasonable doubt in the mind of the trial court, or the Supreme Court on review, as to the possibility that the accused might have misunderstood the nature of the charge to which he pleaded guilty, and to ascertain the circumstances attendant to the commission of the crime which may justify or require either a greater or lesser degree of severity in the imposition of the prescribed penalties.[75]

Thus, as it stands, the conviction of the accused no longer depends solely on his plea of guilty but rather on the strength of the prosecution's evidence.

The accused must be given a reasonable opportunity to present evidence

The third duty imposed on the trial court by the 2000 Revised Rules is to allow the accused to present exculpatory or mitigating evidence on his behalf in order to properly calibrate the correct imposable penalty. This duty, however, does not mean that the trial court can compel the accused to present evidence. Of course, the court cannot force the accused to present evidence when there is none. The accused is free to waive his right to present evidence if he so desires.

Consistent with the policy of the law, the Court has issued guidelines regarding the waiver of the accused of his right to present evidence under this rule, thus:

> Henceforth, to protect the constitutional right to due process of every accused in a capital offense and to avoid any confusion about the proper steps to be taken when a trial court comes face to face

---

[75] *People v. Besonia*, 466 Phil. 822, 841-842 (2004). (citation omitted)

with an accused or his counsel who wants to waive his client's right to present evidence and be heard, **it shall be the unequivocal duty of the trial court to observe, as a prerequisite to the validity of such waiver, a procedure akin to a "searching inquiry" as specified in *People v. Aranzado* when an accused pleads guilty**, particularly —

1. The trial court shall hear both the prosecution and the accused with their respective counsel on the desire or manifestation of the accused to waive the right to present evidence and be heard.

2. The trial court shall ensure the attendance of the prosecution and especially the accused with their respective counsel in the hearing which must be recorded. Their presence must be duly entered in the minutes of the proceedings.

3. During the hearing, it shall be the task of the trial court to —

a. ask the defense counsel a series of question to determine whether he had conferred with and completely explained to the accused that he had the right to present evidence and be heard as well as its meaning and consequences, together with the significance and outcome of the waiver of such right. If the lawyer for the accused has not done so, the trial court shall give the latter enough time to fulfill this professional obligation.

b. inquire from the defense counsel with conformity of the accused whether he wants to present evidence or submit a memorandum elucidating on the contradictions and insufficiency of the prosecution evidence, if any, or in default theory, file a demurrer to evidence with prior leave of court, if he so believes that the prosecution evidence is so weak that it need not even be rebutted. If there is a desire to do so, the trial court shall give the defense enough time to this purpose.

c. elicit information about the personality profile of the accused, such as his age, socio-economic status, and educational background, which may serve as a trustworthy index of his capacity to give a free and informed waiver.

d. all questions posed to the accused should be in a language known and understood by the latter, hence, the record must state the language used for this purpose as well as reflect the corresponding translation thereof in English.

In passing, **trial courts may also abide by the foregoing procedure even when the waiver of the right to be present and be heard is made**

in criminal cases involving non-capital offenses. After all, in whatever action or forum the accused is situated, the waiver that he makes if it is to be binding and effective must still be exhibited in the case records to have been validly undertaken, that is, it was done voluntarily, knowingly and intelligently with sufficient awareness of the relevant circumstances and likely consequences. As a matter of good court practice, the trial court would have to rely upon the most convenient, if not primary, evidence of the validity of the waiver which would amount to the same thing as showing its adherence to the step-by-step process outlined above.

Clearly, the rationale behind the foregoing requirements is that courts must proceed with more care where the possible punishment is in its severest form, namely death, for the reason that the execution of such a sentence in irrevocable and experience has shown that innocent persons have at times thrown caution to the wind and given up defending themselves out of ignorance or desperation. Moreover, the necessity of taking further evidence would aid this Court in determining on appellate review the proprietary or impropriety of the waiver.[76] (emphasis supplied, citations omitted)

The RTC failed to comply with the mandate of Sec. 3, Rule 116 of the 2000 Revised Rules on Criminal Procedure

Applying the foregoing principles in this case, it is evident that the trial court failed miserably to comply with the duties imposed by the 2000 Revised Rules. As regards the first duty, the trial court failed to conduct a searching inquiry to determine the voluntariness and full comprehension by accused-appellant of his plea of guilty. The Court scanned the records of the case to see compliance with the said duty. The search, however, was in vain. The records are barren of any proceeding where the trial court gauged the mindset of the accused when he pleaded guilty.

There is no transcript of stenographic notes which would reveal what actually took place, what words were spoken, what warnings were given, if a translation was made and the manner

---

[76] *People v. Bodoso*, 446 Phil. 838, 855-857 (2003).

by which it was made, and whether or not the guidelines for a searching inquiry were duly observed.

The RTC merely stated in its August 20, 2009 Order[77] that "[a]ll the contents of the Information as well as the particular crime charged was personally read to accused-appellant in a Cebuano-Visayan dialect."[78] The RTC further stated that the court and his counsel explained to accused-appellant the consequences of his plea of guilt and that he will be sentenced and imprisoned. Despite this, accused-appellant maintained his plea of guilty.

Simply, there is no proof whatsoever that the herein judge conducted the searching inquiry required. No other conclusion can be made other than that the RTC failed to discharge its duties. Accused-appellant's plea of guilt is improvident.

What compounded the RTC's strenuous oversight is the fact that the trial court penalized accused-appellant of the crime charged despite failure of the prosecution to present evidence of his guilt. This is in direct contravention of the mandate of the second duty stated in Sec. 3, Rule 116 of the 2000 Revised Rules.

In this regard, the Court agrees with the CA that accused-appellant's guilt for the crime of murder was not proven beyond reasonable doubt. It is beyond cavil that the prosecution did not present any witness, despite being given four (4) separate hearing dates to do so. Thus, the RTC's conviction of accused-appellant relied solely on his improvident plea of guilty.

Lastly, as regard the third requisite, the October 5, 2011 Order of the RTC stated that "[a]ccused[-appellant,] despite the non-reception of prosecution's evidence[,] opted not to present any evidence in *[sic]* his behalf."[79] It would appear that accused-appellant waived his right to present evidence under Sec. 3,

---

[77] Records, p. 22.

[78] Id.

[79] Id. at 61.

Rule 116 of the 2000 Revised Rules. However, the same Order and the records of the case are bereft of any showing that the trial court complied with the guidelines promulgated by the Court in *People v. Bodoso*. Such cavalier attitude of the trial court to the Rules of Court and existing jurisprudence leaves much to be desired.

The RTC's noncompliance with the Rules of Court is beyond dispute. Both the OSG and accused-appellant agree on this point. The divergence, however, is centered on the effect of such noncompliance. Accused-appellant contends that he should be acquitted while the OSG agrees with the CA's order to remand the case for reception of evidence to prove accused-appellant's guilt.

The acquittal of accused-appellant is in order.

Jurisprudence dictates that the correct course of action depends on whether the prosecution has presented evidence to establish the guilt of the accused

The State insists that the case must be remanded to the trial court for further proceedings so that the trial court may comply with the requirements of Sec. 3, Rule 116.

For his part, accused-appellant insists that he should be acquitted because his guilt was not proven beyond reasonable doubt. In support thereof, he cited *Janjalani*[80] which ruled that "[c]onvictions based on an improvident plea of guilt are set aside only if such plea is the sole basis of the judgment."

Unfortunately, accused-appellant's quote is misleading. While it is true that convictions based on an improvident plea of guilt are indeed set aside if the plea is the sole basis of the judgment, it does not automatically result in the acquittal of the accused. Rather, the case is remanded to the lower court for compliance with Sec. 3, Rule 116 of the 2000 Revised Rules.

---

[80] Supra note 33.

The issue of the effects of an improvident plea of guilty on a conviction is not novel.

The applicable course of action prior to the 1985 Rules is clear. As stated above, the conviction of the accused simply depends on whether the plea of guilty to a capital offense was improvident or not. An indubitable admission of guilt automatically results to a conviction. Otherwise, a conviction on the basis of an improvident plea of guilt, on appeal, would be set aside and the case would be remanded for presentation of evidence. An exception to this is when, despite the existence of an improvident plea, a conviction will not be disturbed when the prosecution presented sufficient evidence during trial to prove the guilt of the accused beyond reasonable doubt. The existing rules, however, shifted the focus from the nature of the plea to whether evidence was presented during the trial to prove the guilt of the accused.

People v. Derilo[81] explained this shift, thus:

> Over the years and through numerous cases, this Court has adopted an exception to the erstwhile rule enunciating that there is no need to prove the presence of aggravating circumstances alleged in an information or complaint when the accused pleads guilty to the charge. Our rulings regarding this principle were expressed more or less in this wise:
>
> > Having pleaded guilty to the information, these aggravating circumstances were deemed fully established, for the plea of guilty to the information covers both the crime as well as its attendant circumstances qualifying and/or aggravating the crime.
>
> We are not, however, concerned here merely with the doctrine itself but more specifically with the consequences thereof. Thus, in *People vs. Rapirap*, it was formerly explained that the subject doctrine has the following effects:
>
> > A plea of guilty does not merely join the issues of the complaint or information, but amounts to an admission of guilt

[81] 338 Phil. 350 (1997).

> and of the material facts alleged in the complaint or information and in this sense takes the place of the trial itself. Such plea removes the necessity of presenting further evidence and for all intents and purposes the case is deemed tried on its merits and submitted for decision. It leaves the court with no alternative but to impose the penalty prescribed by law.

Then, in *People vs. Lambino*, we prevented the accused in criminal actions from contradicting the outcome of his admission, with our holding that by the plea of guilty, the accused admits all the facts alleged in the information and, by that plea, he is precluded from showing that he has not committed them.

People vs. Yamson, et al. thereafter expanded the application of the doctrine to both capital and non-capital cases:

> A plea of guilty is an admission of all the material facts alleged in the complaint or information. A plea of guilty when formally entered in arraignment is sufficient to sustain a conviction for any offense charged in the information, without the necessity of requiring additional evidence, since by so pleading, the defendant himself has supplied the necessary proof. It matters not even if the offense is capital for the admission (plea of guilty) covers both the crime as well as its attendant circumstances.

Finally, *People vs. Apduhan, Jr.* cited by some of the cases relied upon by the lower court, declared that —

> While an unqualified plea of guilty is mitigating, it at the same time constitutes an admission of all material facts alleged in the information, including the aggravating circumstance therein recited. x x x The prosecution does not need to prove the three aggravating circumstances (all alleged in the second amended information) since the accused, by his plea of guilty, has supplied the requisite proof.

With the foregoing presentation, the trial court must have believed that it had acted correctly in presuming the existence of evident premeditation based on appellant's plea of guilty without any proof being presented to establish such aggravating circumstance. However, the developmental growth of our procedural rules did not stop there. With the advent of the revised Rules on Criminal Procedure on January 1, 1985, a new rule, specifically mandating the course that

trial courts should follow in capital cases where the accused pleads guilty, was introduced into our remedial law with this provision:

> SEC. 3. *Plea of guilty to capital offense; reception of evidence* — When the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and require the prosecution to prove his guilt and the precise degree of culpability. The accused may also present evidence in his behalf.

We expounded on this in *People vs. Camay* with this explanation:

> Under the new formulation, three (3) things are enjoined of the trial court after a plea of guilty to a capital offense has been entered by the accused: 1. The court must conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea; 2. The court must require the prosecution to present evidence to prove the guilt of the accused and the precise degree of his culpability; and 3. The court must ask the accused if he desires to present evidence in his behalf and allow him to do so if he desires.
>
> The amended rule is a capsulization of the provisions of the old rule and pertinent jurisprudence. We had several occasions to issue the caveat that even if the trial court is satisfied that the plea of guilty was entered with full knowledge of its meaning and consequences, the Court must still require the introduction of evidence for the purpose of establishing the guilt and degree of culpability of the defendant. This is the proper norm to be followed not only to satisfy the trial judge but also to aid the Court in determining whether or not the accused really and truly comprehended the meaning, full significance and consequences of his plea.

The presentation of evidence is required in order to preclude any room for reasonable doubt in the mind of the trial court, or the Supreme Court on review, as to the possibility that there might have been some misunderstanding on the part of the accused as to the nature of the charge to which he pleaded guilty, and to ascertain the circumstances attendant to the commission of the crime which justify or require the exercise of a greater or lesser degree of severity in the imposition of the prescribed penalty.

To emphasize its importance this Court held in *People vs. Dayot* that the rule in Section 3, Rule 116 is mandatory, and issued the warning that any judge who fails to observe its command commits a grave abuse of discretion.

This Court has come a long way in adopting a mandatory rule with regard to the presentation of evidence in capital cases where the accused pleads guilty to the criminal charge. From granting trial courts in the earlier Rules of Court sufficient discretion in requiring evidence whenever guilt is admitted by the accused, the Court has now made it mandatory on the part of the lower courts to compel the presentation of evidence and make sure that the accused fully comprehends the nature and consequences of his plea of guilty.[82] (citations omitted)

Thus, the plea of guilty of an accused cannot stand in place of the evidence that must be presented and is called for by Sec. 3 of Rule 116. Trial courts should no longer assume that a plea of guilty includes an admission of the attending circumstances alleged in the information as they are now required to demand that the prosecution prove the exact liability of the accused. The requirements of Sec. 3 would become idle and fruitless if we were to allow conclusions of criminal liability and aggravating circumstances on the dubious strength of a presumptive rule.[83]

As it stands, the conviction of the accused shall be based principally on the evidence presented by the prosecution. The improvident plea of guilty by the accused becomes secondary.

Accordingly, convictions involving improvident pleas are affirmed if the same are supported by proof beyond reasonable doubt. Otherwise, the conviction is set aside and the case remanded for re-trial when the conviction is predicated solely on the basis of the improvident plea of guilt, meaning that the prosecution was unable to prove the accused's guilt beyond reasonable doubt. Thus:

---

[82] Id. at 365-368.

[83] Id. at 373-374.

As in the case of an improvident plea of guilty, an invalid waiver of the right to present evidence and be heard ***per se*** **does not work to vacate a finding of guilt in the criminal case and enforce an automatic remand thereof to the trial court**. In *People v. Molina*, **to warrant the remand of the case it must also be proved that as a result of such irregularity there was inadequate representation of facts by either the prosecution or the defense during the trial** —

> In *People v. Abapo* we found that undue reliance upon an invalid plea of guilty prevented the prosecution from fully presenting its evidence, and thus remanded the criminal case for further proceedings. Similarly in *People v. Durango* where an improvident plea of guilty was followed by an abbreviated proceeding with practically no role at all being played by the defense, we ruled that this procedure was "just too meager to accept as being the standard constitutional due process at work enough to forfeit a human life" and so threw back the criminal case to the trial court for appropriate action. Verily the relevant matter that justifies the remand of the criminal case to the trial court is the procedural unfairness or complete miscarriage of justice in the handling of the proceedings *a quo* as occasioned by x x x the "attendant circumstances."

Conversely, **where facts are adequately represented in the criminal case and no procedural unfairness or irregularity has prejudiced either the prosecution or the defense as a result of the invalid waiver, the rule is that the guilty verdict may nevertheless be upheld where the judgment is supported beyond reasonable doubt by the evidence on record**. Verily, in such a case, it would be a useless ritual to return the case to the trial court for further proceedings.[84] (emphases supplied)

Accordingly, this Court has sustained convictions[85] involving improvident pleas of guilt because, in any case, the sentence of conviction is supported by proof beyond reasonable doubt independent of the accused's plea of guilty.

---

[84] *People v. Bodoso,* supra note 76 at 857-858.

[85] *People v. Petalcorin*, 259 Phil. 1173 (1989); *People v. Nuñez*, 369 Phil. 422 (1999), *People v. Gumimba*, 545 Phil. 627 (2007); *People v. Ceredon*, 566 Phil. 536 (2008); and *People v. Francisco*, 649 Phil. 729 (2010).

However, where the conviction is predicated solely on the basis of an improvident plea of guilty, this Court has consistently chosen to set aside said conviction and, instead, remand the case to the lower court for further proceedings. This was the ruling in an unbroken line of jurisprudence.[86] "Further proceedings" usually entails re-arraignment and reception of evidence from both the prosecution and the defense in compliance with Sec. 3, Rule 116.

In *People v. Dalacat*,[87] this Court, in deciding to remand the case, stated the following:

> Given the unchanging state of the three-tiered requisites in Section 3, Rule 116, there is, indeed, no justification for the trial court's failure to observe them.
>
> Thus, we purge the decision under review of its errors and remand the case to the trial court for further re-arraignment, a more incisive searching inquiry and the reception of evidence for the prosecution and the defense, if the latter so desires, in accordance with the foregoing guideposts.[88] (citation omitted)

Parenthetically, it is a mistake to assume that an invalid arraignment automatically results to a remand of the case. In *People v. Ong (Ong)*,[89] the Court decided the case on its merits despite a determination of an invalid arraignment.

Jurisprudence has developed in such a way that cases are remanded back to the trial court for re-arraignment and re-trial when undue prejudice was brought about by the improvident

---

[86] *People v. Alicando*, 321 Phil. 656 (1995); *People v. Diaz*, 325 Phil. 217 (1996); *People v. Estomaca*, 326 Phil. 429 (1996); *People v. Abapo*, 385 Phil. 1175 (2000); *People v. Samontañez*, 400 Phil. 703 (2000); *People v. Sta. Teresa*, 407 Phil. 194 (2001); *People v. Galvez*, 428 Phil. 438 (2002); *People v. Pastor*, 428 Phil. 976 (2002); *People v. Ernas*, 455 Phil. 829 (2003); *People v. Besonia*, 466 Phil. 822 (2004); *People v. Murillo*, 478 Phil. 446 (2004); and *People v. Dalacat*, 485 Phil. 35 (2004).

[87] *People v. Dalacat*, supra.

[88] Id. at 54.

[89] 476 Phil. 553 (2004).

plea of guilty. The Court explains this course of action in *People v. Abapo*,[90] *viz*.:

We are not unmindful of the rulings of this Court to the effect that the manner by which the plea of guilt was made, whether improvidently or not, loses its legal significance where the conviction is based on the evidence proving the commission by the accused of the offense charged. However, after a careful examination of the records of this case, we find that the improvident plea of guilt of the accused-appellant has affected the manner by which the prosecution conducted its presentation of the evidence. The presentation of the prosecution's case was lacking in assiduity and was not characterized with the meticulous attention to details that is necessarily expected in a prosecution for a capital offense. The state prosecutor in his examination of the victim was evidently concerned only with proving the respective dates of the commission of the repeated rapes, and did not attempt to elicit details about the commission of each rape that would satisfy the requirements for establishing proof beyond reasonable doubt that the offenses charged have in fact been committed by the accused. It is clear to our mind that the prosecution did not discharge its obligation as seriously as it would have had there been no plea of guilt on the part of the accused. x x x[.][91] (citation omitted)

The Court repeated the rule in *People v. Molina (Molina)*[92] when it held that:

It is also urged in the Brief for the Appellant that an improvident plea of guilty *per se* results in the remand of the criminal case(s) to the trial court for the re-arraignment of accused-appellant and for further proceedings. We hold that this argument does not accurately reflect the standing principle. Our jurisdiction does not subscribe to a *per se* rule that once a plea of guilty is deemed improvidently made that the accused-appellant is at once entitled to a remand. To warrant a remand of the criminal case, it must also be proved that as a result of such irregularity there was inadequate representation of facts by either the prosecution or the defense during the trial. In

---

[90] Supra note 86 at 1186-1187.

[91] Id.

[92] Supra note 69.

People v. Abapo, we found that undue reliance upon an invalid plea of guilty prevented the prosecution from fully presenting its evidence, and thus remanded the criminal case for further proceedings. Similarly in *People v. Durango* where an improvident plea of guilty was followed by an abbreviated proceeding with practically no role at all being played by the defense, we ruled that this procedure was "just too meager to accept as being the standard constitutional due process at work enough to forfeit a human life" and so threw back the criminal case to the trial court for appropriate action. Verily the relevant matter that justifies the remand of the criminal case to the trial court is the procedural unfairness or complete miscarriage of justice in the handling of the proceedings *a quo* as occasioned by the improvident plea of guilty, **or what *People v. Tizon*, encapsulizes as the "attendant circumstances."**[93] (citations omitted, emphasis supplied)

Here, the Court cannot sustain the conviction as there is nothing in the records that would show the guilt of accused-appellant. Neither is it just to remand the case. This is not a situation where the prosecution was wholly deprived of the opportunity to perform its duties under the 2000 Revised Rules to warrant a remand. In this case, the prosecution was already given reasonable opportunity to prove its case against accused-appellant. Regrettably, the State squandered its chances to the detriment of accused-appellant. If anything, the State, given its vast resources and awesome powers, cannot be allowed to vex an accused with criminal prosecution more than once. The State should, first and foremost, exercise fairness.

The records also do not disclose that the improvident plea of guilty jeopardized the presentation of evidence by the prosecution, to the prejudice of either the prosecution or accused-appellant.

Therefore, in instances where an improvident plea of guilt has been entered and the prosecution was given reasonable opportunity to present evidence to establish the guilt of the accused but failed to do so, the accused is entitled to an acquittal, if only to give rise to the constitutionally guaranteed right to due process and the presumption of innocence.

---

[93] Id. at 651-652.

Since the prosecution was given four (4) separate hearing dates to present evidence against accused-appellant and, despite these chances, the prosecution was unable to prove his guilt, the Court acquits accused-appellant for failure of the prosecution to establish his guilt beyond reasonable doubt for the crime of murder.

The Refutation of the Dissents

Remand of the case to the trial court is unreasonable under the circumstances of the case

The Court respects the contrary position taken by other Members of the Court. While they agree that the trial court failed to comply with the three-fold duty imposed by Sec. 3, Rule 116 of the 2000 Revised Rules, they, however, are in unison that a remand of the instant case is more just and proper for a myriad of reasons. Their considerations will now be addressed in an effort to fully ventilate the issues at hand.

First, in his separate Opinion, Mr. Justice Rodil V. Zalameda argues that there was no evidence proving the prosecution was sorely remiss in its duties as to warrant the acquittal of accused-appellant and that this failure on the part of the prosecution may be justified. Further, he asserts that there was no showing that the prosecution was given an opportunity to explain why it failed to present its evidence and no showing that the defense raised any prejudice caused by the prosecution's inaction during the trial proper.[94] In short, he urges the Court to examine the reasons for such failure to determine whether the failure to prosecute was excusable or not. For this purpose, he proposes that the Court employ an approach similar to that adopted in cases of inordinate delay, as elucidated in *Cagang v. Sandiganbayan, Fifth Division (Cagang)*.[95] The purpose of

---

[94] *Reflections of J. Zalameda,* pp. 2-3.

[95] G.R. Nos. 206438, 206458 & 210141-42, July 31, 2018, 875 SCRA 374.

this proposal is to determine whether the delay is excusable considering that institutional delays may have occurred, which should not be taken against the State.

Second, he highlights the fact that accused-appellant maintained his plea of guilt despite the reading of the allegations of the information and the explanation given to him by counsel regarding the consequences of his plea. Thus, while accused-appellant's arraignment was less than ideal, the learned Justice asserts that to ignore the accused's "resolute stance" would be to unduly favor the accused and to ignore the interests of the State and the victim's relatives.[96] Madame Justice Amy C. Lazaro-Javier, in turn, posits that to acquit accused-appellant now would be to put a sad closure to the death of Selma and the sufferings of her family.[97]

Third, Mr. Justice Zalameda also found sufficient basis to engender the belief that accused-appellant was likely responsible for Selma's death and should be held for trial. He cites the affidavits submitted during preliminary investigation, wherein the affiants narrated the events concerning the death of the victim, Selma. His Opinion also notes that most of the affiants were relatives of accused-appellant,[98] thereby implying that this is most likely the reason why the prosecution had a hard time and even failed to prosecute. Mr. Justice Edgardo L. Delos Santos shared this view. He opined that "accused's plea of guilt and relationship with the private complainant indeed affected the supposed postponements and the absence of the key witness during the trial."[99]

Fourth, Mr. Justice Zalameda opines that the prosecution should have sought the provisional dismissal of the instant case. He further opines that the trial court should have issued a bench

---

[96] *Reflections of J. Zalameda*, p. 3.

[97] *Revised Reflections of J. Javier*, p. 4.

[98] *Reflections of J. Zalameda*, pp. 3-5.

[99] *Reflections of J. Delos Santos*, pp. 2-3.

warrant instead of allowing the trial to terminate without any witnesses presented by either of the parties.[100] He reasons that "the trial judge should have been more discerning and proactive by assisting the prosecution in securing its witnesses' attendance before hastily terminating the trial, and convicting the accused."[101] He concludes that "[p]erforce, courts, within ethical limits, should afford the prosecution a real opportunity to ventilate its accusations through the use of authorized court processes to compel production of evidence. After all, the State is also entitled to due process in criminal cases, that is, a fair opportunity to prosecute and convict."[102] Madame Justice Javier, for her part, observes that "[t]he evidence at the preliminary investigation was overwhelmingly inculpatory of murder that, together with appellant's guilty plea, should have compelled the trial judge and the trial prosecutor to have acted pro-actively."[103] Mr. Justice Mario V. Lopez, on the other hand, asserts that the case should be remanded because "the trial court committed an error or abuse of discretion when it allowed *nolle prosequi* amounting to dereliction of duty."[104] The learned Justice opines that "[the trial] court should have directed the prosecution, under pain of contempt, to prove the *corpus delicti* and to require the presentation of the victim's death certificate, the autopsy report, and the investigation report x x x. These documentary evidence coupled with the confession of the accused may suffice to satisfy the required quantum of evidence to secure a conviction, at least for the crime of homicide, assuming that no witness can be presented to the court."[105]

Fifth, for his part, Mr. Justice Samuel H. Gaerlan posits that "[i]t is indubitable x x x that the trial court judge was guilty

---

[100] *Reflections of J. Zalameda*, pp. 7-9.

[101] Id. at 8.

[102] Id. at 8-9.

[103] *Revised Reflections of J. Javier*, p. 2.

[104] *Reflections of J. Lopez*, p. 1.

[105] Id.

of negligence in his duty of ensuring that due process is observed despite a voluntary plea of guilt on the part of the appellant"[106] since the Court "made no mention of anything that would show that the trial court judge obliged the prosecution to present their evidence despite a voluntary plea of guilty. The *ponencia* cited no order or resolution from the trial court judge further requiring and directing the prosecution to proceed to the presentation of its witnesses after the latter's initial failure to present its evidence on the four hearing dates scheduled for such purpose. Instead, records show that the judge ordered the appellant to present witnesses in his defense, which appellant opted to waive."[107]

Sixth, Mr. Justice Gaerlan claims that "the parties' deliberate omission to present their evidence in support of their respective claims and defenses, was the effect of appellant's plea of guilt, which later on has been proven to be made improvidently. There was, therefore, undue reliance on the part of both the prosecution and the defense upon an invalid plea of guilty which prevented them from fully presenting their respective evidence."[108] Thus, it is of no moment that the prosecution failed to present its evidence despite reasonable opportunity to do so. Further, he opines that the failure of the prosecution to present its evidence "x x x is not the lone fault of the prosecution but also of the trial court judge."[109] This justifies the remand of the case.

Finally, Madame Senior Associate Justice Estela M. Perlas-Bernabe argues that the instant case be remanded because the lack of a valid plea taints the entire criminal proceedings and precludes the trial court from rendering a valid verdict.[110] She posits that an invalid arraignment should be considered as a fatal defect in criminal proceedings because it taints the

---

[106] *Reflections of J. Gaerlan,* p. 6.

[107] Id. at 5-6.

[108] Id. at 5.

[109] Id.

[110] *Revised Reflections of J. Perlas-Bernabe*, p. 1.

accused's ability to defend himself[111] and may likewise affect the prosecution's strategy and vigor in presenting its case.[112] She asserts that an invalid arraignment should result in the remand of the case. This view is shared by Madame Justice Javier.[113] Meanwhile, Mr. Justice Lopez asseverates that accused-appellant should be re-arraigned to enter a proper plea so that the court may render a valid verdict.[114]

In sum, they recommend that the case be remanded for re-trial.

Regrettably, the Court does not agree with these positions. Following existing laws and jurisprudence, the Court is convinced that justice is better achieved with accused-appellant's acquittal and, with due respect, the positions taken by some members of the Court would serve as a dangerous precedent that would put the accused in a more disadvantageous position, thereby jeopardizing fairness in criminal proceedings.

Allow Us to explain.

First, Mr. Justice Zalameda contends that it cannot be concluded that the prosecution was sorely remiss in its duties as to warrant the acquittal of accused-appellant and proposes to use the framework adopted in *Cagang*, supra, to balance the interest of all parties involved.

The Court respectfully begs to differ.

To the Court's mind, the proposal to determine the justification of the delay lacks basis and is unwarranted. There is nothing in the records that would show any inkling that the delay was excusable; otherwise the prosecution would have raised the same or the trial court would have stated otherwise. Further, the State had the opportunity to raise the reason for the

---

[111] Id. at 3.

[112] Id. at 6.

[113] *Revised Reflections of J. Javier*, pp. 1-2.

[114] *Reflections of J. Lopez*, p. 1.

prosecution's failure to present evidence in the appeal before the CA and this Court. Yet, it had been silent. The fact that none was noted or raised means that there were no extraordinary circumstances that would warrant re-trial.

On the contrary, there were sufficient reasons why the trial court was justified in waiving the prosecution's opportunity to present its evidence and proceeded with the promulgation of the decision.

To reiterate, Sec. 3, Rule 116 of the 2000 Revised Rules imposes upon the prosecution the duty to prove beyond reasonable doubt the guilt of the accused for the capital offense he pleaded guilty to. Aside from proving his guilt, the prosecution must also prove the accused's precise degree of culpability.

Clearly, the prosecution failed to discharge this duty. It failed to prove accused-appellant's guilt for the crime of murder beyond reasonable doubt. It did not present any evidence despite more than ample opportunity to do so.

As stated, the trial court provided the prosecution with reasonable opportunity to present its evidence. No less than four (4) separate hearing dates were given to the prosecution. Upon its failure to present evidence on the fourth hearing date, the prosecution did not seek another hearing date to once again attempt to present its evidence. Rather, the prosecution, together with the defense, submitted the case for decision.[115]

Sec. 11, Rule 119 of the 2000 Revised Rules provides:

SECTION 11. Order of Trial. — The trial shall proceed in the following order:

(a) The prosecution shall present evidence to prove the charge and, in the proper case, the civil liability.

(b) The accused may present evidence to prove his defense and damages, if any, arising from the issuance of a provisional remedy in the case.

---

[115] *Rollo*, p. 5; *records*, p. 54.

(c) The prosecution and the defense may, in that order, present rebuttal and sur-rebuttal evidence unless the court, in furtherance of justice, permits them to present additional evidence bearing upon the main issue.

(d) Upon admission of the evidence of the parties, the case shall be deemed submitted for decision unless the court directs them to argue orally or to submit written memoranda.

(e) When the accused admits the act or omission charged in the complaint or information but interposes a lawful defense, the order of trial may be modified. (3a) (emphasis supplied)

By submitting the case for decision, the prosecution impliedly declared that it is ready for the trial court to render its decision on the basis of the offered evidence. It must be stressed that the submission of the case for resolution did not originate from the trial court judge. It was on motion of both parties that the case be submitted. It is evident that the prosecution was not prevented from presenting its evidence as to accused-appellant's guilt and degree of culpability; rather, it appears that the prosecution merely chose not to pursue the same. No one prevented the prosecution from asking for more time to present its evidence; it was free to do so. However, when it chose to submit the case for decision, the State should have been ready for the consequences of its actions.

The fact that the defense joined the prosecution in its submission of the case for resolution should not be taken against accused-appellant. "In criminal cases, the prosecution has the *onus probandi* of establishing the guilt of the accused. *Ei incumbit probatio non qui negat*. He who asserts — not he who denies — must prove. The burden must be discharged by the prosecution on the strength of its own evidence, not on the weakness of that for the defense."[116]

The prosecution's failure to present evidence equates to a failure to discharge its duty under Sec. 3 of Rule 116: to prove beyond reasonable doubt the guilt of accused-appellant for the

---

[116] *People v. Asis*, 439 Phil. 707, 727-728 (2002).

crime of murder. The prosecution's failure to discharge said duty, absent any undue prejudice to either the prosecution or the defense, warrants the acquittal of accused-appellant.

Thus, there is no need to dwell on the justifications for the delay as there are no circumstances that would warrant suspicion that there was something amiss in the proceedings, especially when the prosecution actively participated in the waiver of its opportunity to present evidence.

Since there is no reason to delve into the justifications of the delay, there is no need to adopt a system similar to that adopted in *Cagang*.[117]

While the Court agrees that institutional delay is a matter which must be addressed and that such institutional delay must not be taken against the State, We are of the opinion that the instant case does not involve any evidence of institutional delay. The prosecution had reasonable opportunity to manifest to the trial court that its failure to present evidence on the hearing dates provided to it was due to any institutional delay. It did not do so. Instead of pursuing any of the remedies allowed by law for it to present evidence, the prosecution chose to move for submission of the case for resolution of the trial court. This belies any claim of institutional delay.

Ultimately, the duty placed on the prosecution by Sec. 3, Rule 116 is to prove beyond reasonable doubt the guilt of accused-appellant for the capital offense of murder. The prosecution failed to discharge this duty. To allow a re-trial would reward the prosecution for its inefficiency and nonfeasance. Justice and fairness dictate that accused-appellant be acquitted; lest, the Court would, wittingly or unwittingly, place the accused-appellant at a distinct disadvantage, a position that fairness would never allow.

Second, Mr. Justice Zalameda theorizes that to ignore accused-appellant's resolute maintenance of his plea of guilt would be to unduly favor accused-appellant and to ignore the interests

---

[117] Supra note 95.

of the State and of the victims' relatives. Simply put, accused-appellant's unusual resoluteness in maintaining his guilty plea should be enough justification for re-trial.

Again, the Court respectfully disagrees.

As discussed, the existing rules have shifted the focus from the nature of the plea to the quantum of evidence presented during trial to prove the guilt of the accused. The plea of guilty of an accused cannot stand in place of the evidence that must be presented and is called for by Sec. 3 of Rule 116. Trial courts should no longer assume that a plea of guilty includes an admission of the attending circumstances alleged in the information as they are now required to demand that the prosecution should prove the exact liability of the accused. ***The requirements of Sec. 3 would become idle and fruitless if we were to allow conclusions of criminal liability and aggravating circumstances on the dubious strength of a presumptive rule***.[118]

The fact that accused-appellant maintained his plea of guilt is of no consequence. His plea does not merit any weight and should not be considered by this Court in arriving at its resolution of the instant case.

Foremost, such plea was improvidently made. Accused-appellant did not have the benefit of the guidance of a searching inquiry. Thus, his plea cannot be legally considered as having been voluntarily made and with full comprehension of the consequences of such plea.

The strongest evidence to support accused-appellant's improvident plea is the fact that after the judgment of conviction had been rendered, accused-appellant appealed the case before the CA to have his conviction overturned. This shows that he is unaware of the consequences of his plea. Further, it belies any and all claims that he is resolute in the maintenance of his plea of guilt. If he is truly resolute in his guilty plea, he should

---

[118] *People v. Derilo*, supra note 81 at 373-374. (emphasis supplied)

not have appealed his conviction. This, however, is not the case.

Time and again, this Court has recognized that "[n]ot infrequently indeed, an accused pleads guilty in the hope of lenient treatment, or upon bad advice, or because of promises of the authorities or parties of a lighter penalty should he admit guilt or express remorse. It is the duty of the judge to see to it that the accused does not labor under these mistaken impressions."[119] A searching inquiry likewise compels the judge to content himself reasonably that the accused has not been coerced or placed under a state of duress and that his guilty plea has not therefore been given improvidently — either by actual threats of physical harm from malevolent quarters or simply because of his, the judge's, intimidating robes."[120]

To give any iota of weight to accused-appellant's improvident plea of guilt would run counter to a long line of jurisprudence, as well as to the tenets of justice and the constitutional presumption of innocence. It would also render inutile the requirements of Sec. 3, Rule 116 of the 2000 Revised Rules, which have been placed to protect the rights of the accused.

Aside from the fact that accused-appellant's plea was improvidently made, it is important to note that, with the advent of the 1985 Rules which introduced Sec. 3 of Rule 116, the plea entered by an accused in criminal cases involving a capital offense is negligible. The conviction of the accused shall stand solely on the strength of the evidence of the prosecution.

Here, there is nothing in the records that would show the guilt of accused-appellant. It is also not just to remand the case because this is not a situation where the prosecution was wholly deprived of the opportunity to perform its duties under the 2000 Revised Rules. In truth, to remand the instant case in the face of the prosecution's failure to discharge its duty under Sec. 3, Rule 116 would be to unduly favor the State and

---

[119] *People v. Nuelan*, 419 Phil. 160, 175 (2001).

[120] *People v. Dayot*, supra note 68.

the victims' relatives to the detriment of the constitutional rights of accused-appellant. This is not what our Constitution envisioned. This is especially true because Sec. 3 of Rule 116 has been in place since 1985. The duty of the prosecution to prove the accused's guilt for the capital offense, despite his plea of guilt, whether improvidently made or not, is not novel. No special considerations should be allotted the prosecution for its failure. *In dubio pro reo*. When in doubt, rule for the accused.

Moreover, existing laws and jurisprudence do not prevent the private complainant from attaining justice. The acquittal of accused-appellant does not disclose a claim for civil damages against the accused.

Lastly, to construe the silence and lack of action to withdraw his guilty plea as an evidence of his guilt would not only read too much on such omission but rather run afoul against the right of the accused-appellant to remain silent. To be sure, to require or even expect the accused-appellant to act in a particular way lest he be adjudged guilty would not only make his right to be silent, but also the presumption of innocence, an empty constitutional promise.

Hence, in this Decision, the interest of all parties concerned are protected.

Third, Mr. Justice Zalameda, joined by Mr. Justice Delos Santos, also posits that there is sufficient basis to engender the belief that accused-appellant was likely responsible for Selma's death and should be held for trial. They cite the narration of events surrounding the death of Selma stated in the records of the preliminary investigation and theorize that the plea of guilt affects the prosecution's presentation of evidence. They hypothesize that "Angelito's absences were based upon his reliance on his brother's admission of guilt";[121] that "accused-appellant's plea of guilt to the charge was an acknowledgment of his authorship of the crime and an attempt to give his family some type of closure."[122]

---

[121] *Reflections of J. Zalameda*, p. 4.

[122] Id.

With due respect, the Court cannot accept that proposition and to adopt this position would be treading on dangerous ground as it would consider evidence not presented during trial and, worse, allow surmises, conjectures, or inferences of the likelihood of the accused's guilt and, on said basis, order that the accused be tried again.

At the risk of being repetitive, there is nothing on record to support the guilt of accused-appellant aside from his improvident plea of guilt. This is something that is conceded. This is why the Court acquitted accused-appellant because there is no evidence to support his conviction. This acquittal is based on the duty of appellate courts to determine whether the quantum of evidence has been met for conviction. It must be made clear that appellate courts are not called to determine whether there is sufficient ground to engender the belief that the accused committed the crime and, thus, should be tried again. If the appellate court undertakes such a course of action, it would be acting beyond its authority and may even constitute grave abuse of discretion.

Here, the case already underwent proceedings in a court of law. The prosecution already had reasonable opportunity to discharge its duty under Sec. 3, Rule 116. Unfortunately, it failed to discharge said duty. There was no evidence of fraud or collusion. Neither was there prejudice in the proceedings that resulted to conviction of the accused by the trial court. Considering the foregoing, the Court submits that it is imprudent and unjust to once more determine the likelihood of accused-appellant's guilt and, on said basis, remand the case.

To be sure, the recommendation to remand is not based on any evidence on record but on assumptions, surmises and conjectures that are inferred from evidence *aliunde*. Evidence to support conviction or even re-trial should be based on evidence on record; otherwise, it would violate the due process rights of the accused, particularly, the presumption of innocence. A court that would lend its imprimatur to this act would be at a loss,

for "***indeed, the sea of suspicion has no shore, and the court that embarks upon it is without rudder or compass***."[123]

While, indeed, the function of the Court is to ferret out the truth, equally important is the mandate of the Court to put primacy on constitutional safeguards of human life and liberty. The truth surrounding Selma's death may only be ferreted out on the basis of evidence presented in court, as the Court is a court of record and of due process. Settled is the rule that "x x x courts will only consider as evidence that which has been formally offered."[124] This "x x x ensures the right of the adverse party to due process of law, for, otherwise, the adverse party would not be put in the position to timely object to the evidence, as well as to properly counter the impact of evidence not formally offered."[125] In the absence of inculpatory evidence amounting to proof beyond reasonable doubt, the Court is mandated by the constitutional presumption of innocence to acquit accused-appellant.

Fourth, Mr. Justice Zalameda argues that the prosecution should have sought the provisional dismissal of the instant case. He further opines that the trial court should have issued a bench warrant instead of terminating the trial proceedings. Meanwhile, Mr. Justice Lopez opines that the trial court should have ordered the prosecution to prove the *corpus delicti* and the submission of documentary evidence so as to prove accused-appellant's guilt.

The Court agrees that the remedies of provisional dismissal and the issuance of a bench warrant were available to both the prosecution and the trial court during trial proper. However, there was nothing in the records that would show that the prosecution sought the issuance of a bench warrant. Likewise, there was no indication that the prosecution sought the provisional dismissal of the case under Sec. 8, Rule 117 of the Rules of

---

[123] *People v. Asis*, supra note 116 at 728. (emphasis supplied)

[124] *Barut v. People*, 744 Phil. 20, 27 (2014).

[125] Id.

Court. Admittedly, the trial court could have directed the prosecution to submit documentary evidence to prove the guilt of accused-appellant. Nonetheless, these considerations should not weigh in the mind of the Court in resolving the instant case.

The sole duty of the appellate court in the instant case is to determine whether the trial court discharged its three-fold duty under Sec. 3, Rule 116 of the 2000 Revised Rules. Again, the three-fold duty of the trial court is to (1) conduct a searching inquiry, (2) require the prosecution to prove the accused's guilt and precise degree of culpability, and (3) allow the accused to present evidence on his behalf.

It is established that the trial court failed to discharge its duties. Thus, the sole question before the Court, then, is what the result is of such failure on the part of the trial court. This is the question to be resolved. It is submitted that the failure of the prosecution to move for provisional dismissal, the failure of the trial court to issue a bench warrant, and the failure of the trial court to order the presentation of documentary evidence is irrelevant in resolving the instant issue. What is clear is that the trial court afforded the prosecution reasonable opportunity to prove accused-appellant's guilt and precise degree of culpability but the prosecution failed to do so. Despite such failure, the trial court convicted accused-appellant based solely on his plea of guilt. To delve into what the RTC and the prosecution should have done, outside of their duties as outlined in Sec. 3, Rule 116, is beyond the pale.

Fifth, it must be clarified that the trial court indeed obliged the prosecution to present its evidence despite a plea of guilty on the part of accused-appellant. This is extant in the records and described in the early portions of this Decision. The records undisputedly show that the insistence of Mr. Justice Gaerlan and Madame Justice Javier that the trial court failed to or even negligently ordered the prosecution to present evidence despite the guilty plea is without basis. At this point, We reiterate the narration of events in the early portions of this Decision:

In its August 20, 2009 Order, the RTC, in specific recognition of the duties imposed by Sec. 3 of Rule 116, stated that "WHEREFORE, premise considered and in consonance to the rules as to the plea of guilty to the capital offense, let the trial and presentation of first prosecution witness to determine the culpability of the accused on May 5, 2010 at 8:30 o'clock in the morning session of this Court." On February 24, 2010, it issued a subpoena to Angelito Pagal, Cesar Jarden, and Emelita Calupas to appear and testify before it on the said date.

On November 22, 2010, the RTC issued another subpoena directed to Angelito Pagal to appear before it on February 22, 2011 at 8:30 in the morning. This was received by a certain Malima Pagal and Angelito Pagal on December 15, 2010. On January 12, 2011, Subpoena/Warrant Server SPO1 Antonino R. Cabal PNP certified that the subpoena was duly served and received.

In the February 22, 2011 Order, the RTC noted that "[s]upposed witness is Angelito P. Pagal who was subpoenaed by this court and properly served upon his person. However, his absence is very conspicuous to this court. The prosecution is so desirous to present prosecution witnesses to determine the culpability of the accused who readily pleaded guilty to the crime charged, requested that other witnesses be subpoenaed for them to testify in court in the event that Angelito Pagal could not come to court on the next setting." It then set the trial and presentation of any prosecution witness on May 11, 2011 at 8:30 in the morning. It ordered a repeat subpoena be issued to Angelito Pagal, Cesar G. Jarden and Jaimelito Calupas.

The repeat subpoena was issued to said prosecution witnesses on March 4, 2011. Included in the subpoena was Dr. Radegunda Uy, RHU, LGU, Matalom, Leyte. This was duly received by all four (4) subpoenaed witnesses as indicated in the receiving copy. On April 11, 2011, Subpoena/Warrant Server SPO1 Antonino R. Cabal PNP certified that the subpoena was duly served and received by all four subpoenaed witnesses.

In its May 11, 2011 Order, the RTC once more noted that "[t]he prosecution is serious enough to prove the degree of culpability of the accused Brendo Pagal who pleaded guilty to

> the crime charged of murder but for several times there were absences made by the prosecution witness despite proper service of subpoena or notices. The prosecution on this situation requested for a resetting and in the event no prosecution witness would appear and testify, this case is submitted to the x x x discretion of this court inviting the degree of culpability." The RTC then set the trial and presentation of prosecution witness on July 20, 2011 at 8:30 o'clock in the morning. It sent another repeat subpoena to Angelito Pagal, Cesar Jarden, and Dr. Radegunda Uy. On June 8, 2011, the RTC issued the repeat subpoena to said three witnesses and also included Jaimelito Calupas therein. This was received by Angelito Pagal, Elesia Jarden on behalf of Cesar Jarden, "Teresita" Calopay on behalf of Jaimelito Calupas, and by Dr. Radegunda Uy as shown by the receiving copy.
>
> In its July 20, 2011 Order, the RTC stated that "[t]he prosecution after having exerted its effort to present any prosecution witness in determining the degree of culpability of the accused who pleaded guilty to the crime charged, has no one to be presented. On this matter, the prosecution now submitted the case for decision and as joined by the defense who has also no witness to be presented." (citations omitted)

Based on the foregoing, in no manner can it be concluded that the trial court did not oblige the prosecution to present its evidence or exert efforts to secure the presence of the four (4) prosecution witnesses. It is worthy to note that one of the prosecution witnesses, Dr. Radegunda Uy, appears to be a third party. The failure of the prosecution to present her as a witness, despite the numerous subpoenas issued and which she duly received, is telling.

Again, at the risk of sounding repetitious, the second duty imposed on the trial court by Sec. 3, Rule 116 is to require the prosecution to prove the guilt and precise degree of culpability of the accused to the capital offense he pleaded guilty to. The trial court afforded the prosecution the opportunity to present

its evidence. The prosecution failed to do so. As such, there is no evidence in support of accused-appellant's conviction. Despite this, the trial court convicted accused-appellant. The failure of the prosecution to prove the guilt of accused-appellant should necessarily result in his acquittal, especially because there is no ambiguity in Sec. 3, Rule 116. The prosecution must prove the guilt of accused-appellant despite his plea of guilty. Absent such proof, he must be acquitted as mandated by the constitutional presumption of innocence.

It must also be respectfully pointed out that, contrary to the characterization of Mr. Justice Gaerlan, Mr. Justice Lopez,[126] and Mr. Justice Delos Santos[127] in their respective opinions, accused-appellant's plea is not a "voluntary plea of *guilty*."[128] Accused-appellant did not enter a "free, truthful, and voluntary plea of *guilty* to the crime of murder."[129] As has been established, said plea cannot be taken, in any manner whatsoever, as free, voluntary, and truthful because it did not benefit from the guidance of a searching inquiry as required by Sec. 3, Rule 116.

This brings us to the sixth argument for the remand of the instant case.

Mr. Justice Gaerlan asserts that there was undue reliance on the part of both the prosecution and the defense upon an "invalid plea of guilty"[130] which prevented them from fully

---

[126] Mr. Justice Lopez opined that "the remand of this case is proper to afford the State its right to penalize the accused based on the crime he voluntarily pleaded." (*Reflections of J. Lopez*, p. 2).

[127] Mr. Justice Delos Santos stated that "[t]he accused Brendo P. Pagal (accused) in this case entered a free, truthful, and voluntary plea of *guilty* to the crime of murder against victim Selma Pagal (Selma)." (*Reflections of J. Delos Santos*, p. 1.)

[128] *Reflections of J. Gaerlan*, p. 5.

[129] *Reflections of J. Delos Santos*, p. 1.

[130] *Reflections of J. Gaerlan*, p. 5.

presenting their respective evidence.[131] Thus, consistent with *Molina*[132] and *People v. Murillo (Murillo)*,[133] this undue reliance necessitates the remand of the case to the trial court for re-arraignment and re-trial.

Regrettably, the Court does not agree that, in the instant case, the prosecution and the defense unduly relied upon the plea of guilty by accused-appellant such that a remand of the case is proper.

The rulings in *Molina*, and *Murillo*, particularly on the undue reliance exhibited by the prosecution and the defense therein on the accused's plea of guilty, do not apply in the instant case because the facts differ from one another.

The undue reliance determined to be present by the Court in these two cases is not the failure of the prosecution to present evidence. Rather, it is the failure of the prosecution to prove its case as evidenced by its approach and attitude, as well as the failure of the defense to faithfully protect the rights of the accused. In both cases, the Court harbored serious doubts as to the guilt of the accused because the defense failed to protect the interests of the accused despite the inculpatory evidence presented therein by the prosecution.

In *Molina*, "x x x the prosecution evidence consisted of (a) the testimonies of Brenda, her mother, the police investigators, a *barangay* councilor, and the medico-legal officer, and (b) certain documents, *e.g.*, the birth certificate of Brenda, the medico-legal certificate, and the letter of accused-appellant to his daughter Brenda begging the latter's forgiveness. While the defense counsel cross-examined the prosecution witnesses, he did not introduce any evidence in behalf of accused-appellant."[134]

---

[131] Id. at 5-6.

[132] Supra note 69.

[133] Supra note 86.

[134] Supra note 69 at 646.

The finding that the improvident plea of guilt of accused-appellant affected the manner by which the prosecution and the defense conducted its presentation of the evidence, and the trial court in carefully evaluating the evidence on record, was based on specific instances carefully outlined in the decision, *viz.*:

> x x x. *First*, the prosecution failed to lay the proper foundation for the introduction of the alleged handwritten letter of accused-appellant acknowledging his guilt for the rape of his daughter. This could very well be attributed to the fact that this letter was introduced only after accused-appellant pleaded guilty to the accusations for which reason the prosecution no longer endeavored to elicit the proper foundation for this evidence.
>
> x x x x
>
> *Second*, the presentation of the prosecution's case was lacking in assiduity and was not characterized with the meticulous attention to details that is necessarily expected in a prosecution for a capital offense. In his examination of Brenda after accused-appellant pleaded guilty, the public prosecutor was evidently concerned with abbreviating the proceedings as shown by his failure to clarify such ambiguous statements as "he repeated to me what he had done to me" when previously he pursued such ambiguities to their clear intended meanings. It is clear to our mind that the prosecution did not discharge its obligation as seriously as it should have had, had there been no plea of guilt on the part of the accused.
>
> x x x x
>
> *Third*, the prosecution could very well clarify why on 1 March 1999 after accused-appellant's wife saw him and Brenda sleeping side by side and after she confronted his husband about it and was told by her daughter that "if I will tell it to you, my father will kill us," accused-appellant was still allegedly able to attempt a rape on his daughter on the same date. It is our understanding of the behavior of gutter criminals that with the confrontation between him and his wife, he would have laid low a while even for just that day. The prosecution may want to elucidate on this seemingly unnatural behavior.
>
> *Fourth*, neither the defense nor the prosecution elicited from the private complainant whether the accusations for incestuous rape and

attempted rape were in a manner colored by the seething allegations in the transcript of stenographic notes that accused-appellant was a violent person towards his family, most especially his wife who is Brenda's mother. This Court would want to know for sure that these criminal cases under review are not merciless equivalents of the alleged violence done by accused-appellant. Our endeavor is to try the case on the facts and not upon the supposedly despicable character of the man.

Fifth, the improvident plea appears to have sent the wrong signal to the defense that proceedings thereafter would be abbreviated. There was thus a perfunctory representation of accused-appellant as shown by (a) his counsel's failure to object to and correct the irregularities during his client's re-arraignment; (b) his failure to question the offer of the alleged letter wherein accused-appellant acknowledged his authorship of the dastardly crimes; (c) his failure to present evidence in behalf of accused-appellant or to so inform the latter of his right to adduce evidence whether in support of the guilty plea or in deviation therefrom; (d) his failure to object to his client's warrantless arrest and the designation of the crime in Crim. Case No. 99-02821-D as attempted rape when the evidence may appear not to warrant the same; and, (e) his failure to file a notice of appeal as regards Crim. Case No. 99-02821-D to the Court of Appeals for appropriate review. This Court perceives no reasonable basis for excusing these omissions as counsel's strategic decision in his handling of the case. Rather, they constitute inadequate representation that renders the result of the trial suspect or unreliable, and as we explained in *People v. Durango*, in violation of the right to counsel of accused-appellant.

x x x x

The flawed re-arraignment of accused-appellant and the invalid admission of his supposed letter-admission were caused by the omission of minimal standards for a searching inquiry in the former and the admissibility of private documents in the latter. We cannot conceive any reasonable legal basis to explain the oversight to contest these errors.

x x x x

The accusation and conviction of accused-appellant for attempted rape in Crim. Case No. 99-02821-D were based on the testimony of Brenda that she was watching television when her father unexpectedly sat beside her, pushed her to the floor, went on top of her, and *with their clothes on*, wiggled his hips while drubbing his penis on her

unexposed vagina. As she further testified, her friends suddenly called out her name from the house's frontage since they were supposed to attend a wake at a relative's house, and the unexpected visitors forced accused-appellant to stop his prurient motions. Considering these allegations, the defense could have plausibly argued accused-appellant's absence of intent to lie with the victim, or given accused-appellant's alleged willingness to plead guilty, at least conferred with the latter to inquire from him if he did have the intention then to have carnal knowledge of his daughter since the crime may constitute acts of lasciviousness and not the crime charged.

Still, as regards the conviction for attempted rape, this Court notes the conspicuous absence of a Notice of Appeal to the Court of Appeals for proper review. It was necessary to file such notice since the conviction does not fall under Sec. 17, par. (1), RA 296 *(The Judiciary Act of 1948)* as amended which outlines our jurisdiction over "[a]ll criminal cases involving offenses for which the penalty imposed is death or life imprisonment; and those involving other offenses which, although not so punished, arose out of the same occurrence or which may have been committed by the accused on the same occasion, as that giving rise to the more serious offense x x x."

x x x x

This omission is fatal since ordinarily the conviction for attempted rape would by now be already final and executory. No doubt this omission was caused by accused-appellant's improvident plea of guilty that led the public defender to simply shorten the proceedings. Given that the plea of guilty has been set aside, effective counseling would have nonetheless dictated the institution of at least a precautionary appeal to the appellate court if only to assure protection of his client's rights.

Sixth, for whatever reason, accused-appellant had not found a voice in the proceedings *a quo*. Oddly from the preliminary investigation to the promulgation of judgment his version was never heard of even if prior to his re-arraignment he appeared adamant at denying the crimes charged against him. This situation is lamentable since at the preliminary investigation of a criminal case the Constitution requires that an accused be informed of his right to counsel and provided with a lawyer if he cannot afford to hire one, and that a waiver of these rights requires the assistance of counsel.

While it is true that unrebutted evidence provides itself an effective corroboration, we cannot give credence to this rule given the circumstances under which such deficiency came about. For one, had the trial court correctly implemented the corresponding rules on plea of guilty, we may not be having this situation where only the private complainant was heard. The absence of the transcripts of stenographic notes of the arraignment proceedings already denies us "full opportunity to review the cases fairly and intelligently." After having set aside the plea of guilty, we could never be sure that accused-appellant would waive telling his version of the story, or that the facts would still be the same after we hear him say his side. Moreover, the sad fact of this omission is that obviously we could have learned more about the crimes alleged by the prosecution if accused-appellant had also participated meaningfully in all the proceedings below. His voice could better assure the fairness of any action for or against him. As in similar situations, we should achieve such comforting posture if the court *a quo* is required to establish with moral certainty the guilt of accused-appellant who allegedly wanted to confess his guilt by requiring him to narrate the incident or making him reenact it, or by causing him to furnish the missing details.

Lastly, the idea that in our midst runs a paucity of facts is substantiated by the assailed Decision of the trial court itself. It bewailed the sloppy pacing of the trial proper, but in coming up with the judgment of conviction barely summed up the testimony of the private complainant and other prosecution evidence. **No reason is given why the trial court found the testimonies of the prosecution witnesses credible except for the bare statement that Brenda wept while on the witness stand and the inadmissible letter allegedly from accused-appellant admitting the charges against him. The assailed Judgment fails to state, in short, the factual and legal reasons on which the trial court based the conviction**, contrary to Sec. 2 of Rule 120, *1985 Rules on Criminal Procedure*. Thus even the Decision lacks the "assurance to the parties that, in reaching judgment, the judge did so through the processes of legal reasoning x x x a safeguard against the impetuosity of the judge, preventing him from deciding by *ipse dixit*."[135] (emphases supplied)

---

[135] *People v. Molina*, supra note 69 at 653-662.

It is apparent from the foregoing that the Court, in *Molina*, harbored serious doubts as to the guilt of therein accused on the basis of the evidence presented during trial proper, as well as the kind of protection extended by the defense counsel. The specific instances it cited to support its conclusion that the prosecution and the defense unduly relied on the plea of guilt is undeniable.

In contrast, there are no specific instances in the case at bench that would point to the supposed undue reliance of the prosecution and the defense on accused-appellant's plea of guilt. It must also be noted that the prosecutors were optimistic in presenting their evidence-in-chief every time they asked for continuance from the trial court. This attitude of the prosecution is a far cry from what *Molina* or *Murillo* describes as undue reliance on the guilty plea. As shown in the Orders of the trial court granting continuance in favor of the prosecution, the latter did not take the case for granted due to the fact that accused-appellant pleaded guilty. Neither should the inaction of accused-appellant be considered as undue reliance to the guilty plea because his inaction to participate stems from his right to remain silent throughout the proceedings.

Be that as it may, in this case, the only thing clear from the records is that the prosecution was afforded reasonable opportunity, in the form of four (4) separate hearing dates, to present its evidence. When its witnesses did not appear, the prosecution, together with the defense, submitted the case for decision.[136] The defense's choice not to present evidence is wholly understandable in the face of the lack of evidence presented by the prosecution. The rule in criminal proceedings is clear; it is the burden of the prosecution to present evidence to prove the guilt of the accused beyond reasonable doubt. The accused need not present evidence to prove his defense.[137]

---

[136] *Rollo*, p. 5; *records*, p. 54.

[137] See *Macayan, Jr. v. People*, 756 Phil. 202, 214 (2015).

Meanwhile, in *Murillo*, the Court ordered the remand of the case due to the improvident plea of guilt and the lackluster defense afforded the accused therein by his counsel. In a marked difference from the instant case, the prosecution therein had, in fact, established the facts of the case through the testimony of therein accused, as hostile witness, and its other witnesses. The Court's recital of facts in *Murillo* was expressly prefaced with the statement that the prosecution's witnesses established the following facts.[138] However, the Court deemed it proper to remand the case because the defense failed to faithfully protect the rights of therein accused in the face of the evidence mounted by the prosecution. The Court's disquisition on the matter is as follows:

> The failure of the defense counsel to faithfully protect the rights of appellant also cannot go unnoticed. Records show that defense counsel Atty. Dante O. Garin, never cross-examined three of the four witnesses of the prosecution, namely Sancho Fereras, Ramon Saraos, and Dr. Ludivino Lagat. The only prosecution witness he cross-examined was SPO2 Nieves to whom he asked four questions pertaining only as to how the police came to the conclusion that the body parts belong to Paz Abiera. Apart from these, no other questions were ever offered.
>
> There is also no record anywhere that the defense counsel presented evidence for the accused nor that the trial court even inform him of his right to do so if he so desires.
>
> For these reasons, it cannot be said that the appellant's rights were observed in the proceedings *a quo*.
>
> It is well established that the due process requirement is part of a person's basic rights and is not a mere formality that may be dispensed with or performed perfunctorily. An accused needs the aid of counsel lest he be the victim of overzealous prosecutors, of the law's complexity or of his own ignorance and bewilderment. Indeed, the right to counsel springs from the fundamental principle

---

[138] "The prosecution presented Sancho Ferreras, brother of the victim; barangay tanod Ramon Saraos; SPO2 Angel Nieves of the Parañaque Police; and NBI Medico-Legal Officer Ludivino Lagat. They established the following facts: x x x" (*People v. Murillo*, supra note 86 at 452).

of due process. The right to counsel, however, means more than just the presence of a lawyer in the courtroom or the mere propounding of standard questions and objections. The right to counsel means that the accused is sufficiently accorded legal assistance extended by a counsel who commits himself to the cause for the defense and acts accordingly. This right necessitates an active involvement by the lawyer in the proceedings, particularly at the trial of the case, his bearing constantly in mind of the basic rights of the accused, his being well-versed on the case and his knowing the fundamental procedures, essential laws and existing jurisprudence. Indeed, the right of an accused to counsel finds meaning only in the performance by the lawyer of his sworn duty of fidelity to his client and an efficient and truly decisive legal assistance which is not just a simple perfunctory representation.

Atty. Garin, had the duty to defend his client and protect his rights, no matter how guilty or evil he perceives appellant to be. The performance of this duty was all the more imperative since the life of appellant hangs in the balance. As a defense counsel, he should have performed his duty with all the zeal and vigor at his command to protect and safeguard appellant's fundamental rights.

While our jurisdiction does not subscribe to a *per se* rule that once a plea of guilty is found improvidently he is at once entitled to a remand, the circumstances of this case warrant that a remand to the trial court be made. To warrant a remand of the criminal case, the Court has held that it must be shown that as a result of such irregularity there was inadequate representation of facts by either the prosecution or the defense during the trial. Where the improvident plea of guilty was followed by an abbreviated proceeding with practically no role at all played by the defense, we have ruled that this procedure was just too meager to accept as being the standard constitutional due process at work enough to forfeit a human life. What justifies the remand of the criminal case to the trial court is the unfairness or complete miscarriage of justice in the handling of the proceedings *a quo* as occasioned by the improvident plea of guilt. In this case, apart from the testimony of appellant, the prosecution does not have any other evidence to hold him liable for the crime charged."[139] (citations omitted, emphasis supplied)

---

[139] *People v. Murillo,* supra note 86 at 463-465.

All told, it is apparent that in *Molina* and *Murillo*, the evidence presented by the prosecution, uncontested and untested by the defense, could have resulted in the conviction of the accused therein. However, the failure of the defense to mount the proper legal defense on behalf of therein accused cast serious doubts on the evidence presented by the prosecution. Thus, the Court, in an effort to balance the interests of both the State and the victim, opted to remand the case in order to rid itself of any doubts as to the guilt of the therein accused.

While the Court understands that some of its Members believe that such similar balancing is needed in the instant case, the Court fails to see any rationale for such course of action. The choice of the defense herein not to present evidence cannot be attributed to the plea of guilty made by accused-appellant. The defense appears to have chosen not to present evidence because there was no inculpatory evidence to rebut or contradict. In the face of the failure of the prosecution to prove beyond reasonable doubt the guilt of accused-appellant, the defense rested its case. As previously noted by this Court, "if the prosecution fails to meet the required quantum of evidence, the defense may logically not even present evidence on its behalf. In which case, the presumption of innocence shall prevail and, hence, the accused shall be acquitted."[140]

The prosecution's failure, on the other hand, cannot be said to have been due to the plea of guilty made by accused-appellant. There is no specific conduct or specific utterance that would lend credence to such conclusion. The mere failure of the prosecution, absent any proof of the whys and hows, cannot be used as rationale for a remand. This is especially true because the prosecution was not lacking in any opportunity to raise any justifying reasons for its failure. Thus, to remand the case absent such proof would be to unduly favor the State at the expense of the accused. To stress once more, it would be unjust and contrary to the constitutional presumption of innocence. All doubts must be resolved in favor of the accused.

---

[140] *People v. Lorenzo*, 633 Phil. 393, 401 (2010).

Finally, Madame Senior Associate Justice Perlas-Bernabe argues that the instant case be remanded because the lack of a valid plea taints the entire criminal proceedings and precludes the trial court from rendering a valid verdict.[141] This, according to Mr. Justice Lopez, necessitates the remand of the instant case so that the Court may render a valid verdict.

The Court respectfully disagrees.

As previously mentioned, it would be a mistake to assume or conclude that an invalid arraignment automatically results in a remand of the case.

In *Ong*,[142] the Court, speaking through Chief Justice Reynato Puno, decided the case on its merits despite a determination of an invalid arraignment. In fact, the Court therein acquitted the two accused.

In said case, the Court found that the arraignment of therein two (2) accused violated the requirement that the information be read in a language or dialect known to them. It was observed that therein two accused were Chinese nationals who were unable "to fully or sufficiently comprehend any other language than Chinese and any of its dialect. Despite this inability, however, the [accused therein] were arraigned on an Information written in the English language."[143]

The Court declared that "[W]e again emphasize that the requirement that the information should be read in a language or dialect known to the accused is mandatory. It must be strictly complied with as it is intended to protect the constitutional right of the accused to be informed of the nature and cause of the accusation against him. The constitutional protection is part of due process. **Failure to observe the rules necessarily nullifies the arraignment**."[144]

---

[141] *Reflections of J. Perlas-Bernabe*, p. 1.

[142] Supra note 89.

[143] Id. at 565.

[144] Id. (emphasis supplied)

Nonetheless, despite such express finding of an invalid arraignment, the Court proceeded to discuss the merits of said case and, ultimately, found that the two accused should be acquitted.

Meanwhile, in *People v. Crisologo*,[145] the Court, through Senior Associate Justice Teodoro R. Padilla, decided the case on the merits despite the accused, who was deaf-mute, having been arraigned without an interpreter for the sign language. Similar to *Ong*, the Court did not order the remand of the case despite the invalid arraignment but, rather, acquitted the accused.[146]

On the basis of the foregoing, and by reason of parity, it is respectfully submitted that an invalid arraignment does not automatically result in the remand of the case. While it is true that a judgment of conviction cannot stand on an invalid arraignment, a judgment of acquittal may proceed from such invalid arraignment. The invalid arraignment itself is ground for acquittal.

The proposal to remand, if carried out, may very well violate accused-appellant's right to speedy disposition of cases

At this juncture, it must be emphasized that accused-appellant was indicted with the charge of murder on July 10, 2009.[147] Since the issuance of the warrant of arrest against him last July 22, 2009 or about (11) eleven years ago, accused-appellant remains under preventive detention.[148] Upon conviction by the trial court, he was transferred to the National Penitentiary in Muntinlupa on November 28, 2015.[149] If the proposal to remand is adopted, he will remain imprisoned during the re-trial. This

---

[145] 234 Phil. 644 (1987).

[146] Id. at 653.

[147] *Records*, pp. 10-11.

[148] Id. at 14.

[149] CA *rollo*, p. 43.

begs the question whether such course of action would be a violation of accused-appellant's constitutional right to speedy disposition of cases.

Sec. 16, Article III of the 1987 Constitution guarantees the constitutional right to speedy disposition of cases. It provides that "[a]ll persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies."

Initially embodied in Sec. 16, Article IV of the 1973 Constitution, the aforesaid constitutional provision is one of three (3) provisions mandating speedier dispensation of justice. It guarantees the right of all persons to 'a speedy disposition of their case'; **includes within its contemplation the periods before, during and after trial**, and affords broader protection than Sec. 14(2), which only guarantees the right to a speedy trial. It is more embracing than the protection under Article VII, Sec. 15, which covers only the period after the submission of the case. The present constitutional provision applies to civil, criminal and administrative cases.[150]

The Court's disquisition in *Corpuz v. Sandiganbayan*[151] is illuminating:

> The right of the accused to a speedy trial and to a speedy disposition of the case against him was designed to prevent the oppression of the citizen by holding criminal prosecution suspended over him for an indefinite time, and to prevent delays in the administration of justice by mandating the courts to proceed with reasonable dispatch in the trial of criminal cases. Such right to a speedy trial and a speedy disposition of a case is violated only when the proceeding is attended by vexatious, capricious and oppressive delays. The inquiry as to whether or not an accused has been denied such right is not susceptible by precise qualification. The concept of a speedy disposition is a relative term and must necessarily be a flexible concept.

---

[150] *Dansal v. Fernandez, Sr.*, 383 Phil. 897, 905 (2000).

[151] 484 Phil. 899 (2004).

While justice is administered with dispatch, the essential ingredient is orderly, expeditious and not mere speed. It cannot be definitely said how long is too long in a system where justice is supposed to be swift, but deliberate. It is consistent with delays and depends upon circumstances. It secures rights to the accused, but it does not preclude the rights of public justice. Also, it must be borne in mind that the rights given to the accused by the Constitution and the Rules of Court are shields, not weapons; hence, courts are to give meaning to that intent.

A balancing test of applying societal interests and the rights of the accused necessarily compels the court to approach speedy trial cases on an *ad hoc* basis.

In determining whether the accused has been deprived of his right to a speedy disposition of the case and to a speedy trial, four factors must be considered: (a) length of delay; (b) the reason for the delay; (c) the defendant's assertion of his right; and (d) prejudice to the defendant. **Prejudice should be assessed in the light of the interest of the defendant that the speedy trial was designed to protect, namely: to prevent oppressive pre-trial incarceration; to minimize anxiety and concerns of the accused to trial; and to limit the possibility that his defense will be impaired.** Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. There is also prejudice if the defense witnesses are unable to recall accurately the events of the distant past. Even if the accused is not imprisoned prior to trial, he is still disadvantaged by restraints on his liberty and by living under a cloud of anxiety, suspicion and often, hostility. His financial resources may be drained, his association is curtailed, and he is subjected to public obloquy.

Delay is a two-edge sword. It is the government that bears the burden of proving its case beyond reasonable doubt. **The passage of time may make it difficult or impossible for the government to carry its burden.** The Constitution and the Rules do not require impossibilities or extraordinary efforts, diligence or exertion from courts or the prosecutor, nor contemplate that such right shall deprive the State of a reasonable opportunity of fairly prosecuting criminals. As held in *Williams v. United States*, for the government to sustain its right to try the accused despite a delay, it must show two things: (a) that the accused suffered no serious prejudice beyond that which ensued from the ordinary and inevitable delay; and (b) that there

was no more delay than is reasonably attributable to the ordinary processes of justice.[152] (citations omitted, emphases supplied)

It is respectfully submitted that the resulting delay in the disposition of the instant case, if the proposal to remand is carried out, would be prejudicial to accused-appellant. As mentioned, accused-appellant was charged with murder in the year 2009. The incident involving the death of Selma occurred in 2008. He has been languishing in jail since 2009[153] and he will continue to be incarcerated during the period of the re-trial. At this point in time, accused-appellant has been incarcerated for more or less eleven (11) years. To require that he undergo re-trial, when the failure of the prosecution to prove his guilt beyond reasonable doubt was through no fault of his, is unreasonably oppressive.

Further, the resulting delay in the disposition of this case, if it were remanded, cannot be characterized, in any manner, as being reasonably attributable to the ordinary processes of justice. It cannot be denied that the decision to remand is in order to afford the prosecution another opportunity to prove what it failed to do the first time around: the guilt of accused-appellant. This cannot be characterized as an ordinary process of justice. After all, the ordinary process of justice demands that the accused be acquitted when his guilt is not proven beyond reasonable doubt after trial.

As a practical point, it must also be noted that the incident involving the death of Selma occurred in 2008. More than twelve (12) years has passed since then. The likelihood of the prosecution witnesses remembering with certainty the events surrounding the incident is miniscule. Any defense witness would also likely have a hard time recalling the events surrounding that fateful day. Thus, the defense would likely be impaired due to the passage of time. This is prejudicial to accused-appellant.[154]

---

[152] Id. at 917-918.

[153] Records, p. 14.

[154] In *Inocentes v. People*, the Court held that "[p]lainly, the delay of at least seven (7) years before the informations were filed skews the fairness

The Court is aware of the esteemed Madame Senior Associate Justice Perlas-Bernabe's proposition that accused-appellant's failure to timely raise the violation of his right to speedy disposition of cases amounts to a waiver of such right.

Respectfully, the Court cannot join such proposition. As things stand right now, there was no violation of accused-appellant's right to speedy disposition of cases. A violation would arise only when the Court adopts the position of the other Members of the Court to remand the case for re-trial. Such act of the Court is the triggering mechanism which would give rise to the violation of accused-appellant's right to speedy disposition of cases. In other words, there is no waiver of the right to speedy disposition of cases as yet because there is no violation of the right as of now. Therefore, accused-appellant could not have validly waived his right to speedy disposition of cases.

In *People v. Monje (Monje)*,[155] the accused therein, who was charged with three (3) others for the crime of rape with homicide involving a 15-year old, was acquitted by the Court due to insufficiency of evidence. On the proposal to remand the case to allow further proceedings, the Court *En Banc*, speaking through Senior Associate Justice Josue N. Bellosillo, had this to say:

> A proposal has been expressed for the remand of this case to the trial court for further proceedings, apparently to enable the prosecution to prove again what it failed to prove in the first instance. We cannot agree because it will set a dangerous precedent. Aside from its being unprocedural, it would open the floodgates to endless litigations because whenever an accused is on the brink of acquittal after trial, and realizing its inadequacy, the prosecution would insist to be allowed to augment its evidence which should have been presented much earlier. **This is a criminal prosecution, and to order the remand**

---

which the right to speedy disposition of cases seeks to maintain. Undoubtedly, the delay in the resolution of this case prejudiced Inocentes since the defense witnesses he would present would be unable to recall accurately the events of the distant past." (789 Phil. 318, 337 [2016].)

[155] 438 Phil. 716 (2002).

of this case to the court *a quo* to enable the prosecution to present additional evidence would violate the constitutional right of the accused to due process, and to speedy determination of his case. The lamentable failure of the prosecution to fill the vital gaps in its evidence, while prejudicial to the State and the private offended party, should not be treated by this Court with indulgence, to the extent of affording the prosecution a fresh opportunity to refurbish its evidence.

In fine, we are not unmindful of the gravity of the crime charged; but justice must be dispensed with an even hand. Regardless of how much we want to punish the perpetrators of this ghastly crime and give justice to the victim and her family, the protection provided by the *Bill of Rights* is bestowed upon all individuals, without exception, regardless of race, color, creed, gender or political persuasion — whether privileged or less privileged — to be invoked without fear or favor. Hence, the accused deserves no less than an acquittal; *ergo*, he is not called upon to disprove what the prosecution has not proved.[156] (emphases supplied)

While *Monje* admittedly did not involve a plea of guilty, improvident or not, the Court's aforequoted statement equally applies in the case at bar for the simple reason that, with the advent of the 1985 Rules which introduced Sec. 3 of Rule 116, the plea entered by an accused in criminal cases involving a capital offense is negligible. It is as if he entered a plea of not guilty. His guilt must be proven beyond reasonable doubt. Absent such proof, he must be acquitted as is necessitated by due process.

Confluence of errors committed by the prosecution, the defense, and the trial court are egregious and an affront to justice

The final nail in the coffin, so to speak, is the confluence of errors perpetrated by the perennial actors in Our criminal justice system. Three (3) principal actors play an integral part in the administration of criminal justice in Our jurisdiction. These principal actors are the public prosecutor, the defense, and the

---

[156] Id. at 735-736.

trial court. The result of acquittal in the instant case was ordained by the actuations of these three principal actors.

The prosecution, despite the numerous opportunities and aid offered to it in the form of repeat subpoenas, miserably failed to present its case for the conviction of accused-appellant. We remind the prosecution that "[t]he role of the fiscal or prosecutor as We all know is to see that justice is done x x x Thus, x x x, it is the duty of the fiscal to proceed with the presentation of evidence of the prosecution to the Court to enable the Court to arrive at its own independent judgment as to whether the accused should be convicted or acquitted."[157]

On the other hand, the defense failed to mount any kind of protection on behalf of its client, accused-appellant. While it is true that the defense was well-within its rights not to present evidence on account of the prosecution's non-presentation, as well as the right of the accused to remain silent, the defense's failure to object to the grievous noncompliance with Sec. 3, Rule 116, particularly on the requirement for a searching inquiry, is an absolute failure on its part to protect the rights of accused-appellant.

Lastly, the trial court completely failed to discharge its duties under Sec. 3, Rule 116. It did not conduct the mandated searching inquiry. It convicted accused-appellant despite the failure of the prosecution to prove his guilt beyond reasonable doubt. It failed to comply with the guidelines laid down in *People v. Bodoso*[158] for the waiver by the accused of his right to present evidence under Sec. 3, Rule 116. But, above all, the most appalling mistake committed by the trial court lies in its *fallo*:

WHEREFORE, in view of the foregoing, accused BRENDO P. PAGAL alyas "DINDO" is hereby found GUILTY beyond reasonable doubt and sentenced to suffer the imprisonment of RECLUSION PERPETUA. And to pay the heirs of SELMA PAGAL [₱]50,000.00 as indemnification and [₱]50,000.00 as moral damages.

---

[157] *Crespo v. Mogul*, 235 Phil. 465, 475 (1987).

[158] Supra note 76.

In the service of his sentence[,] accused is hereby credited with the full time of his preventive imprisonment if he agreed to abide by the same disciplinary rules imposed upon convicted prisoners, otherwise, he will only be entitled to 4/5 of the same.

SO ORDERED.[159]

In *Velarde v. Social Justice Society*,[160] the Court stated the essential elements of a good decision. Particularly, "[i]n a criminal case, the disposition should include a finding of innocence or guilt, **the specific crime committed**, the penalty imposed, the participation of the accused, the modifying circumstances if any, and the civil liability and costs. In case an acquittal is decreed, the court must order the immediate release of the accused if detained, unless he/she is being held for another cause, and order the director of the Bureau of Corrections (or wherever the accused is detained) to report, within a maximum of ten (10) days from notice, the exact date when the accused were set free."[161]

Thus, the glaring absence in the *fallo* of the specific crime accused-appellant was convicted for by the trial court is so egregious and shocking that it appalls the sensibilities of the Court. At its core, the RTC Decision on which the conviction rests, and on which basis accused-appellant has been imprisoned for the past years, lacks a definitive statement as to what crime accused-appellant was being imprisoned for. Worse, what makes the error more atrocious is the fact that even on appeal, the appellate court failed to notice such basic and inexcusable mistake.

To remand in spite of this lackadaisical conviction, and the numerous transgressions committed by the trial court, the prosecution, and the defense, would be to countenance their fault, negligence, inattention, and lack of care at the expense of accused-appellant's constitutional rights to due process, presumption of innocence, and speedy disposition of cases. It

---

[159] CA *rollo*, p. 40.

[160] 472 Phil. 285 (2004).

[161] Id. at 325.

would be to completely disregard the rights of accused-appellant for what is essentially a misguided attempt to vindicate the victim and her heirs. To remand would be nothing short of an egregious miscarriage of justice.

Lest it be misunderstood, the decision to acquit is not recompense to accused-appellant and penalty for the trial court and the State's failure to abide by Sec. 3, Rule 116. It is the result demanded by applicable law and jurisprudence.

At the end of day, the Court deeply feels and echoes the cry for justice for Selma and her family. However, such justice cannot be achieved at the expense of trampling on accused-appellant's constitutional rights to due process, presumption of innocence, and speedy disposition of cases. In that case, justice would not be justice at all. For while "[t]he sovereign power has the inherent right to protect itself and its people from vicious acts which endanger the proper administration of justice; hence, the State has every right to prosecute and punish violators of the law,"[162] "***in the hierarchy of rights, the Bill of Rights takes precedence over the right of the State to prosecute, and when weighed against each other, the scales of justice tilt towards the former***."[163]

In all criminal prosecutions, the State bears the burden of establishing the guilt of the accused beyond reasonable doubt. When the State fails to overcome the presumption of innocence in favor of the accused, such as in this case, the accused must be acquitted and set free. No less than the precepts of justice and fairness demand this.

Here, the acquittal of accused-appellant is fair and just under the circumstances; that between the State and the accused, the latter should be given preference. Accused-appellant's acquittal is not just based on justice and fairness but also based on humanity as the accused should not be made to answer for the State's blunders.

---

[162] *Allado v. Judge Diokno*, 302 Phil. 213, 238 (1994).

[163] Id. (emphasis supplied)

Indeed, while justice is the first virtue of the court, yet admittedly, humanity is the second.[164]

Summary

For the guidance of the bench and the bar, this Court adopts the following guidelines concerning pleas of guilty to capital offenses:

1. AT THE TRIAL STAGE. When the accused makes a plea of guilty to a capital offense, the trial court must strictly abide by the provisions of Sec. 3, Rule 116 of the 2000 Revised Rules of Criminal Procedure. In particular, it must afford the prosecution an opportunity to present evidence as to the guilt of the accused and the precise degree of his culpability. Failure to comply with these mandates constitute grave abuse of discretion.

    a. In case the plea of guilty to a capital offense is supported by proof beyond reasonable doubt, the trial court shall enter a judgment of conviction.

    b. In case the prosecution presents evidence but fails to prove the accused's guilt beyond reasonable doubt, the trial court shall enter a judgment of acquittal in favor of the accused.

    c. In case the prosecution fails to present any evidence despite opportunity to do so, the trial court shall enter a judgment of acquittal in favor of the accused.

    In the above instance, the trial court shall require the prosecution to explain in writing within ten (10) days from receipt its failure to present evidence. Any instance of collusion between the prosecution and the accused shall be dealt with to the full extent of the law.

---

[164] *Padilla v. Court of Appeals*, 328 Phil. 1266, 1270 (1996).

2. AT THE APPEAL STAGE:

   a. When the accused is convicted of a capital offense on the basis of his plea of guilty, whether improvident or not, and proof beyond reasonable doubt was established, the judgment of conviction shall be sustained.

   b. When the accused is convicted of a capital offense solely on the basis of his plea of guilty, whether improvident or not, without proof beyond reasonable doubt because the prosecution was not given an opportunity to present its evidence, or was given the opportunity to present evidence but the improvident plea of guilt resulted to an undue prejudice to either the prosecution or the accused, the judgment of conviction shall be set aside and the case remanded for re-arraignment and for reception of evidence pursuant to Sec. 3, Rule 116 of the 2000 Revised Rules of Criminal Procedure.

   c. When the accused is convicted of a capital offense solely on the basis of a plea of guilty, whether improvident or not, without proof beyond reasonable doubt because the prosecution failed to prove the accused's guilt despite opportunity to do so, the judgment of conviction shall be set aside and the accused acquitted.

Said guidelines shall be applied prospectively.

WHEREFORE, the Court **GRANTS** the appeal; **REVERSES** and **SETS ASIDE** the May 8, 2018 Decision of the Court of Appeals in CA-G.R. CR-HC No. 01521; **ACQUITS** accused-appellant Brendo P. Pagal a.k.a. "Dindo" of the crime of Murder, defined and penalized under Article 248 of the Revised Penal Code, for failure to prove his guilt beyond reasonable doubt; and **ORDERS** his **IMMEDIATE RELEASE** from detention unless he is confined for another lawful cause.

Let a copy of this Decision be furnished the Penal Superintendent, Leyte Penal Colony for immediate implementation and he is **ORDERED** to report the action he has taken to this Court within five (5) days from receipt of this Decision.

SO ORDERED.

Hernando, Carandang, and *Inting, JJ.*, concur.

Peralta, C.J. and *Leonen, J.*, see concurring opinions.

Caguioa,[*] *J.*, left his vote, see concurring opinion.

Perlas-Bernabe, Lazaro-Javier, Zalameda, Lopez, and *Gaerlan, JJ.*, see dissenting opinions.

Delos Santos,[*] *J.*, left his vote, see dissenting opinion.

Baltazar-Padilla, J., on leave.

CONCURRING OPINION

PERALTA, *C.J.*:

I concur with the *ponencia* of Justice Alexander G. Gesmundo. I make this submission, however, in order to fully articulate my thoughts as to why appellant Brendo P. Pagal is entitled to be acquitted when his conviction for murder was set aside for being based solely on his plea of guilt.

A brief rundown of the antecedents is imperative.

Appellant Brendo Pagal was charged of murder, a capital offense, before a Regional Trial Court *(RTC)*. During arraignment, he entered a guilty plea. Finding the plea to be in order, the RTC set four (4) hearing dates for the prosecution to present evidence to prove the guilt of the appellant and to determine the exact degree of his culpability. On the hearing dates, however, none of the prosecution witnesses appeared. For its part, the defense also chose not to present any evidence.

---

[*] On official leave.

Under such premises, the prosecution and the defense then moved for the submission of the case for decision. Soon enough, the RTC issued its judgment convicting the appellant as charged by relying solely on the latter's plea of guilt.

On appeal, the Court of Appeals *(CA)* reversed. The CA found that the RTC actually failed to perform its duty, under Section 3 of Rule 116 of the Rules of Court, to conduct a *searching inquiry* into the voluntariness of the appellant's plea of guilt and his full comprehension of the consequences thereof. For this reason, the appellate court considered appellant's plea of guilty to a capital offense as improvident and, hence, invalid. As the appellant's conviction was based solely on an improvident plea of guilt, the CA set aside such conviction and—following settled precedents—forthwith ordered the remand of the case for further proceedings.

Unsatisfied, appellant lodged the present appeal where he asked for a complete acquittal.

The *ponencia* granted the appeal. As said, I concur.

Jurisprudence up until now has been consistent in how courts ought to deal with convictions for capital offenses that are based *solely* on improvident pleas of guilt.[1] When a conviction for a capital offense is appealed and is there found to be based exclusively on an improvident plea of guilt, case law typically compels the appellate court to set aside the conviction of the accused and *remand the entire case back to the trial court for re-arraignment and the conduct of further proceedings*.[2]

While I concede that a conviction for a capital offense when based solely on an improvident plea of guilt must always be set aside, I believe that a remand of the criminal case should not be ordered *ipso facto* as a matter of course. In tune to what the *ponencia* advances, I venture that an exception to the remand directive should be made in instances where the prosecution was previously given the opportunity to present evidence to prove the guilt of the accused but failed to do so

---

[1] *See* page 24 of the *ponencia*.

[2] *Id.*

for no justifiable reason. I submit that, in such instances, it actually becomes the duty of the appellate court to render a judgment of acquittal in favor of the accused.

Such exception, while novel, is grounded on existing rules and sound reason.

It should be stressed that under our current rules of procedure, a guilty plea—*whether improvident or not*—can never on its own justify a conviction for a capital offense. This is the unequivocal import of Section 3 of Rule 116 of the 2000 Revised Rules of Criminal Procedure:

> **SECTION 3.** *Plea of Guilty to Capital Offense; Reception of Evidence.* — When the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and shall require the prosecution to prove his guilt and the precise degree of culpability. The accused may present evidence in his behalf.

In *People v. Oden*,[3] we held that the above provision mandated trial courts to fulfill three (3) *distinct* duties whenever an accused pleads guilty to a capital offense, to wit:

> (1) It must conduct a searching inquiry into the voluntariness and full comprehension of the consequences of the plea of guilt,
>
> (2) **It must require the prosecution to still prove the guilt of the accused and the precise degree of his culpability**, and
>
> (3) It must inquire whether or not the accused wishes to present evidence in his behalf and allow him to do so if he desires.[4]

The second duty of the trial court under Section 3 of Rule 116 confirms a subsisting obligation on the part of the prosecution to present evidence and prove the guilt of the accused charged of a capital offense—notwithstanding the latter's guilty plea. Indeed, by the provision, such *onus* of the prosecution remains

---

[3] 471 Phil. 638 (2004).

[4] *Id.* at 648.

even if the trial court had already fulfilled its first duty, and *even if* the plea of guilty by the accused was determined to have been voluntarily and intelligently taken by the latter.

Hence, in cases where the accused enters a plea of guilty to a capital offense, the issue of whether such plea was improvidently taken or not will not actually determine the ultimate fate of the accused. As can be seen, regardless of the quality of the accused's plea of guilty, the prosecution is never discharged of its burden to adduce evidence and prove the guilt of the former. The implication of this procedure is crystal—in cases involving capital offenses, the accused's conviction or acquittal will still have to depend on whether the prosecution is able to discharge its burden of proving the guilt of the accused beyond reasonable doubt.[5] Accordingly, it is only when the prosecution is able to do so that the trial court would be justified in rendering a judgment of conviction. Otherwise, the accused—in spite of his plea of guilt—must be acquitted consistent with the constitutional presumption of innocence.

The case at bench, therefore, simply pertains to a situation where the prosecution was not able to discharge its burden of proving the guilt of an accused charged of a capital offense, *after* being required and given the opportunity by the trial court to do so.

---

[5] The procedure under Section 3 of Rule 116, thus, effectively removes the distinction between a plea of guilty and a plea of not guilty in the prosecution of capital offenses. As observed by Justice Alfredo Benjamin S. Caguioa in his Concurring Opinion:

> Thus, **as it stands, there is effectively no difference between a plea of guilty or not guilty to a capital offense – that is, in both instances, the prosecution is required to present evidence to prove the guilt of the accused beyond reasonable doubt**. An accused who made an improvident plea of guilty may nonetheless be found guilty of the crime charged if, independent of the improvident plea, the evidence adduced by the prosecution establishes his guilt beyond reasonable doubt. To the contrary, **absent proof by the prosecution proving beyond reasonable doubt the guilt of the accused, such accused who pleads guilty to a capital offense, must be acquitted**. (Emphasis and underscoring in the original)

It may be recalled that, after the appellant entered a plea of guilty to the crime of murder, the RTC—in fulfillment of its second duty under Section 3 of Rule 116—set four (4) hearing dates for the prosecution to present its evidence. However, the prosecution still failed to present any witness or evidence on any of the provided hearing dates. Obviously, the guilt of the appellant was never proven independently of his guilty plea.

When the case against the appellant was thus submitted for decision, it is clear that the RTC should have rendered a judgment of acquittal in favor of the appellant. At that juncture, and by the Constitution and our rules, the appellant already deserves to be acquitted on the ground of the failure of the prosecution to prove his guilt by reasonable doubt. It is only unfortunate that the RTC erred and rendered a judgment of conviction on the sole basis of the appellant's guilty plea.

From that perspective, I believe that the relief that should be accorded to the appellant *on appeal* must also be his complete acquittal from the crime charged. This is consistent with the basic purpose of an appeal which is to rectify errors of judgment committed by a lower court.[6] Here, the rectification of the RTC's judgment could only be achieved when it is superseded by that which should have been issued by the trial court in the first place.

Rendering a judgment of acquittal in favor of the appellant on appeal, in other words, merely recognizes the verdict the latter was legally entitled from the start.

Conversely, requiring the remand of the case back to the RTC *under the present circumstances*, would be nothing short of inflicting a complete injustice to the appellant.

For one, a remand will undeservedly cure all the prosecution's lapses and shortcomings during the trial stage. It will disregard the fact that the prosecution was already given, but had squandered for no justifiable reason, an opportunity to adduce

---

[6] *Silverio v. Court of Appeals*, 225 Phil. 459, 471 (1986).

evidence against and prove the guilt of the appellant. Allowing such an outcome—under the peculiar facts of this case—sets a dangerous precedent for the administration of criminal justice as it seems to encourage, if not reward, indolence in the prosecution of capital offenses.

Second, ordering a remand would undeniably work considerable prejudice to the appellant—particularly in his ability to raise a viable legal defense against the crime with which he was charged. It should be stressed that the appellant himself had not seen the need to present any evidence in his defense during the trial, most likely because the prosecution itself did not present any evidence to establish his guilt. Hence, conducting a re-trial at this stage would practically mean that the appellant has to, *for the first time*, collect evidence and build a case for his defense—a whole eleven years since he was indicted and almost a decade later after he was erroneously convicted by the RTC. Under such circumstances, a remand would not in any sense be fair to the appellant and would only prolong his unrest and anxiety. With these considerations, I therefore agree with the astute conclusion of Associate Justice Alfredo Benjamin S. Caguioa that remanding the present case back to the RTC may run the risk of violating the appellant's right to speedy trial.[7]

Lastly, the Court is not unmindful of the case of *People v. Abapo*[8] wherein we rationalized the necessity of the remand directive as such:

> x x x. However, after a careful examination of the records of this case, we find that **the improvident plea of guilt of the accused-appellant has affected the manner by which the prosecution conducted its presentation of the evidence. The presentation of the prosecution's case was lacking in assiduity and was not characterized with the meticulous attention to details that is necessarily expected in a prosecution for a capital offense**. The state prosecutor in his examination of the victim was evidently concerned only with proving

---

[7] See Concurring Opinion of Justice Alfredo Benjamin S. Caguioa, pp. 18-19.

[8] 385 Phil. 1175, 1187 (2000).

the respective dates of the commission of the repeated rapes, and did not attempt to elicit details about the commission of each rape that would satisfy the requirements for establishing proof beyond reasonable doubt that the offenses charged have in fact been committed by the accused. **It is clear to our mind that the prosecution did not discharge its obligation as seriously as it would have had there been no plea of guilt on the part of the accused**. (Emphasis supplied)

In essence, *Abapo* predicated the need to remand on what it perceived to be as the detrimental effect of an accused's plea of guilt on "*the manner by which the prosecution conduct[s] its presentation of the evidence*."[9] It observed that a plea of guilty to a capital offense may lead "*the prosecution not* [to] *discharge its obligation as seriously as it would have had there been no plea of guilt*."[10] Consequently, when a conviction for a capital offense was hinged solely on the accused's plea of guilt, but the plea was later determined to be improvident on appeal, the case has to be remanded back to the trial court because the prosecution, which relied on the accused's plea of guilt, could be said to have been effectively prevented from fully presenting its evidence.

Abapo's ruminations, however, seem to contradict the import of Section 3 of Rule 116 and, thus, should be revisited. As discussed earlier, the provision recognizes a subsisting duty on the part of the prosecution to present evidence and prove the guilt of an accused charged of a capital offense—notwithstanding the latter's guilty plea. The obvious significance of this rule is that, in cases involving capital offenses, the plea of guilt of the accused, regardless of whether it was improvidently taken or not, by itself will never discharge the prosecution of its burden to adduce evidence and prove the guilt of the accused.

Hence, contrary to *Abapo*, I find that the prosecution can never be justified into letting a plea of guilt to a capital offense adversely affect the manner by which it presents its evidence.

---

[9] *Id.*

[10] *Id.*

Under our rules, the prosecution is expected, nay obligated, to present evidence and prove the guilt of an accused charged of capital offense with all seriousness, zeal and fervor, whatever the plea entered by the accused. The prosecution's reliance on a plea of guilty and the perceived detrimental effect thereof on how it presents its case, therefore, should never be considered as a valid ground for remand.

I then inevitably arrive at the same conclusion reached by the *ponencia*. The appellant, by all accounts, should be acquitted. The criminal case against him should no longer be remanded back to the trial court because the prosecution was already given the opportunity to prove the guilt of the appellant, only the latter did not. Insisting on a remand, under such circumstances, would not be consistent with the procedure prescribed under Section 3 of Rule 116 of the Rules of Court and will work considerable prejudice to the appellant. The appellant's situation is a valid exception to the remand directive.

IN VIEW WHEREOF, I cast my vote in favor of granting the instant appeal and of acquitting the appellant of the crime of murder.

CONCURRING OPINION

LEONEN, *J.*:

I concur with Associate Justice Alexander G. Gesmundo's *ponencia*. The assailed May 18, 2018 Decision of the Court of Appeals must be reversed and set aside. Accused-appellant Brendo P. Pagal a.k.a. "Dindo" must be acquitted of the charge of murder.

The resolution of this case centers on the proper appreciation and application of an accused's most basic rights: to be held to answer for a criminal offense only with due process of law,[1]

---

[1] CONST., art. III. sec. 14(1) states:

SECTION 14. (1) No person shall be held to answer for a criminal offense without due process of law.

and to be presumed innocent until the prosecution proves their guilt beyond reasonable doubt.[2] Failing compliance with these rights, acquittal inevitably ensues. Moreover, in proper cases, pending criminal proceedings must cease, foreclosing any further proceedings and absolving the accused of criminal liability.

From these, two pivotal doctrinal propositions may be identified. First, in appropriate cases where the continuation of the proceedings would perpetuate violations of an accused's constitutional rights, subsequent proceedings become pointless. Second, as a consequence of this inefficacy, a full dismissal that amounts to acquittal must ensue.

I

A basic, ineluctable precept underlies all criminal proceedings: that the prosecution carries the burden of proving an accused's guilt beyond reasonable doubt. Its case must rise on its own merits, not trusting on the weakness of the defense. This is a matter of due process. The prosecution's failure to discharge its burden necessarily negates the accused's criminal liability. In *Macayan, Jr. v. People*:[3]

> This rule places upon the prosecution the task of establishing the guilt of an accused, relying on the strength of its own evidence, and not banking on the weakness of the defense of an accused. Requiring proof beyond reasonable doubt finds basis not only in the due process clause of the Constitution, but similarly, in the right of an accused to be "presumed innocent until the contrary is proved." "Undoubtedly, it is the constitutional presumption of innocence that lays such burden upon the prosecution." Should the prosecution fail to discharge its burden, it follows, as a matter of course, that an

---

[2] The Revised Rules of Criminal Procedure identifies this as the first of the rights of an accused during trial. Rule 115, Section 1(a) states that an accused has the right "[t]o be presumed innocent until the contrary is proved beyond reasonable doubt." This is in keeping with the 1987 Constitution which, in Article III, Section 14 (2) provides that "[i]n all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved."

[3] 756 Phil. 202 (2015) [Per J. Leonen, Second Division].

accused must be acquitted. As explained in *Basilio v. People of the Philippines*:

> We ruled in *People v. Ganguso*:
>
> > An accused has in his favor the presumption of innocence which the Bill of Rights guarantees. Unless his guilt is shown beyond reasonable doubt, he must be acquitted. This reasonable doubt standard is demanded by the due process clause of the Constitution which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged. The burden of proof is on the prosecution, and unless it discharges that burden the accused need not even offer evidence in his behalf, and he would be entitled to an acquittal. Proof beyond reasonable doubt does not, of course, mean such degree of proof as, excluding the possibility of error, produce absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. The conscience must be satisfied that the accused is responsible for the offense charged.
>
> Well-entrenched in jurisprudence is the rule that the conviction of the accused must rest, not on the weakness of the defense, but on the strength of the prosecution. The burden is on the prosecution to prove guilt beyond reasonable doubt, not on the accused to prove his innocence.[4]

II

In the ordinary course of things, the prosecution completes its presentation of evidence. Only then do the accused present their evidence. From these, judgment is rendered, either convicting or acquitting the accused. This sequence of events confirms the prosecution's basic duty to establish guilt beyond reasonable doubt.

---

[4] Id. at 213-214 citing CONST., art. III, sec. 1; CONST., art. III, sec. 14(2); *People v. Solayao*, 330 Phil. 811, 819 (1996) [Per J. Romero, Second Division]; and *Boac v. People*, 591 Phil. 508 (2008) [Per J. Velasco, Jr., Second Division].

Accordingly, at the appropriate stage of the proceedings—when it is manifest that the prosecution has failed to discharge its burden—the Revised Rules of Criminal Procedure facilitate a means through which the accused may be relieved of the ordeal of standing prolonged trial, sparing them from the vexation of continuing criminal prosecution. Rule 119, Section 23 provides:

> SECTION 23. Demurrer to evidence. — After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court.
>
> If the court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.
>
> The motion for leave of court to file demurrer to evidence shall specifically state its grounds and shall be filed within a non-extendible period of five (5) days after the prosecution rests its case. The prosecution may oppose the motion within a non-extendible period of five (5) days from its receipt.
>
> If leave of court is granted, the accused shall file the demurrer to evidence within a non-extendible period of ten (10) days from notice. The prosecution may oppose the demurrer to evidence within a similar period from its receipt.
>
> The order denying the motion for leave of court to file demurrer to evidence or the demurrer itself shall not be reviewable by appeal or by certiorari before judgment.

The 1987 Constitution provides benchmarks that define how trial should be conducted. These are all designed to serve the accused's right to due process. They also confirm the prosecution's duty to secure a conviction through its own decorous, prompt, and disciplined efforts. Article III, Section 14 reads in full:

> SECTION 14. (1) No person shall be held to answer for a criminal offense without due process of law.

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

Article III, Section 14(1) articulates the demand of due process. Meanwhile, Section 14(2) spells out the prosecution's duty to establish guilt beyond reasonable doubt. It also identifies norms that serve the general, overarching principles of due process and guilt having to be shown by the prosecution itself: first, the right of an accused "to be heard by [him/her]self and counsel"; second, the need for an accused "to be informed of the nature and cause of the accusation against him [or her]"; third, the imperative of "a speedy, impartial, and public trial"; fourth, the right "to meet the witnesses face to face"; and fifth, the right "to have compulsory process to secure the attendance of witnesses and the production of evidence in his [or her] behalf."

These normative benchmarks are confirmed in Rule 115[5] of the Revised Rules of Criminal Procedure, which provides for an accused's rights during trial.

---

[5] RULES OF COURT, Rule 115 provides:

RULE 115

Rights of Accused

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

(a) To be presumed innocent until the contrary is proved beyond reasonable doubt.

(b) To be informed of the nature and cause of the accusation against him.

(c) To be present and defend in person and by counsel at every stage of the proceedings, from arraignment to promulgation of the judgment. The accused may, however, waive his presence at the

Ultimately, even when trial conforms to all of the Constitution's normative benchmarks, and the accused's rights during trial are respected, acquittal will ensue for as long as the prosecution is unable to establish guilt beyond reasonable doubt. This is the logical consequence of lack of proof beyond reasonable doubt despite the prosecution's potentially best efforts.

III

Jurisprudence has considered the effects of the prosecution's utter and abject inability to discharge its function in the midst of trial. When it is manifest that the prosecution—despite its competence and all reasonable opportunity being afforded to it—has all but abandoned its duty to prove an accused's guilt, it becomes unjust for one to continue to stand trial, or otherwise

---

trial pursuant to the stipulations set forth in his bail, unless his presence is specifically ordered by the court for purposes of identification. The absence of the accused without justifiable cause at the trial of which he had notice shall be considered a waiver of his right to be present thereat. When an accused under custody escapes, he shall be deemed to have waived his right to be present on all subsequent trial dates until custody over him is regained. Upon motion, the accused may be allowed to defend himself in person when it sufficiently appears to the court that he can properly protect his right without the assistance of counsel.

(d) To testify as a witness in his own behalf but subject to cross-examination on matters covered by direct examination. His silence shall not in any manner prejudice him.

(e) To be exempt from being compelled to be a witness against himself.

(f) To confront and cross-examine the witnesses against him at the trial. Either party may utilize as part of its evidence the testimony of a witness who is deceased, out of or can not with due diligence be found in the Philippines, unavailable or otherwise unable to testify, given in another case or proceeding, judicial or administrative, involving the same parties and subject matter, the adverse party having the opportunity to cross-examine him.

(g) To have compulsory process issued to secure the attendance of witnesses and production of other evidence in his behalf.

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

(i) To appeal in all cases allowed and in the manner prescribed by law.

be put in jeopardy of having to be made criminally liable. "The Bill of Rights provisions of the 1987 Constitution were precisely crafted to expand substantive fair trial rights and to protect citizens from procedural machinations which tend to nullify those rights."[6]

This unjustness—borne not by the fault of the accused, but of those who should be dutifully pursuing the case against the accused—has led this Court to rule that delays and missteps not only during trial, but even in stages preceding trial proper, are fatal to the continued pursuit of criminal cases.

In *Tatad v. Sandiganbayan*,[7] this Court considered "inordinate delay" and how it justified the "radical relief" of dismissing a criminal complaint:

> In a number of cases, this Court has not hesitated to grant the so-called "radical relief" and to spare the accused from undergoing the rigors and expense of a full-blown trial where it is clear that he has been deprived of due process of law or other constitutionally guaranteed rights. Of course, it goes without saying that in the application of the doctrine enunciated in those cases, particular regard must be taken of the facts and circumstances peculiar to each case.[8]

In *Tatad*, this Court found that the manner by which the proceedings were conducted had been "politically motivated[,]"[9] ultimately running afoul of due process:

We find the long delay in the termination of the preliminary investigation by the Tanodbayan in the instant case to be violative

---

[6] *Abadia v. Court of Appeals*, 306 Phil. 690, 698-699 (1994) [Per J. Kapunan, En Banc].

[7] 242 Phil. 563 (1988) [Per J. Yap, En Banc].

[8] *Id.* at 573 citing *Salonga v. Cruz Pano*, 219 Phil. 402 (1985) [Per J. Gutierrez, En Banc]; *Mead v. Argel*, 200 Phil. 650 (1982) [Per J. Vasquez, First Division]; *Yap v. Lutero*, 105 Phil. 1307 (1959) [Per J. Concepcion, En Banc]; and *People v. Zulueta*, 89 Phil. 752 (1951) [Per J. Bengzon, First Division].

[9] *Id.* at 575.

of the constitutional right of the accused to due process. Substantial adherence to the requirements of the law governing the conduct of preliminary investigation, including substantial compliance with the time limitation prescribed by the law for the resolution of the case by the prosecutor, is part of the procedural due process constitutionally guaranteed by the fundamental law. Not only under the broad umbrella of the due process clause, but under the constitutionally guarantee of "speedy disposition" of cases as embodied in Section 16 of the Bill of Rights (both in the 1973 and the 1987 Constitutions), the inordinate delay is violative of the petitioner's constitutional rights. A delay of close to three (3) years cannot be deemed reasonable or justifiable in the light of the circumstance obtaining in the case at bar. We are not impressed by the attempt of the Sandiganbayan to sanitize the long delay by indulging in the speculative assumption that "the delay may be due to a painstaking and grueling scrutiny by the Tanodbayan as to whether the evidence presented during the preliminary investigation merited prosecution of a former high-ranking government official." In the first place, such a statement suggests a double standard of treatment, which must be emphatically rejected. Secondly, three out of the five charges against the petitioner were for his alleged failure to file his sworn statement of assets and liabilities required by Republic Act No. 3019, which certainly did not involve complicated legal and factual issues necessitating such "painstaking and grueling scrutiny" as would justify a delay of almost three years in terminating the preliminary investigation. The other two charges relating to alleged bribery and alleged giving of unwarranted benefits to a relative, while presenting more substantial legal and factual issues, certainly do not warrant or justify the period of three years, which it took the Tanodbayan to resolve the case.[10]

Notably, the determination of inordinate delay has not been confined to whether there were underlying political considerations. In *Cagang v. Sandiganbayan, Fifth Division*:[11]

Political motivation, however, is merely one of the circumstances to be factored in when determining whether the delay is inordinate.

---

[10] *Id.* at 575-576.

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

The absence of political motivation will not prevent this Court from granting the same "radical relief." Thus, in *Angchangco v. Ombudsman*, this Court dismissed the criminal complaints even if the petition filed before this Court was a petition for mandamus to compel the Office of the Ombudsman to resolve the complaints against him after more than six (6) years of inaction:

> Here, the Office of the Ombudsman, due to its failure to resolve the criminal charges against petitioner for more than six years, has transgressed on the constitutional right of petitioner to due process and to a speedy disposition of the cases against him, as well as the Ombudsman's own constitutional duty to act promptly on complaints filed before it. For all these past 6 years, petitioner has remained under a cloud, and since his retirement in September 1994, he has been deprived of the fruits of his retirement after serving the government for over 42 years all because of the inaction of respondent Ombudsman. If we wait any longer, it may be too late for petitioner to receive his retirement benefits, not to speak of clearing his name. This is a case of plain injustice which calls for the issuance of the writ prayed for.[12] (Citations omitted)

Cagang further clarified that in "determining whether inordinate delay exists, a case is deemed to have commenced from the filing of the formal complaint and the subsequent conduct of the preliminary investigation."[13] It adds:

> What may constitute a reasonable time to resolve a proceeding is not determined by "mere mathematical reckoning." It requires consideration of a number of factors, including the time required to investigate the complaint, to file the information, to conduct an arraignment, the application for bail, pre-trial, trial proper, and the submission of the case for decision. Unforeseen circumstances, such as unavoidable postponements or force majeure, must also be taken into account.
>
> . . . .
>
> The determination of whether the delay was inordinate is not through mere mathematical reckoning but through the examination

---

[12] Id.

[13] Id.

of the facts and circumstances surrounding the case. Courts should appraise a reasonable period from the point of view of how much time a competent and independent public officer would need in relation to the complexity of a given case. If there has been delay, the prosecution must be able to satisfactorily explain the reasons for such delay and that no prejudice was suffered by the accused as a result. The timely invocation of the accused's constitutional rights must also be examined on a case-to-case basis.[14] (Citations omitted)

Since *Tatad*, many other cases have similarly considered inordinate delay and how it justified the "radical relief" of dismissing a case: *Angchangco, Jr. v. Ombudsman*,[15] *Duterte v. Sandiganbayan*,[16] *Roque v. Ombudsman*,[17] *Cervantes v. Sandiganbayan*,[18] *Lopez, Jr. v. Ombudsman*,[19] *Licaros v. Sandiganbayan*,[20] *People v. SPO4 Anonas*,[21] *Enriquez v. Ombudsman*,[22] *People v. Sandiganbayan, First Division*,[23] *Inocentes v. People*,[24] *Almeda v. Ombudsman*,[25] *People v. Sandiganbayan, Fifth Division*,[26] *Torres v. Sandiganbayan*,[27] and *Remulla v. Sandiganbayan*.[28]

---

[14] *Id.*

[15] 335 Phil. 766 (1997) [Per J. Melo, Third Division].

[16] 352 Phil. 557 (1998) [Per J. Kapunan, Third Division].

[17] 366 Phil. 368 (1999) [Per J. Panganiban, Third Division].

[18] 366 Phil. 602 (1999) [Per J. Pardo, First Division].

[19] 417 Phil. 39 (2001) [Per J. Gonzaga-Reyes, Third Division].

[20] 421 Phil. 1075 (2001) [Per J. Panganiban, En Banc].

[21] 542 Phil. 539 (2007) [Per J. Sandoval-Gutierrez, First Division].

[22] 569 Phil. 309 (2008) [Per J. Sandoval-Gutierrez, First Division].

[23] 723 Phil. 444 (2013) [Per J. Bersamin, First Division].

[24] 789 Phil. 318 (2016) [Per J. Brion, Second Division].

[25] 791 Phil. 129 (2016) [Per J. Del Castillo, Second Division].

[26] 791 Phil. 37 (2016) [Per J. Peralta, Third Division].

[27] 796 Phil. 856 (2016) [Per J. Velasco, Jr., Third Division].

[28] 808 Phil. 739 (2017) [Per J. Mendoza, Second Division].

IV

As in those cases, the prosecution's sheer inaction here means that it has failed to diligently and timely pursue its case. Such failure amounts to a violation of an accused's constitutional rights, warranting the "radical relief" of putting an end to the proceedings.

The prosecution failed to establish accused-appellant's guilt despite having multiple opportunities to do so. The *ponencia* recounts the material incidents in detail: For over eight months, hearings were repeatedly set for the presentation of the prosecution's evidence. Yet, not once did the prosecution present a witness.[29] The *ponencia*'s summation of the prosecution's own fatal negligence hits the nail on its head:

> This is not a situation where the prosecution was wholly deprived of the opportunity to perform its duties under the 2000 Revised Rules that would warrant a remand. In this case, the prosecution was already given a reasonable opportunity to prove its case against accused-appellant. Regrettably, the State squandered its chances to the detriment of accused-appellant. If anything, the State, given its vast resources and awesome powers, cannot be allowed to vex an accused with criminal prosecution more than once. The State should, first and foremost, exercise fairness.[30]

The prosecution's lackadaisical attitude was what led to its failure to establish its case. It had its chance and blew it. To give the prosecution a second chance despite its demonstrated negligence would be unfairly generous to it. It would give it an unfair advantage, an opportunity to win a case that it had lost on its own.

More than being overly generous to the prosecution, it would be a violation of accused-appellant's right to due process and to be deemed innocent unless the prosecution is able to establish his guilt beyond reasonable doubt. It would be a dangerous precedent that will, in the future, enable cavalier prosecution at the expense of our cherished civil liberties.

---

[29] Ponencia, p. 2.

[30] Id. at 26.

V

This Court cannot afford to be distracted by the coincidence that accused-appellant happened to have made a guilty plea. This is not the point on which the case turns. I echo the *ponencia*'s words that "the conviction of the accused shall be based solely on the evidence presented by the prosecution. The improvident plea of guilty by the accused is negligible."[31] Whichever way the accused pleads during arraignment, their right to be presumed innocent—along with the prosecution's concomitant duty to establish guilt beyond reasonable doubt—remains. The nature of a criminal proceeding as one where the burden of proof lies in the prosecution is not altered by the plea that the accused makes.

Some members of this Court maintain that the improvidence of accused-appellant's guilty plea should entail the remand of the case to the trial court.[32] I maintain reservations to this. It is a potentially dangerous proposition that amounts to our justice system turning a blind eye to the inherently unjust, even possibly outright damning, manner by which the accused are induced to declare their guilt. Consistent with due process and the prosecution's burden, improvident pleas should be viewed with immense distrust, not as an opportunity for the prosecution to reset its game plan.

Improvident pleas of guilt bring to mind the same considerations of being untrustworthy as those that, in the classic case of *Miranda v. Arizona*,[33] had led the United States Supreme Court —and our own legal system, following *Miranda*'s example— to maintain that confessions of guilt obtained under dubious circumstances deserve no credence and are inadmissible. Of course, the circumstances in *Miranda* were different, having involved admissions obtained during custodial investigation. This

---

[31] Id. at 23.

[32] J. Perlas-Bernabe, Dissenting Opinion, pp. 7-8; J. Zalameda, Dissenting Opinion, pp. 4-5.

[33] 384 U.S. 436 (1966).

case involves an acknowledgment of guilt obtained in open court, in the presence of a judge.

Yet, that difference actually makes an improvident plea even more problematic. Officers conducting custodial investigation may be expected to be inclined to pursue an accused's guilt. Of course, this does not excuse the use of wrongful methods in custodial investigation, but at least it accounts for it. A judge, on the other hand, is duty bound to proceed with utmost care and impartiality. That an improvident plea was obtained under the watch of a supposedly diligent and fair judge invites greater distrust. All the more, the yielded plea should carry no weight and cannot induce subsequent action.

The members of this Court who urge a remand also assert that it will address a potential miscarriage of justice suffered by the prosecution.[34] I take exception to giving the prosecution here a chance to rebuild its case owing to how its strategy or vigor may have been affected by accused-appellant's plea.[35] I reiterate that its duty to establish guilt beyond reasonable doubt remained the same regardless of the plea entered by accused-appellant. The constitutional imperative is not weakened by an accused's posture.

It is well to disabuse prosecutors, law enforcers, and similarly situated officers of the notion that their work is made easier by an accused's declaration of liability. Our Constitution wisely maintains the presumption of innocence—regardless of antecedent circumstances, such as supposed admissions of guilt—precisely to keep law enforcement and the prosecution on their toes, that they may proceed only with utmost care. The same injunction applies to the Judiciary, that it may render judgments of conviction only when warranted by proof beyond reasonable doubt.

The potential miscarriage of justice suffered by an accused wrongly convicted is far greater than that which lackadaisical

---

[34] J. Zalameda, Dissenting Opinion, pp. 4-5; J. Perlas-Bernabe, Dissenting Opinion, pp. 7-8.

[35] J. Perlas-Bernabe, Dissenting Opinion, pp. 7-8.

prosecution stands to suffer. This is granting that it can even be called a "miscarriage of justice" on the part of negligent prosecution. Our Bill of Rights is a bundle of protections adopted with the intent of guarding against the State's excesses. The State has immense resources and unparalleled competencies at its disposal. Against these, individuals can only count on the State's temperance and forthrightness. In discharging its judicial function, this Court must see to the protection of individuals, rather than the inordinate enabling of government when it must face the consequences of its own indolence.

VI

Attention has also been called to the material adduced during the preliminary investigation.[36] However, it is dangerous for this Court to make an independent consideration of what transpired in and what was adduced during the prior stage of preliminary investigation, when its real task is to appraise the consequences of the how the trial itself was conducted. Although related, preliminary investigation and trial are distinct processes. In this regard, as the *ponencia* notes, "there is nothing in the [case] records that would show the guilt of accused-appellant."[37] The prosecution's case should stand on its own during trial. For this Court to go out of its way to bring into the equation what transpired during preliminary investigation—particularly at this late juncture—runs the risk of this Court making itself a surrogate for the prosecution, where it is already making its own case to convict accused-appellant.

If at all, the supposed strength of inculpatory matters considered during preliminary investigation only makes things worse for the prosecution, whose abject inaction during trial was blatant. If, indeed, there had been a solid case against accused-appellant as adduced during preliminary investigation, it is more damning that the prosecution bungled its chance at the proper opportunity to demonstrate its case to the trial court.

---

[36] J. Zalameda, Dissenting Opinion, pp. 3-4; J. Lazaro-Javier, Dissenting Opinion, p. 2.

[37] Ponencia, p. 26.

At this point, accused-appellant's guilty plea has been used as nothing more than a smokescreen to hide the prosecution's own dismal and inexcusable negligence. It is not this Court's desire to see crimes go unaddressed. However, it is our primordial duty to uphold constitutional rights. This duty compels us to rule for an acquittal at every instance that the prosecution fails to discharge its burden. For whatever unsavory consequences, if there be any, the prosecution need only look at itself. It only has itself to blame for bungling the chance to win its case. It cannot look to this Court to bend the standards —anchored on no less than the Constitution—to afford it another shot at doing what it has already shown itself incapable of accomplishing.

ACCORDINGLY, I vote that the Court of Appeals' May 8, 2018 Decision in CA-G.R. CR-HC No. 01521 be **REVERSED and SET ASIDE**, and that accused-appellant Brendo P. Pagal a.k.a. "Dindo" be **ACQUITTED** of the charge of murder.

CONCURRING OPINION

CAGUIOA, *J.*:

I concur with the *ponencia*. The failure of the prosecution, through its own fault or negligence, to present evidence against accused-appellant Brendo P. Pagal (Pagal), after the latter had pleaded guilty to a capital offense, should result in Pagal's acquittal based on reasonable doubt.

The mandatory taking of the prosecution's evidence independent of a guilty plea to a capital offense safeguards an accused against the consequences of an improvident plea of guilty.

The practice of requiring the prosecution to present evidence to prove the guilt and precise degree of culpability of an accused over and above, or in spite of, his guilty plea, is a unique safeguard

founded on our own legal tradition.[1] Although it became mandatory only under the 1985 Rules of Criminal Procedure, the taking

---

[1] The Federal Rules of Criminal Procedure does not require the presentation of evidence after a guilty plea. Rule 11 thereof provides:

(a) Entering a Plea.

(1) In General. A defendant may plead not guilty, guilty, or (with the court's consent) nolo contendere.

(2) Conditional Plea. With the consent of the court and the government, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right to have an appellate court review an adverse determination of a specified pretrial motion. A defendant who prevails on appeal may then withdraw the plea.

(3) Nolo Contendere Plea. Before accepting a plea of nolo contendere, the court must consider the parties' views and the public interest in the effective administration of justice.

(4) Failure to Enter a Plea. If a defendant refuses to enter a plea or if a defendant organization fails to appear, the court must enter a plea of not guilty.

(b) Considering and Accepting a Guilty or Nolo Contendere Plea.

(1) Advising and Questioning the Defendant. Before the court accepts a plea of guilty or nolo contendere, the defendant may be placed under oath, and the court must address the defendant personally in open court. During this address, the court must inform the defendant of, and determine that the defendant understands, the following:

(A) the government's right, in a prosecution for perjury or false statement, to use against the defendant any statement that the defendant gives under oath;

(B) the right to plead not guilty, or having already so pleaded, to persist in that plea;

(C) the right to a jury trial;

(D) the right to be represented by counsel—and if necessary have the court appoint counsel—at trial and at every other stage of the proceeding;

(E) the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses;

(F) the defendant's waiver of these trial rights if the court accepts a plea of guilty or nolo contendere;

of evidence despite the guilty plea of an accused has been an established practice in our jurisdiction — even in the absence of such requirement in the rules of procedure prevailing at that time.[2]

> (G) the nature of each charge to which the defendant is pleading;
>
> (H) any maximum possible penalty, including imprisonment, fine, and term of supervised release;
>
> (I) any mandatory minimum penalty;
>
> (J) any applicable forfeiture;
>
> (K) the court's authority to order restitution;
>
> (L) the court's obligation to impose a special assessment;
>
> (M) in determining a sentence, the court's obligation to calculate the applicable sentencing-guideline range and to consider that range, possible departures under the Sentencing Guidelines, and other sentencing factors under 18 U.S.C. §3553(a);
>
> (N) the terms of any plea-agreement provision waiving the right to appeal or to collaterally attack the sentence; and
>
> (O) that, if convicted, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.
>
> ***(2) Ensuring That a Plea is Voluntary.*** Before accepting a plea of guilty or nolo contendere, the court must address the defendant personally in open court and determine that the plea is voluntary and did not result from force, threats, or promises (other than promises in a plea agreement).
>
> ***(3) Determining the Factual Basis for a Plea.*** Before entering judgment on a guilty plea, the court must determine that there is a factual basis for the plea.

[2] In 1900, US colonial officials issued General Order No. 58, the relevant provision of which reads:

> SECTION 25. A plea of guilty can be put in only by the defendant himself in open court. The court may at any time before judgment upon a plea of guilty, permit it to be withdrawn and a plea of not guilty substituted.

1940 RULES OF COURT, Rule 114, Sec. 5, and 1964 RULES OF COURT, Rule 118, Sec. 5 provide:

In the 1906 case of *US v. Talbanos*[3] *(Talbanos)*, despite therein accused's guilty plea to a charge for murder, the Court of First Instance in the Province of Samar called witnesses to ascertain factual matters in the case. Holding that the judge was correct in ordering the presentation of evidence since therein accused pleaded guilty to a charge for an offense where the penalty may be death, the Court remanded the case for compliance with the proper procedure for taking the testimony of a witness:[4]

Notwithstanding the plea of guilty so entered by the defendant, the court, evidently desiring to be advised upon all the facts of these case, called four witnesses for the purpose probably of ascertaining for itself the degree of culpability of the defendant as well as for the purpose of fixing the grade of punishment to be inflicted under the brigandage law. During the examination of these four witnesses the court made some memoranda of the facts to which these witnesses

---

SECTION 5. *Plea of Guilty — Determination of Punishment*. — Where the defendant pleads guilty to a complaint or information, if the court accepts the plea and has discretion as to the punishment for the offense, it may hear witnesses to determine what punishment shall be imposed.

[3] 6 Phil. 541 (1906).

[4] SECTION 32 of General Order No. 58 provides:

In courts of first instance or similar jurisdiction each witness must be duly sworn and his testimony reduced to writing as a deposition by the court or under its direction. The deposition must state the name, residence, and occupation of the witness. It must contain all questions put to the witness and his answers thereto. If a question put is objected to and the objection be either over-ruled or sustained, the fact of objection and its nature, together with the ground on which it shall have been sustained or over-ruled must be stated, or if a witness declines to answer a question put, the fact and the proceedings taken thereon shall be entered in the record. The deposition must be read to the witness and made to conform to what he declares to be the truth. He must sign the same, or, if he refuses, his reason for such refusal must be stated. It must also be signed by the magistrate and certified by the clerk. In cases where an official stenographer is engaged, the testimony and proceedings may be taken by him in shorthand, and it will not be necessary to read the testimony to the witness nor for the latter to sign the same; but a transcript of the record made by the official stenographer and certified as correct by him shall be prima facie a correct statement of such testimony and proceedings.

testified; the court made no effort to record the specific questions nor the answer to the same. This memorandum of the court was united with the record which was brought to this court.

x x x x

It is argued that this court ought not to consider the notes made by the judge in the form above indicated as evidence taken in this cause, for the reason that this evidence, if evidence it may be considered, was not taken in accordance with the requirements of section 32 of General Orders, No. 58 x x x. This leaves the case without any evidence in the record. **The question arises, Can this court affirm a sentence rendered by an inferior court upon a complaint and plea of guilty unsupported by the testimony of witnesses? Can the Courts of First Instance sentence defendants in criminal causes upon the plea of guilty without further proof of the guilt of the defendant?** Section 31 of General Orders, No. 58, provides for the procedure in the trial of a cause where the defendant pleads not guilty. **The procedure for the trial of criminal causes makes no specific provision for the trial of a cause when the defendant pleads guilty. We are of the opinion and so hold that the Courts of First Instance may sentence defendants in criminal causes who plead guilty to the offense charged in the complaint, without the necessity of taking testimony. However, in all cases, and especially in cases where the punishment to be inflicted in severe, the court should be sure that the defendant fully understands the nature of the charges preferred against him and the character of the punishment to be imposed before sentencing him. While there is no law requiring it, *yet in every case under the plea of guilty where the penalty may be death it is advisable for the court to call witnesses for the purpose of establishing the guilt and the degree of culpability of the defendant.* This, however, must be left to the discretion of the trial court.** Nevertheless, if the trial court shall deem it necessary and advisable to examine witnesses in any case where the defendant pleads guilty, he should comply in the taking of said testimony with said section 32 of General Orders, No. 58.[5]

In *US v. Rota*[6] *(Rota)*, after therein accused had pleaded guilty, the court, over the objection of the defense, permitted

---

[5] Supra note 3 at 542-543. Emphasis and underscoring supplied.

[6] 9 Phil. 426 (1907).

the prosecution to introduce testimony to support the allegations in the complaint. The Supreme Court, in said case, reiterated the *Talbanos* doctrine:

> It is contended that the judgment and sentence of the trial court should be reversed —
>
> First, because testimony was taken over the objection of the defendant.
>
> Second, because the trial court of its own motion, set aside the judgment originally pronounced, and called the accused to the witness stand to testify in his own behalf.
>
> x x x x
>
> **There is no provision of law which prohibits the taking of testimony where the accused enters a plea of "guilty," and that procedure is the proper and prudent course, especially in cases where grave crimes are charged, and where the court is required to exercise its discretion in imposing a more or less severe penalty in view of all the circumstances attending the commission of the crime.** In discussing this question in the case of the United States vs. Talbanos (6 Phil. Rep., 541), it was said (p. 543):
>
> > The procedure for the trial of criminal causes makes no specific provision for the trial of a cause when the defendant pleads guilty. We are of the opinion, and so hold, that the Courts of First Instance may sentence defendants in criminal causes who plead guilty to the offense charged in the complaint, without the necessity of taking testimony. However, in all case, and especially in cases where the punishment to be inflicted is severe, the court should be sure that the defendant fully understands the nature of the charges preferred against him and the character of the punishment to be imposed before sentencing him. **While there is no law requiring it, yet in every case under the plea of guilty where the penalty may be death it is advisable for the court to call witnesses for the purpose of establishing the guilt and the degree of culpability of the defendant.** This, however, must be left to the discretion of the trial court.[7]

---

[7] Id. at 431-432. Emphasis and underscoring supplied.

In the 1915 case of *US v. Agcaoili*[8] *(Agcaoili)*, the Court echoed *Talbanos* but this time, rationalizing the practice of taking evidence **as a guard against an improvident guilty plea**. The Court remanded the case to the trial court for reception of evidence:

> No evidence was taken at the trial and after a careful examination of the whole record we cannot rid our minds of a reasonable doubt as to whether the accused did or did not thoroughly understand the precise nature and effect of his plea upon arraignment. We are not wholly satisfied that he understood that in pleading "guilty" of the crime charged in the information, he pleaded guilty to its commission marked with all the aggravating circumstances alleged therein x x x.
>
> x x x x
>
> In this connection we deem it proper to invite attention to the rule of practice recommended in the cases of United States v. Talbanos (6 Phil. Rep., 541), and United States v. Rota (9 Phil. Rep., 426). x x x
>
> x x x x
>
> **While it is true that a judgment convicting and sentencing a defendant may lawfully be pronounced upon a solemn plea of "guilty" in open court and on arraignment, entered by the accused with full knowledge of the meaning and effect of his plea, *nevertheless*, where the complaint charges a capital offense, the possibility of misunderstanding or mistake in so grave a matter, justifies and in most instances *requires* the taking of such available evidence in support of the allegations of the information as the trial judge may deem necessary to remove all reasonable possibility that the accused might have entered his plea of "guilty" improvidently, or without a clear and precise understanding of its meaning and effect.**[9]

In *US v. Jamad*[10] *(Jamad)*, when the Attorney-General asked for a clarification as to the practice of admitting evidence after a plea of guilty of therein accused, the Court, reiterating the *Talbanos* doctrine, settled the issue, ruling as follows:

---

[8] 31 Phil. 91 (1915).

[9] Id. at 92-94. Emphasis and underscoring supplied.

[10] 37 Phil. 305 (1917).

Our experience has taught us that it not infrequently happens that, upon arraignment, accused persons plead "guilty" to the commission of the gravest offenses, qualified by marked aggravating circumstances, when in truth and in fact they intend merely to admit that they committed the act or acts charged in the complaint, and have no thought of admitting the technical charges of aggravating circumstances. It not infrequently happens that after a formal plea of "guilty" it develops under the probe of the trial judge, or in the course of the statement of the accused made at the time of the entry of his plea, or upon the witness stand, that the accused, while admitting the commission of the acts charged in the information, believes or pretends to believe that these acts were committed under such circumstances as to exempt him in whole or in part from criminal liability. Clearly, a formal plea of guilty entered under such circumstances is not sufficient to sustain a conviction of the aggravated crime charged in the information.

As will readily be understood, the danger of the entry of improvident pleas of this kind is greatly augmented in cases wherein the accused is a member of an uncivilized tribe, or a densely ignorant man who speaks a dialect unknown to his own lawyer, to the trial judge, and to the court officers other than the interpreter. In the course of the last fifteen years we have had before us a number of instances wherein members of uncivilized tribes have pleaded guilty to the commission of crimes marked with one or more aggravating circumstances, for which the prescribed penalty is that of death, life imprisonment, or a long term of imprisonment. In not a few of these cases the evidence, taken under the rule of practice in this jurisdiction, has disclosed the fact that the crimes actually committed were not marked with the aggravating circumstances set forth in the information, and in some cases it has developed that the accused was either wholly or partially exempt from criminal liability.

x x x x

We may say then, in response to the request for a ruling on this subject by the Attorney-General:

> (1) The essence of the plea of guilty in a criminal trial is that the accused, on arraignment, admits his guilt freely, voluntarily, and with full knowledge of the consequences and meaning of his act, and with a clear understanding of the precise nature of the crime or crimes charged in the complaint or information.

(2) Such a plea of guilty, when formally entered on arraignment, is sufficient to sustain a conviction of any offense charged in the information, even a capital offense, without the introduction of further evidence, the defendant having himself supplied the necessary proof.

(3) There is nothing in the law in this jurisdiction which forbids the introduction of evidence as to the guilt of the accused, and the circumstances attendant upon the commission of the crime, after the entry of a plea of "guilty."

(4) Having in mind the danger of the entry of improvident pleas of "guilty" in criminal cases, the prudent and advisable course, especially in cases wherein grave crimes are charged, is to take additional evidence as to the guilt of the accused and the circumstances attendant upon the commission of the crime.

(5) The better practice would indicate that, when practicable, such additional evidence should be sufficient to sustain a judgment of conviction independently of the plea of guilty, or at least to leave no room for reasonable doubt in the mind of either the trial or the appellate court as to the possibility of a misunderstanding on the part of the accused as to the precise nature of the charges to which he pleaded guilty.

(6) Notwithstanding what has been said, it lies in the sound judicial discretion of the trial judge whether he will take evidence or not in any case wherein he is satisfied that a plea of "guilty" has been entered by the accused, with full knowledge of the meaning and consequences of his act.

(7) But in the event that no evidence is taken, this court, if called upon to review the proceedings had in the court below, may reverse and send back for a new trial, if, on the whole record, a reasonable doubt arises as to whether the accused did in fact enter the plea of "guilty" with full knowledge of the meaning and consequences of the act.[11]

Jamad further stated that the reason for receiving evidence despite the guilty plea of an accused to a capital offense is:

---

[11] Id. at 314-318. Emphasis and underscoring supplied.

to establish independently the commission of the crime, or at least to leave no room for reasonable doubt in the mind of either the trial court or this court, on review, as to the possibility that there might have been some misunderstanding on the part of the accused as to the nature of the charges to which he pleaded guilty; and, further, to develop the circumstances surrounding the commission of the crime which justify or require the exercise of a greater or less degree of severity in the imposition of the prescribed penalties.[12]

In other words, the Court, in *Talbanos*, *Rota*, *Agcaoili*, and *Jamad*, recognized that personal circumstances such as language barrier and the level of education of the accused may result in an improvident plea of guilt. In some instances, an accused may have committed the act alleged in the information but with none of the aggravating circumstance/s that would qualify the criminal act to a capital offense. The Court likewise acknowledged the reality that if no evidence was presented during trial, then it would have no basis for its review of the case other than the guilty plea of the accused. Since convictions for capital offenses are subject to automatic review by the Supreme Court, then the more prudent course would be to require the presentation of evidence in capital offense cases despite a guilty plea — especially since a guilty plea almost always leads to a conviction by the trial court.

Parsed from the foregoing jurisprudential pronouncements, the taking of evidence upon a guilty plea to a capital offense is prudent and proper: (1) to guard against an improvident guilty plea; (2) to establish the guilt of the accused independent of the guilty plea; and (3) to determine the punishment or degree of culpability of the accused.

The wisdom behind the abovementioned cases was later adopted by the Court, as part of its mandated procedure, when the 1985 Rules on Criminal Procedure required the prosecution to prove the guilt of the accused independent of a guilty plea. Section 3, Rule 116 of the 1985 Rules of Criminal Procedure reads:

---

[12] Id. at 316-317.

SECTION 3. *Plea of Guilty to Capital Offense; Reception of Evidence*. — When the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and require the prosecution to prove his guilt and the precise degree of culpability. The accused may also present evidence in his behalf.

Except for the deletion of the word "also" in the last sentence, Section 3, Rule 116 of the 1985 Rules of Criminal Procedure was reproduced verbatim in Section 3, Rule 116 of the 2000 Revised Rules of Criminal Procedure, which provides:

SECTION 3. *Plea of Guilty to Capital Offense; Reception of Evidence*. — When the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and require the prosecution to prove his guilt and the precise degree of culpability. The accused may present evidence in his behalf.

Thus, under the current formulation of our rules of procedure, when an accused pleads guilty to a capital offense, the trial court is enjoined to do three things: (1) it must conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea; (2) it must require the prosecution to present evidence to prove the guilt of the accused and the precise degree of his culpability; and (3) it must ask the accused if he desires to present evidence in his behalf and allow him to do so if he desires.[13]

Anent the first requirement, the searching inquiry must determine whether the plea of guilt was based on a free and informed judgment. Hence, it must focus on (1) the voluntariness of the plea, and (2) the full comprehension of the consequences of the plea. Although there is no definite and concrete rule as to how a trial judge must conduct a searching inquiry, jurisprudence has developed the following guidelines:

---

[13] *People v. Nuelan*, G.R. No. 123075, October 8, 2001, 366 SCRA 705, 713.

1. Ascertain from the accused himself (a) how he was brought into the custody of the law; (b) whether he had the assistance of a competent counsel during the custodial and preliminary investigations; and (c) under what conditions he was detained and interrogated during the investigations. This is intended to rule out the possibility that the accused has been coerced or placed under a state of duress either by actual threats of physical harm coming from malevolent quarters or simply because of the judge's intimidating robes.

2. Ask the defense counsel a series of questions as to whether he had conferred with, and completely explained to, the accused the meaning and consequences of a plea of guilty.

3. Elicit information about the personality profile of the accused, such as his age, socio-economic status, and educational background, which may serve as a trustworthy index of his capacity to give a free and informed plea of guilty.

4. Inform the accused the exact length of imprisonment or nature of the penalty under the law and the certainty that he will serve such sentence. For not infrequently, an accused pleads guilty in the hope of a lenient treatment or upon bad advice or because of promises of the authorities or parties of a lighter penalty should he admit guilt or express remorse. It is the duty of the judge to ensure that the accused does not labor under these mistaken impressions because a plea of guilty carries with it not only the admission of authorship of the crime proper but also of the aggravating circumstances attending it, that increase punishment.

5. Inquire if the accused knows the crime with which he is charged and fully explain to him the elements of the crime which is the basis of his indictment. Failure of the court to do so would constitute a violation of his fundamental right to be informed of the precise nature of the accusation against him and a denial of his right to due process.

6. All questions posed to the accused should be in a language known and understood by the latter.

7. The trial judge must satisfy himself that the accused, in pleading guilty, is truly guilty. The accused must be required to narrate the tragedy or reenact the crime or furnish its missing details.[14]

---

[14] *People v. Pastor*, G.R. No. 140208, March 12, 2002, 379 SCRA 181, 189-190.

As to the second requirement, the rules make it mandatory for the prosecution to present evidence to prove the guilt of the accused and the precise degree of his culpability. This means that even as the accused had admitted to the commission of the crime and enters a voluntary and informed plea of guilty, the prosecution is still charged with the onus of proof to establish his guilt beyond reasonable doubt. **An accused charged with a capital offense cannot therefore be convicted based on his guilty plea alone.** A plea of guilty is only a supporting evidence or secondary basis for a finding of culpability, the main proof being the evidence presented by the prosecution to prove the accused's guilt beyond reasonable doubt. **Once an accused charged with a capital offense enters a plea of guilty, a regular trial shall be conducted just the same as if no guilty plea was entered.**[15] Thus, a guilty plea to a capital offense is not and cannot be considered a judicial admission[16] which requires no further proof.[17] Neither is it comparable to an extrajudicial confession.[18] An extrajudicial confession takes place prior to the start of the trial. The concern on whether the accused fully understands the consequences of his guilty plea does not come into play. Similar to a guilty plea in a capital offense, an extrajudicial confession (for any offense) is not a sufficient ground for conviction. An extrajudicial confession only forms a *prima facie* case against an accused.[19] To sustain a conviction, the prosecution must first establish that the

---

[15] *People v. Besonia*, G.R. Nos. 151284-85, February 5, 2004, 422 SCRA 210, 225.

[16] *See* Dissenting Opinion of Justice Lazaro-Javier, p. 6.

[17] RULES OF COURT, Rule 129, Sec. 4:

SECTION 4. *Judicial admissions*. – An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

[18] *See* Dissenting Opinion of Justice Lazaro-Javier, p. 6.

[19] *People v. Satorre*, G.R. No. 133858, August 12, 2003, 408 SCRA 642, 648.

extrajudicial confession is admissible, and that the same is corroborated by evidence of *corpus delicti*.[20]

At this juncture, it must be emphasized that a defective searching inquiry which results in an improvident plea under Section 3, Rule 116 of the 2000 Revised Rules of Criminal Procedure is distinct from an invalid arraignment under Section 1, Rule 116.[21] Arraignment is the formal mode and manner of implementing the constitutional right of an accused to be informed of the nature and cause of the accusation against him. The purpose of arraignment is to apprise the accused of the possible loss of freedom, even of his life, depending on the nature of the crime imputed to him, or at the very least to inform him of why the prosecuting arm of the State is mobilized against him.[22] On the other hand, a searching inquiry is conducted to inquire into the voluntariness and full comprehension by the accused of the consequences of his guilty plea. It entails more than informing the accused that he faces a jail term, but also the exact length of imprisonment under the law and the certainty that he will serve time at the national penitentiary or a penal colony. This is because an accused often pleads guilty in the hope of a lenient treatment, or upon bad advice, or because of promises of the authorities or parties of a lighter penalty should he admit guilt or express remorse.[23] Verily, the purpose of an arraignment is different from that of a searching inquiry. Arraignment is aimed at informing the accused of the charges

---

[20] RULES OF COURT, Rule 133, Sec. 3:

SECTION 3. *Extrajudicial confession, not sufficient ground for conviction.* — An extrajudicial confession made by an accused, shall not be sufficient ground for conviction, unless corroborated by evidence of *corpus delicti*.

See also *People v. Lim*, G.R. No. 90021, May 8, 1991, 196 SCRA 809, 815.

[21] *See* Dissenting Opinion of Justice Perlas-Bernabe, pp. 2-6.

[22] *People v. Pangilinan*, G.R. No. 171020, March 14, 2007, 518 SCRA 358, 371.

[23] *People v. Bello*, G.R. Nos. 130411-14, October 13, 1999, 316 SCRA 804, 813-814.

against him or her so that he or she can properly prepare his or her defense while the conduct of a searching inquiry (after the accused pleads guilty) is intended to remove any erroneous impression of the accused that a lighter penalty will be meted out if he or she pleads guilty.

While an invalid arraignment necessarily results in an improvident plea since an accused cannot enter a proper plea unless he or she understands the charges against him or her, the reverse is not true: an improvident plea is not always preceded by an invalid arraignment. It may happen that an accused was informed of the nature and cause of the accusation against him or her but nonetheless enters an improvident guilty plea because he or she mistakenly believes that he or she will get a lighter sentence by doing so. Hence, the principle that a conviction cannot stand on an invalid arraignment (because it amounts to a violation of the constitutional right of the accused to be informed of the nature and cause of the accusation against him or her) does not invariably apply to instances where an accused makes an improvident guilty plea.

Therefore, the absence of the first requirement, as in this case — where there is no proof that an inquiry as to the voluntariness of the plea of guilty was conducted by the judge — does not automatically render the criminal proceedings defective and invalid, which would necessitate a remand of the case to the trial court. To insist otherwise would render nugatory a legal tradition that was finally ensconced in the 1985 Rules of Criminal Procedure and carried over and reiterated in the 2000 Revised Rules of Criminal Procedure. To stress, the requirement under the rules that the prosecution prove beyond reasonable doubt the guilt of the accused in instances where the latter pleads guilty to a capital offense ***is*** the safeguard against an improvident plea. Regardless of the improvident plea of the accused, there should be on record evidence to determine whether the accused is guilty beyond reasonable doubt — as the prosecution is required to present such evidence under the rules. The remand then of the case based solely on the improvident guilty plea of the accused would effectively be a retrial of the case: the accused would have to *again* enter his plea; the

prosecution would have to *again* establish the guilt of the accused; and the accused would have to *again* prove his defenses — a useless and impractical exercise that is unfair and oppressive to both the prosecution and the accused.

Again, it bears to emphasize that the mandatory taking of the prosecution's evidence, under the second requirement, persists, as indeed, this was adopted into our rules of procedure precisely to safeguard against an improvident plea of the accused *and* to allow the trial court, and subsequently the reviewing court, to make its own determination as to the guilt and culpability of the accused, independent of the guilty plea — improvident or otherwise. In fact, based on prevailing jurisprudence, our jurisdiction does not subscribe to a *per se* rule that once a plea of guilty is deemed improvidently made that the case is at once remanded to the trial court.[24]

Thus, as it stands, **in capital offenses, there is effectively no difference between a plea of guilty or not guilty — that is, in both instances, the prosecution is required to present evidence to prove the guilt of the accused beyond reasonable doubt.** An accused who made an improvident plea of guilty may nonetheless be found guilty of the crime charged if, independent of the improvident plea, the evidence adduced by the prosecution establishes his guilt beyond reasonable doubt. In the same vein, **an accused who made an improvident plea must perforce be acquitted if the prosecution failed to establish his guilt beyond reasonable doubt.**

In *People v. Enciso*[25] *(Enciso)*, a case tried before the 1985 Rules of Criminal Procedure,[26] when the taking of evidence

---

[24] *People v. Molina*, G.R. Nos. 141129-33, December 14, 2001, 372 SCRA 378, 388.

[25] G.R. No. 77685, April 15, 1988, 160 SCRA 728.

[26] 1985 RULES OF CRIMINAL PROCEDURE, Rule 116, Sec. 3 reads:

SECTION 3. *Plea of Guilty to Capital Offense; Reception of Evidence.* — When the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and require the

was not even mandatory, the Court acquitted therein accused despite pleading guilty to robbery with homicide — a capital offense. The trial court, in accordance with practice and a long line of jurisprudence, required the prosecution to present evidence to prove the guilt of the accused, and thereafter found the accused guilty of the crime charged. On appeal, the Court acquitted the accused upon finding that the prosecution's evidence fell short of proving the guilt of the accused beyond reasonable doubt. The Court said:

> It should be noted that the two accused Nestor Enciso and Jessie Suyong pleaded guilty to the offense charged in the information. And they have not questioned the validity of this plea. It should likewise be noted that conspiracy is alleged in the information. A plea of guilty constitutes an admission of the crime and the attendant circumstances alleged in the information. **Nonetheless, despite Enciso's and Suyong's pleas of guilty, We believe the pleas must not be taken against them, for as clearly borne out by the evidence presented, said guilt has not actually been proved beyond reasonable doubt.** The fact that they did not appeal is of no consequence, for after all, this case is before Us on automatic review (that is whether appeal was made or not). Accordingly, both Enciso and Suyong are ACQUITTED on reasonable doubt.
>
> In the same vein and on reasonable doubt, the third accused Balasbas is ACQUITTED on reasonable doubt.[27]

I find the Court's ruling in *Enciso* applicable to this case.

Similarly, Pagal entered a plea of guilty to murder — a capital offense. After arraignment, trial ensued and the prosecution was granted by the trial court in no less than four separate hearing dates, spread from November 17, 2010 until July 20, 2011, to present evidence to establish the guilt of Pagal. Despite

---

prosecution to prove his guilt and the precise degree of culpability.
The accused may also present evidence in his behalf.

Except for the deletion of the word "also" in the last sentence, Section 3, Rule 116 of the 1985 Rules of Criminal Procedure was reproduced verbatim in Section 3, Rule 116 of the 2000 Revised Rules of Criminal Procedure.

[27] Supra note 25 at 734-735. Emphasis and underscoring supplied.

being given eight months to do so, the prosecution failed miserably to produce any evidence. In other words, the prosecution utterly failed to discharge its burden to prove the guilt of Pagal beyond reasonable doubt (as it could not have established the guilt of Pagal) for failure to present any evidence. The total absence of proof against Pagal warrants his acquittal in this case.

A remand of the case to the trial court applies only when there is a deprivation of due process or undue prejudice to the accused.

I am not unaware of existing jurisprudence where the Court had remanded the case to the trial court for re-arraignment and further proceedings after finding that the plea of guilty of the accused to a capital offense had affected trial proceedings.

In *People v. Abapo*[28] *(Abapo)*, the Court held that the prosecution was prejudiced by the improvident guilty plea of therein accused:

> x x x However, after a careful examination of the records of this case, we find that the improvident plea of guilt of the accused-appellant has affected the manner by which the prosecution conducted its presentation of the evidence. The presentation of the prosecution's case was lacking in assiduity and was not characterized with the meticulous attention to details that is necessarily expected in a prosecution for a capital offense. The state prosecutor in his examination of the victim was evidently concerned only with proving the respective dates of the commission of the repeated rapes, and did not attempt to elicit details about the commission of each rape that would satisfy the requirements for establishing proof beyond reasonable doubt that the offenses charged have in fact been committed by the accused. It is clear to our mind that the prosecution did not discharge its obligation as seriously as it would have had there been no plea of guilt on the part of the accused. x x x
>
> x x x x

[28] G.R. Nos. 133387-423, March 31, 2000, 329 SCRA 513.

It will be seen that with the above admission made by the defense counsel, the prosecution desisted from availing of the opportunity to fully submit its case. The improvident plea of guilt had adversely influenced the prosecution's presentation of evidence.[29]

In *People v. Durango*[30] *(Durango)*, the Court found that the defense was prejudiced by the improvident guilty plea of therein accused:

This Court, in the recent case of *People vs. Tizon*, has expressed the rationale behind the rule and it is, at bottom —

> x x x that no accused is wrongly convicted or erroneously sentenced. It constantly behooves the courts to proceed with utmost care in each and every case before them but perhaps nothing can be more demanding of judges in that respect than when the punishment is in its severest form — death x x x.

x x x x

The records would show that thenceforth defense counsel spoke not one word. Nor would it appear that the trial court gave defense counsel or the accused any chance to talk for when the prosecutor ended his direct examination of Noniebeth, the latter was thereupon simply excused and the court forthwith declared the case submitted for decision. x x x

x x x x

The improvident plea, followed by an abbreviated proceeding, with practically no role at all played by the defense, is just too meager to accept as being the standard constitutional due process at work enough to forfeit a human life.[31]

In *People v. Molina*[32] *(Molina)*, the Court ruled that both the prosecution and the defense were prejudiced by the improvident guilty plea of therein accused:

---

[29] Id. at 523-526.

[30] G.R. Nos. 135438-39, April 5, 2000, 329 SCRA 758.

[31] Id. at 764, 767.

[32] G.R. Nos. 141129-33, December 14, 2001, 372 SCRA 378.

After a careful examination of the records, we find that the improvident plea of guilt of accused-appellant has affected the manner by which the prosecution and the defense conducted its presentation of the evidence, and the trial court in carefully evaluating the evidence on record. Remand of Crim. Case Nos. 99-02817-D, 99-02818-D, 99-02819-D, 99-02820-D and 99-02821-D for re-arraignment and further relevant proceedings is therefore proper. ***First,* the prosecution failed to lay the proper foundation for the introduction of the alleged handwritten letter of accused-appellant acknowledging his guilt for the rape of his daughter.** This could very well be attributed to the fact that this letter was introduced only after accused-appellant pleaded guilty to the accusations for which reason the prosecution no longer endeavored to elicit the proper foundation for this evidence.

x x x x

Second, the presentation of the prosecution's case was lacking in assiduity and was not characterized with the meticulous attention to details that is necessarily expected in a prosecution for a capital offense. x x x

x x x x

Third, the prosecution could very well clarify why on 1 March 1999 after accused-appellant's wife saw him and Brenda sleeping side by side and after she confronted his husband about it and was told by her daughter that "if I will tell it to you, my father will kill us," accused-appellant was still allegedly able to attempt a rape on his daughter on the same date. x x x

Fourth, neither the defense nor the prosecution elicited from the private complainant whether the accusations for incestuous rape and attempted rape were in a manner colored by the seething allegations in the transcript of stenographic notes that accused-appellant was a violent person towards his family, most especially his wife who is Brenda's mother. x x x

Fifth, the improvident plea appears to have sent the wrong signal to the defense that proceedings thereafter would be abbreviated. There was thus a perfunctory representation of accused-appellant as shown by (a) his counsel's failure to object to and correct the irregularities during his client's re-arraignment; (b) his failure to question the offer of the alleged letter wherein accused-appellant acknowledged his authorship of the dastardly crimes; (c) his failure to present evidence in behalf of accused-appellant or to so inform the latter of his right

to adduce evidence whether in support of the guilty plea or in deviation therefrom; (d) his failure to object to his client's warrantless arrest and the designation of the crime in Crim. Case No. 99-02821-D as attempted rape when the evidence may appear not to warrant the same; and, (e) his failure to file a notice of appeal as regards Crim. Case No. 99-02821-D to the Court of Appeals for appropriate review. This Court perceives no reasonable basis for excusing these omissions as counsel's strategic decision in his handling of the case.[33]

In *People v. Ernas*[34] *(Ernas)*, the Court found supposed errors committed by the trial court subsequent to the improvident guilty plea entered by therein accused:

> With the plea of guilty entered by the appellant on the three counts of rape, the prosecution opted to dispense with the direct testimony of the complaining witnesses and formally offered the following exhibits:
>
> x x x x
>
> Appellant has made an improvident plea of guilty.
>
> x x x x
>
> Fourth, the Judge should have asked appellant to recount what he exactly did to show that he fully understood the nature of the crimes filed against him. Moreover, as already stated, the trial judge failed to require the prosecution to present its evidence. We have consistently held that the taking of the testimony is the prudent and proper course to follow for the purpose of establishing not only the guilt but also the precise degree of culpability of the accused taking into account the presence of other possible aggravating or mitigating circumstances — and thereafter, to make the accused present his own evidence x x x.
>
> x x x x
>
> It must be stressed that under the 1985 Rules of Criminal Procedure, a conviction in capital offenses cannot rest alone on a plea of guilt. The prosecution evidence must be sufficient to sustain a judgment of conviction independently of the plea of [guilty].

---

[33] Id. at 389-393. Emphasis and underscoring supplied.

[34] G.R. Nos. 137256-58, August 6, 2003, 408 SCRA 391.

We, therefore, cannot accept as valid the plea of guilty entered by the appellant to the three charges of rape. His re-arraignments as to the three charges are fatally flawed. The trial court erred in believing that the questions propounded to the appellant and the latter's answers as well as the documentary exhibits offered by the People would aid it in determining whether the accused really and truly understood and comprehended the meaning, full significance and consequences of his plea.

It likewise erred in allowing the prosecution to dispense with the testimonies of the complaining witnesses. As we have ruled, even if the trial court is satisfied that the plea of guilty was entered with full knowledge of its meaning and consequences, the introduction of evidence to establish the guilt and the degree of culpability of the accused is still required. Judges therefore must be cautioned, toward this end, against the demands of sheer speed in disposing of cases, for their mission after all, and as has been time and again put, is to see that justice is done.[35]

Based on the foregoing, the Court had, in the foregoing cases, gone out of its way to find reasons to remand the cases to the trial court for perceived prejudices caused to and tactical errors committed by the prosecution, defense, and even the trial court judge in the conduct of trial. The Court remanded the cases to essentially allow the prosecution to correct its mistakes and present evidence to prove the guilt of the accused.

However, in light of the now mandatory duty of the prosecution to present evidence to establish the guilt of an accused who pleads guilty to a capital offense, I believe the foregoing cases are no longer controlling.

Stripped to the basics, the prosecution in *Abapo* and *Molina* simply failed to present sufficient evidence to prove the guilt of the accused beyond reasonable doubt. In *Ernas*, the trial court judge did not require the prosecution to present evidence. The prosecution's error in dispensing with the direct testimony of the other witnesses and its mistaken reliance on its documentary exhibits should have resulted in the acquittal of the accused.

---

[35] Id. at 307-402. Emphasis supplied.

To drive home the point, in these cases, had the accused pleaded "not guilty," he or she would have been entitled to an acquittal. If the Court were to still follow the foregoing cases, an accused is better off pleading not guilty to a capital offense. Otherwise, he would risk a remand of his case to the trial court to give the prosecution another chance to prove his guilt beyond reasonable doubt. It is my submission that this should not be the rule because the basic right of an accused to be presumed innocent until proven guilty applies even after he or she enters a guilty plea to a capital offense. The convoluted approach adopted in these cases of remanding cases to the trial court jeopardizes this right of the accused guaranteed by no less than our Constitution.

Moreover, the past practice of remanding cases to the trial court could be justified prior to the 1985 Rules of Criminal Procedure because the taking of evidence (upon a guilty plea to a capital offense) then was discretionary. In instances where the Court entertained doubts as to the validity of the guilty plea of the accused, it had no basis for review because no evidence was presented during trial. Thus, remand of the cases was necessary.

The Court should not revert back to the rules enunciated in the foregoing cases because under the 2000 Revised Rules of Criminal Procedure, the taking of evidence after a guilty plea to a capital offense is made mandatory. Regardless of the plea of the accused, the prosecution is required to prove his or her guilt with proof beyond reasonable doubt. A guilty plea is merely a supporting evidence in favor of the prosecution.[36] Hence, if the prosecution fails to present proof beyond reasonable doubt for any reason whatsoever, the accused should be acquitted — regardless of his or her guilty plea.

It should thus be clear that with the current *ponencia*, decided *en banc*, the rulings in *Abapo*, *Durango*, *Molina* and *Ernas* are, as they ought to be considered, abandoned.

---

[36] *People v. Besonia*, supra note 15 at 225.

In this regard, while I agree with the guidelines[37] stated in the *ponencia* as to the application of Section 3, Rule 116 at the trial stage, I submit, however, that the Court should only remand cases for retrial in situations when the prosecution was **completely deprived** of its right to present evidence ***and*** when **undue prejudice is caused to the accused** such as in *Durango*, where the defense lawyer's failure to assert and protect the rights of the accused was flagrant and manifest. I believe a remand is proper in these instances because it involves a violation of due process and a deprivation of the right of the accused to defend himself. Further, the latter exception is in recognition of the inherent imbalance in our criminal justice system with the scales tipped against the accused:

> The presence and participation of counsel in criminal proceedings should never be taken lightly. Even the most intelligent or educated man may have no skill in the science of the law, particularly in the rules of procedure, and, without counsel, he may be convicted not because he is guilty but because he does not know how to establish his innocence. The right of an accused to counsel is guaranteed to minimize the imbalance in the adversarial system where the accused is pitted against the awesome prosecutory machinery of the State. Such right proceeds from the fundamental principle of due process which basically means that a person must be heard before being condemned.[38]

The imbalance is even greater when an accused pleads guilty to a capital offense. Since the accused has already admitted the crime, the defense is left with the task of mitigating the consequences of the guilty plea. This is when counsel of the accused is called upon to be more vigilant and protective of the rights of his client.

---

[37] See *ponencia*, pp. 50-52.

[38] *People v. Santocildes, Jr.*, G.R. No. 109149, December 21, 1999, 321 SCRA 310, 315-316.

Remanding the instant case for retrial run the risk of violating the constitutional right to speedy disposition of cases.

Finally, I find that remanding the cases to the trial court violates the accused's right to speedy trial.

One of the factors used in determining whether there is a violation of the accused's right to speedy trial is the prejudice to the accused caused by the delay in the proceedings. Prejudice is determined through its effect on three interests of the accused that the right to a speedy trial is designed to protect, which are: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired.[39] **Of these, the most serious is the last, because the inability of a defendant to adequately prepare his case skews the fairness of the entire system.**[40]

Here, the prosecution was given a total of eight months to present its evidence but it failed to do so. Pagal already pleaded guilty to the charge of murder. That there is nothing on record to explain why the prosecution did not present any evidence is irrelevant. The burden to prove the guilt of the accused falls on the prosecution even when an accused pleads guilty to a capital offense. Again, the rules *require* the prosecution to present evidence to prove the guilt of the accused despite a guilty plea. Thus, there is no need for the trial court to inquire as to why the prosecution was not able to present any evidence. Had it the intention to present evidence, the prosecution could have made its case before the trial court and asked for additional hearing dates. But it did not. The fact of the matter is that the prosecution failed to present any evidence despite all the time and opportunity given to it. Pagal was therefore already

---

[39] *People v. Domingo*, G.R. No. 204895, March 21, 2018, 859 SCRA 564, 567.

[40] *Coscolluela v. Sandiganbayan*, G.R. No. 191411, July 15, 2013, 701 SCRA 188, 200.

prejudiced when the prosecution failed to present its evidence during all the settings given to it by the court.

To now remand the case to the trial court (***after nine years that this case has languished on appeal***) and compel Pagal to undergo essentially a new trial, through no fault of his own, and to allow the prosecution another chance, would only further aggravate the prejudice to Pagal caused by the delay in the trial of his case. Here, since the prosecution did not present any evidence, the defense saw no need to present evidence of its own. Remanding the case would mean that Pagal would have to build his defense evidence all over again almost a decade after the trial court convicted him. Indeed, **the objective of the right to speedy trial is to assure that an innocent person may be free from the anxiety and expense of litigation or, if otherwise, of having his guilt determined within the shortest possible time compatible with the presentation and consideration of whatsoever legitimate defense he may interpose. This looming unrest as well as the tactical disadvantages carried by the passage of time should be weighed against the State and in favor of the individual.**[41]

The Court should enjoin trial courts to strictly comply with Section 3, Rule 116.

It has been suggested by some members of the Court that Section 3, Rule 116 of the Rules of Court should be revisited and amended by codifying a second-stage searching inquiry in cases where the prosecution fails to adduce evidence despite being required by the rules to do so or, alternatively, by completely removing the rule of requiring the prosecution to prove an accused's guilt beyond reasonable doubt despite the latter's guilty plea.[42]

---

[41] Id. at 199-200.

[42] *See* Opinion of Justice Lazaro-Javier, pp. 5-6.

As to the first proposition, I find it unnecessary to add another layer of searching inquiry only to find out why the prosecution cannot present evidence to prove the guilt of the accused even though it is specifically required by the rules to do so. It begs the question: What comes after the searching inquiry? Should the trial court dispense with the presentation of evidence by the prosecution if the latter were able to give sufficient reason for its failure to prove the guilt of the accused? To my mind, adding a second tier of searching inquiry after the prosecution fails to present evidence, without providing any reason therefor, is to unduly favor the State and reward the prosecution's ineptitude to comply with its mandate to prove an accused's guilt beyond reasonable doubt.

As to the second proposition, to dispense with the mandatory taking of the prosecution's evidence despite an accused's guilty plea is to remove the very safeguard of an accused against an improvident guilty plea. Such proposition runs counter to the constitutional right of presumption of innocence and to a long-established rule in our jurisdiction that a plea of guilty alone is insufficient to support a conviction. Further, putting a heavy weight on guilty pleas will open the gates to convictions grounded on confessions extracted through force, torture, violence and intimidation.

Rather than revising Section 3, Rule 116, I agree with the *ponencia* in instead enjoining trial courts to strictly abide by the provisions of the said rule.

Indeed, justice is served not only when the guilty is convicted or the innocent acquitted. Justice is served when trials are fair and both parties are afforded due process. Technical rules serve a purpose. Every rule has the objective of a more efficient and effective judicial system. The three requirements in Section 3, Rule 116 ensure that both parties are afforded fairness and due process. These requirements aid in striking a balance between the State's right to prosecute crimes and the constitutional rights of the accused, which the courts are duty-bound to protect.

In view of the foregoing considerations, I vote with the *ponencia* in acquitting accused-appellant Brendo P. Pagal of Murder for

failure of the prosecution to prove his guilt beyond reasonable doubt.

DISSENTING OPINION

PERLAS-BERNABE, *J.:*

Respectfully, I disagree with the *ponencia*'s proposal to acquit accused-appellant Brendo P. Pagal (accused). For the reasons herein explained, the case should be remanded to the trial court so that the accused may be re-arraigned, and in so doing, enter the proper plea. The lack of a valid plea in this case taints the entire criminal proceedings and hence, precludes the trial court from rendering a valid verdict.

To recount, the accused was charged with, and thereafter, pleaded guilty to the capital offense of Murder. Under Section 3, Rule 116 of the Rules of Criminal Procedure (Section 3, Rule 116), "[w]hen the accused pleads guilty to a capital offense, the court shall conduct a **searching inquiry into the voluntariness and full comprehension of the consequences of his plea** and shall require the prosecution to prove his guilt and the precise degree of culpability. x x x"[1] However, the trial court judge failed to conduct the required searching inquiry. The prosecution was then given four (4) hearing dates to present its evidence, but none of its witnesses appeared and testified during any of these dates. In light of this, the defense likewise chose not to present any evidence. Eventually, both the prosecution and the defense submitted the case for decision.

The trial court convicted the accused of Murder based solely on his plea of guilty. On appeal, the Court of Appeals (CA) set aside accused's conviction and instead, ordered that the case be remanded with a directive that the trial court follow the mandate of Section 3, Rule 116.

The *ponencia* reverses and sets aside the CA ruling and instead, pronounces that the accused be acquitted. It held that

---

[1] Emphasis supplied.

since the prosecution was given four (4) separate hearing dates to present evidence against the accused, and despite these chances, the prosecution was unable to prove his guilt, his acquittal is in order.[2]

As earlier intimated, I respectfully disagree.

In criminal proceedings, an arraignment has been regarded as an integral requirement of procedural due process:

> Procedural due process requires that the accused be arraigned so that he [or she] may be informed of the reason for his [or her] indictment, the specific charges he [or she] is bound to face, and the corresponding penalty that could be possibly meted against him [or her].[3]

Particularly, an arraignment is "**the formal mode and manner of implementing the constitutional right of an accused to be informed of the nature and cause of the accusation against him**."[4] In *Borja v. Mendoza*,[5] the Court has highlighted that "[a]n arraignment x x x [is] **indispensable** as the means 'for bringing the accused into court and notifying him of the cause he is required to meet.'"[6] In the same case, the Court discussed the complementary relation of a valid arraignment to the rule regarding the sufficiency of the Information, which both serve the purpose of preserving the accused's right to be informed of the nature and cause of the accusation against him:

> **[I]t is at that stage where in the mode and manner required by the Rules, an accused, for the first time, is granted the opportunity to know the precise charge that confronts him**. It is imperative that he is thus made fully aware of possible loss of freedom, even of his

---

[2] *Ponencia*, p. 58.

[3] See *Corpus, Jr. v. Pamular*, G.R. No. 186403, September 5, 2018.

[4] See *People v. Palema*, G.R. No. 228000, July 10, 2019; emphasis supplied. See also *People v. Nuelan*, 419 Phil. 160 (2001).

[5] 168 Phil. 83 (1977).

[6] Id. at 86; emphasis supplied.

life, depending on the nature of the crime imputed to him. At the very least then, he must be fully informed of why the prosecuting arm of the state is mobilized against him. An arraignment serves that purpose. Thereafter he is no longer in the dark. **It is true, the complaint or information may not be worded with sufficient clarity. He would be in a much worse position though if he does not even have such an opportunity to plead to the charge**. With his counsel by his side, he is thus in a position to enter his plea with full knowledge of the consequences. He is not even required to do so immediately. He may move to quash. What is thus evident is that an arraignment assures that he be fully acquainted with the nature of the crime imputed to him and the circumstances under which it is allegedly committed. **It is thus a vital aspect of the constitutional rights guaranteed him. It is not useless formality, much less an idle ceremony**.[7] (Emphases supplied)

Since the arraignment is meant to formally inform the accused of the essential details of the charge against him, a valid arraignment is also important for the accused to adequately prepare his defense. The groundwork for the defense stems from the accused's preliminary understanding of the import and consequences of the charge against him. Case laws states that "the right of an accused to be informed of the precise nature of the accusation leveled at him x x x is, therefore, really an avenue for him to be able to hoist the necessary defense in rebuttal thereof."[8] In *People v. Alcalde*:[9]

The constitutional right to be informed of the nature and cause of the accusation against him under the Bill of Rights carries with it the correlative obligation to effectively convey to the accused the information to enable him to effectively prepare for his defense.[10]

Without a valid arraignment, therefore, the accused's ability to defend himself is tainted; hence, an invalid arraignment must be considered as a fatal defect in the criminal proceedings.

---

[7] Id. at 87.

[8] *People v. Estomaca*, 326 Phil. 429, 438 (1996).

[9] 432 Phil. 366 (2002).

[10] Id. at 379.

The importance of a valid arraignment gains additional nuance when the accused pleads guilty to a capital offense. As mentioned, Section 3, Rule 116 requires that on such occasion, the trial court judge must first conduct a searching inquiry into the voluntariness and full comprehension of the accused of his plea of guilty to a capital offense. In addition, trial court judges are enjoined to require the prosecution to present evidence to prove the guilt of the accused and the precise degree of his culpability; and to ask the accused to present evidence in his behalf and allow him to do so if he so desires.[11]

The rationale behind this special rule on searching inquiries is that "courts must proceed with more care where the possible punishment is in its severest form, namely death, for the reason that the execution of such a sentence is irrevocable and experience has shown that innocent persons have at times pleaded guilty. The primordial purpose is to avoid improvident pleas of guilt on the part of an accused where grave crimes are involved since he might be admitting his guilt before the court and thus forfeit his life and liberty without having fully understood the meaning, significance and consequence of his plea."[12]

While the Rules of Criminal Procedure do not specify the actual matters that must be addressed during this searching inquiry, the Court, in several cases, has laid down the following guidelines that trial court judges must observe in this respect:

1. Ascertain from the accused himself (a) how he was brought into the custody of the law; (b) whether he had the assistance of a competent counsel during the custodial and preliminary investigations; and (c) under what conditions he was detained and interrogated during the investigations. **This is intended to rule out the possibility that the accused has been coerced or placed under a state of duress either by actual threats of physical harm coming from malevolent quarters or simply because of the judge's intimidating robes**.

---

[11] See *People v. Magat*, 388 Phil. 311, 322 (2000).

[12] *People v. Ernas*, 455 Phil. 829, 838 (2003).

2. Ask the defense counsel a series of questions as to whether he had conferred with, and completely explained to, the accused the meaning and consequences of a plea of guilty.

3. Elicit information about the personality profile of the accused, such as his age, socio-economic status, and educational background, which may serve as a trustworthy index of his capacity to give a free and informed plea of guilty.

4. Inform the accused the exact length of imprisonment or nature of the penalty under the law and the certainty that he will serve such sentence. For not infrequently, an accused pleads guilty in the hope of a lenient treatment or upon bad advice or because of promises of the authorities or parties of a lighter penalty should he admit guilt or express remorse. It is the duty of the judge to ensure that the **accused does not labor under these mistaken impressions because a plea of guilty carries with it not only the admission of authorship of the crime proper but also of the aggravating circumstances attending it, that increase punishment**.

5. Inquire if the accused knows the crime with which he is charged and fully explain to him the elements of the crime which is the basis of his indictment. **Failure of the court to do so would constitute a violation of his fundamental right to be informed of the precise nature of the accusation against him and a denial of his right to due process**.

6. All questions posed to the accused should be in a language known and understood by the latter.

7. The trial judge must satisfy himself that the accused, in pleading guilty, is truly guilty. The accused must be required to narrate the tragedy or reenact the crime or furnish its missing details.[13] (Emphases supplied)

Ultimately, however, "[t]he bottom line of the rule is that the plea of guilt must be **based on a free and informed judgment**. Thus, the searching inquiry of the trial court must be focused on: (1) **the voluntariness of the plea**, and (2) **the**

---

[13] See *People v. Gambao*, 718 Phil. 507, 521-522 (2013); and *People v. Mira*, 561 Phil. 646, 656-657 (2007); *People v. Ernas*, supra, at 839-840; and *People v. Pastor*, 428 Phil. 976, 986-987 (2002).

full comprehension of the consequences of the plea. The questions of the trial court [must] show the voluntariness of the plea of guilt of the [accused] [and that] the questions demonstrate appellant's full comprehension of the consequences of his plea."[14]

Recent cases convey that a conviction based solely on an improvident plea of guilt **shall be set aside and the case remanded for further proceedings**.[15] This notwithstanding, some of these cases interestingly show that despite an improvident plea, a judgment of conviction may be sustained if the prosecution is nonetheless able to present ample evidence independent from the improvident guilty plea.[16] To my mind, these more recent cases appear to gloss over the older line of jurisprudence which soundly holds that "**no valid judgment can be rendered upon an invalid arraignment**."[17]

In *People v. Molina*,[18] the Court set aside the plea of guilt and remanded the case since it could not determine whether or not the trial court complied with the conduct of searching questions to ensure the accused's plea of guilt was proper. This Court declared that a "**judgment of conviction cannot stand upon an invalid arraignment**."[19]

In *People v. Tizon*,[20] the Court observed that "[s]o indispensable is this requirement that a plea of guilt to a capital offense can be held null and void where the trial court has

---

[14] *People v. Alicando*, 321 Phil. 656, 681 (1995); emphases supplied.

[15] See *People v. Durango*, 386 Phil. 202 (2000).

[16] See *People v. Gambao*, supra note 13; *People v. Francisco*, 649 Phil. 729 (2010); *People v. Documento*, 629 Phil. 579 (2010); *People v. Talusan*, 610 Phil. 378 (2009); *People v. Tanyacao*, 477 Phil. 608 (2004); *People v. Alborida*, 412 Phil. 81 (2001).

[17] *People v. Durango*, supra note 15, at 213; and *People v. Estomaca;* supra note 8, at 449-450; emphases supplied.

[18] 423 Phil. 637 (2001).

[19] Id. at 663; emphasis supplied.

[20] 375 Phil. 1096 (1999).

inadequately discharged the duty of conducting the prescribed 'searching inquiry.'"[21] "Verily, **a judgment of conviction cannot stand upon an invalid arraignment**. In the interest of substantial justice then, this Court has no recourse but to remand the case to the trial court for further and appropriate proceedings."[22]

In *People v. Estomaca*,[23] citing *People v. Alicando*,[24] the Court similarly ruled that "**[n]o valid judgment can be rendered upon an invalid arraignment. Since x x x the arraignment of appellant therein was void, the judgment of conviction rendered against him was likewise void**, hence in fairness to him and in justice to the offended party that case was remanded to the trial court for further proceedings."[25]

Indeed, I subscribe to these earlier cases on the subject since ultimately, an invalid arraignment constitutes a fatal defect in the criminal proceedings precluding the trial court from making a valid judgment, whether of acquittal or conviction. On the contrary, I maintain reservations with the more recent cases which still uphold a judgment of conviction if there is evidence to sustain such finding, notwithstanding the improvident plea of guilt by the accused. As I see it, a trial court will not even be able to properly arrive at any determination of guilt if the arraignment is, in the first place, defective. This is because **an invalid arraignment impairs the understanding of the accused of the nature and cause of the accusation against him to which his defense strategy depends**. In turn, an impaired defense effectively plays into the relative strength of the prosecution's evidence since an accused who does not understand the charge against him may very well leave the prosecution's allegations unrebutted or evidence unobjected.

---

[21] Id. at 1104.

[22] Id. at 1104-1105; emphasis supplied.

[23] Supra note 8.

[24] Supra note 14; also citing *Binabay v. People*, 147 Phil. 402 (1971).

[25] *People v. Estomaca,* supra note 8, at 449-450; emphasis supplied.

The lack of rebuttal and objection consequently plays a role in the trial court's calibration of the evidence, and leads to a judgment of conviction that is tainted. In the end, any finding of guilt beyond reasonable doubt to sustain a conviction will be clouded by the irregularity of the arraignment, begging the question: *had the accused intelligently understood the consequences of his plea, would he then allow the prosecution's allegations to remain unrebutted and evidence unobjected, and consequently alter the trial court's assessment of the case?*

In fact, I add that not only does an invalid arraignment impair the defense, but, in some cases, may likewise affect the prosecution's strategy and vigor in presenting its case. **Hence, in my view, a judgment of acquittal can neither be made**.

The above observation finds bearing in existing jurisprudence. In *People v. Abapo*,[26] the Court remanded the case after observing that the prosecution's presentation of evidence was improperly impaired by the accused's improvident plea of guilt. It discerned that the prosecution's evidence was "**lacking in assiduity and was not characterized with the meticulous attention to details that is necessarily expected in a prosecution for a capital offense**."[27] Specifically, it found that the prosecution focused on obtaining the frequency and the material dates the crimes were committed, instead of eliciting details material to prove the elements of the crime.

In *People v. Besonia*,[28] Court likewise ordered the remand of the case, finding, among others, that "the trial court and the prosecution unduly relied on [the accused-appellant's] plea of guilty and his admissions made during the searching inquiry. **The prosecution did not discharge its obligation as seriously as it would have had there been no plea of guilt on the part of [the accused-appellant]**."[29]

---

[26] 385 Phil. 1175 (2000).

[27] Id. at 1187; emphasis supplied.

[28] 466 Phil. 822 (2004).

[29] Id. at 843; emphasis supplied.

Overall, whether from the standpoint of the prosecution or the defense, the foregoing considerations show how a miscarriage of justice may result from an improvident plea of guilt. Hence, a remand of the case is in order so that the arraignment may be conducted properly and in turn, for the trial court to render a valid judgment. To reiterate, the absence of a valid arraignment in this case is a fatal defect in the proceedings. This defect is not merely procedural but is substantive in nature as it affects not only the constitutional rights of the accused but, as shown by the foregoing cases, may equally impair the proper prosecution of crimes which is undeniably imbued with public interest. To this end, I disagree with the *ponencia's* notion that "[w]hile it is true that a judgment of conviction cannot stand on an invalid arraignment, a judgment of acquittal may proceed from such invalid arraignment," adding that "[t]he invalid arraignment itself is ground for acquittal."[30] This selective treatment clearly defies the substantive nature of an arraignment, the invalidity of which renders null and void the ensuing proceedings in its entirety.

Further, to suppose that an invalid arraignment is a ground for acquittal runs counter to the basic rule on double jeopardy that a first jeopardy may attach only upon a valid arraignment.[31] As such, an acquittal cannot spring from an invalid arraignment.

In addition, the *ponencia*'s statement loses sight of the fact that an acquittal is premised on a determination of non-guilt on the merits, which should not obtain just because of an invalid arraignment. In fact, it does not even warrant dismissal since it is still remediable by the remand of the case for the re-arraignment of the accused, which is my position herein.

Notably, should there be any inordinate delay[32] borne from the remand, the ground for dismissal is violation of the accused's right to speedy disposition which is a ground for dismissal

---

[30] *Ponencia*, p. 50.

[31] See *Tan, Jr. v. Sandiganbayan*, 354 Phil. 463 (1998).

[32] The *ponencia* states that "accused-appellant has been incarcerated for more or less eleven (11) years." See *ponencia*, p. 52.

tantamount to an acquittal. However, based on the records, this ground was never raised. In this regard, jurisprudence provides that the "[f]ailure to seasonably raise the right to speedy trial precludes the accused from relying thereon as a ground to dismiss the case. He is deemed to have slept on his rights by not asserting the right to speedy disposition at the earliest possible opportunity."[33]

At this juncture, while I do recognize that a doctrinal directive to remand upon an improvident plea of guilt purports a policy of "resetting" the proceedings and hence may promote inexpediency, the underlying considerations are not merely procedural but are substantive in nature and thus, cannot be simply ignored for expediency's sake. The solution to this concern may lie, however, in the Court revisiting the current procedural framework and identify gaps that need to be bridged. In this light, I join the call of Associate Justices Rodil V. Zalameda and Amy C. Lazaro-Javier to codify the proper searching inquiry guidelines and other relevant procedures that trial court judges must follow whenever an accused pleads guilty to a capital offense. In addition, I suggest that the consequences of the failure to comply with these procedures—with respect to the criminal proceedings, and maybe, even as to disciplinary sanctions as to the mishandling judge—should be explicitly provided for proper guidance. Further, I propose that the Court look into crafting a procedure to account for findings of improvident guilty pleas at the latter stage of the case but at the same time, preserving the proceedings already conducted. In this regard, the crucial consideration is that the parties are given the opportunity to consider any change in legal strategy upon the accused's proper understanding of the nature and cause of the accusation against him as embodied in a valid plea. In the final analysis, the Court must strive to ensure fairness not only to the State and the accused, but also to the private offended party, whose interest, despite being merely civil in theory, is in reality, a strident call for retributive justice.

---

[33] *Valencia v. Sandiganbayan*, 510 Phil. 70, 88 (2005).

All told, I vote to affirm the CA ruling ordering the remand of the case to the trial court with the directive to strictly follow the procedure laid out in Section 3, Rule 116 of the Rules of Criminal Procedure, as well as the pertinent guidelines on searching inquiries as stated in our current jurisprudence. I further suggest that the Court undertake the necessary revision of the Rules of Criminal Procedure as discussed herein.

DISSENTING OPINION

LAZARO-JAVIER, *J.*:

To remand or not to remand, that is the question.

The *ponencia* correctly identifies the applicable legal principles, to wit:

(i) At present, the three-fold **duty** of the trial court in instances where the accused pleads guilty to a capital offense is as follows: (1) conduct a searching inquiry, (2) require the prosecution to prove the accused's guilt and precise degree of culpability, and (3) allow the accused to present evidence on his behalf.

(ii) A justiciable template exists as to the procedure and contents of the **searching inquiry** *(which I like to refer to now* as the ***initial searching inquiry)*** not only to satisfy the trial judge himself but also to aid the Supreme Court in determining whether the accused really and truly understood and comprehended the meaning, full significance, and consequences of his plea.

(iii) The rule is that a remand of the case must be made –

> where as a result of [an improvident guilty plea] **there was inadequate representation of facts by either the prosecution or the defense during the trial**. Where **the improvident plea of guilty was followed by an abbreviated proceeding with practically no role at all played by the defense, we have ruled that this procedure was just too meager to accept as being the standard constitutional due process at work enough to forfeit a human life**. What **justifies the remand** of the criminal

> case to the trial court is the **unfairness or complete miscarriage of justice** in the handling of the proceedings a quo as occasioned by the improvident plea of guilt.[1]

However, I most respectfully dissent when the *ponencia* refused to remand the instant case to the trial court because the prosecution was **allegedly given four real and meaningful opportunities** to present its witnesses but failed to do so despite **subpoenas having been supposedly served** upon its witnesses. I also do not subscribe to its insistence on acquitting appellant as a result of the inability of the prosecution to adduce evidence on any of the four hearing dates it was allotted. Like Justice Rodil Zalameda, I do not agree with the *ponencia* that the failure of the trial process to abide by the mandated procedure should result in the **foregone perfunctory** acquittal of appellant.

First. In denying the remand of the instant case to the trial court, the *ponencia* claims that the prosecution was given four trial dates that went for naught because none of the prosecution witnesses appeared despite notice.

I have **my doubts** that the **subpoenas were properly served** upon the prosecution witnesses in the manner subpoenas are to be served – in the **same manner as the personal or if proper substituted service** of summons.[2] I cannot fathom that even a government witness, Dr. Regunda Uy, would have refused to heed her subpoena.

---

[1] *People v. Murillo*, 478 Phil. 446, 464-465 (2004).

[2] SECTION 6. Service. — Service of a subpoena shall be made in the same manner as personal or substituted service of summons. The original shall be exhibited and a copy thereof delivered to the person on whom it is served, tendering to him the fees for one day's attendance and the kilometrage allowed by these Rules, except that, when a subpoena is issued by or on behalf of the Republic of the Philippines or an officer or agency thereof, the tender need not be made. The service must be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance. If the subpoena is duces tecum, the reasonable cost of producing the books, documents or things demanded shall also be tendered. (6a, R23)

Nonetheless, even if the prosecution witnesses had been properly served the subpoenas, if the trial judge and the trial prosecutor were **both minded about the duty of the prosecution** to prove the guilt of appellant beyond a reasonable doubt, the trial prosecutor should have sought, and the trial judge ought to have obliged, **coercive measures to compel** the attendance of the prosecution witnesses under Section 8[3] and Section 9[4] of Rule 23, *Rules of Court*.

The foregoing **duty** of the prosecution is a **duty** that the trial court cannot relieve the prosecution of. This **duty encompasses** the trial prosecutor's obligation to bring the prosecution witnesses to the court **by all means necessary**. As the Court has said a number of times, "[t]he court **cannot, and should not, relieve the prosecution of its duty** to prove the guilt of the accused and the precise degree of his culpability by the requisite quantum of evidence."[5]

Hence, just as the trial court cannot simply accede to a motion to dismiss a pending case by the prosecution,[6] the **waiver** of evidence by the prosecution **cannot and should not be taken lightly** by the trial court.

---

[3] SECTION 8. Compelling Attendance. — In case of failure of a witness to attend, the court or judge issuing the subpoena, upon proof of the service thereof and of the failure of the witness, may issue a warrant to the sheriff of the province, or his deputy, to arrest the witness and bring him before the court or officer where his attendance is required, and the cost of such warrant and seizure of such witness shall be paid by the witness if the court issuing it shall determine that his failure to answer the subpoena was willful and without just excuse. (11, R23)

[4] SECTION 9. Contempt. — Failure by any person without adequate cause to obey a subpoena served upon him shall be deemed a contempt of the court from which the subpoena is issued. If the subpoena was not issued by a court, the disobedience thereto shall be punished in accordance with the applicable law or Rule. (12a, R23)

[5] *People v. Espidol*, 485 Phil. 35, 54 (2004); *People v. Besonia*, 466 Phil. 822, 841-842 (2004); *People v. Camay*, 236 Phil. 431, 434 (1987).

[6] *Heirs of Tria v. Obias*, 650 Phil. 449 (2010).

In ***People v. Bodoso***,[7] the Court held that a **waiver** of evidence by the **defense** must not only be **voluntary** – it must also be **knowing**, **intelligent**, and **done with sufficient awareness of the relevant circumstances and likely consequences**. "There must thus be **persuasive evidence of an actual intention to relinquish** the right. **Mere silence** of the holder of the right should not be easily construed as surrender thereof; the courts **must indulge every reasonable presumption against** the existence and validity of such waiver. Necessarily, where there is a reservation as to the nature of any manifestation or proposed action affecting the right of the accused to be heard before he is condemned, certainly, the doubt must be resolved in his favor to be allowed to proffer evidence in his behalf."

In addition, ***Bodoso*** elucidated:

> This Court **notes with deep regret the failure of the trial court to inquire from accused-appellant himself** whether he wanted to present evidence; or submit his memorandum elucidating on the contradictions and insufficiency of the prosecution evidence, if any; or in default thereof, file a demurrer to evidence with prior leave of court, if he so believes that the prosecution evidence is so weak that it need not even be rebutted. **The inquiry is simply part and parcel of the determination of the validity of the waiver, i.e., "not only must be voluntary, but must be knowing, intelligent, and done with sufficient awareness of the relevant circumstances and likely consequences" which ought to have been done by the trial court** not only because this was supposed to be an uncomplicated and routine task on its part, **but more importantly since accused-appellant himself did not personally, on a person-to-person basis, manifest** to the trial court the waiver of his own right.
>
> As things stand, both this Court and the trial court being asked hook, line and sinker to take the word of counsel de oficio whose own concern in that particular phase of the proceedings a quo may have been compromised by pressures of his other commitments. **For all we know, the statutory counsel of the indigent accused at that**

---

[7] 446 Phil. 838, 850-851 (2003).

time of the trial, although not evident in the other aspects of his representation, only wanted to get rid of dreary work rather than protect the rights of his client. . . . But, for sure, we must inquire if the waiver was validly done.

The inquiry sought herein is not unprecedented. . . . To emphasize, the lower court ought to have inquired into the voluntariness and full knowledge of the consequences of accused-appellant's waiver, and prudence requires this Court to ascertain the same if only to avoid any grave miscarriage of justice. . . .

Henceforth, to protect the constitutional right to due process of every accused in a capital offense and to avoid any confusion about the proper steps to be taken when a trial court comes face to face with an accused or his counsel who wants to waive his client's right to present evidence and be heard, it shall be the unequivocal duty of the trial court to observe, as a prerequisite to the validity of such waiver, a procedure akin to a "searching inquiry" as specified in People v. Aranzado when an accused pleads guilty, particularly —

1. The trial court shall hear both the prosecution and the accused with their respective counsel on the desire or manifestation of the accused to waive the right to present evidence and be heard.

2. The trial court shall ensure the attendance of the prosecution and especially the accused with their respective counsel in the hearing which must be recorded. Their presence must be duly entered in the minutes of the proceedings.

3. During the hearing, it shall be the task of the trial court to —

a. ask the defense counsel a series of question to determine whether he had conferred with and completely explained to the accused that he had the right to present evidence and be heard as well as its meaning and consequences, together with the significance and outcome of the waiver of such right. If the lawyer for the accused has not done so, the trial court shall give the latter enough time to fulfill this professional obligation.

b. inquire from the defense counsel with conformity of the accused whether he wants to present evidence or submit a memorandum elucidating on the contradictions and insufficiency of the prosecution evidence, if any, or in default theory, file a demurrer to evidence with prior leave of court, if he so believes that the prosecution evidence

is so weak that it need not even be rebutted. If there is a desire to do so, the trial court shall give the defense enough time to this purpose.

c. elicit information about the personality profile of the accused, such as his age, socio-economic status, and educational background, which may serve as a trustworthy index of his capacity to give a free and informed waiver.

d. all questions posed to the accused should be in a language known and understood by the latter, hence, the record must state the language used for this purpose as well as reflect the corresponding translation thereof in English.

There is **no reason** why the Court should *not* require of the public prosecution service the **same standards for determining the validity of its carte blanche waiver** to present its evidence **without even a single verified information** from its witnesses why they would no longer be attending any of the trial dates at all. The **reason** lies in the fact that the prosecution and punishment or correction of criminal offenders is a vital concern of the State, vital to its very existence. The interests of the people should **not** be sacrificed or jeopardized by the ignorance, negligence or malicious conduct of its prosecutors.

Further, the **duty of the prosecution** to present evidence is backstopped by the **correlative duty of the court to inquire** from the prosecution about its evidence. The court is **not a mere rubber-stamp** of whatever the prosecution wishes to do in litigating its case. The **waiver** must be tested for its validity and fairness, as explained above, and **ought to conform** to similarly situated proceedings where the court **has to intervene** by searching questions. Thus, in a petition for bail, where the prosecution is **duty-bound** to prove that the evidence of guilt is strong, the court is **obliged** to **obtain clarifications by searching questions** even if the prosecution despite the opportunities to call its evidence submits the resolution of the petition to the sound discretion of the court without presenting evidence — "even where the prosecutor refuses to adduce evidence in opposition to the application to grant and fix bail, **the court may ask the prosecution such questions** as would

ascertain the strength of the state's evidence or judge the adequacy of the amount of bail . . ."[8]

As in ***Bodoso***, the **remand** of the instant case to the trial court is **demanded** not by the inadequate **but by the utter absence** of facts appropriate to the level of prosecutorial diligence vis-à-vis the nature and gravity of the crime. The remand is for the **purposes** of **receiving the prosecution evidence**, as it appears that the subpoenas were **not properly served in the same manner as summonses**, and if properly served, of **imposing coercive measures** that had not been resorted to compel the attendance of prosecution witnesses and thereupon **conducting the second searching inquiry** to explain the waiver of prosecution evidence.

Second. In close connection with the above discussion, I also respectfully submit that any accused's guilty plea should at least be a **curiosity centerpiece** in a criminal case, especially one involving a capital crime. It should rise to the level of an inculpatory evidence when it is adamantly adhered to **despite a faulty** searching inquiry. The guilty plea may not and **at present** will not constitute proof beyond a reasonable doubt, **but in instances where the prosecution fails to present evidence, it is imperative that the prosecution and its witnesses should be subjected to a *second searching inquiry***, *with the same zealousness and strictness as the first searching inquiry*, **to determine the why's and wherefore's for their absences**.

In arguing for a **second-stage searching inquiry**, I am **not arguing parallel** to the constitutional concern on an **accused's right to speedy trial**, which addresses the systemic and human-made **delay** in the administration of criminal justice. While **delay** *could* be a factor to consider, the gravamen is the **skewed trial** and **fact-finding** for the purpose of establishing appellant's guilt beyond a reasonable doubt. I think this is **how**

---

[8] *Mamolo Sr. v. Narisma*, 322 Phil. 670, 675 (1996); *Zuño v. Cabebe*, 486 Phil. 605, 615 (2004); *Marzan-Gelacio v. Flores*, 389 Phil. 372, 383

jurisprudence on Section 3, Rule 116 has evolved,[9] and **delay** has **never been a keyword** in describing this evolution.

In this regard, just as Justice Zalameda wishes to codify the template for the **first-stage** searching inquiry, there is as well a need to institutionalize and codify this **second-stage** searching inquiry when the prosecution fails to adduce evidence of an accused's guilt per Section 3 of Rule 116.

Third. As the *ponente* himself has described, the guilty plea here was **improvident**. As such, it voided the entire proceedings from arraignment until conviction.[10] As eloquently argued by Senior Associate Justice Estela Perlas-Bernabe, a **void** arraignment does **not** exist in law, and without an arraignment, **all proceedings** from that point onward are **also void**.

In *People v. Tizon* (G.R. No. 126955, October 28, 1999), *People v. Alicando* (251 SCRA 293), *Binabay v. People* (37 SCRA 445), *People v. Durango* (G.R. Nos. 135438-39, April 5, 2000), *People v. Estomaca* (256 SCRA 421), *People v. Badilla* (138 SCRA 513), *People v. Parba* (142 SCRA 158) and *People v. Petalcorin* (180 SCRA 685), among others, the

---

(2000). With clear-cut procedural guidelines on bail now incorporated in the Rules of Court, judges have been enjoined to study them well and be guided accordingly.

Concededly, judges cannot be faulted for honest lapses in judgment but this defense has become shopworn from overuse. To reiterate, although the Provincial Prosecutor had interposed no objection to the grant of bail to the accused, respondent judge should have set the application or petition for bail for hearing. 28 If the prosecution refuses to adduce evidence or fails to interpose an objection to the motion for bail, it is still mandatory for the court to conduct a hearing or ask searching and clarificatory questions. 29 For even the failure of the prosecution to interpose an objection to the grant of bail to the accused will not justify such grant without a hearing. *Borinaga v. Tamin*, 297 Phil. 223, 225-226 (1993).

[9] *People v. Galvez*, 428 Phil. 438 (2002); *People v. Nuelan*, 419 Phil. 160 (2001); *People v. Abapo*, 385 Phil. 1175 (2000); *People v. Durango*, 386 Phil. 202 (2000); *People v. Ernas*, 455 Phil. 829 (2003); *People v. Murillo*, 478 Phil. 446 (2004); *People v. Besonia*, 466 Phil. 822 (2004).

[10] *People v. Benavidez*, 437 Phil. 831 (2002).

Court invariably ruled that an arraignment is void where the accused entered an improvident plea of guilt, sans any clear showing that the trial court has adequately discharged its duty of conducting the requisite searching inquiry. An invalid arraignment means there is no arraignment at all. Without a valid arraignment, there can be no valid proceedings, let alone, a valid judgment of conviction or acquittal by the trial court, the Court of Appeals, or even the Supreme Court.

Worse, the plea of guilt, improvident as it may be, adversely affected if not improperly impaired the prosecution's presentation of its case. As a consequence of appellant's guilty plea, the prosecution no longer zealously endeavored to elicit sufficient details beyond what was admitted. In fact, it opted to present no evidence at all. It did not even seek the coercive powers of the court to compel the attendance of its supposed witnesses. Simply stated, there appeared no genuine effort on the part of the prosecution to prove the elements of murder. It merely relied on appellant's admission of guilt to stand on its own, without more.

In *People v. Abapo*,[11] appellant therein entered an improvident plea of guilt to 86 counts of rape. Relying on appellant's plea, the prosecution no longer presented its case with assiduity and meticulous attention to details that was necessarily expected in a prosecution for a capital offense. Consequently, when the victim testified in open court, the prosecution did not quiz her on the details of the alleged rapes beyond the approximate dates and frequency of their commission. Too, the prosecution dispensed with the testimony of the victim's mother though she was ready and willing to testify. Verily, the prosecution did not discharge its obligation as seriously as it would have had there been no plea of guilt on the part of the appellant. A remand of the case to the trial court was therefore warranted therein.

---

[11] 385 Phil. 1175 (2000).

If the doctrine in *Abapo* where the prosecution had managed to present witnesses during the trial despite appellant's plea of guilt, was to remand the case to the trial court for re-arraignment and further proceedings, with more reason should the Court remand the case here since the prosecution presented no evidence at all to support the charge against appellant.

Notably, in all the aforementioned cases and even in the cases cited in the *ponencia*, the common denominator was the accused' improvident plea of guilt. In all these cases, the Court had one (1) uniform action, *i.e.*, it set aside the verdict of conviction and remanded the case to the trial court for re-arraignment and trial proper. It did not ever hand down a verdict of acquittal. And it makes sense. No valid judgment, whether for conviction or acquittal may draw, nay, proceed from an invalid arraignment. It means, therefore, that the proceedings before the trial court ought to start all over again.

True, an improvident plea of guilt would not at all times warrant the remand of a case to the trial court. For when there is sufficient evidence on record to sustain a verdict of conviction independent of the admission of guilt, the manner in which the plea of guilt is made loses legal significance. *People v. Gumimba*,[12] citing *People v. Derilo*[13] is apropos:

> **Convictions based on an improvident plea of guilt are set aside only if such plea is the sole basis of the judgment**. If the trial court relied on sufficient and credible evidence to convict the accused, the conviction must be sustained, because then it is predicated not merely on the guilty plea of the accused but on evidence proving his commission of the offense charged. Thus, as we have ruled in *People v. Derilo*:
>
> > While it may be argued that appellant entered an improvident plea of guilty when re-arraigned, we find no need, however, to

---

[12] 545 Phil. 627, 651 (2007).

[13] 338 Phil. 350, 374 (1997). See also *People v. Ostia*, 446 Phil. 181 (2003); *People v. Nismal*, 199 Phil. 649 (1982); *People v. Petalcorin*, 259 Phil. 1173 (1989).

> remand the case to the lower court for further reception of evidence. **As a rule, this Court has set aside convictions based on pleas of guilty in capital offenses because of improvidence thereof and when such plea is the sole basis of the condemnatory judgment. However, where the trial court receives evidence to determine precisely whether or not the accused has erred in admitting his guilt, the manner in which the plea of guilty is made (improvidently or not) loses legal significance, for the simple reason that the conviction is based on evidence proving the commission by the accused of the offense charged.**
>
> Thus, even without considering the plea of guilty of appellant, he may still be convicted if there is adequate evidence on record on which to predicate his conviction. x x x (emphases added)

But the case here is different. The case records are bereft of any evidence from the prosecution. Evidently, there was no basis for appellant's conviction other than his improvident plea of guilt. The exception enunciated in *Gumimba*, therefore, is inapplicable here. Instead, the Court ought to apply the general rule and remand the case to the trial court.

Fourth. The evidence at the preliminary investigation was overwhelmingly inculpatory of murder that, together with appellant's guilty plea, **should have compelled** the trial judge and the trial prosecutor to have acted **pro-actively**.

By referring to the evidence at the preliminary investigation and during the trial judge's probable cause determination, I **am not suggesting** that appellant is actually guilty as charged. I refer to these pieces of evidence **to buttress the point** that the trial prosecutor **did not perform his duty** to prove the guilt of appellant beyond a reasonable doubt **by calling in the evidence which the prosecution already had on hand as early as the preliminary investigation stage and the judicial determination of probable cause**. It is these **glaring pieces of evidence** that were **not adduced at the trial** that **justify the need to remand the case to explore their presentation** or at least **an explanation as to their non-presentation**.

Fifth. The *ponencia* held that the Court should **presume** regularity in the performance of functions and we need clear and convincing evidence to **disprove** this presumption.

The prosecution **cannot be accorded** the **presumption of regularity** for the simple reason that the prosecution did not discharge its duty under Section 3, Rule 116. This is an **irregularity** that precludes the invocation of the presumption. As has been said, it is fundamental that the **presumption of regularity cannot be invoked** if there is *a* **demonstration of irregularity**.

As well, a presumption is an inference on the existence of a fact not actually known, and **arises from its usual connection with another that is known**, or a conjecture based on past experience as to what course of human affairs ordinarily takes. The **presumption of regularity cannot arise** from a **vacuum** but must be made from **particular known facts**.

Here, the presumption of regularity **cannot be invoked** because of the **paucity of facts** from which to infer this presumption. Thus, it is **not known** whether the witnesses knew of the trial dates and the critical importance of their evidence to prove the guilt of appellant beyond a reasonable doubt; it is **not known** whether the trial prosecutor conferred with these witnesses prior to the dates of their supposed appearances; it is **not known** whether these witnesses are still within the reach of the trial court's subpoenas, or are even still alive. There are so many **unknown variables** that the *ponencia* **cannot** reasonably conform its conclusion to deny the remand of the case to the trial court with the presumption of regularity.

Thus, to stress, the trial judge ought to have conducted the **initial searching inquiry** in the manner required by law, and out of abundance of caution, ought to have held **as in the waiver of defense evidence** a **searching inquiry** (following the searching inquiry as to the voluntariness of the guilty plea) when the trial prosecutor was unable to produce the prosecution evidence.

Sixth. Indeed, to acquit appellant now will **put a sad closure** to the death of Selma Pagal and the sufferings of her family.

While "[u]nfortunately, this Court has to contend with the scarcity of records of the arraignment proceedings to make a nuanced approach." **We simply cannot put a closure to a tragedy with another tragedy, worse, a travesty of what we are here for.**

Seventh. As a point of clarification, appellant's guilty plea is **not** glamorized for its evidentiary value but as a justification for the remand of this case to the trial court. Clearly, **jurisprudence favors a remand** because this guilty plea, provident or improvident, **skewed the orderly progression of the trial**, which resulted in the **non-presentation of evidence** and ultimately in the **injustice to both** appellant and the complainants as kins of the victim.

To repeat, the totality of evidence for the preliminary investigation and the trial judge's determination of probable cause is not at this point important to the guilt or non-guilt of appellant **but to the fairness of the remand of this case** to the trial court for appropriate proceedings. The pieces of evidence are **not hollow**, they are very significant to the attainment of justice.

Appellant's outright acquittal impresses a **dangerous precedent**. This outcome seems to suggest that **acquittal** is the **recompense** for appellant and the **penalty** for the court and the State's failure to abide by Section 3 of Rule 116. While there may be consequences or sanctions that ought to be imposed upon the court and the State for their respective errors in applying Section 3 and some recognition for appellant being at the receiving end of these errors, I **do not think** that *acquittal* is the proper remedy for this purpose. At the end of the day, we **cannot not recognize** that **there are real and named victims** in this case for which acquittal would truly be an **unfair outcome**.

Lastly, the rule on guilty plea ought to be revisited, specifically the requirement that the prosecution **still prove the guilt** of an accused, besides his or her precise degree of culpability. The Court must **do away with this requirement** in instances **where the prosecution is left hanging with no prosecution evidence** ***after the determination of probable***

cause. Of course, **at the start**, there **must have been some evidence against an accused**, because otherwise, no criminal case would have been instituted to begin with.

The proposal is motivated by, first, the **heavy evidentiary weight** carried by a guilty plea **not improvidently made** as it is really a **judicial admission** in the most formal and solemn manner. Judicial admissions are a substitute for legal evidence at trial, and waive or dispense with the production of evidence as well as the actual proof of facts by conceding for the purpose of litigation the truthfulness of the fact alleged by the adverse party.

Indeed, if an **extrajudicial confession** could result in a finding of guilt beyond reasonable doubt, I see no reason why a guilty plea should not be accorded equal if not greater evidentiary weight. The **adversarial nature** of the proceedings where an **extrajudicial confession** is introduced as evidence should **not** make a **guilty plea** less desirable and weighty than an extrajudicial confession. So long as it is **not improvidently made**, a **guilty plea** is always a **judicial admission** that **cannot be ignored** especially *when the prosecution loses the evidence it was earlier able to muster in filing the criminal case*.

The proposal is also motivated by the underlying **injustice** of dismissing a criminal case and acquitting an accused despite the guilty plea because the prosecution can no longer summon the evidence it had at the beginning of the criminal case. One example is when the only prosecution witness in the case has died even before he or she could take the witness stand.

At the start, an accused may sincerely, knowingly, voluntarily and truthfully confess his guilt as a result of the strength of the evidence against him or the call of his or her conscience. If the **prosecution is unable to present its evidence**, it would be the height of injustice to let an accused go unpunished and unblemished **despite his or her provident, truthful, voluntary, informed and sincere guilty plea**, simply because of or pursuant to the **mechanical** application of the rule that the prosecution must still present evidence of the guilt of this accused.

ACCORDINGLY, I vote **to remand** this criminal case to the trial court for the prosecution to have an opportunity anew to present its evidence against appellant. In addition, I propose to **institutionalize and codify** a **second-stage** searching inquiry if and when the prosecution fails to adduce evidence of an accused's guilt, and further propose to **revisit and amend** the rule requiring the prosecution to prove an accused's guilt despite his or her provident, truthful, sincere, informed and voluntary guilty plea, by allowing such guilty plea the full effects of a judicial admission.

DISSENTING OPINION

ZALAMEDA, *J.*:

> *"To ferret out the truth in the maze of the conflicting claims of opposing parties is the Herculean task of the courts, the path which must always be illuminated by reason and justice. Tribunals should always insist on having the truth and judging only upon satisfactory evidence of the truth. The quest for truth is their main responsibility. To judge by means of untruths is to debase the noblest function in the hands of humanity."*[1]

In this appeal, the *ponente* opines that accused-appellant should be acquitted despite his plea of guilty to the crime of murder. With all due respect, I am constrained to dissent. Litigation of criminal cases is not a zero-sum game, where the shortcomings of one party automatically results in the victory of another. Utmost sensitivity and a holistic consideration of the peculiar facts of the case must be made in order to ensure that case outcomes are based on truth, and that justice is fairly administered.

In this case, Selma Pagal (Selma) died in the presence of her family, and near her home, where she was supposed to feel secure. Terminating this case without any factual

---

[1] *Eduarte v. People*, G.R. No. 176566, 16 April 2009; 603 Phil. 504 (2009).

determination of accused-appellant's culpability, although ostensibly logical, hardly vindicates her death and the consequent disturbance of peace it has caused to her family and the community.

As will further be explained below, my vote to remand the case to the trial court should not be construed as an advocacy for or against accused-appellant, but rather a sincere submission to have the case re-evaluated to determine his supposed authorship of his sister-in-law's death.

This all the more becomes relevant in view of the allowance of the instant appeal[2] despite the wrong remedy availed of by accused-appellant in seeking his acquittal; accused-appellant filed a notice of appeal instead of an appeal by *certiorari* under Rule 45 of the Rules of Court, thus, rendering the decision of the Court of Appeals to remand the case to the trial court for further proceedings final. As such, the Court's leniency and broader understanding should not only be accorded to accused-appellant, but likewise, must serve the interests of substantial justice for all, prosecution and defense alike.

The conviction of accused-appellant must be upheld

I dissent to dismiss the case and acquit accused-appellant for the following reasons:

First, it appears that the arraignment of accused-appellant was highly irregular. It has not been established that the trial court performed its duty under Sec. 3 of Rule 116 of the Rules of Court. Other than the statement in its Order dated 20 August 2009 that the Information was read to the accused in the Cebuano-Visayan dialect and that the consequences of his guilty plea were explained to him, there is nothing to establish that the trial judge sufficiently inquired into the voluntariness of such an action and accused-appellant's full understanding of the rights and liberty that he will forfeit with such admission of guilt.

---

[2] *Ponencia*, pp. 7-8.

Second, it is uncontested that the prosecution failed to present evidence establishing the elements of the crime and accused-appellant's guilt. As duly noted by the *ponente*, the prosecution failed to present its witnesses on four (4) hearing dates, *viz.*: 17 November 2010, 22 February 2011, 11 May 2011 and 20 July 2011. However, looking closely at aforesaid dates, I hesitate to conclude that the prosecution was simply remiss in its duty, as to warrant the acquittal of accused-appellant. After all, even our procedural rules are cognizant that delays may occur in criminal prosecution. Rule 119 Section 3[3] provides for exclusions to the time limits set to commence trial from the time of arraignment.

---

[3] Section 3. Exclusions. — The following periods of delay shall be excluded in computing the time within which trial must commence:

(a) Any period of delay resulting from other proceedings concerning the accused, including but not limited to the following:

(1) Delay resulting from an examination of the physical and mental condition of the accused;
(2) Delay resulting from proceedings with respect to other criminal charges against the accused;
(3) Delay resulting from extraordinary remedies against interlocutory orders;
(4) Delay resulting from pre-trial proceedings; provided, that the delay does not exceed thirty (30) days;
(5) Delay resulting from orders of inhibition, or proceedings relating to change of venue of cases or transfer from other courts;
(6) Delay resulting from a finding of the existence of a prejudicial question; and
(7) Delay reasonably attributable to any period, not to exceed thirty (30) days, during which any proceeding concerning the accused is actually under advisement.

(b) Any period of delay resulting from the absence or unavailability of an essential witness.

For purposes of this subparagraph, an essential witness shall be considered absent when his whereabouts are unknown or his whereabouts cannot be determined by due diligence. He shall be considered unavailable whenever his whereabouts are known but his presence for trial cannot be obtained by due diligence.

(c) Any period of delay resulting from the mental incompetence or physical inability of the accused to stand trial.

In *Cagang v. Sandiganbayan*,[4] this Court acknowledged the reality of institutional delays, and the burdensome work of our government prosecutors. In that case, this Court opined that institutional delay, in the proper context, should not be taken against the State. I believe that a similar approach should be adopted in the case at bar. There is no showing that the prosecution was given an opportunity to explain why it failed to present its evidence in support of its case. Similarly, there is no showing that the defense raised any prejudice caused by the prosecution's inaction during the trial proper, since it also decided to forego presenting evidence to establish the accused's defense.

Third, accused-appellant maintained his plea of guilt throughout the reading of the allegations in the Information, and even after his counsel explained the consequences of his plea of guilt.[5] Although far from ideal, to completely disregard accused-appellant's resolute stance would be to unduly favor him while ignoring the interests of both the State and the victim's relatives in seeking justice for the death of Selma.

Fourth, there appears to be a good reason to hold accused-appellant for trial. While our rules state that the record of the preliminary investigation does not form part of the record of

---

(d) If the information is dismissed upon motion of the prosecution and thereafter a charge is filed against the accused for the same offense, any period of delay from the date the charge was dismissed to the date the time limitation would commence to run as to the subsequent charge had there been no previous charge.
(e) A reasonable period of delay when the accused is joined for trial with a co-accused over whom the court has not acquired jurisdiction, or, as to whom the time for trial has not run and no motion for separate trial has been granted.
(f) Any period of delay resulting from a continuance granted by any court motu proprio, or on motion of either the accused or his counsel, or the prosecution, if the court granted the continuance on the basis of its findings set forth in the order that the ends of justice served by taking such action outweigh the best interest of the public and the accused in a speedy trial.

[4] G.R. Nos. 206438, 206458 & 210141-42, 31 July 2018.

[5] *Ponencia*, p. 20.

the case in the trial court,[6] I was constrained to look into the proceedings before the investigating prosecutor given the lack of formally offered evidence during trial. In any case, I believe that this Court is not prohibited to look into the records of the preliminary investigation in order to make a judicious determination of the legal issues submitted before Us.[7]

During the preliminary investigation, all of the affiants[8] narrated that they saw the wounded victim, Selma, running away from accused-appellant, who was then carrying a bloodied *bolo*. One of them was even attacked by accused-appellant, but managed to run and evade the strike.[9] It is interesting to note that most of these affiants are related to accused-appellant. Private complainant, Angelito Pagal (Angelito), is accused-appellant's brother, while one of the witnesses, Cesar Jarden (Jarden), is Selma's brother, both of whom were not shown to have been impelled by improper motives in implicating accused-appellant. Indeed, if it is unnatural for a relative interested in vindicating a crime done to their family to accuse somebody other than the real culprit,[10] it is even more unlikely for a sibling to accuse his own brother if the latter was truly not involved in the crime. Evidently, the aforesaid circumstances are sufficient

---

[6] Sec. 8 (b) of the Rules on Criminal Procedure provides:

Section 8. (a) x x x

(b) Record of preliminary investigation. — The record of the preliminary investigation, whether conducted by a judge or a fiscal, shall not form part of the record of the case. **However, the court, on its own initiative or on motion of any party, may order the production of the record or any of its part when necessary in the resolution of the case or any incident therein, or when it is to be introduced as an evidence in the case by the requesting party.** (Emphasis ours)

[7] *Id.*, *See* also *Uy v. Office of the Ombudsman*, G.R. Nos. 156399-400, 27 June 2008; 578 Phil. 635 (2008).

[8] *Records*, pp. 2-7, Affidavits of Angelito Pagal, Cesar Jarden, and Jaimelito Canlupas.

[9] *Id.* at 4-5, Affidavit of Cesar Jarden dated 08 January 2009.

[10] *See People v. Reyes*, G.R. No. 178300, 17 March 2009; 600 Phil. 738 (2009).

to engender a belief that accused-appellant was likely responsible for Selma's death and should be held for trial.

Given the relationship between accused-appellant and private complainant, one has to wonder whether the plea of guilt had affected the prosecution's presentation of its evidence. A reading of the case records reveals that the cause for the postponement of the prosecution's presentation of evidence was the absence of Selma's widower and private complainant, Angelito. It is not far-fetched to consider that Angelito's absences were based upon his reliance on his own brother's admission of guilt. He could have surmised that his testimony is inconsequential or unnecessary in view of accused-appellant's plea.

In the same vein, it is equally possible that accused-appellant's plea of guilt was an acknowledgment of his authorship of the crime, and an attempt to give his family some type of closure. While I do not discount the possibility that accused-appellant might have failed to fully understand his plea, it may also be that he truly intended to be accountable for Selma's death. Unfortunately, this Court has to contend with the scarcity of records of the arraignment proceedings to make a nuanced approach.

The prosecution should have sought the provisional dismissal of the case

While I do not regard the prosecution's actions to warrant the acquittal of the accused, I find that the prosecution was misguided in allowing the case to be submitted for decision without its witnesses' testimonies. The State should have instead moved that the case be provisionally dismissed.

Provisional dismissal is a halfway measure which allows the prosecution to maintain a case, which is at a standstill due to the absence or unavailability of the complainant, and temporarily relieves the accused of the burdens of the trial.[11] It is a mechanism to balance the sovereign right of the State to prosecute

---

[11] *See* Dissenting Opinion, J. Puno, *People v. Lacson*, G.R. No. 149453, 01 April 2003; 448 Phil. 317 (2003).

crimes with the inherent right of the accused to be protected from the unnecessary burdens of criminal litigation.[12]

Courts in the United States also acknowledge difficulties in prosecution and similarly allow the State to seek dismissal of criminal cases, without prejudice.

In the early case of *State v. Crawford*,[13] the accused was discharged from a second indictment of murder based on a rule authorizing permanent dismissal if the accused has not been tried after three (3) regular court terms "unless the failure to try him was caused by his insanity; or by the witnesses for the State being enticed or kept away, or prevented from attending by sickness or inevitable accident; or by a continuance granted on the motion of the accused; or by reason of his escaping from jail, or failing to appear according to his recognizance, or of the inability of the jury to agree in their verdict."

The same principle was applied in *People v. Allen*,[14] where the Illinois Supreme Court declared the defendant immune from another prosecution for the offense of involuntary slaughter because his former indictment thereon was dismissed due to delay in prosecution beyond the statutory period.

In *State of Kansas v. Ransom*,[15] the Supreme Court of Kansas ruled that the State can move for dismissal of a criminal case and refile the same within the statutory period, in case of justified absences of witnesses. In that case, the complaint against the defendant for aggravated kidnapping, rape, aggravated battery, and aggravated robbery was initially dismissed upon the State's motion due to the unavailability of its principal witnesses. The doctors, who were supposed to testify on the process and results of their examination of the rape victim, were unable to attend the scheduled trial dates because one had to take a medical

---

[12] *Id.*

[13] 98 S.E. 615 (1919).

[14] 14 N.E.2d 397 (III. October 22, 1937).

[15] 673 P.2d 1101 (1983); reiterated in *State v. Cadle*, 2015 Kan. App. Unpub. LEXIS 530 (Kan. Ct. App. June 26, 2015).

board examination, while the other had professional commitments in another state. The Kansas Supreme Court surmised that a dismissal without prejudice may be preferable for the State, as opposed to moving for continuance, if the witness' testimony is vital to the case. The court opined that although trial may proceed and an absent witness may later on be declared in contempt, a crucial testimony not presented during trial can fundamentally cripple the prosecution's case.

The prosecution's primary authority in the dismissal and refiling of criminal cases has been echoed in recent cases. In *United States v. Oliver*,[16] the US Court of Appeals for the Eighth Circuit upheld the second indictment of the defendant for the same offense of conspiracy to distribute cocaine. Citing Federal Rule of Criminal Procedure 48(a),[17] the appellate court explained that the dismissal of a criminal complaint at the request of the Government under Rule 48 does not bar subsequent prosecution for criminal acts described in that indictment.

In the case at bar, the trial was postponed several times because of Angelito's absence; thus, it would have been more prudent for the prosecution, upon the consent of accused-appellant, to have the case provisionally dismissed.

Verily, prosecutors differ from other legal practitioners in that they advocate for the interests of the State aggrieved by the commission of crime. Representing the State, however, does not grant them boundless powers to arbitrarily persecute people, nor justify a lackadaisical approach in case of occupational difficulties. Ultimately, prosecutors said the court in its mandate to dispense justice,[18] even to the accused. In this case, instead

---

[16] *United States v. Oliver*, 950 F.3d 556 (8th Cir. Minn. February 19, 2020).

[17] Rule 48. Dismissal

(a) By the Government. The government may, with leave of court, dismiss an indictment, information, or complaint. The government may not dismiss the prosecution during trial without the defendant's consent.

[18] *See De Lima v. Reyes*, G.R. No. 209330, 11 January 2016; 776 Phil. 623 (2016).

of nonchalantly submitting the case for decision on the basis of accused-appellant's plea of guilt, the prosecution should have at least sought provisional dismissal of the case as full and equal recognition of the interests of both the State and accused-appellant.

The trial judge should have issued a bench warrant

Courts are empowered by our procedural rules with tools to ensure the full and orderly determination of the merits of the case. Upon the failure of a witness to attend court hearings, judges have the power to issue a bench warrant to compel the witness' attendance. A bench warrant is a writ issued directly by a judge to a law-enforcement officer, especially for the arrest of a person who has been held in contempt, has disobeyed a subpoena, or has to appear for a hearing or trial.[19] Jurisprudence dictates that the primary requisite for a bench warrant to be issued is that the absent-party was duly informed of the hearing date but unjustifiably failed to attend so.[20]

Here, the records of the case reveal that Angelito duly received the subpoena issued by the trial court.[21] Unfortunately, despite his authority to issue a bench warrant, Judge Abando allowed the trial to terminate without any witness presented by the prosecution and defense.

Under similar circumstances, this Court, in *Office of the Court Administrator v. Lorenzo*,[22] reminded judges to be conscientious in the conduct of their judicial duties. In that case, the judge allowed the accused to post bail because of the non-appearance of key prosecution witnesses for three (3) bail

---

[19] *Magleo v. De Juan-Quinagoran*, A.M. No. RTJ-12-2336, 12 November 2014.

[20] *Id.*

[21] *Records*, p. 48, Order dated 11 May 2011.

[22] A.M. Nos. RTJ-05-1911 & RTJ-05-1913, 23 December 2008; 595 Phil. 618 (2008).

hearings despite the issuance of a proper subpoena. Upon investigation, this Court discovered that the witnesses failed to attend because one is on official mission abroad, while the other did not receive the subpoena from the trial court. Finding the judge administratively liable, the Court explained that given the materiality and relevance of the witnesses' testimony, the judge should have first inquired into the reasons for their absences before ordering the release of the accused on bail.

The same rationale applies in the case at bench. Contrary to the *ponente*'s opinion that determination of the reasons for the delay is unnecessary, it is my humble opinion that the trial judge should have been more discerning and pro-active by assisting the prosecution in securing its witnesses' attendance before hastily terminating the trial, and convicting the accused. As discussed above, there could be a myriad of reasons for the witness' non-appearance that are not necessarily related to the diligence of the State in prosecuting the case. It is also useful to remember that there are cases[23] where this Court ordered remand and/or continuation of the criminal proceedings despite the delay in the prosecution's presentation of evidence.

It is in view of these realities of public litigation that I referred to this Court's opinion in *Cagang v. Sandiganbayan*. I believe that it is worthwhile to be cognizant of these difficulties so that the courts and litigants can minimize lapses and ensure that trial is conducted properly. Being part of the five (5) pillars of the criminal justice system,[24] the prosecution and the court's cooperation and harmonious interaction is vital to the orderly administration of justice. Necessarily, courts, within ethical limits, should afford the prosecution a real opportunity to ventilate its accusations through the use of authorized court processes to

---

[23] *Tan v. People*, G.R. No. 173637, 21 April 2009; 604 Phil. 68 (2009); *Valencia v. Sandiganbayan*, G.R. No. 165996, 17 October 2005; 510 Phil. 70 (2005).

[24] *See Pagdilao, Jr. v. Angeles*, A.M. No. RTJ-99-1467, 05 August 1999; 370 Phil. 780 (1999).

compel production of evidence. After all, the State is also entitled to due process in criminal cases, that is, a fair opportunity to prosecute and convict.[25]

The remand of the case to the trial court serves the interests of both the defense and the prosecution

Considering the foregoing reasons, the remand to the trial court is proper. **Indeed, it has been held that where the plea of guilt to a capital offense has adversely influenced or impaired the presentation of the prosecution's case, the remand of the case to the trial court for further proceedings is imperative.**[26] Compared to the acquittal of accused-appellant, further proceedings would ensure that the interests of the both the prosecution and defense are duly considered and weighed. Allowing the accused-appellant to re-plead, with a definite showing that measures were undertaken to ensure that he understood the charge and the possible consequences of his plea, would also allow the trial court to determine if the accused-appellant had factual basis for his admission of guilt.

The retaking of the accused-appellant's plea is necessary since arraignment is a formal procedure in a criminal prosecution "to afford an accused due process." An arraignment is the means of implementing the constitutional right of an accused to be informed of the nature and cause of the accusation against him. Actual arraignment is an element of due process, and is imperative for the accused to be fully aware of possible loss of freedom. Procedural due process requires that the accused be arraigned so that he may be informed as to why he was indicted and what penal offense he has to face, to be convicted only on a showing that his guilt is shown beyond reasonable

---

[25] *Valencia v. Sandiganbayan, supra.*

[26] *People v. Besonia*, G.R. Nos. 151284-85, 05 February 2004; 466 Phil. 822 (2004).

doubt with full opportunity to disprove the evidence against him.[27]

Likewise, as recognized in the *ponencia*, Philippine jurisprudence has been consistent in remanding the case to the trial courts for further proceedings should the appellate courts find that the conviction was predicated solely on an improvident plea.[28] A cursory reading of US cases[29] would also reveal that convictions are vacated and remand is ordered whenever the accused is found to have improvidently pleaded guilty to a capital offense. Here, where it appears that accused-appellant may have entered an improvident plea, among others, should not be treated as an exception.

Guidelines in the conduct of arraignment where the accused-appellant manifests an intention to plead guilty to a capital offense

In order to avoid confusion among trial judges, this Court's pronouncement in *People v. Gambao*[30] stating the guidelines to be observed by the trial court in conducting a "searching inquiry" should be incorporated in our rules on criminal procedure, to wit:

1. Ascertain from the accused himself:

    (a) how he was brought into the custody of the law;

    (b) whether he had the assistance of a competent counsel during the custodial and preliminary investigations; and

---

[27] *People v. Nuelan*, G.R. No. 123075, 08 October 2001; 419 Phil. 160 (2001).

[28] *Ponencia*, p. 26.

[29] *Class v. United States*, 138 S. Ct. 798 (2018), *Lee v. United States*, 137 S. Ct. 1958 (2017), <https://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=3772&context=bclr> (visited 29 September 2020); *Mccarthy v. United States*, 394 U.S. 459 (1969), <https://www.leagle.com/decision/1969853394us4591800> (visited 29 September 2020).

[30] G.R. No. 172707, 01 October 2013; 718 Phil. 507 (2013).

(c) under what conditions he was detained and interrogated during the investigations. This is intended to rule out the possibility that the accused has been coerced or placed under a state of duress either by actual threats of physical harm coming from malevolent quarters or simply because of the judge's intimidating robes.

2. Ask the defense counsel a series of questions as to whether he had conferred with, and completely explained to, the accused the meaning and consequences of a plea of guilty.

3. Elicit information about the personality profile of the accused, such as his age, socio-economic status, and educational background, which may serve as a trustworthy index of his capacity to give a free and informed plea of guilty.

4. Inform the accused the exact length of imprisonment or nature of the penalty under the law and the certainty that he will serve such sentence. For not infrequently, an accused pleads guilty in the hope of a lenient treatment or upon bad advice or because of promises of the authorities or parties of a lighter penalty should he admit guilt or express remorse. It is the duty of the judge to ensure that the accused does not labor under these mistaken impressions because a plea of guilty carries with it not only the admission of authorship of the crime proper but also of the aggravating circumstances attending it, that increase punishment.

5. Inquire if the accused knows the crime with which he is charged and fully explain to him the elements of the crime which is the basis of his indictment. Failure of the court to do so would constitute a violation of his fundamental right to be informed of the precise nature of the accusation against him and a denial of his right to due process.

6. All questions posed to the accused should be in a language known and understood by the latter.

7. The trial judge must satisfy himself that the accused, in pleading guilty, is truly guilty. The accused must be required to narrate the tragedy or reenact the crime or furnish its missing details.[31]

---

[31] *Id.*

Proposed amendments on trial procedure in case of a valid and voluntary plea of guilt

Justice Lazaro-Javier suggested that this Court re-evaluate the evidentiary weight courts accord to pleas of guilt. She proposed relieving the prosecution of the burden to prove the guilt of an accused who already declared his guilt of the offense, and merely requiring trial for determination of the accused's precise degree of culpability.[32]

I share the opinion of Justice Lazaro-Javier. Regular trial to establish the facts and elements of the crime, in a case where an accused who had been already extensively examined on his plea of guilt, is both redundant and inefficient. In *Brady v. United States*,[33] the Supreme Court of the United States recognized the benefits of valid and voluntary pleas of guilt to the interests of the State. In that case, the Court opined that "the more prompt punishment is imposed after an admission of guilt, the more effective the State attains its objective of punishment; and with the avoidance of trial, scarce judicial and prosecutorial resources are conserved for those cases in which there is a substantial issue of the defendant's guilt or in which there is substantial doubt that the State can sustain its burden of proof."[34]

The instant case presents the Court an opportunity to delve into the implications of entering a plea of guilt. Once a valid plea of guilt is entered, the prosecution and the defense remain an active participant only insofar as the proper sentencing of the accused is concerned. As aptly observed by Justice Lopez, this is because the ascertainment of the appropriate penalty is both for the benefit of the accused and the State.[35]

---

[32] *See* Reflections, p. 4, J. Lazaro-Javier.

[33] 397 U.S. 742.

[34] *Id.*

[35] *See* Reflections, p. 1, J. Lopez.

Given the foregoing, and similar to the United States' Federal Rules of Criminal Procedure,[36] I propose that for valid pleas of guilt, the prosecutor must be required to summarize its case and identify in writing the crime or offense committed by accused-appellant for the trial court to consider in sentencing. The prosecution must also provide any information relevant to sentencing, such as the law and jurisprudence applicable, the presence of any mitigating or aggravating circumstances, including any previous conviction of the accused, statement on the effect of the crime or offense committed to the victims or their heirs, among others. In the same vein, the trial court must likewise afford the accused an opportunity to be sentenced based on the facts as agreed by both the prosecution and the defense, or in the absence of such an agreement, if the accused wants to be sentenced on the basis of different facts proposed by the prosecution. The accused must also be allowed to introduce any evidence relevant to sentencing.

The trial court, after it is satisfied that the guilt of the accused is established beyond reasonable doubt, may now convict the accused of the appropriate crime or offense and pass the appropriate sentence. Likewise, the trial court must explain to the accused the factual and legal basis for the sentence, as well as its implications. Should the trial court find that the guilt of the accused has not been proven beyond reasonable doubt, it shall enter a judgment of acquittal instead.

In outline form, I thus propose the following be integrated in our Rules on Criminal Procedure in cases of valid plea of guilt:

Plea of guilty to a capital offense; sentencing procedure - When the accused pleads guilty to a capital offense or those crimes punishable by *reclusion perpetua* and life imprisonment, and only if the court is satisfied of the voluntariness, comprehension and factual basis of the plea, the court shall:

---

[36] https://www.justia.com/criminal/docs/frcrimp/rule11/ (visited 29 September 2020); *See* also https://www.americanbar.org/groups/criminal_justice/publications/criminal_justice_section_archive/crimjust_standards_guiltypleas_blk/ (visited 29 September 2020).

1. require the prosecutor to –

a) summarize the prosecution's case;
b) identify in writing any offense that the prosecutor proposes should be taken into consideration in sentencing;
c) provide information relevant to sentence, including—
    i. any previous conviction of the accused, and the circumstances where relevant,
    ii. any statement of the effect of the offense on the victim, the victim's family or others; and
d) identify any other matter relevant to sentence, including—
    i. the legislation applicable,
    ii. any sentencing guidelines, or case law applicable,
    iii. aggravating and mitigating circumstances affecting the accused's culpability.

2. Clarify from the accused the factual basis of the plea, specifically whether:

a) the accused wants to be sentenced on the basis of the facts agreed with the prosecutor; or
b) in the absence of such agreement, the accused wants to be sentenced on the basis of different facts to those proposed by the prosecution.

3. Before passing sentence, the court must give the accused an opportunity to introduce evidence relevant to sentence.

4. Should the court be satisfied that the guilt of the accused be established by proof beyond reasonable doubt, the trial court shall convict him of the appropriate offense. Otherwise, the court shall enter a judgment of acquittal.

5. When the court has taken into account all the evidence, information and any report available, the court shall sentence the accused, and must-

a) explain the factual and legal basis for the sentence;
b) explain to the accused its effect, and the consequences of failing to comply with any order or payment of civil liability.

Plea of guilty to non-capital offense; reception of evidence, discretionary. — When the accused pleads guilty to a non-capital offense, the court may receive evidence from the parties to determine the penalty to be imposed.

The court may require the prosecution to:

a) summarize the prosecution's case;

b) identify any offense to be taken into consideration in sentencing;

c) provide information relevant to sentence, including any statement of the effect of the offense on the victim, the victim's family or others; and

d) where it is likely to assist the court, identify any other matter relevant to sentence, including—

i. the legislation applicable,
ii. any sentencing guidelines, or case law applicable,
iii. aggravating and mitigating circumstances affecting the accused's culpability.

Record of proceedings. — A verbatim record of the proceedings of arraignment should be made and preserved.

Arguably, the specificity in the conduct of searching inquiry may entail prolonged arraignment proceedings. Likewise, the proposed rule on immediate sentencing may demand more effort from the parties' counsels. Nonetheless, I am optimistic that my proposal would be mutually beneficial to the accused and the State if implemented properly. Under these proposed rules, the accused is given the benefit of mitigation of punishment, while lengthy trials are also avoided. Although trial is summary in nature, the accused does not lose protections currently guaranteed to him by the Constitution and the laws. Courts are still fully empowered to order acquittal should the prosecution fail to prove its accusations with moral certainty.

Accordingly, I register my dissent and vote for the denial of the instant petition.

DISSENTING OPINION

LOPEZ, *J.*:

With due respect to the *ponencia*, I disagree to acquit the accused. Foremost, the improvident plea of guilt warrants the

remand of this case to the trial court for appropriate proceedings. The absence of a searching inquiry as required under Section 3, Rule 116 of the 2000 Revised Rules of Criminal Procedure, and the accused's subsequent appeal indicate that the plea of guilty may not have been voluntarily and intelligently made. These were aptly observed in the reflections of Justices Estela Perlas-Bernabe, Amy Lazaro-Javier, Rodil Zalameda, Edgardo De Los Santos, and Samuel Gaerlan. Thus, the accused should be re-arraigned to enter a proper plea so the court may render a valid verdict.

Moreover, even assuming that the plea of guilty is proper, I submit that the case should still be remanded because the trial court committed an error or abuse of discretion when it allowed *nolle prosequi* amounting to dereliction of duty. Notably, once an information has been filed, any disposition of the case, whether it results in dismissal, conviction, or acquittal of the accused, rests in the sound discretion of the trial court. The only limitation is that the accused's substantial rights must not be impaired, and the State should not be deprived of due process.[1] Considering that there was already a plea of guilty, the trial court should have directed the prosecution, under pain of contempt, to prove the *corpus delicti* and to require the presentation of the victim's death certificate, the autopsy report, and the investigation report, which are all readily available. These documentary pieces of evidence, coupled with the accused's confession, may satisfy the required quantum of evidence to secure a conviction, at least for the crime of homicide, assuming that no eyewitness can be presented to the court.

It is my humble view that when an accused pleaded guilty, and the trial court is satisfied that it is voluntarily and intelligently made, meaning it is not improvident, the accused's presumption of innocence **is already rebutted**. A plea of guilty is an admission of the material facts alleged in the information and must be considered a judicial confession of guilt.[2] A free and voluntary

---

[1] *Fuentes v. Sandiganbayan*, 527 Phil. 58, 65 (2006).

[2] *People v. Lagarto*, 274 Phil. 11, 17 (1991); and *People v. Perete, et al.*, 111 Phil. 943, 945 (1961).

confession of guilt with full comprehension of its significance should be considered as evidence of high order because no person of a normal mind will deliberately admit to a crime unless prompted by truth and conscience.[3] As such, the State and the private offended parties become interested in the proper sentencing of the accused. The ascertainment of the appropriate penalty is for the benefit of both the accused and the State. The right to a speedy trial or speedy disposition of the case is no longer material because the accused deserves to be serving his sentence. If there is any delay, the same cannot be considered prejudicial to the accused but on the State who is the real victim entitled to retribution for the crime committed. It must be stressed that the State also deserves due process for the speedy punishment of the accused.

Accordingly, the remand of this case is proper to afford the State its right to penalize the accused based on the crime he voluntarily pleaded. The crime of homicide, which does not *per se* require reception of evidence in cases of a plea of guilty,[4] is considered subsumed as a lesser offense to the crime of murder.[5] Yet, a conviction for the lesser offense may not be a commensurate penalty or punishment for the crime that the accused has confessed. Justice is better served if the accused will be convicted for the proper offense. The State does not deserve conviction for a lesser offense, worse an acquittal of the accused.

Accordingly, I join my esteemed colleagues that this case should be remanded to the trial court for appropriate proceedings.

---

[3] *United States v. De los Santos,* 24 Phil. 329, 353 (1913).

[4] Under Section 4, Rule 116 of THE RULES OF COURT, reception of evidence is discretionary in cases of a plea of guilty for a non-capital offense.

[5] *People v. Glino*, 564 Phil. 396 (2007). Also, Rule 120, Sec. 4, which provides: "Sec. 4. Judgment in case of variance between allegation and proof. — When there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved."

I also join their observations on the need to codify proper searching inquiry guidelines and other relevant procedures that the trial court may follow in cases when an accused pleads guilty to a capital offense.

DISSENTING OPINION

DELOS SANTOS, *J.*:

I dissent. I vote that the case be remanded to the Regional Trial Court (RTC) for the conduct of appropriate proceedings. The accused Brendo P. Pagal (accused) in this case entered a plea of *guilty* to the crime of Murder against victim Selma Pagal (Selma). The RTC found accused guilty beyond reasonable doubt of the said crime solely on such voluntary plea of guilt. On appeal, the Court of Appeals (CA) remanded the case to the RTC for the conduct of further proceedings, particularly for the conduct of a *searching inquiry* on the voluntariness of accused's plea of guilt as required by Rule 116, Section 3 of the Rules of Court.

The *ponente's* view is that the accused must be acquitted on the ground that the prosecution failed to present evidence of guilt beyond reasonable doubt.

I most respectfully disagree.

Article III, Section 14 of the 1987 Constitution provides:

> Section 14. (1) No person shall be held to answer for a criminal offense without due process of law.
>
> (2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, **to be informed of the nature and cause of the accusation against him**, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable. (Emphasis supplied)

Rule 116, Section 3 of the Rules of Court provides:

> Section 3. *Plea of guilty to capital offense; reception of evidence.* – When the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and require the prosecution to prove his guilt and the precise degree of culpability. The accused may present evidence in his behalf.

As correctly observed by the *ponente*, under Rule 116, Section 3 of the Rules of Court, the trial court has a three (3)-fold duty in instances where the accused pleads guilty to a capital offense, including the duty to: (1) conduct a *searching inquiry*; (2) require the prosecution to prove the accused's guilt and the accused's precise degree of culpability; and (3) allow the accused to present evidence in his behalf. In *People v. Tizon*,[1] the Court explained the importance of the requirements of the *searching inquiry* under Rule 116, Section 3 of the Rules of Court, to wit:

> This Court has had occasion to state that the requirements of the Rules are mandatory, affording, such as they do, **the proper understanding of the all-important constitutional mandate regarding the right of an accused to be so informed of the precise nature of the accusation leveled against him so essential in aptly putting up his defense**. The searching inquiry, which must be recorded, requires the court to make it indubitably certain that the accused is fully apprised of the consequences of his plea of guilt. In this case, peculiarly, the court must let the [accused] realize that a plea of guilt will not, under Republic Act No. 7659, affect or reduce the death penalty as he may have otherwise so perceived and come to believe or been advised. Not infrequently, said the Court in one case, an accused pleads guilty in the hope of a lenient treatment or upon promises of the authorities or parties of a lighter penalty, and it should compel the judge to make sure that he does not labor under these mistaken impressions. **In sum, the searching inquiry under Section 3, Rule 116 must focus on: (1) the voluntariness of the plea, and (2) a complete comprehension of the legal effects of the plea, so that the *plea of guilt is based on a free and informed judgment*.** So indispensable

[1] 375 Phil. 1096 (1999).

is this requirement that a plea of guilt to a capital offense can be held null and void where the trial court has inadequately discharged the duty of conducting the prescribed "searching inquiry." (Emphasis supplied; italics in the original)

In the case at bar, it has not been clearly established that the RTC performed its duty under the 1987 Constitution and the Rules of Court. Clearly, besides reading the Information in accused's Cebuano-Visayan dialect, there is nothing in the records of the case that would suggest that the RTC: (1) specifically inquired into the voluntariness of accused's plea of guilt; and (2) proved accused's complete comprehension of the legal effects of his plea of guilt to the capital offense of Murder. Considering that the preliminary investigation conducted on accused was marred by a number of irregularities, I respectfully believe that there should have been at least a second or further *searching inquiry* conducted by the RTC and the accused, who pleaded guilty to the capital offense, should be not acquitted solely on the basis of the failure of the prosecution to produce evidence of guilt beyond reasonable doubt. In this case, a further *searching inquiry* is proper to ensure that the criminal due process requirements under the 1987 Constitution are observed. Any acquittal which does not meet the requirements of the 1987 Constitution is inoperative.

Moreover, upon reviewing the records of the case, it is indeed glaring that the absence of key witness was, in fact, prompted by accused's relation to the private complainant. Notably, I most respectfully agree with Justice Rodil D. Zalameda's observations that accused's plea of guilt and relationship with the private complainant indeed affected the supposed postponements and the absence of the key witness during trial. In his *Dissenting Opinion*, Justice Zalameda observed:

During the preliminary investigation, all of the affiants narrated that they saw the wounded victim, Selma, running away from the accused-appellant, who was then carrying a bloodied *bolo*. One of them was even attacked by accused-appellant, but managed to run and evade the strike. It is interesting to note that most of these affiants are related to accused-appellant. Private complainant, Angelito Pagal (Angelito), is accused-appellant's brother, while one of the witnesses,

Cesar Jarden (Jarden), is Selma's brother, both of whom were not shown to have been impelled by improper motives in implicating accused-appellant. Indeed, if it is unnatural for a relative interested in vindicating a crime done to their family to accuse somebody other than the real culprit, it is even more unlikely for a sibling to accuse his own brother if the latter was truly not involved in the crime. Evidently, the aforesaid circumstances are sufficient to engender a belief that accused-appellant was likely responsible for Selma's death and should be held for trial.

Given the relationship between accused-appellant and private complainant, one has to wonder whether the plea of guilt had affected the prosecution's presentation of its evidence. A reading of the case's records reveals that the cause for the postponement of the prosecution's presentation of evidence was the absence of Selma's widower and private complainant, Angelito. It is not far- fetched to consider that Angelito's absences were based upon his reliance on his own brother's admission of guilt.[2]

Indeed, it is highly likely that the absence of the key witness was prompted by accused's plea of guilt. Given his relationship with accused, the key witness would surely have considered his testimony as inconsequential considering that accused had already entered his plea of guilt. In *People v. Besonia*,[3] the Court ruled that where the prosecution unduly relied on accused's plea of guilt and that the said plea had already adversely influenced or impaired the presentation of the prosecution's evidence, the remand to the RTC for further proceedings is already imperative, to wit:

Apparently, the trial court and the prosecution unduly relied on Besonia's plea of guilty and his admissions made during the searching inquiry. The prosecution did not discharge its obligation as seriously as it would have had there been no plea of guilt on the part of Besonia. Its presentation of its case was lacking in assiduity that is necessarily expected in a prosecution for a capital offense; it was too meager to be accepted as being the standard constitutional due process at work enough to forfeit a human life. It has been held that where the plea

---

[2] Justice Rodil V. Zalameda, *Dissenting Opinion*, p. 4.

[3] 466 Phil. 822 (2004).

of guilt to a capital offense has adversely influenced or impaired the presentation of the prosecution's case, the remand of the case to the trial court for further proceedings is imperative.

Accordingly, a remand to the RTC is clearly necessary in this case to allow the RTC to properly carry out the *searching inquiry* and implement the provisions of Article III, Section 14 of the 1987 Constitution. The remand in this case will correct any potential improvident plea by accused. To repeat, the judgment of acquittal cannot be implemented by the Court since it is clear that the requirements of criminal due process under the 1987 Constitution were not properly observed. Notably, it is not proper to acquit accused due to the prosecution's failure to present evidence of guilt beyond reasonable doubt on account of the prosecution's flawed reliance on the sufficiency of accused's plea of guilt. The accused must clearly be re-arraigned.

The Rule on the Conduct of a Searching Inquiry in Cases Where an Accused Pleads Guilty to a Capital Offense Must be Revisited.

Indeed, the rule on the conduct of a *searching inquiry* when an accused pleads guilty to a capital offense must also be revisited. Following the Court's ruling in *People v. Gambao*,[4] the specific guidelines on how judges shall conduct a *searching inquiry* must also be adopted. As pointed out by Justice Zalameda and by the Court in *Gambao*, the United States' Federal Rules of Criminal Procedure provides valuable guidance on this matter, to wit:

1. Ascertain from the accused himself

   (a) how he was brought into the custody of the law;

   (b) whether he had the assistance of a competent counsel during the custodial and preliminary investigations; and

---

[4] 718 Phil. 507 (2013).

(c) under what conditions he was detained and interrogated during the investigations. This is intended to rule out the possibility that the accused has been coerced or placed under a state of duress either by actual threats of physical harm coming from malevolent quarters or simply because of the judge's intimidating robes.

2. Ask the defense counsel a series of questions as to whether he had conferred with, and completely explained to, the accused the meaning and consequences of a plea of guilty.

3. Elicit information about the personality profile of the accused, such as his age, socio-economic status, and educational background, which may serve as a trustworthy index of his capacity to give a free and informed plea of guilty.

4. Inform the accused the exact length of imprisonment or nature of the penalty under the law and the certainty that he will serve such sentence. For not infrequently, an accused pleads guilty in the hope of a lenient treatment or upon bad advice or because of promises of the authorities or parties of a lighter penalty should he admit guilt or express remorse. It is the duty of the judge to ensure that the accused does not labor under these mistaken impressions because a plea of guilty carries with it not only the admission of authorship of the crime proper but also of the aggravating circumstances attending it, that increase punishment.

5. Inquire if the accused knows the crime with which he is charged and fully explain to him the elements of the crime which is the basis of his indictment. Failure of the court to do so would constitute a violation of his fundamental right to be informed of the precise nature of the accusation against him and a denial of his right to due process.

6. All questions posed to the accused should be in a language known and understood by the latter.

7. The trial judge must satisfy himself that the accused, in pleading guilty, is truly guilty. The accused must be required to narrate the tragedy or reenact the crime or furnish its missing details.[5]

---

[5] Id. at 521-522.

ACCORDINGLY, I vote to **REMAND** the case to the Regional Trial Court for re-arraignment following the requirements of Rule 116, Section 3 of the Rules of Court and to give the prosecution an opportunity to present evidence against accused Brendo P. Pagal.

DISSENTING OPINION

GAERLAN, *J.*:

I disagree with the conclusion of the *ponencia* acquitting Brendo P. Pagal a.k.a. "*Dindo*" (appellant) of the crime of Murder.

The *ponencia* made an exhaustive narration of the evolution of the duty of trial courts in instances where the accused pleaded guilty to a capital offense. Thereafter, the *ponente* made the pronouncement that Section 3, Rule 116 of the 2000 Revised Rules of Court (Section 3, Rule 116)[1] is indeed mandatory. The *ponente* then summarized the duties of the trial court when accused pleads guilty to a capital offense, *viz.*:

> (1) to conduct a searching inquiry into the voluntariness and full comprehension of the consequences of the plea of guilt[;]
>
> (2) to require the prosecution to still prove the guilt of the accused and the precise degree of his culpability[;] and
>
> (3) to inquire whether or not the accused wishes to present evidence in his behalf and allow him to do so if he desires.[2]

Applying the foregoing conditions to the above-entitled case, the *ponente* concluded that the trial court failed to comply

---

[1] Sec. 3. *Plea of Guilty to Capital Offense; Reception of Evidence*. – When the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and shall require the prosecution to prove his guilt and the precise degree of culpability. The accused may present evidence in his behalf.

[2] *Ponencia*, p. 12, citing *People v. Gambao*, 718 Phil. 507, 520-521 (2013).

with these duties and declared that appellant made an improvident plea of guilt. Notwithstanding, the *ponente* acquitted appellant from the crime charged on the ground that the prosecution, despite being given its day in court, failed to present evidence to prove appellant's guilt.

I respectfully beg to differ only as to the conclusion of the *ponente* acquitting appellant from the crime charged.

At the outset, I do agree that the trial court failed to comply with its duties as enunciated by pertinent rules and jurisprudence resulting to appellant making an improvident plea of guilty to the offense of murder. This, however, does not automatically entitle the appellant to an acquittal.

To reiterate, it is established that Section 3, Rule 116 is mandatory. Based on this rule, there are three conditions that the trial court should comply with in order to forestall the entry of an improvident plea of guilty by the accused, namely:

> 1. The court *must* conduct a searching inquiry into the voluntariness x x x and full comprehension [by the accused] of the consequences [of his plea];
>
> 2. The court *must* require the prosecution to present evidence to prove the guilt of the accused and the precise degree of his culpability; and
>
> 3. The court *must* ask the accused [whether] he desires to present evidence on his behalf, and allow him to do so if he [so] desires.[3] (Citation omitted)

Given the unchanging state of the three-tiered requisites in Section 3, Rule 116, there is, therefore, no justification for the trial court's failure to observe them.

Now, in a plethora of cases where the trial court failed to comply with these requisites resulting to the accused making an improvident plea of guilty to a capital offense, this Court has repeatedly remanded the case to the trial court for re-arraignment and further proceedings.

---

[3] *People v. Dalacat*, 485 Phil. 35, 47 (2004).

In the case of *People v. Nadera Jr.*,[4] the Court in remanding the case to the trial court explained:

> Convictions based on an improvident plea of guilt are set aside only if such plea is the sole basis of the judgment. If the trial court relied on sufficient and credible evidence to convict the accused, the conviction must be sustained, because then it is predicated not merely on the guilty plea of the accused but on evidence proving his commission of the offense charged.[5] (Citation omitted)
>
> x x x x
>
> In view of the foregoing, we find it necessary to remand the case for the proper arraignment and trial of the accused, considering not only the accused's improvident plea of guilt but also his lawyer's neglect in representing his cause. A new trial has been ordered in criminal cases on the ground of retraction of witnesses, negligence or incompetency of counsel, improvident plea of guilty, disqualification of an attorney de oficio to represent the accused in the trial court, and where a judgment was rendered on a stipulation of facts entered into by both the prosecution and the defense.[6] (Citations omitted)

In *People v. Ernas*,[7] this Court remanded the case to the trial court for re-arraignment and re-trial on the ground that accused was found to have made an improvident plea of guilty to three counts of rape, notwithstanding the fact, that the prosecution opted not to present the testimony of the complaining witnesses in support of accused's conviction, *viz.*:

> It must be stressed that under the 1985 Rules of Criminal Procedure, **a conviction in capital offenses cannot rest alone on a plea of guilt. The prosecution evidence must be sufficient to sustain a judgment of conviction independently of the plea of guilt.**
>
> We, therefore, cannot accept as valid the plea of guilty entered by the appellant to the three charges of rape. His re-arraignments

---

[4] 381 Phil. 484 (2000).

[5] Id. at 499.

[6] Id. at 504.

[7] 455 Phil. 829 (2003).

as to the three charges are fatally flawed. The trial court erred in believing that the questions propounded to the appellant and the latter's answers as well as the documentary exhibits offered by the People would aid it in determining whether the accused really and truly understood and comprehended the meaning, full significance and consequences of his plea.

It likewise erred in allowing the prosecution to dispense with the testimonies of the complaining witnesses. As we have ruled, even if the trial court is satisfied that the plea of guilty was entered with full knowledge of its meaning and consequences, the introduction of evidence to establish the guilt and the degree of culpability of the accused is still required. Judges therefore must be cautioned, toward this end, against the demands of sheer speed in disposing of cases, for their mission after all, and as has been time and again put, is to see that justice is done.[8] (Emphasis supplied and citations omitted)

Likewise, this Court, in the case of *People v. Molina*,[9] while admitting that there is no strict rule that once a plea of guilty is found to be improvident the case needs to be remanded to the court *a quo*, made a categorical pronouncement that the unfairness or complete miscarriage of justice in the handling of the proceedings *a quo* as occasioned by the improvident plea of guilt justifies the remand of the criminal case to the trial court,[10] to wit:

It is also urged in the Brief for the Appellant that an improvident plea of guilty *per se* results in the remand of the criminal case(s) to the trial court for the re-arraignment of accused-appellant and for further proceedings. We hold that this argument does not accurately reflect the standing principle. **Our jurisdiction does not subscribe to a *per se* rule that once a plea of guilty is deemed improvidently made that the accused-appellant is at once entitled to a remand. To warrant a remand of the criminal case, it must also be proved that as a result of such irregularity there was inadequate representation**

---

[8] Id. at 842.

[9] 423 Phil. 637 (2001).

[10] Id. at 652.

of facts by either the prosecution or the defense during the trial. In *People v. Abapo* we found that undue reliance upon an invalid plea of guilty prevented the prosecution from fully presenting its evidence, and thus remanded the criminal case for further proceedings. Similarly, in *People v. Durango* where an improvident plea of guilty was followed by an abbreviated proceeding with practically no role at all being played by the defense, we ruled that this procedure was "just too meager to accept as being the standard constitutional due process at work enough to forfeit a human life" and so threw back the criminal case to the trial court for appropriate action. Verily the relevant matter that justifies the remand of the criminal case to the trial court is the procedural unfairness or complete miscarriage of justice in the handling of the proceedings a quo as occasioned by the improvident plea of guilty, or what *People v. Tizon* encapsulizes as the "attendant circumstances."

Where facts are however adequately represented in the criminal case and no procedural unfairness or irregularity has prejudiced either the prosecution or the defense as a result of the improvident plea of guilty, the settled rule is that a decision based on an irregular plea may nevertheless be upheld where the judgment is supported beyond reasonable doubt by other evidence on record since it would be a useless ritual to return the case to the trial court for another arraignment and further proceedings.[11] (Emphasis supplied and citations omitted.)

This was reiterated in the case of *People v. Murillo*,[12] thus:

While our jurisdiction does not subscribe to a *per se* rule that once a plea of guilty is found improvidently he is at once entitled to a remand, the circumstances of this case warrant that a remand to the trial court be made. **To warrant a remand of the criminal case, the Court has held that it must be shown that as a result of such irregularity there was inadequate representation of facts by either the prosecution or the defense during the trial.** Where the improvident plea of guilty was followed by an abbreviated proceeding with practically no role at all played by the defense, we have ruled that this procedure was just too meager to accept as being the standard

---

[11] Id. at 651-652.

[12] 478 Phil. 446 (2004).

constitutional due process at work enough to forfeit a human life. **What justifies the remand of the criminal case to the trial court is the unfairness or complete miscarriage of justice in the handling of the proceedings *a quo* as occasioned by the improvident plea of guilt. In this case, apart from the testimony of appellant, the prosecution does not have any other evidence to hold him liable for the crime charged.**

In view of the foregoing, we find that it is imperative to remand the case for the proper arraignment and trial of the accused, considering not only the accused's improvident plea of guilt but also his lawyer's neglect in representing his cause.[13] (Emphasis supplied. Citations omitted.)

The *ponencia* should have followed the foregoing precedence.

In the instant case, after appellant's plea of guilty to the crime of Murder, the prosecution failed to present any evidence to support his guilt. The appellant's counsel likewise opted to forego the presentation of the defense evidence. With the submission of the case for decision, the trial court convicted appellant for murder based solely on his improvident plea of guilt.

It may be deduced from the established facts that the parties' deliberate omission to present their evidence in support of their respective claims and defenses was the effect of appellant's plea of guilt, which later on has been proven to be made improvidently. There was, therefore, undue reliance on the part of both the prosecution and the defense upon an invalid plea of guilty which prevented them from fully presenting their respective evidence. Otherwise stated, if not for the appellant's plea of guilt, the prosecution, as well as the defense, would have diligently presented their respective cases by presenting witnesses and adducing evidence in support thereof. Clearly, due to appellant's improvident plea of guilt there was inadequate representation of facts by the prosecution and defense during the trial. Such irregularity resulted to unfairness and complete

---

[13] Id. at 464-465.

miscarriage of justice in the handling of the proceedings *a quo*. This, in the words of this Court in the *Molina*[14] and *Murillo*[15] cases, justifies the remand of the criminal case to the trial court.

Furthermore, the failure of the prosecution to present witnesses on four hearing dates scheduled for such purpose is of no moment. While there was due notice of the hearing dates, the prosecution most probably deemed it unnecessary to present their witnesses. As earlier discussed, it may have heavily relied on appellant's plea of guilt, thinking that such admission is sufficient to convict him for the crime charged. Such omission, moreover, is not the lone fault of the prosecution but also of the trial court judge.

It bears stressing that the proposed *ponencia* made no mention of anything that would show that the trial court judge obliged the prosecution to present their evidence despite a voluntary plea of guilty. The *ponencia* cited no order or resolution from the trial court judge further requiring and directing the prosecution to proceed to the presentation of its witnesses after the latter's initial failure to present its evidence on the four hearing dates scheduled for such purpose. Instead, records show that the judge ordered the appellant to present witnesses in his defense, which appellant opted to waive. It is indubitable, therefore, that based on the *ponencia*, the trial court judge was guilty of negligence in his duty of ensuring that due process is observed despite a voluntary plea of guilt on the part of the appellant. The trial court judge should have been guided by the established rule that:

> x x x [t]he presentation of evidence should be required in order to preclude any room for reasonable doubt in the mind of the trial court, or the Supreme Court on review, as to the possibility that there might have been some misunderstanding on the part of the accused as to the nature of the charge to which he pleaded guilty, and to ascertain the circumstances attendant to the commission of the crime

---

[14] *People v. Molina*, supra note 9.

[15] *People v. Murillo*, supra note 12.

which justify or require the exercise of a greater or lesser degree of severity in the imposition of the prescribed penalties.[16]

Accordingly, pursuant to the above-quoted jurisprudence and in compliance with the mandatory character of Section 3, Rule 116, the appellant should be given the opportunity to make a proper plea after ensuring that he is duly informed of the crime charged against him and the consequences of admitting to the commission thereof. Equally important, the prosecution should likewise he given another chance to present its case and prove the allegations in the information, including the qualifying, mitigating or aggravating circumstances, if any. It is important to note that these attending circumstances, if duly proven, will then determine the proper penalty to be imposed.

Needless to state, despite appellant's voluntary plea of guilt, the prosecution must and should prove the appellant's guilt for the crime charged and the precise degree of his culpability. If the prosecution fails to prove appellant's guilt beyond reasonable doubt for the crime of murder, or any other crime in connection thereto, then and only then may appellant be acquitted of the crime charged.

Moreover, acquitting the appellant due to the trial court's failure to strictly comply with the rules on voluntary plea of guilt in capital offenses, particularly its failure to oblige the prosecution to present its evidence, will prejudice the victim and her kin who will be deprived of due process. They should not be made victims again, this time of the trial court who refused to diligently comply with the pertinent rules.

From all the foregoing, I humbly submit that due to the court *a quo*'s failure to comply diligently with the rules, a re-arraignment and re-trial is in order. With all due respect, instead of acquitting the appellant, the case should, therefore, be remanded to the trial court.

---

[16] *People v. Dayot*, G.R. No. 88281, July 20, 1990, 187 SCRA 637, 642.

One final note, I humbly reiterate the pronouncement of this Court in *People v. Bello*,[17] "let it be clearly understood that the administration of justice, including among other things, the punishment of guilty persons and the protection of the innocent, is the very reason for the existence of courts. While justice demands speedy administration, courts are in duty bound to be extra solicitous in seeing to it that when an accused pleads guilty he understands fully the meaning of his plea and the import of his inevitable conviction. Any court which abets injustice or neglects to ascertain the truth with the use of all the faculties at its command abdicates its most important function and forfeits its very right to existence."[18]

I vote to **DISMISS** the appeal.

---

[17] 375 Phil. 277 (1999), citing *Nitafan, David G. Arraignment in Serious Offenses*, December 11, 1995, 251 SCRA 161.

[18] Id. at 293-294.

SECOND DIVISION

[A.C. No. 8451. September 30, 2020]
(Formerly CBD Case No. 13-3982)

ATTY. ESTHER GERTRUDE D. BILIRAN,[*] *Complainant, v.* **ATTY. DANILO A. BANTUGAN,** *Respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; DISBARMENT AND SUSPENSION; QUANTUM OF PROOF IN ADMINISTRATIVE CASES; ADMINISTRATIVE CHARGES SHALL BE DISMISSED IF NOT ADEQUATELY SUPPORTED BY SUBSTANTIAL EVIDENCE. — The burden of proof in disbarment and suspension proceedings always rests on the complainant. While administrative cases call for the lowest standard of proof, it cannot be overemphasized that mere allegations is not evidence, nor is it equivalent to proof. . . .

. . .

Except for complainant's allegations, she failed to present sufficient evidence to substantiate the allegations in her Letter-Complaint. The standard of substantial evidence is satisfied when there is reasonable ground to believe, based on the evidence submitted, that Atty. Bantugan is responsible for the misconduct complained of. It need not be overwhelming or preponderant, as is required in an ordinary civil case or evidence beyond reasonable doubt as is required in criminal cases, but the evidence must be enough for a reasonable mind to support a conclusion. Here, the Court is not satisfied that the evidence presented by complainant has met this threshold as to hold Atty. Bantugan administratively liable and for this reason, dismisses the complaint against him. The Court, however, must clarify that its ruling is limited to the sufficiency of the evidence presented against Atty. Bantugan and is not a final pronouncement as to his innocence of the charges imputed against him.

---

[*] Also referred to as "Ester Gertrudes Biliran" in some parts of the *rollo*.

2. ID.; ID.; ID.; THE ACTS CHARGED AND THE LAWYER'S MOTIVES MUST BE CLEAR AND FREE FROM DOUBT TO MERIT DISBARMENT OR SUSPENSION. — It has been held that charges meriting disciplinary action against a member of the Bar generally involve the motives that induced him to commit the acts or acts charged, and that, to justify disbarment or suspension, the case against him must be clear and free from doubt, not only as to the acts charged, but as to his motive. As punishment by disbarment or suspension will deeply affect a lawyer's professional life, neither should be imposed unless the case against him is free from doubt not only as to the acts charged, but as to his motive. Taking together the plausibility of the defenses put forth by Atty. Bantugan coupled with the absence of any substantial evidence as to characterize his acts as willful and committed with wrongful intent, the Court cannot discount the possibility that these stem from a mere error of judgment. Indeed, while the Court will not hesitate to mete out the proper disciplinary punishment upon lawyers who have failed to live up to their sworn duties, neither will it hesitate to extend its protective arm to them when the accusation against them is not indubitably proven.

APPEARANCES OF COUNSEL

Doni D. Piqueru for respondent.

D E C I S I O N

DELOS SANTOS, *J.*:

The Case

Before the Court is a Letter-Complaint[1] dated August 24, 2009 filed by complainant Atty. Esther Gertrude D. Biliran[2] (complainant) against respondent Atty. Danilo A. Bantugan

---

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

[2] Per OBC Report and Recommendation dated August 26, 2010, the correct name of complainant is "Esther Gertrude Biliran," as appearing in the Roll of Attorneys; id. at 22.

(Atty. Bantugan) for violation of Rule 1.01 and Rule 7.03 of the Code of Professional Responsibility (CPR) for alleged misuse of funds and property. In a Report and Recommendation[3] dated September 1, 2016, Investigating Commissioner Rico A. Limpingco (Investigating Commissioner) recommended the dismissal of the complaint without prejudice to its re-filing with sufficient evidence. In a Resolution[4] dated March 1, 2017, the Integrated Bar of the Philippines-Board of Governors (IBP-BOG) reversed the findings of the Investigating Commissioner and recommended the penalty of suspension from the practice of law for two years.

The Facts

Complainant is a member of the IBP-Bohol Chapter (IBP-Bohol). On September 14, 2009, she filed a Letter-Complaint before the Office of the Court Administrator (OCA) charging respondent Atty. Bantugan with misuse of funds and property of the Legal Assistance for Effective Law Enforcement Program (LAELEP) and claiming that the IBP-Bohol failed to file the appropriate criminal and/or administrative action against Atty. Bantugan.

Atty. Bantugan is a member of the IBP-Bohol and LAELEP. LAELEP is a joint project of the Provincial Government of Bohol and the IBP-Bohol aimed at assisting police officers in the performance of their functions through litigation and education.[5] Subsequently, this project was extended to benefit *barangay tanods*, firemen, jail officers, and provincial jail guards. The provincial government provides for the funds while the IBP-Bohol implements the project.

On April 19 and 20, 2002, the LAELEP held live-in seminars which incurred expenses for food and accommodation. Complainant alleged that Atty. Bantugan took a check payable

---

[3] *Rollo*, Vol. III, pp. 499-508.

[4] Id. at 498.

[5] *Rollo*, Vol. I, p. 1.

to cash in the amount of ₱27,500.00 from LAELEP/IBP-Bohol staff which was intended for JJ's Seafood Village as payment. Atty. Bantugan undertook to pay the establishment and such payment was recorded in LAELEP's accounting books as paid. However, no payment was effected and demands were made by the owner of JJ's Seafood Village. Thus, during the succeeding administration of IBP-Bohol (2005-2007), a Special Committee[6] was formed to investigate LAELEP and Atty. Bantugan, and make recommendations therefor.

On December 19, 2006, the Special Committee recommended "*the filing of administrative, civil and/or criminal action to the person/persons concerned, if evidence so warrants.*"[7] During the course of their investigation, the Special Committee discovered that in addition to the non-payment to JJ's Seafood Village, there were other instances of misappropriation which involved Atty. Bantugan. For reference, the Special Committee's Final Report/Recommendation[8] is quoted as follows:

1. COMBAT PAY DEDUCTIONS

   The committee believes that all money collected is a public fund hence, there must be a proper liquidation to be prepared and submitted to the LAELEP Office.

2. BALANCE IN JJ'S [SEAFOOD VILLAGE]

   Although the account is now fully paid but we cannot comprehend why personal checks [were] issued and eventually dishonored by the bank. Payment was only effected after the investigation was conducted and upon demands made by the restaurant owner.

3. PNP HANDBOOK

   We found out that this was fully paid on December 03, 2002 and until now, the PNP [H]andbook is not yet delivered.

---

[6] The Special Committee constituted by IBP-Bohol is composed of Chairman Atty. Boler Binamira and members Retired Judges Felicisimo Maisog, Jr. and Gervasio Lopena.

[7] *Rollo*, Vol. I, p. 13.

[8] Id. at 12-13.

> Presently, the draft is under proof reading by Atty. Cristifil Baluma, who promised to complete the job by early [January of] 2007.
>
> 4. LAPTOP
>
> The [laptop] was borrowed by Atty. Danilo A. Bantugan on December 15, 2005 and returned on October 31, 2006 after written and oral demands were made by the Investigating Committee.
>
> The Committee recommends that any property of the LAELEP before it can be taken out by any borrower should accomplish a borrower's card indicating the date it was borrowed and the date to be returned which must not exceed two days and must be duly approved by the IBP President countersigned by the LAELEP Chairman.
>
> 5. TRIP TO SINGAPORE
>
> The Committee believes that this expenditure must also be subject to liquidation, as this also involves public funds. During the IBP Board Meeting on Sept. 14, 2006, Atty. Danilo Bantugan committed to submit documents to support the liquidation but until now, he has not yet complied.

Despite these findings, complainant claimed that the succeeding administrations of IBP-Bohol ignored the Special Committee's recommendation to file charges against Atty. Bantugan. In view of the aforementioned acts, complainant charged Atty. Bantugan for violating the CPR, in particular, Rule 1.01[9] for engaging in unlawful, dishonest, or deceitful conduct, as well as Rule 7.03[10] for engaging in conduct that adversely reflects on his fitness to practice law.

---

[9] Rule 1.01 - A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

[10] Rule 7.03 - A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

The OCA endorsed the Letter-Complaint to the Office of the Bar Confidant (OBC) for whatever action it deemed appropriate.[11] The Court directed the IBP-Bohol and Atty. Bantugan to file their respective Comments.[12] Considering the seriousness of the allegations imputed against Atty. Bantugan, the OBC recommended that the case be referred to the IBP-Commission on Bar Discipline (IBP-CBD) for investigation and recommendation.[13] Meanwhile, receipt of evidence for the case was delegated to the President of IBP-Bohol.

In his Comment[14] and Position Paper,[15] Atty. Bantugan denied the charges against him. He stated that he was a City Councilor of Tagbilaran City, Bohol from 2001-2010; during which time he concurrently held the following positions in LAELEP: (a) technical committee member from 2001-2003; (b) pioneer committee member from 2003-2005; and (c) committee member from 2005-2007 and 2007-2009. As regards the alleged misuse of LAELEP funds, he claims that this issue was pursued by then IBP-Bohol President Atty. Salvador Diputado (2005-2007) as an election issue because he was seeking a seat in the Provincial Board of Bohol and campaigned for Atty. Antonio Amora, Jr., who was a rival candidate of Atty. Diputado in the IBP-Bohol elections. He claimed that complainant could have submitted this purported issue to the Supreme Court as early as 2002 or thereabouts, yet sent the Letter-Complaint not long after he acted as legal counsel for one Nemesio Barafon[16] in filing a Complaint for disbarment against complainant in 2009. In fine, he averred that the filing of the Letter-Complaint was

---

[11] *Rollo*, Vol. I, p. 15-A.

[12] *See* Resolutions dated November 15, 2010 and March 21, 2012; id. at 26-27 and 48-49, respectively.

[13] OBC Report and Recommendation dated April 26, 2013, id. at 62-64. *See also* Resolution dated July 3, 2013, id. at 65-66.

[14] Id. at 50-52.

[15] *Rollo*, Vol. III, pp. 328-337.

[16] *Rollo*, Vol. I, p. 50.

an act of retaliation and a form of barratry on the part of complainant.

Further, Atty. Bantugan alleged that the accountability for LAELEP funds is to the Provincial Government of Bohol. He underscored that had there been anything irregular or unliquidated, the provincial government would not have regularly and continuously released funds since 2002. As regards the Philippine National Police (PNP) combat pay, he claims that the Special Committee ignored the affidavit of PNP Provincial Director Superintendent Sancho Bernales which he submitted to them for consideration, which attested to the following facts: (1) he was designated as a Training Director and conducted a series of trainings; (2) he was tasked to manage the expenditures from the trainings, with the approval of the PNP Provincial Director; (3) to support the trainings, the PNP consented to a deduction from their personnel's combat pay, and thus, these money was purely a PNP Fund; and (4) he recommended that the excess combat pay deductions be given to LAELEP. With regard to the non-payment to JJ's Seafood Village, he claimed that he had a separate account with the establishment which was co-mingled by the Special Committee. As regards the trip to Singapore, he stated that he was one of the members of the IBP-Bohol delegation and questioned why he was singled out when the trip was fully documented and liquidated to the provincial government. As to the laptop, he denied possession of the same.

In its Comment[17] the IBP-Bohol averred that contrary to complainant's claim, its previous administrations had acted upon the investigation involving Atty. Bantugan. The IBP-Bohol Board of Officers for 2009-2011 adopted Resolution No. 17, Series of 2009[18] which endorsed the Special Committee's Final Report/

---

[17] *Rollo*, Vol. III, pp. 78-80.

[18] Id. at 83-84; *see* Board Resolution No. 17, Series of 2009 entitled, "A Resolution Endorsing the Special Committee to the Provincial Government [Through] the Governor and *Sangguniang Panlalawigan* of Bohol for their Appropriate Action," dated September 25, 2009.

Recommendation to the Provincial Government of Bohol for action under the premise that the funds allegedly misused were government funds. Likewise, the IBP-Bohol Board of Officers for 2011-2013 issued Resolution No. 5, Series of 2011[19] following up on the investigation conducted by the provincial government and requesting a copy of the results of the audit. However, no definite action was taken by the provincial government. The present administration of IBP-Bohol adopted the position of its previous administrations to the effect that it is the provincial government who should file the proper charges. In consideration, however, of the fact that IBP-CBD now possessed the records of the case, the IBP-Bohol submitted the resolution of the investigation on Atty. Bantugan to its sound judgment.

Report and Recommendation of the Investigating Commissioner

In his Report and Recommendation[20] dated September 1, 2016, the Investigating Commissioner recommended the dismissal of the complaint without prejudice to its re-filing with supporting evidence. After examining the records of the case, he found that complainant failed to meet the quantum of proof of preponderance of evidence before Atty. Bantugan could be held administratively liable. He determined that the Special Committee's Final Report/Recommendation and the Minutes of the Joint Meeting of the IBP-Bohol Board of Officers and LAELEP, unsupported by documentary or any other evidence, cannot sustain a finding of misconduct. In fine, while the accusations against Atty. Bantugan portrayed him in a negative light, these were unfounded. Finally, the Investigating Commissioner underscored that while the IBP-BOG requested

---

[19] Id. at 81-82; *see* Board Resolution No. 5, Series of 2011 entitled, "A Resolution Requesting the Office of the Governor Through the Internal Audit Service (IAS) of the Provincial Government of Bohol to Provide the Integrated Bar of the Philippines-Bohol Chapter a Copy of the Official Result of the Audit Conducted on the LAELEP Funds that was Subject of the Investigation," dated June 15, 2011.

[20] Supra note 3.

the submission of affidavits of the members of the Special Committee, relevant witnesses whom the Special Committee obtained evidence from or those with personal knowledge of the facts, as well as supporting documents as to the acts attributed to Atty. Bantugan, these were not complied with despite receipt of evidence for both parties being delegated to the current President of IBP-Bohol.

Recommendation of the IBP-BOG

On March 1, 2017, the IBP-BOG issued Resolution No. XXII-2017-839,[21] which reversed the recommendation of the Investigating Commissioner, thus:

> RESOLVED to REVERSE the recommendations of the Investigating Commissioner and IMPOSE the penalty of SUSPENSION from the practice of law for two (2) years.
>
> RESOLVED FURTHER, to direct CIBD Assistant Director Juan Orendain P. Buted to prepare an extended resolution explaining the Board's action.

In its Extended Resolution[22] dated July 5, 2018, the IBP-BOG ratiocinated that Atty. Bantugan was administratively liable for violation of Rules 1.01 and 7.03 of the CPR for the following reasons: (a) he acted with dishonesty when he failed to deliver the check for payment to JJ's Seafood Village for food and accommodation expenses and thereafter, attempted to pay the same by the issuance of a personal check which was subsequently dishonored; (b) he failed to contest substantially the allegations of misappropriation of funds pertaining to the PNP combat pay deduction, unliquidated checks, PNP Handbook, trip to Singapore, and his failure to return a laptop to IBP-Bohol; and (c) he failed to uphold the integrity and dignity of the legal profession and discredited the IBP-Bohol when the aforementioned acts were publicized in two local newspapers in Tagbilaran City.

---

[21] *Rollo*, Vol. III, pp. 541-542.

[22] Id. at 509-517. Penned by Atty. Franklin B. Calpito, Deputy Director of the Committee on Integrity and Bar Discipline.

On September 21, 2018, Atty. Bantugan filed a Motion for Reconsideration[23] and a Second Motion for Reconsideration with Leave to Admit Delayed Pleadings[24] dated September 30, 2019, both of which were opposed by complainant.

On December 6, 2018, the IBP-BOG issued a Resolution[25] denying the Motion for Reconsideration for failure to raise new matters which would otherwise convince the IBP-BOG to reverse its earlier ruling.

The Issue

The essential issue in this case is whether Atty. Bantugan should be held administratively liable for violating Rules 1.01 and 7.03 of the CPR.

The Court's Ruling

The Court adopts the findings and recommendation of the Investigating Commissioner to dismiss the complaint against Atty. Bantugan, without prejudice to its re-filing with sufficient evidence.

At the onset, it bears to emphasize that the quantum of proof in administrative cases against members of the legal profession is substantial evidence, and not preponderance of evidence as stated by both the Investigating Commissioner and the IBP-BOG. This matter has been settled in the case of *Reyes v. Atty. Nieva*,[26] thus:

Besides, the evidentiary threshold of substantial evidence – as opposed to preponderance of evidence – is more in keeping with the primordial purpose of and essential considerations attending this type of cases. As case law elucidates, "[d]isciplinary proceedings against lawyers are *sui generis*." Neither purely civil nor purely

---

[23] Id. at 518-521.

[24] Id. at 574-577.

[25] Id. at 539-540.

[26] 794 Phil. 360, 379 (2016).

criminal, they do not involve a trial of an action or a suit, but is rather an investigation by the Court into the conduct of one of its officers. Not being intended to inflict punishment, it is in no sense a criminal prosecution. Accordingly, there is neither a plaintiff nor a prosecutor therein. It may be initiated by the Court *motu proprio*. **Public interest is its primary objective, and the real question for determination is whether or not the attorney is still a fit person to be allowed the privileges as such.** x x x (Emphases supplied)

This was the same conclusion in the recent case of *Spouses Nocuenca v. Atty. Bensi*,[27] further citing *Reyes* and *Dela Fuente Torres v. Dalangin*[28] which stated that substantial evidence, or "that amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion" is the evidentiary threshold in administrative cases.

In this case, Atty. Bantugan was charged with violations of Rules 1.01 and 7.03 of the CPR which stemmed from his alleged misuse of LAELEP funds and property. According to the Special Committee, Atty. Bantugan committed the following acts:[29] (1) received ₱150,000.00 as combat pay fee deductions; (2) paid LAELEP's obligation with JJ's Seafood Village with the issuance of a personal check which was dishonored, but now fully satisfied; (3) failed to liquidate a total amount of ₱197,960.00 consisting of two checks in his name for a trip to Singapore; (4) based on oral information from different personalities, Atty. Bantugan was in prolonged possession of a laptop belonging to IBP-Bohol; and (5) unduly retained possession of the PNP Handbook whose reproduction was forestalled despite full payment. The alleged commission of these acts were primarily established by the complainant through the presentation of the Special Committee's Final Report/Recommendation and Minutes of the Joint Meeting by the IBP Board of Officers and the LAELEP. It bears to note however that the aforementioned

---

[27] A.C. No. 12609, February 10, 2020.

[28] 822 Phil. 80 (2017).

[29] *Rollo*, Vol. I, pp. 10-11 and 14.

acts were not supported by any other evidence, documentary or otherwise.

In administrative proceedings, the burden of proof lies upon the complainant. For the Court to exercise its disciplinary powers, the case against a respondent must be established by convincing and satisfactory proof.[30] As aptly found by the Investigating Commissioner, the evidence presented by complainant does not sufficiently establish the facts from which her Letter-Complaint is based, to wit:

> Scrutiny of the records of this case show that while the minutes of IBP Bohol Chapter meetings and the final report of the Special Committee, which paint an unflattering portrait of Atty. Bantugan and concluded that he is guilty of the fiscal misdeeds attributed to him, were indeed forwarded to the IBP-CBD, there is an unfortunate absence of evidence to support these findings. There is not a single dishonored check, demand letter, or any kind of documentary or other evidence to buttress the finding of the Special Committee that respondent Atty. Bantugan had failed to make a proper accounting or liquidation of funds, refused to return LAELEP equipment, appropriated for his personal use a check intended for payment to a restaurant, etc.[31] (Underscoring supplied)

The Court finds no cogent reason to depart from this finding considering that our own review of the records of the case leads us to the same conclusion. The Special Committee's Final Report/Recommendation[32] and the Minutes of the Joint Meetings of the IBP Board of Officers and the LAELEP Special Committee dated January 15, 2007[33] and January 23, 2007[34] alone cannot substantiate complainant's allegations of misappropriation against Atty. Bantugan. The Special Committee's Final Report/Recommendation does not cite any

---

[30] *Villatuya v. Atty. Tabalingcos*, 690 Phil. 381, 396 (2012).

[31] *Rollo*, Vol. III, pp. 551-552.

[32] Supra note 8.

[33] *Rollo*, Vol. I, pp. 4-6.

[34] Id. at 7-9.

basis for its findings and conclusions, considering the fact that what is involved in this controversy are dishonored checks, demands for payment, liquidation, and accounting. Moreover, in the Court's assessment, a plain reading of the Minutes of the Joint Meetings even weaken the case of complainant. In response to a query as to why the Special Committee's recommendation was to file an administrative, civil and/or criminal action, but qualified it with the statement, "*if evidence so warrants*"; a member of the Special Committee replied that they were not making a conclusion on the investigation, but were leaving it to the Board to decide.[35] Similarly, the Special Committee also refrained from giving a categorical assessment on the sufficiency of the evidence on hand to substantiate Atty. Bantugan's misconduct.[36]

The paucity of the evidence against Atty. Bantugan is further underscored by the fact that IBP-BOG requested the submission of affidavits by the members of the Special Committee and all the other relevant witnesses which the Special Committee may have received evidence from, or who may have personal knowledge of the facts, as well as supporting documents relating to the acts attributed to Atty. Bantugan.[37] Records show that the reception of evidence for this disciplinary case was referred to the President of IBP-Bohol; hence, the convenience in obtaining these documents yet for some reasons, this was not accomplished.[38] Lastly, it bears pointing out that complainant was neither a member of the IBP Board of Officers or LAELEP, nor does she appear to have attended the Joint Meetings to provide insight as to the deliberations of its members and the context of their statements. Otherwise stated, she has no personal knowledge of the facts relating to Atty. Bantugan's alleged

---

[35] *See* letter G, sub-item 1 of the Minutes of the Joint Meeting of the IBP Board of Officers and LAELEP Special Committee dated January 23, 2007, id. at 9.

[36] Id.

[37] *Rollo*, Vol. III, p. 508.

[38] Id. at 508 and 513.

misuse of LAELEP funds and the investigation conducted, save from what she gleaned from the Final Report/Recommendation of the Special Committee and the Minutes of the Joint Meetings between the IBP Board of Officers and the LAELEP.

The burden of proof in disbarment and suspension proceedings always rests on the complainant. While administrative cases call for the lowest standard of proof, it cannot be overemphasized that mere allegation is not evidence, nor is it equivalent to proof.[39] The Court's disquisitions, in the case of *BSA Tower Condominium Corporation v. Atty. Reyes II*[40] is instructive:

> **The Court has consistently held that an attorney enjoys the legal presumption that he is innocent of the charges against him until the contrary is proved,** and that as an officer of the court, he is presumed to have performed his duties in accordance with his oath. Burden of proof, on the other hand, is defined in Section 1 of Rule 131 as the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount evidence required by law.
>
> In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence, which is that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion. Further, **the complainant has the burden of proving by substantial evidence the allegations in his complaint. The basic rule is that mere allegation is not evidence and is not equivalent to proof.** Likewise, charges based on mere suspicion and speculation cannot be given credence. (Emphases supplied)

A member of the Bar may be so removed or suspended from office as an attorney for any deceit, malpractice or misconduct in his office.[41] The word "conduct" used in the rules is not limited to conduct exhibited in connection with the performance of the lawyers' professional duties, but it also

---

[39] *Atty. Dela Fuente Torres v. Atty. Dalangin*, 822 Phil. 80, 101 (2017), citing *Cabas v. Atty. Sususco*, 787 Phil. 167, 174 (2016).

[40] A.C. No. 11944, June 20, 2018, 867 SCRA 12, 18-19.

[41] RULES OF COURT, Rule 138, Sec. 27.

refers to any misconduct, although not connected with his professional duties that would show him to be unfit for the office and unworthy of the privileges from which his license and the law confer upon him.[42] Thus, lawyers must conduct themselves beyond reproach at all times, whether they are dealing with their clients or the public at-large, and a violation of the high moral standards of the legal profession justifies the imposition of the appropriate penalty, including suspension and disbarment.[43] It cannot be gainsaid that the accusations against Atty. Bantugan certainly portray him in a negative light. Neither can his defenses be characterized as sufficient to wholly exculpate him from any liability insofar as he primarily proffered the defenses of denial, ill motive on the part of complainant, mere mismanagement of his affairs insofar as the matter of issuance of a personal check for the balance of JJ's Seafood Village is concerned and finally, as proof of his proper accounting and non-misuse of funds, the continued release by the provincial government of funding for LAELEP's projects. However, under the circumstances of this case, the Court finds that the weakness of Atty. Bantugan to substantially contest the charges against him does not evince his guilt as to warrant the imposition of disciplinary action.

It has been held that charges meriting disciplinary action against a member of the Bar generally involve the motives that induced him to commit the acts or acts charged, and that, to justify disbarment or suspension, the case against him must be clear and free from doubt, not only as to the acts charged, but as to his motive.[44] As punishment by disbarment or suspension will deeply affect a lawyer's professional life, neither should be imposed unless the case against him is free from doubt not only as to the acts charged, but as to his motive.[45] Taking together

---

[42] *Orbe v. Atty. Adaza*, 472 Phil. 629, 633 (2004).

[43] *Velasco v. Atty. Doroin*, 582 Phil. 1, 8-9 (2008).

[44] *Osop v. Atty. Fontanilla*, 417 Phil. 724, 730 (2001).

[45] Id.

the plausibility of the defenses put forth by Atty. Bantugan coupled with the absence of any substantial evidence as to characterize his acts as willful and committed with wrongful intent, the Court cannot discount the possibility that these stem from a mere error of judgment. Indeed, while the Court will not hesitate to mete out the proper disciplinary punishment upon lawyers who have failed to live up to their sworn duties, neither will it hesitate to extend its protective arm to them when the accusation against them is not indubitably proven.[46]

Except for complainant's allegations, she failed to present sufficient evidence to substantiate the allegations in her Letter-Complaint. The standard of substantial evidence is satisfied when there is reasonable ground to believe, based on the evidence submitted, that Atty. Bantugan is responsible for the misconduct complained of. It need not be overwhelming or preponderant, as is required in an ordinary civil case or evidence beyond reasonable doubt as is required in criminal cases, but the evidence must be enough for a reasonable mind to support a conclusion. Here, the Court is not satisfied that the evidence presented by complainant has met this threshold as to hold Atty. Bantugan administratively liable and for this reason, dismisses the complaint against him. The Court, however, must clarify that its ruling is limited to the sufficiency of the evidence presented against Atty. Bantugan and is not a final pronouncement as to his innocence of the charges imputed against him.

WHEREFORE, premises considered, the Court **DISMISSES** the Letter-Complaint against respondent Atty. Danilo A. Bantugan for lack of sufficient evidence.

SO ORDERED.

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

Baltazar-Padilla, J., on leave.

---

[46] *Atty. Guanzon v. Atty. Dojillo,* A.C. No. 9850, August 6, 2018, 876 SCRA 245, 253.

SECOND DIVISION

[A.C. No. 9268. September 30, 2020]

DELTAVENTURE RESOURCES, INC., *Complainant, v.* **ATTY. CAGLIOSTRO MIGUEL MARTINEZ,** *Respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; DISBARMENT OR DISCIPLINARY ACTIONS AGAINST LAWYERS; THE COMPLAINANT BEARS THE BURDEN OF PROOF TO SATISFACTORILY PROVE THE ALLEGATIONS IN THE COMPLAINT THROUGH SUBSTANTIAL EVIDENCE. — In administrative cases for disbarment or suspension against a member of the Bar, the complainant bears the burden of proof to satisfactorily prove the allegations in his complaint through substantial evidence. Failure to discharge this burden by the complainant, the presumption of innocence stands in favor of the respondent lawyer.

2. ID.; ID.; ID.; IF THE COMPLAINT FOR DISBARMENT OR OTHER DISCIPLINARY ACTION IS PREDICATED ON FRIVOLOUS MATTERS, WHERE ITS PLAIN OBJECTIVE IS CLEARLY TO HARASS OR GET EVEN WITH THE RESPONDENT LAWYER, THE SAME SHOULD BE DISMISSED. — This Court shares the same observation with the IBP Board doubting the real intention of Deltaventure in filing the subject disbarment complaint against Atty. Martinez. The Court consistently reminds that administrative proceedings brought against lawyers for acts in the exercise of their profession are not alternatives to reliefs that may be sought and obtained from the proper offices. The Court's exercise of its disciplinary power over members of the Bar is not only aimed at preserving the integrity and reputation of the Law Profession, but also at shielding lawyers, in general, they being officers themselves of the Court. Any complaint for disbarment or other disciplinary sanction predicated on frivolous matters, as here, should be dismissed, more so, where its plain objective is clearly to harass or get even with respondent lawyer.

APPEARANCES OF COUNSEL

Ponferrada Orbe & Altubar for complainant.
Custodio Acorda Sicam De Castro & Panganiban Law Offices for respondent.

D E C I S I O N

DELOS SANTOS, *J.*:

This administrative case pertains to a disbarment complaint filed by Deltaventure Resources, Inc. (Deltaventure) against Atty. Cagliostro Miguel Martinez (Atty. Martinez) for allegedly issuing an untruthful secretary's certificate, thereby violating the Code of Professional Responsibility (CPR), Canons of Professional Ethics, and the Lawyer's Oath.

The Facts

On August 5, 2011, the Development Bank of the Philippines (DBP) filed with the Office of the Ombudsman (OMB) a Complaint[1] against its former directors and officers, as well as the officers of Deltaventure, namely Josephine A. Manalo, Ma. Lourdes A. Torres, and Roberto V. Ongpin (Mr. Ongpin) for violation of Section 3(e), (g), and (j) of Republic Act No. (RA) 3019[2] in relation to RA 8791,[3] Bangko Sentral ng Pilipinas (BSP) Rules and Regulations, and DBP Rules and Regulations. The case was docketed as OMB Case No. CC11-492, entitled *"Development Bank of the Philippines, et al. v. Reynaldo G. David, et al."*

On August 10, 2011, Atty. Zenaida Ongkiko-Acorda (Atty. Ongkiko-Acorda) held a press conference relative to OMB Case No. CC11-492, wherein she represented herself as the

---

[1] *Rollo*, pp. 28-121.

[2] Anti-Graft and Corrupt Practices Act.

[3] The General Banking Law of 2000.

spokesperson of DBP. She declared that an investigation was conducted by the DBP Board of Directors (DBP Board) on the alleged anomalous transactions (hereinafter, Deltaventure transactions) between certain officers of DBP and Deltaventure. The transactions pertain to the loans extended by DBP to Mr. Ongpin's company, Deltaventure, and the sale of DBP's Philex Mining Corporation (Philex) shares to Deltaventure and Two Rivers Pacific Holding Corporation.[4]

On August 11, 2011, Mr. Ongpin, claiming to be the beneficial owner of Deltaventure, caused a publication of an article refuting Atty. Ongkiko-Acorda's public statement. Therein, he also questioned her authority or legal personality to act as the spokesperson or counsel for DBP, *i.e.*, that Atty. Ongkiko-Acorda was neither an officer nor employee of DBP. He averred that DBP violated its Charter when it allegedly failed to obtain the consent of its Chief Legal Counsel, as well as that of the Office of the Government Corporate Counsel (OGCC) and the Commission on Audit (COA), in engaging the services of Atty. Ongkiko-Acorda.[5]

On August 18, 2011, some senior DBP officers, namely Edgardo F. Garcia, Benedicto Ernesto R. Bitonio, Jesus S. Guevara II, and Benilda A. Tejada (Garcia, *et al.*), caused a publication of a Notice to the Public[6] disavowing Atty. Ongkiko-Acorda's claim that she was DBP's spokesperson or counsel. Garcia, *et al.* were among those sought by the DBP Board to be held administratively/criminally liable in relation to the Deltaventure transactions.[7] They declared that Atty. Ongkiko-Acorda was not in DBP's plantilla as a bank lawyer, spokesperson or consultant.

---

[4] *Rollo,* pp. 124-128.

[5] Id. at 129.

[6] Id. at 135-136.

[7] Id. at 122.

On August 23, 2011, Atty. Ongkiko-Acorda held another press conference maintaining that the DBP Board authorized her to act as the bank's spokesperson.[8]

On September 24, 2011, DBP caused a publication of a Secretary's Certificate[9] dated 22 September 2011 in the Philippine Daily Inquirer and Philippine Star. The said certificate was signed by the then Officer-In-Charge (OIC) of the Office of the Corporate Secretary of DBP, herein respondent Atty. Martinez, who certified that the DBP Board, in its regular meeting held on August 3, 2011, adopted Board Resolution No. 0230 (BR 0230) designating Atty. Ongkiko-Acorda as DBP's official spokesperson on the case pertaining to Deltaventure transactions. The pertinent portions of the certificate read:

> I, CAGLIOSTRO MIGUEL MARTINEZ, Officer-in-Charge, Office of the Corporate Secretary of the Development Bank of the Philippines (DBP) x x x do hereby certify that the Board of Directors of the Development Bank of the Philippines in its regular meeting held on August 3, 2011, adopted Resolution No. 0230, the dispositive portion of which reads as follows:
>
> RESOLUTION NO. 0230. Deltaventure Resources, Inc. and Philex Mining Corporation.
>
> x x x x
>
> Thus, the Board, upon motion made and duly seconded, ***APPROVED AND CONFIRMED*** the following:
>
> x x x x
>
> c. Designation of Atty. Zenaida Ongkiko-Acorda as the official spokesperson of DBP on the case involving the accounts of [Deltaventure] and Philex Mining.[10] (Underscoring supplied)

Doubting the veracity of the foregoing Secretary's Certificate, Deltaventure referred to a copy of DBP Board Resolution No.

---

[8] Id. at 137.

[9] Id. at 140-141.

[10] Id. at 140.

0229 (BR 0229),[11] likewise dated August 3, 2011, attached to DBP's complaint-affidavit in OMB Case No. CC11-492. Deltaventure pointed out that BR 0229, which was signed by Atty. Martinez, mentioned nothing about the designation of Atty. Ongkiko-Acorda as DBP's spokesperson, *viz.*:

BR 0229 – DELTAVENTURE RESOURCES, INC. AND PHILEX MINING CORPORATION

APPROVED AND CONFIRMED the following:

***a. Filing of administrative and/or criminal complaints/ charges x x x against the following respondents in connection with the four (4) transactions involving Deltaventure Resources, Inc. (DVRI) and Philex Mining Corporation (Philex Mining)* x x x:**

(1) Mr. Reynaldo G. David

(2) Mr. Roberto V. Ongpin

x x x x

b. Authority for Chairman Jose A. Nuñez, Jr. and Pres./CEO Francisco F. Del Rosario, Jr. to sign the administrative, criminal and such other complaints/charges before the Office of the Ombudsman, Securities and Exchange Commission and other government agencies, where necessary.[12] (Emphasis in the original)

Underscoring that the questioned Secretary's Certificate certified the issuance of BR 0230 on August 3, 2011, or the same day as that of BR 0229, Deltaventure theorized that it was illogical, far-fetched, and impractical for the IBP Board to have separately convened twice on August 3, 2011 with regard to the filing of administrative and/or criminal charges pertaining to the Deltaventure transactions and the authority of Atty. Ongkiko-Acorda to act as DBP's spokesperson in relation thereto, under BR 0229 and BR 0230, respectively.[13]

---

[11] Id. at 122-123.

[12] Id.

[13] Id. at 5-8.

Further, Deltaventure suspected the belated publication of the questioned Secretary's Certificate on September 24, 2011, or more than a month after August 10, 2011 when Atty. Ongkiko-Acorda publicly represented herself as DBP's spokesperson pertaining to OMB Case No. CC11-492. To Deltaventure, if Atty. Ongkiko-Acorda was indeed designated as DBP's spokesperson, she could have easily dispelled doubts on her representation during her second press conference on August 23, 2011 by simply producing a copy of BR 0230 dated August 3, 2011 adverted to in the Secretary's Certificate.[14] Deltaventure, thus, claimed that the Secretary's Certificate dated 22 September 2011 was a contrived afterthought, or one manufactured and executed *post facto* by Atty. Martinez, deliberately asserting falsehood under oath in order to make it appear that Atty. Ongkiko-Acorda had the authority to act as DBP's spokesperson as early as August 3, 2011.[15]

In the subject disbarment complaint,[16] Deltaventure charged Atty. Martinez with violation of the CPR and betrayal of his avowed Lawyer's Oath to "*do no falsehood, nor consent to the doing of any in court*," in relation to the assailed Secretary's Certificate.

In his Comment,[17] Atty. Martinez denied having falsified the subject Secretary's Certificate. He invoked the "final and approved" BR 0230 designating Atty. Ongkiko-Acorda as the official spokesperson of DBP on the case involving the accounts of Deltaventure and Philex, as indicated in Board Minutes No. 17[18] dated August 3, 2011, which pertinently reads:

---

[14] Id. at 6-7.

[15] Id. at 6-8.

[16] Id. at 1-15.

[17] Id. at 156-174.

[18] Id. at 182.

RESOLUTION NO. 0230. Deltaventure Resources, Inc. and Philex Mining Corporation.

x x x x

Thus, the Board, upon motion made and duly seconded, APPROVED AND CONFIRMED the following:

a. Filing of administrative and/or criminal complaints/ charges as soon as possible against the following respondents in connection with the four (4) transactions involving Deltaventure Resources, Inc. (DVRI) and Philex Mining Corporation (Philex Mining), namely: ₱150.0 Million loan to DVRI, ₱510.00 Million loan to DVRI, sale of the 50,000,000 Philex Mining shares to DVRI and sale of the 59,399,000 Philex Mining shares to Two Rivers Pacific Holding Corporation:

(1) Mr. Reynaldo G. David
(2) Mr. Roberto V. Ongpin

x x x x

(13) Mr. Edgardo F. Garcia

x x x x

(16) Mr. Benedicto Ernesto R. Bitonio, Jr.
(17) Mr. Jesus S. Guevara II
(18) Atty. Benilda A. Tejada

x x x x

c. ***Designation of Atty. Zenaida Ongkiko-Acorda as the official spokesperson of DBP on the case involving the accounts of DVRI and Philex Mining***.[19] (Emphasis in the original, underscoring supplied)

Atty. Martinez clarified that both the filing of OMB Case No. CC11-492 and the related designation of Atty. Ongkiko-

[19] Id.

Acorda were included in the agenda of the August 3, 2011 board meeting.[20] Owing to the urgent nature of the matter pertaining to the Deltaventure transactions, the Office of the Corporate Secretary directed the immediate preparation of the resolution necessary for the filing of the administrative/criminal cases after the board meeting. In the preparation of the resolution, however, only the draft bullet summary of the discussion pertaining to the filing of the complaint was reflected in the resolution erroneously numbered as "0229," which Atty. Martinez initialed and dated.[21]

Atty. Martinez explained that the BR 0229 attached in the complaint in OMB Case No. CC11-492 complaint and the BR 0230 mentioned in the Secretary's Certificate were both part of one resolution officially numbered as BR 0230, as approved by the DBP Board during the August 24, 2011 board meeting.[22] He claimed that the adjustment was done in accordance with the rules and procedure followed by the Office of the Corporate Secretary.[23] To Atty. Martinez, the failure of BR 0229 to mention the authority of Atty. Ongkiko-Acorda to act as DBP's spokesperson was understandable, as the same was not relevant to the filing of the case with the OMB. He claimed that the "final and approved" BR 0230 was the basis of the Secretary's Certificate he issued.[24]

Report and Recommendation, IBP Commission on Bar Discipline

Submitted for resolution before the Integrated Bar of the Philippines – ommission on Bar Discipline (IBP Commission) was the core issue: whether Atty. Martinez violated the provisions of the CPR and the Lawyer's Oath.[25]

---

[20] Id. at 161.

[21] Id. at 159.

[22] Id. at 161.

[23] Id. at 160-165.

[24] Id. at 165.

[25] Id. at 413.

In a Report and Recommendation[26] dated March 30, 2016, Investigating Commissioner Roland B. Beltran (Commissioner Beltran) resolved the issue in the affirmative and reprimanded Atty. Martinez, *viz.*:

> WHEREFORE, it is hereby recommended that Atty. Cagliostro Miguel Martinez be meted the penalty of reprimand for violating the procedure of his office in releasing a draft resolution BR 0229, for violation of the Code of Professional Responsibility and the Lawyer's oath, with stern warning that a repetition of the same shall be dealt with more seriously.
>
> RESPECTFULLY SUBMITTED.[27] (Underscoring supplied)

Commissioner Beltran refrained from passing upon the veracity or genuineness of the subject Secretary's Certificate owing to the pendency of a related criminal case for perjury against Atty. Martinez before the Metropolitan Trial Court of Makati.[28] Nevertheless, Commissioner Beltran held that Atty. Martinez violated DBP's internal procedure in the preparation of board minutes and resolutions, finding that he signed and released BR 0229 on August 4, 2011, or a day after the 03 August 2011 meeting, sans the pre-requisite review by the DBP Board. Under the said internal procedure, the draft resolution had to be reviewed or corrected by the members of the IBP Board prior to its release. Commissioner Beltran doubted and questioned Atty. Martinez's intentions, when he affixed his signature on a mere draft, BR 0229. Commissioner Beltran concluded that Atty. Martinez made BR 0229 appear as the complete and official document of authority for the filing of OMB Case No. CC11-492.[29]

Commissioner Beltran characterized Atty. Martinez's supposed deviation from DBP's internal procedure as one traversing his

---

[26] Id. at 408-419.

[27] Id. at 419.

[28] Id. at 417-418.

[29] Id. at 414-415.

sworn obligation "*[not to] engage in conduct that adversely reflects on his fitness to practice law*" under Section 7.03, Canon 7 of the CPR.[30] Further, underscoring Atty. Martinez's oath as a lawyer "*to do no falsehood,*" Commissioner Beltran opined:

> The action taken by Atty. Martinez in releasing a draft resolution and affixing his signature thereon, in violation of his office's internal procedure, manifested serious concerns about his fitness as an attorney who has sworn to uphold the law under his lawyer's oath.
>
> x x x x
>
> The office of an attorney is so impressed with public interest, and respondent Atty. Martinez failed to uphold his lawyer's oath when he allowed himself to be a tool so the cases against Mr. Roberto D. Ongpin, et al., could be filed with haste x x x. Respondent Atty. Martinez should have stood his ground or at the very least uphold the dignity of his office by following the procedure in the preparation of the minutes and resolutions passed by the members of the Board of DBP.[31] (Underscoring supplied)

Taking into consideration that Atty. Martinez had never been previously charged with any disciplinary measure, Commissioner Beltran recommended reprimand as penalty.[32]

Recommendation, IBP Board of Governors

In an Extended Resolution[33] dated June 29, 2018, the IBP Board of Governors (IBP Board) reversed the findings and recommendation of the IBP Commission, and dismissed the complaint against Atty. Martinez, *viz.*:

> **To conclude**, the Board is not convinced that the actions of Respondent constituted a violation of the Code of Professional Responsibility and the Lawyer's Oath.

---

[30] Id. at 416.

[31] Id. at 416-417.

[32] Id. at 418.

[33] Id. at 420-430.

The Recommendation of the Board of Governors to the Honorable Supreme Court

WHEREFORE, premises considered, the Board resolved to **REVERSE** the recommendations of the Investigating Commissioner and to **DISMISS** the complaint.[34] (Emphases in the original)

The IBP Board found convincing Atty. Martinez's explanation as regards the errors which he claimed to have occurred in the drafting, as well as the numbering of the minutes of the meeting, BR 0229, and BR 0230.

The IBP Board held that the designation of Atty. Ongkiko-Acorda as spokesperson for DBP pertaining to OMB Case No. CC11-492 does not constitute an exercise of DBP's corporate power or function, as would require a board resolution or a secretary's certificate.[35] It ruled that whatever irregularities that may have attended to such representation had been ratified by DBP's inaction after her press conference, and the subsequent publication of the subject Secretary's Certificate dated 22 September 2011.[36] To the IBP Board, the belated or the non-filing of the Secretary's Certificate pertaining to Atty. Ongkiko-Acorda's representation as spokesperson for DBP was not critical as it did not have the effect of prejudicing or causing damage to the public or to Deltaventure.[37]

The issue for the Court's resolution is whether or not Atty. Martinez should be held administratively liable for violation of the CPR and the Lawyer's Oath.

The Court's Ruling

After a thorough review of this case, the Court resolves to adopt the findings of facts and recommendation of the IBP Board.

---

[34] Id. at 430.

[35] Id. at 427.

[36] Id. at 424-425.

[37] Id. at 428.

The disbarment complaint must be dismissed for utter lack of merit.

In administrative cases for disbarment or suspension against a member of the Bar, the complainant bears the burden of proof to satisfactorily prove the allegations in his complaint through substantial evidence.[38] Failure to discharge this burden by the complainant, the presumption of innocence stands in favor of the respondent lawyer.[39]

In the instant case, the Court agrees with the IBP Board that Deltaventure failed to discharge the burden of proving the administrative violations of Atty. Martinez in relation to the execution of the questioned Secretary's Certificate.

In accusing Atty. Martinez of falsely certifying the existence of BR 0230 in the subject Secretary's Certificate, all Deltaventure could offer was its personal opinion that it was "illogical, far-fetched, and impractical" for the DBP Board to have convened twice in one day to come up with BR 0229 (*i.e., for the filing of administrative and/or criminal charges against Deltaventure*) and BR 0230 (*i.e., for the designation Atty. Ongkiko-Acorda to act as DBP's spokesperson*). Clearly, this charge is nothing but a mere suspicion and speculation undeserving of credence.[40] Other than this bare allegation, no serious proof was presented by Deltaventure to show that the Secretary's Certificate and BR 0230, as well as the minutes thereof, were fabricated. Faced, thus, with the documents extant in the records (*i.e.*, Board Minutes No. 17 dated August 3, 2011, BR 0230, and Secretary's Certificate dated 22 September 2011), Atty. Martinez's explanation as regards the erroneous numbering of the draft resolutions, and most importantly, the subsequent publication by DBP of the assailed Secretary's

---

[38] See *Reyes v. Nieva*, 794 Phil. 360, 377-380 (2016).

[39] Id.

[40] See *Torres v. Dalangin*, A.C. No. 10758, December 5, 2017, 847 SCRA 472, 497, citing *Cabas v. Atty. Sususco*, 787 Phil. 167 (2016).

Certificate confirming Atty. Ongkiko-Acorda's representation as DBP's spokesperson, Atty. Martinez could not be held liable for deliberately asserting falsehood in executing the said Certificate. Deltaventure's disbarment complaint against Atty. Martinez is simply baseless.

Equally lacking in basis is the opinion of Commissioner Beltran that Atty. Martinez allowed himself to be used by DBP as a tool for the alleged "hasty filing" of the administrative/criminal case against Mr. Ongpin, *i.e.*, that Atty. Martinez deviated from DBP's internal procedure pertaining to the preparation of the board minutes and drafting of resolutions.

It must be underscored that DBP was a complainant against Mr. Ongpin and other Deltaventure officers in OMB Case No. CC11-492 pertaining to the alleged anomalous Deltaventure transactions. As borne by the records, the DBP Board discussed the filing of the said case in its regular meeting on August 3, 2011, from which BR 0229 was drafted and subsequently attached in the complaint. Following the absence of evidence that DBP maliciously filed the case or that Atty. Martinez personally took it upon himself to file the same, the supposed deviation from DBP's internal procedure in the preparation of the minutes and drafting of BR 0229 was not critical, as would support Commissioner Beltran's conclusion that Atty. Martinez consented to a wrongdoing by DBP in relation to the filing of the case.

This Court shares the same observation with the IBP Board doubting the real intention of Deltaventure in filing the subject disbarment complaint against Atty. Martinez. The Court consistently reminds that administrative proceedings brought against lawyers for acts in the exercise of their profession are not alternatives to reliefs that may be sought and obtained from the proper offices.[41] The Court's exercise of its disciplinary power over members of the Bar is not only aimed at preserving the integrity and reputation of the Law Profession, but also at

---

[41] *Domingo v. Rubio*, 797 Phil. 581, 590 (2016).

shielding lawyers, in general, they being officers themselves of the Court.[42] Any complaint for disbarment or other disciplinary sanction predicated on frivolous matters, as here, should be dismissed, more so, where its plain objective is clearly to harass or get even with respondent lawyer.[43]

WHEREFORE, the Court **DISMISSES** the complaint against Atty. Cagliostro Miguel Martinez for utter lack of merit and substance.

SO ORDERED.

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

Baltazar-Padilla, J., on leave.

---

[42] Id.

[43] Id.

THIRD DIVISION

[G.R. No. 207324. September 30, 2020]

MARY ELIZABETH MERCADO, *Petitioner*, *v.* **RENE V. ONGPIN,** *Respondent*.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; QUESTIONS OF FACT; ISSUES OF BAD FAITH AND ENTITLEMENT TO DAMAGE ARE QUESTIONS OF FACT THAT MAY BE RESOLVED BY THE COURT IN VIEW OF THE CONFLICTING FINDINGS THEREON BY THE COURTS BELOW. —** Generally, this Court does not review questions of fact in a petition for review under Rule 45 of the Rules of Court. Whether or not a party acted in bad faith is a question of fact. Entitlement to damages likewise requires examination of the factual circumstances of a case. However, when the factual findings of the Regional Trial Court and Court of Appeals are conflicting, then this Court may resolve these issues.

2. **CIVIL LAW; DAMAGES; MORAL DAMAGES, WHEN AWARDED. —** Moral damages are a form of compensation for the "physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury" unjustly sustained by a person. They are awarded when: (1) there is a physical, mental or psychological injury clearly sustained by the claimant; (2) a wrongful act or omission is factually established; (3) the act or omission is the proximate cause of the injury; and (4) the award of damages is based on any of the cases stated in Article 2219 of the Civil Code.

3. **ID.; ID.; ID.; STANDARDS FOR THE EXERCISE OF ONE'S RIGHT AND PERFORMANCE OF DUTIES; LEGAL REMEDY FOR VIOLATION THEREOF. —** Article 19 of the Civil Code sets the standards for the exercise of one's rights and performance of duties:

> ARTICLE 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

This provision recognizes that even the exercise of a right may be the source of some illegal act, when done in a manner contrary to the standards it sets, and results in damage to another.

Articles 20 and 21 provide for the legal remedy for a violation of Article 19:

> ARTICLE 20. Every person who, contrary to law, wilfully or negligently causes damage to another, shall indemnify the latter for the same.
>
> ARTICLE 21. Any person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

4. ID.; ID.; ID.; ABUSE OF RIGHTS, ELEMENTS. — For there to be a finding of an abuse of rights under Article 19, the following elements must concur: (1) there is a legal right or duty; (2) the right is exercised or the duty is performed in bad faith; and (3) the sole intent of the exercise or performance is to prejudice or injure another.

5. ID.; ID.; ID.; ID.; MALICE OR BAD FAITH; IT MUST BE SHOWN THAT THE EXERCISE OF THE RIGHT OR PERFORMANCE OF THE DUTY WAS DONE WITH BAD FAITH. — It must be shown that the exercise of the right or performance of the duty was done with bad faith. In *Dart Philippines, Inc. v. Spouses Calogcog*:

> Malice or bad faith is at the core of Article 19 of the Civil Code. Good faith refers to the state of mind which is manifested by the acts of the individual concerned. It consists of the intention to abstain from taking an unconscionable and unscrupulous advantage of another. It is presumed. Thus, he who alleges bad faith has the duty to prove the same. Bad faith does not simply connote bad judgment or simple negligence; it involves a dishonest purpose or some moral obloquy and conscious doing of a wrong, a breach of known duty due to some motives or interest or ill will that partakes of the nature of fraud. Malice connotes ill will or spite and speaks not in response to duty. It implies an intention to do ulterior and unjustifiable harm. Malice is bad faith or bad motive.

6. ID.; ID.; ID.; ID.; ID.; AWARD OF DAMAGES IN CASES OF BIGAMY; THE MERE CONTRACTING OF A BIGAMOUS MARRIAGE DOES NOT WARRANT AN AWARD OF DAMAGES ABSENT EVIDENCE OF BAD FAITH. — This Court has sanctioned the award of moral damages in cases of bigamy based on Articles 19, 20 and 21 of the Civil Code.

. . .

In *Manuel v. People*, this Court awarded moral damages to the innocent spouse upon a finding that the bigamous spouse acted deceitfully and fraudulently when he contracted his second marriage: . . .

. . .

Thus, the Regional Trial Court was in error when it held that the mere contracting of a second marriage despite the existence of a first marriage is, by itself, a ground for damages under Article 19 in relation to Article 20 or Article 21. As correctly stressed by the Court of Appeals, the bad faith, or deliberate intent to do a wrongful act, of the bigamous spouse must be established. . . .

Petitioner has not been able to prove that, at the time she and respondent married, respondent knew that his divorce from his first spouse was invalid. There is no proof that, upon the first spouse's confirmation of her Philippine citizenship at the time she obtained the divorce decree, respondent concealed this knowledge from petitioner or allowed her to continue believing that their marriage was valid. The malice or bad faith necessary to sustain an action based on Article 19 of the Civil Code has not been shown in this case.

7. ID.; ID.; EXEMPLARY DAMAGES; ATTORNEY'S FEES; NON-ENTITLEMENT TO MORAL DAMAGES NEGATES AWARDS FOR EXEMPLARY DAMAGES AND ATTORNEY'S FEES. — There being no entitlement to moral damages, no exemplary damages can likewise be awarded to petitioner.

As regards attorney's fees, the Court of Appeals correctly held that none may be awarded to petitioner:

> Consequently, the award of attorney's fees must also be deleted.... Appellee's emotional suffering and anxiety are only such as are usually caused to a party hauled into [court] as a party in litigation, but is insufficient justification for the award of moral or exemplary damages.

8. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; WITHDRAWAL OF APPEAL; THE GRANT OR DENIAL THEREOF IS ADDRESSED TO THE SOUND DISCRETION OF THE COURT. — [T]his Court notes that, on December 19, 2019, petitioner filed a motion to dismiss, praying that this Court consider her appeal withdrawn, the Court of Appeals' ruling binding against her, and directing an entry of judgment be issued in this case: . . . .

Once a case has been submitted for a court's decision, the petitioning party cannot, at their election, withdraw their appeal. The grant or denial of the withdrawal is addressed to the sound discretion of the court.

APPEARANCES OF COUNSEL

Terencio Angel De Dios Martija and Chipeco Law Offices for petitioner.

Fortun & Santos Law Offices for respondent.

D E C I S I O N

LEONEN, *J.*:

Malice or bad faith must be proved to sustain an action for damages based on Article 19 of the Civil Code.

This is a Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court, assailing the Decision[2] and Resolution[3] of the Court of Appeals in CA-G.R. CV No. 98320. The Court

---

[1] *Rollo*, pp. 6-24.

[2] Id. at 25-35. The Decision dated February 21, 2013 docketed as CA-G.R. CV No. 98320 was penned by Associate Justice Amy C. Lazaro-Javier (now a member of this Court), and concurred in by Associate Justices Mariflor P. Punzalan Castillo and (now a member of this Court) Rodil V. Zalameda.

[3] Id. at 36. The Resolution dated May 22, 2013 docketed CA-G.R. CV No. 98320 was penned by Associate Justice Amy C. Lazaro-Javier (now a member of this Court), and concurred in by Associate Justices Mariflor P. Punzalan Castillo and (now a member of this Court) Rodil V. Zalameda.

of Appeals deleted the Regional Trial Court's award of moral and exemplary damages and attorney's fees to Mary Elizabeth Mercado (Mercado) in a case for the declaration of nullity of her marriage to Rene V. Ongpin (Ongpin).

On February 5, 1972, Ongpin married Alma D. Mantaring (Mantaring) in Quezon City. Later, Mantaring obtained a divorce decree from the District Court of Clark County, Nevada, United States of America.[4] Believing he was divorced from Mantaring, Ongpin married Mercado in Princeton, New Jersey, United States of America on April 21, 1989. However, the two separated on March 16, 2000.[5] Ongpin subsequently obtained a judicial declaration of the nullity of his marriage to Mantaring on November 25, 2003.[6]

On January 8, 2006, Ongpin filed a petition for declaration of nullity of his marriage to Mercado before the Bacoor, Cavite Regional Trial Court.[7] The petition was based on Article 35(4) of the Family Code, which states:

Art. 35. The following marriages shall be void from the beginning:

. . . .

(4) Those bigamous or polygamous marriages not falling under Article 41;

Ongpin claimed that, after he married Mercado, he found that Mantaring was still a Filipino citizen when she obtained the divorce decree, and as such, his marriage to her was still valid and subsisting at the time of his second marriage.[8]

On the other hand, Mercado argued that their marriage was valid under Article 26 of the Family Code and not prohibited

---

[4] Id. at 79.

[5] Id. at 80.

[6] Id. at 26.

[7] Id. at 25.

[8] Id. at 26.

by Article 35(4), because she was a United States citizen at the time.[9] Further, she claimed that the petition was Ongpin's scheme to evade liability in a separate civil case for separation of property she filed in 2002 over the properties acquired during their marriage that Ongpin was allegedly concealing or disposing with intent to deprive her of her share. She also claimed moral and exemplary damages, and costs of suit.[10]

On November 12, 2009, the Regional Trial Court issued a Decision[11] declaring Ongpin and Mercado's marriage void. The dispositive portion of the Decision stated:

> ACCORDINGLY, judgment is rendered declaring the marriage entered into between Ongpin V. Ongpin and respondent Mercado Mercado-Ongpin as null and void.
>
> The petitioner is ordered to pay respondent ₱250,000.00 as moral damages, ₱100,000.00 as exemplary damages, and ₱150,000.00 as and for attorney's fees.
>
> Let copies of this Decision be furnished [to] the parties and their respective counsel, the Office of the Solicitor General, the Office of the Provincial Prosecutor of Cavite, the National Statistics Office and the Offices of the Local Civil Registrar of the City of Manila, San Pedro, Laguna and Bacoor, Cavite.
>
> Considering that the determination of the property regime of petitioner and respondent is pending before Branch 19 of this Court, let the corresponding Decree of Declaration of Absolute Nullity of Marriage be issued after such determination and compliance with section 22 of A.M. No. 02-11-10 dated 04 March 2003 of the Supreme Court.
>
> SO ORDERED.[12]

---

[9] Id.

[10] Id. at 27.

[11] Id. at 79-91. The Decision dated November 12, 2009 docketed as Civil Case No. BCV-2006-68 was penned by Executive Judge Eduardo Israel Tanguanco of Branch 89, Regional Trial Court, Bacoor, Cavite.

[12] Id. at 91.

The Regional Trial Court found that Ongpin was incapacitated to marry at the time he married Mercado, rendering their marriage null and void pursuant to Article 35(4) of the Family Code.[13]

Further, the Regional Trial Court found that Ongpin was liable for moral damages pursuant to Article 2219[14] in relation to Articles 19,[15] 20,[16] and 21[17] of

---

[13] Id. at 87-88.

[14] CIVIL CODE, art. 2219 states:

ARTICLE 2219. Moral damages may be recovered in the following and analogous cases:

(1) A criminal offense resulting in physical injuries;
(2) Quasi-delicts causing physical injuries;
(3) Seduction, abduction, rape, or other lascivious acts;
(4) Adultery or concubinage;
(5) Illegal or arbitrary detention or arrest;
(6) Illegal search;
(7) Libel, slander or any other form of defamation;
(8) Malicious prosecution;
(9) Acts mentioned in article 309;
(10) Acts and actions referred to in articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

The parents of the female seduced, abducted, raped, or abused, referred to in No. 3 of this article, may also recover moral damages.

The spouse, descendants, ascendants, and brothers and sisters may bring the action mentioned in No. 9 of this article, in the order named.

[15] CIVIL CODE, art. 19 states:

ARTICLE 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

[16] CIVIL CODE, art. 20 states:

ARTICLE 20. Every person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same.

[17] CIVIL CODE, art. 21 states:

ARTICLE 21. Any person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

the Civil Code.[18] The trial court held that Ongpin's act of contracting a second marriage despite his first marriage not yet being annulled, undermined the family as a social institution, and went against good morals, and the interest and general welfare of society.[19] Ongpin was also held liable for exemplary damages because his actions were tainted with bad faith. Finally, he was ordered to pay for attorney's fees as Mercado had been constrained to incur legal expenses to protect her interest.[20]

Ongpin filed a partial appeal of the November 12, 2009 Decision, assailing the award of moral and exemplary damages, and attorney's fees.[21] On February 21, 2013, the Court of Appeals issued a Decision[22] granting his appeal. The dispositive portion reads:

> ACCORDINGLY, the Decision dated November 12, 2009 is MODIFIED, DELETING the award of moral and exemplary damages and attorney's fees.
>
> SO ORDERED.[23]

According to the Court of Appeals, Ongpin did not deliberately contract a second marriage despite knowing that his first marriage subsisted. It found that Ongpin believed in good faith that the divorce decree secured by Mantaring was valid and binding, as he thought she was already a United States citizen. It was only after his marriage to Mercado that Ongpin consulted a lawyer and learned that the divorce was ineffectual. The Court of Appeals pointed out that Ongpin would not have married Mercado under pain of indictment for bigamy.[24]

---

[18] *Rollo*, pp. 88-90.

[19] Id. at 90.

[20] Id.

[21] Id. at 118-134.

[22] Id. at 25-35.

[23] Id. at 34.

[24] Id. at 32.

As such, the Court of Appeals held that Ongpin could not be liable for moral damages, which required a showing of bad faith, or a conscious and intentional design to do a wrongful act. It found that Mercado failed to prove Ongpin's bad faith by clear and convincing evidence.[25]

Further, the Court of Appeals found that Ongpin did not file the petition to evade liability in the separation of property case, since the case was still pending and there was no liability to evade. It pointed out that the declaration of nullity of marriage would include a ruling on Ongpin and Mercado's property relations, notwithstanding the other case, preventing Ongpin from evading a settlement of his property relations with Mercado.[26]

In deleting the award of exemplary damages, the Court of Appeals held that Ongpin did not act in a wanton, fraudulent, reckless, oppressive, or malevolent manner, in merely seeking a judicial declaration of nullity of his marriage to Mercado. Similarly, it held that the award of attorney's fees should be deleted, as both parties had incurred costs to protect their interests.[27]

The Court of Appeals denied Mercado's motion for reconsideration in its May 22, 2013 Resolution.[28]

On June 17, 2013, Mercado filed with this Court a Motion to Admit,[29] and with it, her Petition for Review on Certiorari[30] under Rule 45 of the Rules of Court, assailing the Decision and Resolution of the Court of Appeals.

---

[25] Id.

[26] Id. at 33.

[27] Id. at 33-34.

[28] Id. at 36.

[29] Id. at 3-5.

[30] Id. at 6-24.

In her Petition for Review, Mercado argues that the Court of Appeals committed grave abuse of discretion when it reversed the findings of the Regional Trial Court.[31] She argues that the Court of Appeals ignored that Ongpin filed two petitions to have his marriage to Mantaring declared void, withdrawing the first one, and filing the second one only after Mercado filed the case for separation of property with the Regional Trial Court. She alleges that Ongpin only attempted to remedy the issue of his seemingly bigamous second marriage when it was expedient for him to do so.[32]

Mercado points out that, unlike Ongpin, she did not do anything wrong. She had the capacity to marry, was a United States citizen at the time of her marriage, and lived with Ongpin for more than 10 years until she finally left him in 2000. As such, she was entitled to moral damages.[33]

Moreover, she argues that Ongpin should be made to pay exemplary damages for his blatant disrespect for the institution of marriage, and to serve as an example for the public. She claims that she should be awarded attorney's fees for being compelled to litigate after Ongpin initiated the suit against her.[34]

This Court granted the Motion to Admit and ordered Ongpin to comment on the Petition for Review in its August 5, 2013 Resolution.[35]

On September 26, 2013, Ongpin filed his Comment[36] where he argues that the Court of Appeals correctly held that Mercado failed to prove that he deliberately contracted a second marriage

---

[31] Id. at 11.

[32] Id. at 14-15.

[33] Id. at 16.

[34] Id. at 19.

[35] Id. at 155.

[36] Id. at 156-165.

knowing that his first was still valid and subsisting. He claims that it was only after he and Mercado separated that Mantaring disclosed her Filipino citizenship at the time she obtained the divorce decree.[37] He points out that Mercado admitted during trial that, at the time she married Ongpin, she knew that both he and Mantaring were Filipino citizens, and that it was Mercado who advised him to get a declaration of nullity of his marriage to Mantaring in 1992.[38]

In her Reply,[39] Mercado claims that Ongpin had known about the invalidity of the divorce decree even before Mantaring told him.[40] She reiterates her claim that she did not know that Ongpin was incapacitated to marry her at the start of their marriage.[41]

Ongpin filed a rejoinder to her reply on January 24, 2014.[42]

In its November 19, 2014 Resolution,[43] this Court resolved to give due course to the Petition for Review and ordered the parties to submit their memoranda, which they complied with.[44]

While the case was pending, Ongpin filed three successive motions praying that this Court direct the Regional Trial Court to issue a partial entry of judgment and certificate of finality concerning the declaration of nullity of his and Mercado's marriage, as the only matter to be resolved by this Court is Mercado's entitlement to damages.[45]

---

[37] Id. at 158.

[38] Id. at 158-159.

[39] Id. at 167-173.

[40] Id. at 168-169.

[41] Id. at 169-170.

[42] Id. at 180-185.

[43] Id. at 212-213.

[44] Id. at 271-290.

[45] Id. at 297-303.

The issues to be resolved in this case are: first, whether or not the Petition for Review raises questions of fact not reviewable in a Rule 45 petition; and second, whether or not Mary Elizabeth Mercado is entitled to moral and exemplary damages, and attorney's fees.

I

Generally, this Court does not review questions of fact in a petition for review under Rule 45 of the Rules of Court.[46] Whether or not a party acted in bad faith is a question of fact.[47] Entitlement to damages likewise requires examination of the factual circumstances of a case.[48] However, when the factual findings of the Regional Trial Court and Court of Appeals are conflicting, then this Court may resolve these issues.[49]

In its November 18, 2016 Decision, the Regional Trial Court held that respondent's act of marrying petitioner even though he had an existing first marriage constituted bad faith. The Court of Appeals ruled otherwise because it found that, at the time respondent married petitioner, he believed in good faith that he was validly divorced from his first wife. Further, it found that respondent did not seek to have his second marriage declared null and void only so that he could evade liability in the civil case filed by petitioner.

Considering these conflicting conclusions, this Court must now examine the factual findings to resolve whether or not respondent acted in bad faith when he married petitioner despite the subsistence of his first marriage.

---

[46] *First Sarmiento Property Holdings, Inc. v. Philippine Bank of Communications*, 833 Phil. 400, 413-414 (2018) [Per J. Leonen, En Banc].

[47] *Diaz v. Encanto*, 778 Phil. 593, 604 (2016) [Per J. Leonardo-de Castro, First Division].

[48] *Solid Homes, Inc. v. Court of Appeals*, 341 Phil. 261, 275 (1997) [Per J. Panganiban, Third Division].

[49] *Spouses Fernando v. Fernando*, 656 Phil. 205, 212 (2011) [Per J. Carpio Morales, Third Division].

II

Moral damages are a form of compensation for the "physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury"[50] unjustly sustained by a person.[51] They are awarded when: (1) there is a physical, mental or psychological injury clearly sustained by the claimant; (2) a wrongful act or omission is factually established; (3) the act or omission is the proximate cause of the injury; and (4) the award of damages is based on any of the cases stated in Article 2219[52] of the Civil Code.[53]

---

[50] CIVIL CODE, art. 2217.

[51] *Expertravel & Tours, Inc. v. Court of Appeals*, 368 Phil. 444, 448 (1999) [Per J. Vitug, Third Division].

[52] CIVIL CODE, art. 2219 states:

ARTICLE 2219. Moral damages may be recovered in the following and analogous cases:

(1) A criminal offense resulting in physical injuries;
(2) Quasi-delicts causing physical injuries;
(3) Seduction, abduction, rape, or other lascivious acts;
(4) Adultery or concubinage;
(5) Illegal or arbitrary detention or arrest;
(6) Illegal search;
(7) Libel, slander or any other form of defamation;
(8) Malicious prosecution;
(9) Acts mentioned in article 309;
(10) Acts and actions referred to in articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

The parents of the female seduced, abducted, raped, or abused, referred to in No. 3 of this article, may also recover moral damages.

The spouse, descendants, ascendants, and brothers and sisters may bring the action mentioned in No. 9 of this article, in the order named.

[53] *Expertravel & Tours, Inc. v. Court of Appeals*, 368 Phil. 444, 448 (1999) [Per J. Vitug, Third Division].

This Court has sanctioned the award of moral damages in cases of bigamy based on Articles 19, 20 and 21 of the Civil Code.[54]

Article 19 of the Civil Code sets the standards for the exercise of one's rights and performance of duties:

> ARTICLE 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

This provision recognizes that even the exercise of a right may be the source of some illegal act, when done in a manner contrary to the standards it sets, and results in damage to another.[55] Meanwhile, Articles 20 and 21 provide for the legal remedy for a violation of Article 19:[56]

> ARTICLE 20. Every person who, contrary to law, wilfully or negligently causes damage to another, shall indemnify the latter for the same.
>
> ARTICLE 21. Any person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

For there to be a finding of an abuse of rights under Article 19, the following elements must concur: (1) there is a legal right or duty; (2) the right is exercised or the duty is performed in bad faith; and (3) the sole intent of the exercise or performance is to prejudice or injure another.[57] It must be shown that the

---

[54] *See Manuel v. People*, 512 Phil. 818 (2005) [Per J. Callejo, Sr., Second Division].

[55] *GF Equity, Inc. v. Valenzona*, 501 Phil. 153, 165-167 (2005) [Per J. Carpio Morales, Third Division].

[56] *See Globe Mackay Cable and Radio Corp. v. Court of Appeals*, 257 Phil. 783 (1989) [Per J. Cortes, Third Division]; *Philippine Commercial International Bank v. Gomez*, 773 Phil. 387 (2015) [Per J. Brion, Second Division].

[57] *Dart Philippines, Inc. v. Spouses Calogcog*, 613 Phil. 224, 234 (2009) [Per J. Nachura, Third Division].

exercise of the right or performance of the duty was done with bad faith. In *Dart Philippines, Inc. v. Spouses Calogcog*:[58]

> Malice or bad faith is at the core of Article 19 of the Civil Code. Good faith refers to the state of mind which is manifested by the acts of the individual concerned. It consists of the intention to abstain from taking an unconscionable and unscrupulous advantage of another. It is presumed. Thus, he who alleges bad faith has the duty to prove the same. Bad faith does not simply connote bad judgment or simple negligence; it involves a dishonest purpose or some moral obloquy and conscious doing of a wrong, a breach of known duty due to some motives or interest or ill will that partakes of the nature of fraud. Malice connotes ill will or spite and speaks not in response to duty. It implies an intention to do ulterior and unjustifiable harm. Malice is bad faith or bad motive.[59]

In *Manuel v. People*,[60] this Court awarded moral damages to the innocent spouse upon a finding that the bigamous spouse acted deceitfully and fraudulently when he contracted his second marriage:

> In the present case, the petitioner courted the private complainant and proposed to marry her. He assured her that he was single. He even brought his parents to the house of the private complainant where he and his parents made the same assurance — that he was single. Thus, the private complainant agreed to marry the petitioner, who even stated in the certificate of marriage that he was single. She lived with the petitioner and dutifully performed her duties as his wife, believing all the while that he was her lawful husband. For two years or so until the petitioner heartlessly abandoned her, the private complainant had no inkling that he was already married to another before they were married.
>
> Thus, the private complainant was an innocent victim of the petitioner's chicanery and heartless deception, the fraud consisting not of a single act alone, but a continuous series of acts. Day by day, he maintained the appearance of being a lawful husband to the

---

[58] 613 Phil. 224 (2009) [Per J. Nachura, Third Division].

[59] Id. at 235.

[60] 512 Phil. 818 (2005) [Per J. Callejo, Sr., Second Division].

private complainant, who changed her status from a single woman to a married woman, lost the consortium, attributes and support of a single man she could have married lawfully and endured mental pain and humiliation, being bound to a man who it turned out was not her lawful husband.[61]

There, this Court found that the bigamous spouse's continuous and collective acts of fraud before, during, and after his marriage were willful, deliberate, and malicious, causing injury to the innocent spouse. It was the bigamous spouse's continuing bad faith that disregarded public policy, undermined and subverted the family as a social institution, and went against good morals, and the interest and general welfare of society.[62]

Thus, the Regional Trial Court was in error when it held that the mere contracting of a second marriage despite the existence of a first marriage is, by itself, a ground for damages under Article 19 in relation to Article 20 or Article 21. As correctly stressed by the Court of Appeals, the bad faith, or deliberate intent to do a wrongful act, of the bigamous spouse must be established:

> Here, it was not convincingly shown that appellant deliberately contracted a second marriage despite knowledge of the subsistence of his first marriage. He believed in good faith that the divorce decree given to his first wife was valid and binding in the Philippines because he thought all along that [his] first wife at that time was already an [American] citizen. Thus, he and Mercado, both consenting adults, freely married each other, both believing that the final divorce decree was valid and binding in the Philippines. Indeed, both appellant and Mercado would not have married each other under pain of indictment for bigamy had they known that appellant's first marriage was still in existence, because it later turned out that Mercado was still a Filipino when the divorce decree was issued. So how could appellant be held liable for damages when he was not shown to have acted in bad faith when he married appellee? It has been consistently held that bad faith does not simply mean negligence or bad judgment. It

---

[61] Id. at 848.

[62] Id.

involves a state of mind dominated by ill-will or motive. It implies a conscious and intentional design to do a wrongful act for a dishonest purpose or some moral obliquity. The person claiming moral damages must prove the existence of bad faith by clear and convincing evidence for the law always presumes good faith. Here, appellee failed to overcome the legal presumption of good faith. Thus, the award of moral damages must be deleted.[63]

Petitioner has not been able to prove that, at the time she and respondent married, respondent knew that his divorce from his first spouse was invalid. There is no proof that, upon the first spouse's confirmation of her Philippine citizenship at the time she obtained the divorce decree, respondent concealed this knowledge from petitioner or allowed her to continue believing that their marriage was valid. The malice or bad faith necessary to sustain an action based on Article 19 of the Civil Code has not been shown in this case.

Moreover, petitioner has not established that she has sustained an injury in law due to respondent's acts.

A review of the records shows that petitioner had known that there was some sort of anomaly in the dissolution of respondent's first marriage as early as 1992. As the Regional Trial Court found, within four years of petitioner and respondent's marriage, they found out that the divorce decree between respondent and Mantaring may not be valid because of their citizenship.[64] Both petitioner and respondent consulted with a lawyer, who advised them to have the first marriage annulled on the ground of psychological incapacity.[65] When respondent withdrew his petition for annulment, petitioner pleaded with him to continue the case.[66]

---

[63] *Rollo*, p. 32.

[64] *Rollo*, p. 85.

[65] Id.

[66] Id. at 85-86.

Petitioner does not dispute any of these findings made by the trial court.[67] She knew, or should have known, that there existed some issue regarding respondent's first marriage which might adversely affect the validity of her marriage to him. Yet, she did not initiate any actions of her own to protect her civil status, and appeared complacent with the uncertainty that hovered over the validity of her marriage with respondent.

There being no entitlement to moral damages, no exemplary damages can likewise be awarded to petitioner.[68]

As regards attorney's fees, the Court of Appeals correctly held that none may be awarded to petitioner:

> Consequently, the award of attorney's fees must also be deleted. Notably, it was not appellee alone who incurred costs to protect her interest. Appellant, too, spent for legal costs to finally settle the issue pertaining to the validity of his marriage with appellee. In the absence of malice and bad faith, the mental anguish suffered by a person for having been made a party in a civil case is not the kind of anxiety which would warrant the award of moral damages. Appellee's emotional suffering and anxiety are only such as are usually caused to a party hauled into [court] as a party in litigation, but is insufficient justification for the award of moral or exemplary damages.[69]

Finally, this Court notes that, on December 19, 2019, petitioner filed a motion to dismiss, praying that this Court consider her

---

[67] Id. at 279-280.

[68] CIVIL CODE, art. 2234 states:

> ARTICLE 2234. While the amount of the exemplary damages need not be proved, the plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded. In case liquidated damages have been agreed upon, although no proof of loss is necessary in order that such liquidated damages may be recovered, nevertheless, before the court may consider the question of granting exemplary in addition to the liquidated damages, the plaintiff must show that he would be entitled to moral, temperate or compensatory damages were it not for the stipulation for liquidated damages.

[69] *Rollo*, pp. 33-34.

appeal withdrawn, the Court of Appeals' ruling binding against her, and directing an entry of judgment be issued in this case:

> 3. Thus, the Petitioner-Appellant has agreed to accept the decision of the Special Sixteenth Division of the Honorable Court of Appeals in CA-G.R. CV No. 98320 entitled "Ongpin V. Ongpin, petitioner-appellant, vs. Mercado Mercado-Ongpin, respondents-appellee" on February 21, 2013 modifying the decision of the Regional Trial Court, Fourth Judicial Region, Branch 89, Bacoor, Cavite, in Civil Case No. BCV-2006-08 dated November 12, 2009 deleting the award to her of moral and exemplary damages and attorney's fees, to wit:
>
> > ACCORDINGLY, the Decision dated November 12, 2009 is MODIFIED, DELETING the award of moral and exemplary damages and attorney's fees.
>
> 4. She, therefore, respectfully prays that her appeal be considered withdrawn and consider the Decision of the Honorable Court of Appeals as binding upon her.[70]

Once a case has been submitted for a court's decision, the petitioning party cannot, at their election, withdraw their appeal.[71] The grant or denial of the withdrawal is addressed to the sound discretion of the court.[72]

> The practice of the courts has always been to the effect that once a case or appeal is submitted for decision, its withdrawal should not be at the discretion of the party, but dependent on the assent thereto of the adjudicating authority.
>
> . . . .
>
> . . . What is important is that once the finality of the questioned judgment has been arrested by a motion for reconsideration, the

---

[70] Entry of Appearance with Motion to Dismiss, pp. 1-2.

[71] *Dee See Choon v. Stanley*, 38 Phil. 208, 209 (1918) [Per J. Malcolm, En Banc]. *See also La Campana Food Products, Inc. v. Court of Industrial Relations*, 138 Phil. 328 (1969) [Per J. Sanchez, En Banc]; *United States v. Sotto*, 38 Phil. 666 (1918) [Per J. Fisher, En Banc].

[72] *People v. Rocha*, 558 Phil. 521, 539 (2007) [Per J. Chico-Nazario, Third Division].

reviewing officer should be given full opportunity to restudy the records and satisfy himself whether justice has been done; and if convinced that it was not done, to revise and correct the judgment as the interest of justice requires, irrespective of whether the defendant will be favored or prejudiced. The public interest demands no less. As the Spanish proverb goes, justice is "no mas pero no menos".[73]

Petitioner can no longer elect to withdraw her Petition for Review at this late stage in the proceedings. It is merely incidental that, if we had granted petitioner's motion, it would have had the same result as this resolution on the merits.

WHEREFORE, the Petition for Review on Certiorari is **DENIED**. The February 21, 2013 Decision and May 22, 2013 Resolution of the Court of Appeals are **AFFIRMED**.

The December 19, 2019 Entry of Appearance with Motion to Dismiss filed by petitioner Mary Elizabeth Mercado is **NOTED**.

SO ORDERED.

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

---

[73] J.B.L. Reyes, dissenting, in *Rodriguez v. Hon. Reyes*, 146 Phil. 986, 999-1000 (1970) [Per J. Makalintal, En Banc].

[*] Designated additional Member per Raffle dated September 16, 2020.

SECOND DIVISION

[G.R. No. 214294. September 30, 2020]

JR HAULING SERVICES and OSCAR MAPUE, *Petitioners*, *v.* **GAVINO L. SOLAMO, RAMIL JERUSALEM, ARMANDO PARUNGAO, RAFAEL CAPAROS, JR., NORIEL SOLAMO, ALFREDO SALANGSANG, MARK PARUNGAO and DEAN V. CALVO,** *Respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE SUPREME COURT IS NOT A TRIER OF FACTS; EXCEPTIONS; THE COURT MAY REVIEW THE FACTS IF THERE IS A CONFLICT BETWEEN THE FACTUAL FINDINGS OF THE LOWER TRIBUNALS. — Generally, the Court does not review factual questions primarily because it is not a trier of facts. Thus, as a general rule, it is not inclined to reexamine and reevaluate the evidence of the parties, whether testimonial or documentary. This Court may, however, in the exercise of its equity jurisdiction, review the facts and re-examine the records of the case, where, like in the instant case, there is a conflict between the factual findings of the LA and the CA, on one hand, and those of the NLRC, on the other.

2. ID.; EVIDENCE; BURDEN OF PROOF; THE PARTY WHO ALLEGES A FACT OR THING HAS THE BURDEN OF PROOF. — [I]t is a well-established rule that the party-litigant who alleges the existence of a fact or thing necessary to establish his/her claim has the burden of proving the same by the amount of evidence required by law, which, in labor proceedings, is substantial evidence, or "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."

3. ID.; ID.; HIERARCHY OF EVIDENTIARY VALUES; SUBSTANTIAL EVIDENCE IS THE LEAST DEMANDING. — [I]n the hierarchy of evidentiary values, "proof beyond reasonable doubt is placed at the highest level, followed by clear and convincing evidence, preponderance of evidence, and substantial evidence, in that order." Thus, in the hierarchy of evidence, [substantial evidence] is the least demanding.

4. ID.; ID.; LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; THE GROUND FOR THE DISMISSAL OF AN EMPLOYEE ONLY REQUIRES SUBSTANTIAL EVIDENCE. — [T]he ground for the dismissal of an employee does not require proof beyond reasonable doubt. The quantum of proof required is merely substantial evidence - which only entails evidence to support a conclusion, "even if other minds, equally reasonable, might conceivably opine otherwise." Accordingly, requiring a quantum of proof that is over and above substantial evidence is contrary to law.

5. ID.; ID.; ID.; ID.; ID.; AFFIDAVITS; IN LABOR CASES, AFFIDAVITS SHOWING THE EMPLOYEE'S INVOLVEMENT IN THE ILLEGAL ACTS IN QUESTION MAY BE SUFFICIENT TO ESTABLISH SUBSTANTIAL EVIDENCE. — It is noteworthy, however, that although the affidavits do not address respondents' participation in the delivery shortages of broilers, it is apparent that the statements in the same affidavits attest to their involvement in the unauthorized sale of excess broilers and broiler crates. We now address the next issue - Are the affidavits sufficient to establish respondents' involvement in the alleged acts in question? We answer in the affirmative.

. . . [I]n labor cases, "[a]ffidavits may be sufficient to establish substantial evidence." . . .

The argument that the affidavits are hearsay for having been taken *ex parte i.e.*, that the affiants were not presented for cross-examination, does not persuade us. The rules of evidence prevailing in courts of law do not control proceedings before the labor tribunals where decisions may be reached on the basis of position papers, accompanied by supporting documents, including affidavits of witnesses, and other allied pleadings. . . .

6. ID.; ID.; ID.; ID.; ID.; ID.; AFFIDAVITS EXECUTED BY CO-EMPLOYEES MAY BE GIVEN EVIDENTIARY WEIGHT. — [W]e find that the affidavits executed by various co-employees constitute substantial evidence to prove respondents' involvement in the unauthorized sale of excess broilers and broiler crates. We are inclined to give them evidentiary weight absent any evidence to rebut their validity. It is well-settled that "a document acknowledged before a notary public is a public document that enjoys the presumption of regularity. It is a *prima*

facie evidence of the truth of the facts stated therein and a conclusive presumption of its existence and due execution." . . .

. . .

. . . Moreover, the affidavits presented by petitioners cannot simply be disregarded absent any proof that petitioners exerted undue pressure on the affiants, or that they committed falsehood in their statements.

7. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; JUST CAUSES THEREFOR. — Article 297 of the Labor Code enumerates the just causes for termination. It provides:

> ARTICLE 297. Termination *by employer*. – An employer may terminate an employment for any of the following causes:
>
> (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
>
> x x x
>
> (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative; . . .

8. ID.; ID.; ID.; ID.; SERIOUS MISCONDUCT; REQUISITES THEREOF; CASE AT BAR. — We have defined misconduct as "the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. For serious misconduct to justify dismissal under the law, "(a) it must be serious, (b) must relate to the performance of the employee's duties; and (c) must show that the employee has become unfit to continue working for the employer."

In this regard, we opine that respondents' acts constitute Serious Misconduct which would warrant the *supreme penalty* of dismissal. Notably, the facts of the case reasonably establish with certainty: (1) that excess broilers and crates were being illegally sold in Tarlac; and (2) that respondents were involved in the anomalous transaction.

9. ID.; ID.; ID.; ID.; LOSS OF TRUST AND CONFIDENCE; CASE AT BAR. — Loss of trust and confidence as a ground for dismissal of employees covers employees occupying a position of trust who are proven to have breached the trust and confidence

reposed on them. Moreover, in order to constitute a just cause for dismissal, the act complained of must be work-related and shows that the employee concerned is unfit to continue working for the employer. In addition, loss of confidence as a just cause for termination of employment is premised on the fact that the employee concerned holds a position of responsibility, trust and confidence, or that the employee concerned is entrusted with confidence with respect to delicate matters, such as the handling or care and protection of the property and assets of the employer. The betrayal of this trust is the essence of the offense for which an employee is penalized. In this regard, it is not the job title but the nature of the work that the employee is duty-bound to perform which is material in determining whether he holds a position where greater trust is placed by the employer and from whom greater fidelity to duty is concomitantly expected.

Petitioners, as drivers/helpers, were entrusted with the custody, delivery and transportation of the broilers and broiler crates, including their proper handling and protection, in accordance with the directives of JR Hauling and instructions of its clients. To stress, respondents are performing the core business of JR Hauling. Thus, even on the premise that respondents were not occupying managerial or supervisory positions, they were, undoubtedly, holding positions of responsibility. As to respondents' transgressions *i.e.*, the unauthorized sale of broilers and broiler crates, the same are clearly work-related as they would not have been able to perpetrate the same were it not for their positions as drivers/helpers of JR Hauling.

10. ID.; ID.; PROCEDURAL DUE PROCESS. — The Implementing Rules in relation to Article 297 of the Labor Code provides for the procedure that must be observed in order to comply with the required procedural due process in dismissal cases, *to wit*:

> a) A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side.
>
> b) A written notice of termination served on the employee indicating that upon due consideration of all circumstances, grounds have been established to justify his termination.

11. ID.; ID.; ID.; ID.; REQUISITES; WRITTEN NOTICE; THE ABSENCE OF NOTICE AND HEARING ALLEGED IN THE PLEADINGS AND NOT CATEGORICALLY DENIED BY EMPLOYER IS DEEMED ADMITTED. — [R]espondents were adamant in their pleadings before the LA and the NLRC that JR Hauling dismissed them from employment without notice and hearing and/or investigation when management allegedly displayed their pictures at the gate and barred them from entering the company premises. Petitioners failed to categorically deny these allegations. It is worth noting that Section 11, Rule 8 of the Rules of Court, which supplements the NLRC Rules of Procedure, provides that allegations which are not specifically denied are deemed admitted.

12. ID.; ID.; ID.; NON-COMPLIANCE WITH THE PROCEDURAL REQUISITES ENTITLES DISMISSED EMPLOYEES TO NOMINAL DAMAGES. — [T]here being just cause for the dismissal but considering petitioners' non-compliance with the procedural requisites in terminating respondents' employment, the latter are entitled to nominal damages in the amount of ₱30,000.00 each in line with existing jurisprudence.

13. ID.; ID.; ID.; REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; CLAIMS FOR SALARY DIFFERENTIALS; IN ILLEGAL DISMISSAL CASES, THE BURDEN RESTS ON THE EMPLOYER TO PROVE PAYMENT OF SALARY DIFFERENTIALS. — In claims involving payment of salary differentials, this Court has held that the burden rests on the employer to prove payment following the basic rule that "in all illegal dismissal cases, the burden rests on the defendant to prove payment rather than on the plaintiff to prove non-payment." This rationale is supported by the fact that all pertinent personnel files, payrolls, records, remittances and other similar documents which show that the salary differentials have in fact been paid are not in the possession of the worker but are in the custody and control of the employer.

APPEARANCES OF COUNSEL

Armando San Antonio for petitioners.
Nenita C. Mahinay for respondents.

D E C I S I O N

HERNANDO, *J.*:

This Petition for Review on *Certiorari*[1] assails the September 5, 2014 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 128497, which set aside the August 28, 2012 Decision[3] and November 15, 2012 Resolution[4] of the National Labor Relations Commission (NLRC) declaring herein respondents Gavino L. Solamo, Ramil Jerusalem, Armando Parungao, Rafael Caparos, Jr., Noriel Solamo,[5] Alfredo Salangsang, Mark Parungao, and Dean[6] V. Calvo to have been illegally dismissed from employment.

Factual Antecedents

This case stemmed from a complaint for illegal dismissal and underpayment/non-payment of salaries/wages, 13th month pay, holiday pay, rest day pay, Service Incentive Leave (SIL) pay, with prayer for reinstatement and payment of full backwages and attorney's fees,[7] filed by the respondents, and Sofronio V. Acoba (Acoba), who eventually withdrew his complaint during

---

[1] *Rollo*, pp. 3-47.

[2] Id. at 48-58; penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Rodil V. Zalameda (now a member of this Court) and Maria Elisa Sempio Diy.

[3] Id. at 211-222; penned by Commissioner Mercedes R. Posada-Lacap and concurred in by Presiding Commissioner Leonardo L. Leonida and Commissioner Dolores M. Peralta-Beley.

[4] Id. at 223-224; penned by Commissioner Mercedes R. Posada-Lacap and concurred in by Presiding Commissioner Leonardo L. Leonida.

[5] The petition filed by JR Hauling Services indicates "Nonel Solamo." But see Complaint dated April 5, 2011 filed by respondents which indicates "Noriel Solamo" as one of the complainants in the instant case.

[6] "Joean" B. Calvo in the August 28, 2012 Decision of the NLRC and December 9, 2011 Decision of Labor Arbiter Leondro M. Jose.

[7] *Rollo*, pp. 275-277.

the pendency of the case before the Labor Arbiter (LA), against petitioner JR Hauling Services (JR Hauling) and its manager, Oscar Mapue (Mapue).

JR Hauling is a domestic corporation engaged in the business of hauling and delivery of broiler chickens to its clients[8] such as Magnolia Corporation and San Miguel Foods, Inc. (SMFI). Respondents are former drivers/helpers of JR Hauling. The details of their employment are as follows:[9]

EMPLOYEE	DATE EMPLOYED	PAYMENT PER TRIP
Gavino Solamo	May 4, 2008	₱300
Ramil Jerusalem	October 2003	₱300
Armando Parungao	July 11, 2010	₱300
Rafael Caparos, Jr.	August 4, 2007	₱300
Noriel Solamo	November 10, 2007	₱300
Alfredo Salangsang	June 10, 2010	₱300
Mark Parungao	August 13, 2010	₱300
Dean V. Calvo	July 27, 2007	₱300

As drivers/helpers of JR Hauling, respondents were tasked to transport live chickens from broiler farms or contract growers to the processing plant of JR Hauling's clients. In the course of transporting broiler chickens, JR Hauling issues to respondents "receiving slips" or job orders containing the details of the deliveries, which include the number of live chickens to be loaded into the trucks for transport, and the delivery route from broiler farms located either in Pangasinan, Tarlac, Batangas, Bulacan, Zambales, or La Union, to the processing plant of its clients in Hermosa, Bataan.[10]

---

[8] Id. at 4.

[9] CA *rollo*, pp. 10-12.

[10] Id. at 11.

From JR Hauling's place of business in Bulacan, respondents proceed to the designated broiler farm indicated in their respective job orders. They then pick up and load the required number of broilers in the delivery trucks and immediately deliver the same to the processing plant. Authorized personnel in the broiler farms are tasked to ensure that the instructions and specifications indicated in the job orders are complied with. The same job orders are likewise presented to the processing plant for verification and checking, after which respondents return to Bulacan for another hauling job.[11]

Since a number of broilers usually die in the course of their delivery, respondents secure from the farms additional broilers to serve as replacements for the dead broilers in order to ensure that the same quantity or number of broilers under the job order will be delivered to the processing plant.[12]

Respondents were required to make two trips per day and were thus paid Three Hundred Pesos (₱300.00) per trip or a total of Six Hundred Pesos (₱600.00) per day. Respondents averred, however, that considering that the broiler farms are located in remote and distant areas, they could only accomplish, on the average, one trip per day, and would thus earn only ₱300.00 per day. Respondents further alleged that from the time they were engaged by JR Hauling, they were not paid their respective 13th month pay, holiday pay, premium pay for holiday and rest day, and SIL.[13]

Respondents claimed that on April 3, 2011, JR Hauling dismissed them from employment without notice and hearing and/or investigation, and without any valid reason when the management allegedly displayed their pictures at the gate and barred them from entering the company premises.[14]

---

[11] Id.

[12] *Rollo*, p. 261.

[13] Id. at 12.

[14] Id. at 171 and 182.

By way of defense, petitioners countered that respondents, in the course of their employment with JR Hauling, incurred shortages in their deliveries of broilers amounting to Three Hundred and Seventy One (371) pieces and Three Hundred and Seventy Seven (377) pieces in February 2011 and March 2011, respectively.[15] In support thereof, petitioners presented a copy of a summary of short broilers delivery[16] supposedly issued by SMFI for February 2011 and March 2011.

Upon further investigation, petitioners discovered that respondents, without the knowledge or consent of JR Hauling, were committing anomalous transactions involving the sale of excess broilers and crates somewhere in Concepcion, Tarlac. In support thereof, petitioners presented the affidavits of Mapue,[17] Pedro,[18] a helper of Mapue, and respondents' co-employees, namely, Acoba,[19] Leo Enriquez (Enriquez) and Marville Moratin (Moratin),[20] Hector Fuentes (Fuentes),[21] Orlando Espares (Espares),[22] and Roberto Sanico (Sanico).[23]

The affidavits of Mapue, Pedro, Fuentes, and Espares also revealed that JR Hauling incurred shortages in the number of broiler crates totalling Two Hundred and Thirty Two (232) pieces.[24] The same were purportedly sold by the respondents together with the excess broilers at Concepcion, Tarlac.

---

[15] Id. at 3.

[16] CA *rollo*, p. 219.

[17] Id. at 246-248.

[18] Id. at 217-218.

[19] Id. at 220.

[20] Id. at 221-222 and 273.

[21] Id. at 255-256.

[22] Id. at 257-258.

[23] *Rollo*, p. 226.

[24] CA *rollo*, p. 247.

Considering the foregoing circumstances, petitioners insisted that respondents' transgressions amounted to serious misconduct, and constituted fraud or willful breach of trust and confidence, which justified their dismissal from employment.

Petitioners also averred that respondents were field employees and/or workers who are paid by the results, and therefore, were not entitled to their monetary claims for underpayment of salaries, 13th month pay, holiday pay, premium pay for holiday and rest day, and SIL.[25]

Respondents, by way of rebuttal, argued that the documentary and testimonial evidence presented by petitioners were purely self-serving and hearsay and, therefore, inadmissible to establish the validity of their dismissal. Respondents also insisted that the admissions of culpability made by their co-employees were binding only on those who made such admissions and were inadmissible against respondents for being hearsay evidence.[26]

Ruling of the Labor Arbiter:

On December 9, 2011, the LA promulgated a Decision[27] the dispositive portion of which states:

> WHEREFORE, premises considered, complainants are found to have been illegally dismissed even as respondents are held liable therefor.
>
> Consequently, respondents are ordered to reinstate complainants to their former positions without loss of seniority rights and other privileges with backwages initially computed at this time and reflected below.
>
> The reinstatement aspect of this decision is immediately executory even as respondents are hereby enjoined to submit a report of compliance therewith within ten (10) days from receipt hereof.

---

[25] Id. at 241-242.

[26] Id. at 223-231.

[27] *Rollo*, pp. 152-164.

Respondents are likewise ordered to pay complainants their salary differential and 10% attorney's fees. x x x

x x x x

All other claims are hereby dismissed for lack of merit.

SO ORDERED.[28]

The LA held that petitioners failed to discharge their burden of proving that respondents were dismissed for just cause, and that due process, namely, notice and hearing, was not observed when JR Hauling summarily terminated their employment.

The LA noted that the summary of short broilers delivery[29] supposedly issued by SMFI for February and March 2011 was not properly identified nor authenticated. Moreover, the sworn statements which respondents submitted in evidence were inadmissible for being hearsay and self-serving.

The LA awarded respondents salary differentials and attorney's fees. Noting, however, that respondents were field personnel, the LA denied their claims for payment of 13th month pay, holiday pay, premium pay for holiday and rest day, and SIL. The LA also ordered respondents' reinstatement and payment of backwages.

Ruling of the National Labor Relations Commission:

In their appeal[30] to the NLRC, petitioners averred that the statements made by Acoba, Enriquez, and Moratin in their respective affidavits were voluntary admissions akin or similar to declarations against interest[31] and, thus, cannot be considered as hearsay or self-serving. Petitioners also argued that in examining the sworn statements of respondents' co-employees, the LA should not have confined himself to technical rules on

---

[28] Id. at 163-164.

[29] CA *rollo*, p. 219.

[30] Id. at 127-165.

[31] Id. at 139.

evidence and should have, instead, liberally applied the same in deciding the instant case.[32] In light of their testimonial and documentary evidence, petitioners insisted that there was substantial evidence to prove that the respondents' fraudulent acts constituted serious misconduct and willful breach of the trust reposed on them by JR Hauling which justified their dismissal from employment.

As to the respondents' monetary claims, petitioners claimed that respondents were receiving an average daily salary of ₱600.00 a day which exceeds the minimum daily wage rate under Wage Order No. RBIII-15, which states, among others, that the minimum wage in non-agricultural establishments, such as JR Hauling, whose total assets is less than Thirty Million Pesos (₱30,000,000.00), is Three Hundred Eight Pesos (₱308).[33]

Considering the foregoing, the NLRC, in its August 28, 2012 Decision,[34] reversed the Decision of the LA and held that respondents' dismissal from employment was valid on the ground of loss of trust and confidence. The dispositive portion of the NLRC Decision states, as follows:

> WHEREFORE, the instant appeal is GRANTED. The assailed DECISION of the Labor Arbiter is REVERSED and SET ASIDE and a new one entered dismissing the complaint for lack of merit.
>
> SO ORDERED.[35]

In ruling for the petitioners, the NLRC relied on the affidavits of Acoba, Enriquez, Moratin, and Sanico, and found adequate basis for JR Hauling's loss of trust and confidence on respondents. The NLRC explained that "as between the general denial of [respondents] as against the positive narration of facts of witnesses who also participated in selling the broilers in Concepcion, Tarlac which were suppose[d] to be delivered to

---

[32] Id. at 142.

[33] Id. at 151.

[34] *Rollo*, pp. 211-222.

[35] Id. at 221.

Hermosa, Bataan, the latter prevails."[36] The NLRC also held that the respondents were estopped from claiming that JR Hauling denied them procedural due process of notice and hearing considering that they filed the instant complaint for illegal dismissal even before JR Hauling could terminate their services. The NLRC also denied respondents' claim for salary differentials and prayer for reinstatement.

Respondents, this time, filed a Motion for Reconsideration[37] which was, however, denied in a November 15, 2012 Resolution[38] of the NLRC.

Ruling of the Court of Appeals:

Aggrieved, respondents filed a Petition for *Certiorari*[39] before the CA ascribing upon the NLRC grave abuse of discretion amounting to lack or in excess of jurisdiction when it found that they were validly dismissed from employment solely on the basis of the affidavits furnished by petitioners. Respondents mainly contended that: (1) the affidavits were taken *ex-parte* and, thus, incomplete and inaccurate; (2) statements therein are self-serving and hearsay, and unsubstantiated by concrete evidence; and (3) the admissions of culpability made by their co-employees are binding only on them and not on the respondents. They further argued that loss of trust and confidence as a just cause for dismissal under Article 297(c) of the Labor Code is not applicable to them considering that they do not hold positions of trust where fidelity to duty is expected from them.

Respondents also argued that they cannot be considered field personnel as their hours of work can be easily determined with reasonable certainty, and that they were under constant supervision while performing their work as drivers/helpers. On this point, respondents posited that they are regular employees

---

[36] Id. at 218.

[37] CA *rollo*, pp. 68-82.

[38] *Rollo*, pp. 223-224.

[39] CA *rollo*, pp. 3-39.

of JR Hauling who are entitled to SIL and their other monetary claims.

In their Comment[40] to respondents' Petition for *Certiorari*, petitioners asserted that the findings of the NLRC in its August 28, 2012 Decision are supported by evidence and prevailing jurisprudence and that respondents failed to show that the NLRC committed grave abuse of discretion in reversing the December 9, 2011 Decision of the LA.

On September 5, 2014, the CA rendered its assailed Decision[41] granting respondents' Petition for *Certiorari* and setting aside the August 28, 2012 Decision and November 15, 2012 Resolution of the NLRC. The dispositive portion of the September 5, 2014 Decision reads as follows:

> WHEREFORE, the instant petition is GRANTED. The Decision dated August 28, 2012 and Resolution dated November 15, 2012 issued by the NLRC in NLRC LAC No. 04-001243-12 (NLRC RAB-III-04-17542-11) are REVERSED and SET ASIDE. The Decision dated December 9, 2011 rendered by the Labor Arbiter is hereby REINSTATED.
>
> SO ORDERED.[42]

The CA concluded that petitioners failed to adduce substantial evidence to establish the charge against respondents which served as basis for JR Hauling's loss of trust and confidence that warranted their dismissal from employment. The CA explained, *viz.*:

> While [petitioners] submitted a Summary of Short Broilers Delivery Based on Actual Counting at Receiving Area, the same, as correctly pointed out by [respondents], was neither signed nor authenticated by any personnel of [petitioners] or SMFI. Moreover, there is nothing on document that would remotely suggest that [respondents] had anything to do with the deliveries, much less with the alleged

---

[40] Id. at 566-584.

[41] *Rollo*, pp. 48-58.

[42] Id. at 58.

deficiencies purportedly summarized therein. Even the affidavits submitted by [petitioners] only contain mere allegations uncorroborated by any other evidence which, to this Court, clearly do not constitute substantial evidence to show [private respondents'] involvement in the alleged deliveries and deficiencies indicated in the summary of deliveries.

Aside from citing jurisprudence to support their position that an employer is justified in dismissing its employees on the basis of the latter's misconduct in the performance of their duties, a reading of the pleadings submitted by [petitioners] will reveal the glaring fact that the allegations made against [respondents] are unsubstantiated. Contrary to the claims of [petitioners], there is no showing that an investigation has indeed been conducted on the allegations against [respondents].

x x x x

x x x loss of trust and confidence as a valid cause to terminate [respondents] must rest on actual breach of duty committed by the, and not on [petitioners'] imagined whim or caprice. x x x For failure of [petitioners] to discharge their burden to prove the validity of [respondents'] dismissal, such dismissal is therefore illegal.[43]

On the matter of JR Hauling's supposed failure to comply with procedural due process of notice and hearing, the CA disregarded petitioners' defense of abandonment and held that respondents' filing of a complaint for illegal dismissal negated any intent on their part to sever their employment with JR Hauling. Accordingly, the CA ordered respondents' reinstatement and payment of backwages.

Issues

Petitioners raised the following issues for resolution:

I.

THE HONORABLE [CA] GRAVELY ABUSED ITS DISCRETION IN REVERSING OR SETTING ASIDE THE DECISION OF THE NLRC BY CONCLUDING THAT PETITIONERS FAILED TO SUFFICIENTLY [ESTABLISH] THAT THE CHARGE AGAINST RESPONDENTS

---

[43] Id. at 54-55.

WHICH WAS THE BASIS FOR ITS LOSS OF TRUST AND CONFIDENCE BY IGNORING OR THRUSTING ASIDE THE EVIDENCE AND JURISPRUDENCE APPLICABLE TO THIS CASE, CONSIDERING THAT PETITIONERS' DEFENSES INCLUDE SERIOUS MISCONDUCT, FRAUD AND COMMISSION OF CRIME AND NOT LIMITED TO BREACH OF TRUST AND CONFIDENCE ALONE.

II.

THE HONORABLE [CA] GRAVELY ABUSED ITS DISCRETION IN CONCLUDING THAT ABANDONMENT IS ONE OF THE DEFENSE RAISED BY THE PETITIONERS.

III.

THE HONORABLE [CA] GRAVELY ABUSED ITS DISCRETION IN DISREGARDING OR IGNORING THAT IF DISMISSAL IS FOUNDED ON AUTHORIZED OR VALID CAUSE, THE SANCTION THAT CAN BE IMPOSED UPON IS IN THE NATURE OF INDEMNIFICATION OR PENALTY AS RULED IN [AGABON V. NATIONAL LABOR RELATIONS COMMISSION] WHICH CASE DISREGARDED THE EARLIER CASE OF [SERRANO V. NATIONAL LABOR RELATIONS COMMISSION].

IV.

THE HONORABLE [CA] GRAVELY ABUSED ITS DISCRETION IN REINSTATING THE DECISION OF THE [LA] AWARDING RESPONDENTS WITH SALARY DIFFERENTIAL WITHOUT CITATION OF SPECIFIC EVIDENCE ON WHICH IT IS BASED.[44]

Simply stated, the issues before us are: (1) whether there is substantial evidence to prove that respondents were validly dismissed from employment; and (2) whether they are entitled to their claims for payment of salary differentials.

Our Ruling

Supreme Court not a trier of facts; Exceptions

Generally, the Court does not review factual questions primarily because it is not a trier of facts. Thus, as a general rule, it is

---

[44] Id. at 18-19.

not inclined to reexamine and reevaluate the evidence of the parties, whether testimonial or documentary. This Court may, however, in the exercise of its equity jurisdiction, review the facts and re-examine the records of the case, where, like in the instant case, there is a conflict between the factual findings of the LA and the CA, on one hand, and those of the NLRC, on the other. In the present case, the NLRC and the CA have opposing views. Moreover, the instant petition presents not only a situation where the LA and the CA, and the NLRC, differ in their understanding of the facts presented by the parties, but also in assessing the sufficiency of evidence which prove the commission of respondents' alleged transgressions.

Considering the foregoing premises, this Court shall take cognizance of and resolve the factual issues involved in this case.

Quantum of proof required in illegal dismissal cases.

The fact of respondents' dismissal from service is undisputed by the parties. The crux of the issue therefore lies on whether the supposed transgressions of respondents are supported by substantial evidence, and whether they are considered just causes for their dismissal.

In this regard, it is a well-established rule that the party-litigant who alleges the existence of a fact or thing necessary to establish his/her claim has the burden of proving the same by the amount of evidence required by law, which, in labor proceedings, is substantial evidence, or "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[45] To be clear, in the hierarchy of evidentiary values, "proof beyond reasonable doubt is placed at the highest level, followed by clear and convincing evidence, preponderance of evidence, and substantial evidence, in that order."[46] Thus, in

---

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

[46] *Spouses Manalo v. Hon. Roldan-Confesor*, 290 Phil. 311, 323 (1992).

the hierarchy of evidence, it is the least demanding.[47] "Corollarily, the ground for the dismissal of an employee does not require proof beyond reasonable doubt."[48] The quantum of proof required is merely substantial evidence — which only entails evidence to support a conclusion, "even if other minds, equally reasonable, might conceivably opine otherwise."[49] Accordingly, requiring a quantum of proof that is over and above substantial evidence is contrary to law. As held in *Manila Electric Company v. National Labor Relations Commission*:[50]

> And this Court has ruled that the ground for an employer's dismissal of an employee need be established only by substantial evidence, it not being required that the former's evidence 'be of such degree as is required in criminal cases, i.e., proof beyond reasonable doubt.' It is absolutely of no consequence that the misconduct with which an employee may be charged also constitutes a criminal offense: theft, embezzlement, assault on another employee or company officer, arson, malicious mischief, etc. The proceedings being administrative, the quantum of proof is governed by the substantial evidence rule and not, as the respondent Commission seems to imagine, by the rule governing judgments in criminal actions.[51]

Considering the foregoing recitals, this Court shall first delve into the evidentiary issues in evaluating the evidence submitted by petitioners.

Sufficiency of evidence proving respondents' alleged transgressions.

As discussed above, petitioners impute on respondents the commission of the following transgressions: (1) incurring shortages

---

[47] *Salvador v. Philippine Mining Service Corporation*, 443 Phil. 878, 889 (2003).

[48] *Lopez v. Alturas Group of Companies*, 663 Phil. 121, 131 (2011).

[49] *Distribution & Control Products, Inc. v. Santos*, 813 Phil. 423, 433 (2017).

[50] 275 Phil. 746 (1991).

[51] Id. at 754.

in the number of broilers delivered to the processing plant in Bataan; and (2) unauthorized selling of excess broilers and broiler crates in Concepcion, Tarlac. To prove their allegations, petitioners presented to the labor tribunals their documentary and testimonial evidence.

Shortages in broiler deliveries.

In particular, as to the supposed shortages in the number of broilers incurred by the respondents, petitioners furnished a copy of an unsigned and unilaterally prepared summary of short broilers delivery[52] supposedly issued by SMFI for February 2011 and March 2011.

The CA, on its part, found no evidentiary value in the summary as it was neither signed nor authenticated by any personnel of petitioners or SMFI."[53] Moreover, both the CA and the respondents emphasized that nothing in the summary suggests respondents' involvement in the alleged listings of deliveries, more so the deficiencies indicated therein. Thus, the summary alone cannot prove with certainty that respondents had any part in, or were responsible for, the shortages of broilers amounting to Seven Hundred Forty Eight (748) pieces.[54]

We agree.

Verily, the summary furnished by petitioners afford no assurance of their authenticity as they were unsigned. While the summary delineates broiler shortages for the months of February and March 2011, the summary itself is uncorroborated and could have been easily concocted to suit the personal interest and purpose of petitioners. Notably, neither the petitioners, or any personnel from SMFI or JR Hauling for that matter, attested to the genuineness of the document, or that the same was executed in their presence. Petitioners did not even disclose

---

[52] CA *rollo*, p. 219.

[53] *Rollo*, p. 54.

[54] Id. at 54-55 and 243.

the maker of the summary. Clearly, the summary is uncertain as to its origin and authenticity and therefore inadmissible to prove respondents' involvement in the deficiencies indicated therein.[55]

Even if the summary is admissible, it would not suffice to show that respondents were indeed responsible for the alleged shortages in the delivery of broilers to SMFI. In the first place, the summary itself does not identify any of the respondents as the assigned driver/helper at the time broiler deliveries were made to SMFI. In fact, the summary itself did not indicate that it was JR Hauling who was responsible for the broiler deliveries at the time the alleged shortages were incurred.

Petitioners, on this point, bring to fore sworn statements or affidavits of Mapue,[56] Pedro,[57] and petitioners' co-employees, namely, Acoba,[58] Enriquez and Moratin,[59] Fuentes,[60] Espares,[61] and Sanico[62] to corroborate the fact of deficiencies in the deliveries supposedly caused by herein respondents. A perusal of the affidavits, however, readily shows that the statements therein referred only to the respondents' alleged involvement in the unauthorized sale of excess broilers and broiler crates, and not as to their involvement in the delivery shortage of 748 broilers.

Nor was there a reasonable connection between the shortages incurred by SMFI and the unauthorized sale of broilers and broiler crates. To be clear, the parties are not in dispute on the

---

[55] See *IBM Philippines, Inc. v. National Labor Relations Commission*, 365 Phil. 137, 147-152 (1999).

[56] Supra note 17.

[57] Supra note 18.

[58] Supra note 19.

[59] Supra note 20.

[60] Supra note 21.

[61] Supra note 22.

[62] Supra note 23.

fact that the sale of live chickens came from the excess or replacement broilers secured by respondents from the farms. Accordingly, the logic is simple – if what were sold by respondents were the excess broilers from the farms not otherwise accounted for under the job orders, then respondents would have not incurred short deliveries of broilers to SMFI.

Considering the foregoing premises, this Court finds no cogent basis to impute such transgression on respondents absent any substantial proof of their participation in the alleged act in question.

Unauthorized sale of excess broilers and broiler crates.

As discussed above, to prove respondents' involvement in the unauthorized sale of excess broilers and broiler crates, petitioners presented the affidavits of Mapue, Pedro, and respondents' co-employees, namely, Acoba, Enriquez and Moratin, Fuentes, Espares, and Sanico.

Notably, respondents argued before the CA that the affidavits presented by petitioners were inadmissible to prove their culpability which would justify their dismissal from employment. Particularly, respondents averred that: (1) the affidavits were taken *ex-parte* and, thus, incomplete and inaccurate; (2) statements therein are self-serving and hearsay, and unsubstantiated by concrete evidence; and (3) the admissions of culpability made by their co-employees are binding only on them and not on respondents. It is for these reasons that the CA, in finding that respondents were illegally dismissed, disregarded these affidavits and held as follows:

> Even the affidavits submitted by [petitioners] only contain mere allegations uncorroborated by any other evidence which, to this Court, clearly do not constitute substantial evidence to show [respondents'] involvement in the alleged deliveries and deficiencies indicated in the summary of deliveries.[63]

---

[63] *Rollo*, p. 55.

It is noteworthy, however, that although the affidavits do not address respondents' participation in the delivery shortages of broilers, it is apparent that the statements in the same affidavits attest to their involvement in the unauthorized sale of excess broilers and broiler crates. We now address the next issue – Are the affidavits sufficient to establish respondents' involvement in the alleged acts in question? We answer in the affirmative.

This Court has held that in labor cases, "[a]ffidavits may be sufficient to establish substantial evidence."[64] Respondents argued, however, that affidavits taken *ex-parte* should not be given due weight for being self-serving, hearsay and inadmissible in evidence. By citing pertinent provisions on the rules on evidence, respondents insisted that any admissions made therein cannot be used to establish their culpability, but only of the confessants themselves.

The argument that the affidavits are hearsay for having been taken *ex parte, i.e.*, that the affiants were not presented for cross-examination, does not persuade us. The rules of evidence prevailing in courts of law do not control proceedings before the labor tribunals where decisions may be reached on the basis of position papers, accompanied by supporting documents, including affidavits of witnesses, and other allied pleadings.[65] Thus, in *Bantolino v. Coca-Cola Bottlers Phils., Inc.*,[66] this Court held that:

> [A]dministrative bodies like the NLRC are not bound by the technical niceties of law and procedure and the rules obtaining in courts of law. Indeed, the Revised Rules of Court and prevailing jurisprudence may be given only stringent application, i.e., by analogy or in a suppletory character and effect. The submission by respondent, citing *People v. Sorrel*, that an affidavit not testified to in a trial, is mere hearsay evidence and has no real evidentiary value, cannot find

---

[64] *Punongbayan and Araullo (P&A) v. Lepon*, 772 Phil. 311, 323 (2015).

[65] *Bantolino v. Coca-Cola Bottlers Phils., Inc.*, 451 Phil. 839, 845 (2003) citing *Rabago v. National Labor Relations Commission*, G.R. No. 82868, August 5, 1991, 200 SCRA 158.

[66] Id. at 846.

relevance in the present case considering that a criminal prosecution requires a quantum of evidence different from that of an administrative proceeding. x x x[67] (Citation omitted)

Along the same lines, we held in *Southern Cotabato Development and Construction, Inc. v. National Labor Relations Commission*[68] that Article 221 (now 227) of the Labor Code, as amended, provides that "the rules of evidence prevailing in courts of law or equity [shall not be controlling]" and that the LA and the NLRC shall "use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law and procedure, all in the interest of due process." Clearly, to disregard the affidavits on the ground that they were taken *ex-parte* would necessarily require the application of the technical rules of evidence and thereby negate the purpose of the summary nature of labor proceedings mandated by the Labor Code and the NLRC Rules of Procedure.

At any rate, we find that the affidavits executed by various co-employees constitute substantial evidence to prove respondents' involvement in the unauthorized sale of excess broilers and broiler crates.[69] We are inclined to give them evidentiary weight absent any evidence to rebut their validity. It is well settled that "a document acknowledged before a notary public is a public document that enjoys the presumption of regularity. It is a *prima facie* evidence of the truth of the facts stated therein and a conclusive presumption of its existence and due execution."[70] The case of *Gabunas, Sr. v. Scanmar Maritime Services, Inc.*[71] is instructive:

---

[67] Id. at 846.

[68] 345 Phil. 1110 (1997).

[69] This Court, however, is inclined to disregard the affidavit of Roberto Sanico as a copy thereof was only presented to this Court by petitioners as an attachment to their Petition filed before us on October 7, 2014.

[70] *Ocampo v. Land Bank of the Philippines*, 609 Phil. 337, 348 (2009).

[71] 653 Phil. 457 (2010).

We also note that even the Labor Arbiter's Decision on this matter is wanting in reference to any evidence that would support findings in favor of petitioner. As between petitioner's bare allegation and the Affidavit of a witness to the contrary, we give credence to the latter.

In *Pan Pacific Industrial Sales Co., Inc. v. Court of Appeals, et al.*, we held that a notarized document carries the evidentiary weight conferred upon it with respect to its due execution. It has in its favor the presumption of regularity, which may only be rebutted by evidence so clear, strong and convincing as to exclude all controversy as to the falsity of the certificate. Absent such evidence, the presumption must be upheld. The burden of proof to overcome the presumption of due execution of a notarial document lies in the one contesting the same.

Petitioner failed to present convincing evidence to rebut the assertions made by Mr. Esta on a crucial point. The CA stated that while it was ready to construe in favor of labor in case of doubt, and **while the Affidavit of Mr. Esta could be considered self-serving, there was absolutely no evidence to rebut this Affidavit; hence, the Affidavit must be believed**.[72] (Emphasis supplied)

The case of *Cañete v. National Labor Relations Commission*[73] is also instructive, *viz.*:

Petitioner now contends that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in holding that he was validly dismissed despite the failure of private respondents to sufficiently prove just cause. He argues that the unsworn statements and documents they submitted are inadmissible as evidence as they are mere hearsay and without probative value.

The contention is without merit. **The documents submitted by private respondents before the Labor Arbiter are not hearsay and can be accorded probative value because Sec. 3, Rule V, of the New Rules of Procedure of the NLRC specifically allows the parties to submit position papers accompanied by all supporting documents including the affidavits of their respective witnesses which take the**

---

[72] Id. at 465.

[73] 374 Phil. 272 (1999).

place of their testimony. It is not necessary that the affidavits and other documents presented conform with the technical rules of evidence since in labor cases the rules of evidence prevailing in courts of law or equity are not controlling. **It is sufficient that the documents submitted by the parties have a bearing on the issue at hand and support the positions taken by them.** x x x[74] (Emphasis supplied)

Notably, while respondents underlined the supposed irregularities which attended the execution of the affidavits, it bears emphasis that at no time in the proceedings before the labor tribunals did respondents present contrary proof to petitioners' testimonial evidence other than their mere denials of culpability. Moreover, the affidavits presented by petitioners cannot simply be disregarded absent any proof that petitioners exerted undue pressure on the affiants,[75] or that they committed falsehood in their statements.[76]

On this point, we give emphasis and credence to the affidavit of Acoba and the joint affidavit of Enriquez and Moratin, respondents' co-employees, and who, by their own admissions, were among those similarly involved in the unauthorized sale of excess broilers together with respondents. Equally important is the affidavit of Fuentes, another co-employee of respondents, who attested to respondents' participation in the unauthorized sale of broiler crates. It is not without precedent in jurisprudence that affidavits of various co-employees constitute substantial evidence to prove the charge against the employee subject of the illegal dismissal case. The statements of co-employees, are, in fact, given utmost weight and credence, and cannot simply be set aside.[77] Thus, in *Punongbayan and Araullo (P&A) v. Lepon*,[78] this Court held that the affidavits of co-

---

[74] Id. at 277-288.

[75] *Capitol Medical Center, Inc. v. National Labor Relations Commission*, 496 Phil. 704, 720 (2005).

[76] *INC Shipmanagement, Inc. v. Moradas*, 724 Phil. 374, 396 (2014).

[77] *Lopez v. Alturas Group of Companies, supra* note 48 at 129.

[78] *Supra* note 64.

employees are sufficient basis for the employer's loss of trust and confidence on the dismissed employee:

> Here, respondent did not adduce evidence to show that the affiants, including Ramilito L. Nanola (Nanola), Wendell D. Ganhinhin (Ganhinhin), Sophia M. Verdida (Verdida), and Cielo C. Diano (Diano), all of whom were employed by P&A, were coerced to execute an affidavit prejudicial to respondent.
>
> x x x x
>
> As correctly held by both the Labor Arbiter and the NLRC, these affidavits constitute substantial evidence to prove that respondent committed acts breaching the trust and confidence reposed on him by P&A. The colleagues and subordinates of respondent executed the affidavits based on their personal knowledge, and without any proof of coercion. Their statements, as discussed below, corroborate each other and leave no room for doubt as to the acts committed by respondent.[79]

Considering the foregoing premises, we hold that petitioners had sufficiently discharged its burden in proving that respondents were indeed involved in the unauthorized sale of excess broilers and broiler crates. By regarding the various affidavits supporting respondents' transgressions as unsubstantial, it appears that the CA is requiring petitioners to prove respondents' culpability over and above the quantum of proof of substantial evidence, which, as discussed above, is contrary to law and settled jurisprudence. "The standard of substantial evidence is satisfied where the employer has reasonable ground to believe that the employee is responsible for the misconduct, and his participation therein renders him unworthy of the trust and confidence demanded by his position."[80]

Substantive Due Process.

Proceeding from the above conclusion, the pivotal question that must be answered now is whether respondents' acts

---

[79] Id. at 324-325.

[80] *Falguera v. Linsangan*, 321 Phil. 736, 748 (1995).

amounted to serious misconduct, fraud or willful breach of trust and confidence, or were tantamount to a commission of a crime, which justified their dismissal from employment.

It is worth noting at this point that it was error on the part of the CA to discuss the propriety of petitioners' dismissal on the ground of abandonment as such defense was never raised by petitioners during the proceedings before the LA and the NLRC.

At any rate, Article 297 of the Labor Code enumerates the just causes for termination. It provides:

> ARTICLE 297. Termination *by employer*. – An employer may terminate an employment for any of the following causes:
>
> (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
>
> x x x
>
> (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; x x x

The CA held in its September 5, 2014 Decision that "[petitioners] failed to sufficiently establish the charge against [respondents] which was the basis for [their] loss of trust and confidence that warranted their dismissal."[81] In this regard, petitioners argued that their defenses are not limited to breach of trust and confidence but also serious misconduct, fraud, and commission of a crime under Article 282 (now Article 297) of the Labor Code.

We have defined misconduct as "the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and

---

[81] *Rollo*, p. 54.

not mere error in judgment. For serious misconduct to justify dismissal under the law, "(a) it must be serious; (b) must relate to the performance of the employee's duties; and (c) must show that the employee has become unfit to continue working for the employer."[82]

In this regard, we opine that respondents' acts constitute Serious Misconduct which would warrant the *supreme penalty* of dismissal. Notably, the facts of the case reasonably establish with certainty: (1) that excess broilers and crates were being illegally sold in Tarlac; and (2) that respondents were involved in the anomalous transaction.

We agree, likewise, with the petitioners that the unauthorized sale of excess broiler and broiler crates constitutes an act of dishonesty, a breach of trust and confidence reposed by JR Hauling upon them.

Loss of trust and confidence as a ground for dismissal of employees covers employees occupying a position of trust who are proven to have breached the trust and confidence reposed on them. Moreover, in order to constitute a just cause for dismissal, the act complained of must be work-related and shows that the employee concerned is unfit to continue working for the employer. In addition, loss of confidence as a just cause for termination of employment is premised on the fact that the employee concerned holds a position of responsibility, trust and confidence or that the employee concerned is entrusted with confidence with respect to delicate matters, such as the handling or care and protection of the property and assets of the employer. The betrayal of this trust is the essence of the offense for which an employee is penalized."[83] In this regard, it is not the job title but the nature of the work that the employee is duty-bound to perform which is material in determining whether he holds a position where greater trust is placed by the employer

---

[82] *Nagkakaisang Lakas ng Manggagawa sa Keihin (NLMK-OLALIA-KMU) v. Keihin Philippines Corporation*, 641 Phil. 300, 310 (2010).

[83] *Cruz, Jr. v. Court of Appeals*, 527 Phil. 230, 243 (2006).

and from whom greater fidelity to duty is concomitantly expected.[84]

Petitioners, as drivers/helpers, were entrusted with the custody, delivery and transportation of the broilers and broiler crates, including their proper handling and protection, in accordance with the directives of JR Hauling and instructions of its clients. To stress, respondents are performing the core business of JR Hauling. Thus, even on the premise that respondents were not occupying managerial or supervisory positions, they were, undoubtedly, holding positions of responsibility. As to respondents' transgressions *i.e.*, the unauthorized sale of broilers and broiler crates, the same are clearly work-related as they would not have been able to perpetrate the same were it not for their positions as drivers/helpers of JR Hauling.

In fine, we hold that there is just cause for respondents' dismissal from the service.

Procedural Due Process.

The Implementing Rules in relation to Article 297 of the Labor Code provides for the procedure that must be observed in order to comply with the required procedural due process in dismissal cases, *to wit*:

a) A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side.

b) A written notice of termination served on the employee indicating that upon due consideration of all circumstances, grounds have been established to justify his termination.

Petitioners admit that no written notice to explain and written notice of termination were served upon respondents. Their defense, however, is premised on their assertion that it was respondents themselves which prevented JR Hauling from serving upon them the written notices when they failed to report for

---

[84] *Abel v. Philex Mining Corporation*, 612 Phil. 203, 215 (2009).

work after they were confronted by management of their alleged transgressions. We are not persuaded.

At the outset, respondents were adamant in their pleadings before the LA and the NLRC that JR Hauling dismissed them from employment without notice and hearing and/or investigation when management allegedly displayed their pictures at the gate and barred them from entering the company premises.[85] Interestingly, petitioners failed to categorically deny these allegations. It is worth noting that Section 11, Rule 8 of the Rules of Court, which supplements the NLRC Rules of Procedure,[86] provides that allegations which are not specifically denied are deemed admitted.[87]

Even on the premise that it was the respondents who refused to report for work, the same does not exculpate petitioners from observing the basic principles of due process before respondents can be dismissed from employment. To be clear, if petitioners were adamant to give respondents the opportunity to explain their side and refute the accusations made against them, petitioners should have served the notices personally to respondents, or where their whereabouts are unknown, such as in this case, by courier or registered mail at their last known addresses indicated in their employee file maintained or in the possession of JR Hauling. This, however, petitioners failed to do.

In light of the above premises, there being just cause for the dismissal but considering petitioners' non-compliance with the procedural requisites in terminating respondents' employment, the latter are entitled to nominal damages in the amount of ₱30,000.00 each in line with existing jurisprudence.[88]

---

[85] *Rollo*, pp. 171 & 182.

[86] 2011 NLRC RULES OF PROCEDURE, AS AMENDED, Rule 1, Sec. 3.

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

[88] *Dela Rosa v. ABS-CBN Corporation*, G.R. No. 242875, August 28, 2019.

Respondents claims for salary differentials.

In determining an employee's entitlement to his monetary claims, the burden of proof is shifted from the employer to the employee depending on the nature of the money claim prayed for. In claims involving payment of salary differentials, this Court has held that the burden rests on the employer to prove payment following the basic rule that "in all illegal dismissal cases, the burden rests on the defendant to prove payment rather than on the plaintiff to prove non-payment."[89] This rationale is supported by the fact that all pertinent personnel files, payrolls, records, remittances and other similar documents which show that the salary differentials have in fact been paid are not in the possession of the worker but are in the custody and control of the employer.

In this regard, petitioners claimed that respondents were receiving an average daily salary rate of ₱600 a day which is beyond the minimum daily wage rate under Wage Order No. RBIII-15, which supposedly states, among others, that the minimum wage in non-agricultural establishments, such as JR Hauling, whose total assets is less than Thirty Million Pesos (₱30,000,000.00), is Three Hundred Eight Pesos (₱308).[90] Petitioners then presented copies of JR Hauling's audited financial statements[91] which indicated that their total assets for 2010 only amounted to Twenty Four Million Forty Nine Thousand Nine Hundred Five and 51/100 Pesos (₱24,049,905.51).

In any case, petitioners failed to present evidence to disprove respondents' allegations that they were merely completing one trip per day, and would thus earn only ₱300 per day, which is clearly below the minimum wage rate provided for by law. We thus find no reversible error in the Decision of the CA granting

---

[89] *Minsola v. New City Builders*, G.R. No. 207613, January 31, 2018.

[90] CA *rollo*, p. 151.

[91] Id. at 160-163.

respondents' claim for salary differentials, subject to the applicable prescriptive periods.

As regards respondent Mapue, he should be dropped as party-respondent there being no proof that he acted in bad faith or with malice vis-à-vis the dismissal of the respondents.

WHEREFORE, the Petition is **PARTLY GRANTED**. Respondents Gavino L. Solamo, Ramil Jerusalem, Armando Parungao, Rafael Caparos, Jr., Noriel Solamo, Alfredo Salangsang, Mark Parungao, and Dean V. Calvo are hereby **DECLARED** to have been **DISMISSED FOR CAUSE**. However, for failure of petitioner JR Hauling Services to comply with procedural due process requirements, it is **ORDERED TO PAY** the respondents the sum of ₱30,000.00 each by way of nominal damages. Moreover, JR Hauling Services is held **LIABLE TO PAY** respondents' salary differentials subject to applicable prescriptive periods.

Respondent Oscar Mapue is **DROPPED** as party-respondent there being no showing that he acted in bad faith or with malice.

The case is **REMANDED** to the Labor Arbiter for the re-computation of respondents' salary differentials subject to applicable prescriptive periods.

SO ORDERED.

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

Baltazar-Padilla, J., on leave.

SECOND DIVISION

[G.R. No. 225151. September 30, 2020]

CIVIL SERVICE COMMISSION, *Petitioner*, *v.* **PETER G. CUTAO,** *Respondent*.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; AUTHORITY OF THE CIVIL SERVICE COMMISSION (CSC) TO RECALL AN APPOINTMENT; RECALL OR INVALIDATION OF AN APPOINTMENT DOES NOT REQUIRE NOTICE AND HEARING, MUCH LESS A FULL-BLOWN, TRIAL-TYPE PROCEEDING. — It is well-settled that the CSC's authority "to take appropriate action on all appointments and other personnel actions" includes the power "to recall an appointment initially approved, [if later on found to be] in disregard of applicable provisions of the Civil Service law and regulations."

The recall or invalidation of an appointment does not require a full-blown, trial-type proceeding. "[I]n approving or disapproving an appointment, [the CSC] only examines the conformity of the appointment with applicable provisions of law and whether the appointee possesses all the minimum qualifications and none of the disqualifications." Thus, in contrast to administrative disciplinary actions, a recall does not require notice and hearing.

2. ID.; ID.; ID.; REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; REMEDIAL PROCEDURE IN NON-DISCIPLINARY CASES, SUCH AS A RECALL OF AN APPOINTMENT; DUE PROCESS, ACCORDED IN CASE AT BAR. — The essence of due process is the right to be heard. Thus, a party can accorded due process through means other than a notice or hearing. The Revised Rules on Administrative Cases in the Civil Service (Civil Service Rules) aptly provides for a remedial procedure applicable specifically to non-disciplinary cases, such as a recall or invalidation of appointment. . . .

An appointment invalidated by the CSCRO [CSC Regional Office], as in the present case, may be appealed to the CSC Proper. If the parties remain unsatisfied with the outcome, they may question the CSC Proper's Decision before the CA *via* Rule 43 of the Rules of Court. Later on, the CA decision may be reviewed by the Court *via* a petition for review on *certiorari* under Rule 45 of the Rules of Court.

It is not disputed that Cutao availed himself of these remedial measures. And even after obtaining a favorable decision from the CA, he was allowed to file his comment on the present petition. That he has taken every available opportunity to ventilate his defenses and other concerns only means that he has been sufficiently accorded due process.

3. ID.; ID.; ID.; IF THE CSC FINDS THAT AN APPOINTEE DOES NOT POSSESS THE APPROPRIATE ELIGIBILITY OR REQUIRED QUALIFICATION, IT IS DUTY-BOUND TO DISAPPROVE THE APPOINTMENT; CASE AT BAR. — Cutao submitted his TOR [Transcript of Records] and CAV [Certification, Authentication and Verification] as part of his application for promotion to show that he obtained a college degree from AIT [Agusan Institute of Technology], a qualification standard for the SPO2 position. Upon the CSCFO's [CSC Field Office's] request, the CHED declared the documents as inauthentic. The lack of other documents showing his educational attainment led the CSC to conclude that Cutao did not hold the bachelor's degree required not only for the position of SPO2, but also for SPO1 and PO3.When the CSC recalled his promotional appointments for not meeting the qualification standard, it was merely performing its recognized duty of ensuring "that the appointee has all the qualifications for the position." If it finds that the appointee does not "possess the appropriate eligibility or required qualification," it is duty-bound to disapprove his appointment.

4. ID.; ID.; ID.; ID.; A VOID APPOINTMENT CANNOT GIVE RISE TO SECURITY OF TENURE, MUCH LESS RIPEN INTO A VESTED RIGHT TO OFFICE. — [T]hat Cutao's appointments were initially approved by the CSC and that he has been in position for six years do not preclude the CSC from reviewing his appointments and disapproving them if the appointee is eventually found ineligible to occupy such office. The

fundamental rule is that "appointments in the civil service shall be made only according to merit and fitness."As his promotional appointments violated the qualification standards set for the positions of PO3, SPO1, and SPO3, these were all null and *void ab initio*. "A void appointment cannot give rise to security of tenure on the part of the holder of such appointment" much less ripen into a vested right to office. Thus, contrary to the CA ruling, the Court cannot allow Cutao to hold office merely on the basis of good faith or the sheer length of time spent therein. Otherwise, the Court would be condoning the entrance of unqualified individuals to government service.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Sansaet-Masendo Cadiz-Bañosia Law Office for respondent.

D E C I S I O N

INTING, *J.*:

This resolves the Petition for Review on *Certiorari*[1] under Rule 45 filed by the Civil Service Commission (CSC) against Peter G. Cutao (Cutao) assailing the Decision[2] dated January 27, 2016 and the Resolution[3] dated May 16, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 05397-MIN. In the assailed issuances, the CA reversed the CSC Resolution No. 1300213[4] dated January 28, 2013 that upheld the CSC Regional Office (CSCRO) No. XIII, Butuan City, recall of Cutao's appointment

---

[1] *Rollo*, pp. 20-32.

[2] *Id.* at 34-42; penned by Associate Justice Maria Filomena D. Singh with Associate Justices Edgardo A. Camello and Perpetua T. Atal-Paño, concurring.

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

[4] *Id.* at 118-121; penned by Commissioner Mary Ann Z. Fernandez-Mendoza with Chairman Francisco T. Duque III and Commissioner Robert S. Martinez, concurring.

as: (a) Police Officer (PO) III; (b) Senior PO (SPO) I; and (c) SPO II for failure to meet the educational attainment requirement for the positions.

The Antecedents

Cutao started in the civil service with the Philippine National Police (PNP) as PO1. He was later on promoted to PO3,[5] SPO1,[6] and SPO2.[7] All of the promotions were approved by the CSC.[8]

As part of the documentary requirements for applying for a promotion to SPO2, Cutao accomplished and submitted his Personal Data Sheet (PDS),[9] indicating that he obtained a bachelor's degree in criminology from the Agusan Institute of Technology (AIT) in Butuan City in 1997. He also submitted a copy of his transcript of records from AIT which bore the following notation:

> GRADUATED: From the Four Year Course in Criminology leading to the degree of BACHELOR OF SCIENCE IN CRIMINOLOGY (B.S. Crim) major in Police Administration as of October 20, 1996. **With Special Order (B)(R-X) No. 702-0094 s, 1997 dated December 14, 1997**.[10] (Emphasis supplied.)

---

[5] *Id.* at 61-62.

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

[7] *Id.* at 65-66.

[8] *Id.* at 61, 63 and 65; Cutao's promotions were approved by the CSC as follows: (a) to PO III by Priscillano E. Caday, Director II, Civil Service Commission (CSC) on March 30, 2005; (b) to SPO1 by Meshach D. Dinhayan, Director II on February 23, 2009; and (c) to SPO II by Meshach D. Dinhayan, Director II on February 16, 2011.

[9] *Id.* at 67-70.

[10] See Official Transcript of Record from Agusan Institute of Technology, *id.* at 74.

Also attached to his application was a Commission on Higher Education (CHED) Certification, Authorization and Verification (CAV)[11] (R-X111) No. A-417, Series 2007, dated May 28, 2007 which states:

To Whom It May Concern:

THIS IS TO CERTIFY that the signature (s) appearing on the original copy (ies) of the attached Transcript of Records, Diploma and Xerox copy of Special Order of

CUTAO, PETER G.

is/are that of The President, The Registrar, AGUSAN INSTITUTE OF TECHNOLOGY, Butuan City, Philippines.

This is to certify further that the Bachelor of Science in Criminology (B.S. Crim.) offered in the said school is duly authorized by the Government of the Republic of the Philippines.

For the Commission:

JOANNA B. CUENCA, Ph.D., CESO III
Director IV

By:

(signed)
ANASTACIO P. MARTINEZ, Ph.D.
Chief Education Program Specialist[12]

There were other signatures on the CAV which appeared to be those of CHED officials who had verified the course, as well as the Special Order (B)(R-X) No. 702-0094, s. 1997[13] dated December 14, 1997, as indicated on Cutao's transcript.

In the process of reviewing the documents submitted by Cutao, the CSC Field Office (CSCFO), Agusan Del Norte, through Meshach D. Dinhayan, Director II, wrote a Letter[14] dated

---

[11] *Id.* at 77.

[12] *Id.* Emphasis omitted.

[13] *Id.* at 75.

[14] *Id.* at 78.

February 16, 2011 to CHED Caraga Administrative Region, through Dr. Isabela L. Mahler, Director IV, requesting the latter to verify the authenticity of Cutao's transcript and CAV.

On June 30, 2011, Dr. Julius Sol O. Jamero, Chief Administrative Officer of CHED Caraga Administrative Region, responded to the query by filling out the *pro forma* verification slip[15] at the lower portion of the Letter dated February 16, 2011 and returning it to the CSCFO. In the slip, he ticked the appropriate box to indicate that the documents sought to be verified were "not authentic," giving the following reasons: *first*, the signatures of the CHED personnel appearing on the CAV submitted were not genuine.[16] *Second*, Special Order (B)(R-X) No. 702-0094, s. 1997[17] dated December 14, 1997 does not reflect Cutao's name. In this regard, the CHED attached a file copy[18] of the same Special Order referred to in Cutao's transcript, showing that the document was issued for purposes of approving the eligibility for graduation of one Bernardo F. Dela Cruz, and confirming that he had completed the requirements to obtain a bachelor's degree from AIT. In other words, the document was issued in the name of another person, not Cutao.

Based on the results of the CSCFO's verification, the CSCRO concluded that the approval of Cutao's promotional appointments was "not in order" for lack of the requisite educational qualification at the time of appointment.[19] Thus, through Adams D. Torres, Director IV, the CSCRO issued Decision No. LSD-NDC-12-006[20] dated January 19, 2012, recalling the approval of Cutao's promotional appointments, *viz.*:

---

[15] *Id.*

[16] *Id.*

[17] *Id.* at 75.

[18] *Id.* at 79.

[19] *Id.* at 80-82; penned by Director IV Adam D. Torres.

[20] *Id.*

WHEREFORE, foregoing premises considered, the approval of the promotional appointments of Mr. Peter G. Cutao, as Police Officer III (PO3), Senior Police Officer I (SPO1), and Senior Police Officer II (SPO2) are hereby RECALLED. This order is without prejudice to the filing of an administrative complaint against Mr. Cutao for the offenses of Dishonesty and/or Falsification of Public Document.[21]

To implement the ruling, the CSCRO wrote[22] Police Chief Superintendent Reynaldo Serrano Rafal, Director, PNP Regional Office No. XIII, Butuan, informing his office of the above-mentioned findings and urging him to issue an order, upon finality of the decision, reverting Cutao to his original position prior to all promotions and adjust his compensation accordingly.

Aggrieved, Cutao appealed the CSCRO Decision No. LSD-NDC-12-006 to the Commission Proper (CSC Proper).[23]

Ruling of the CSC Proper

In Decision No. 120653[24] dated October 2, 2012, the CSC Proper dismissed Cutao's appeal and upheld the invalidation of the subject promotional appointments. It explained that CSC Resolution No. 02-1288[25] dated October 8, 2002 lists a bachelor's degree as among the qualification requirements for the positions PO3, SPO1, and SPO2. Inasmuch as CHED already declared that the transcript and CAV submitted by Cutao were not authentic, it follows that he does not possess the requisite educational attainment for the higher positions.[26]

The CSC Proper gave more weight to CHED's declaration over Cutao's submissions, consisting of a certification issued

---

[21] *Id.* at 82.

[22] *Id.* at 83-84.

[23] *Id.* at 36.

[24] *Id*. at 94-99; penned by Commissioner Mary Ann Z. Fernandez-Mendoza with Commissioner Robert S. Martinez, concurring, and Chairman Francisco T. Duque III, on official business.

[25] *Id.* at 97.

[26] *Id.* at 99.

by the AIT Registrar dated February 23, 2012, stating that he "had graduated from the Four-Year Course in Criminology leading to the degree of Bachelor of Science in Criminology x x x as of October 20, 1996."[27]

In his subsequent Motion for Reconsideration,[28] he insisted that he graduated and obtained his bachelor's degree in Criminology from AIT. The discrepancies in his school records are "beyond his control" and "not his fault."[29] The CSC Proper summarized the documents submitted by Cutao to support his claims as follows:

> 1. Letter dated October 22, 2012 of Maria Delia M. Labado, AIT Registrar, addressed to Police Chief Superintendent Carmelo E. Valmoria praying for understanding and requesting that AIT be given time to prove that Cutao graduated [with] the degree of Bachelor of Science in Criminology on October 1996;
>
> 2. Letter dated October 23, 2012 of Labado addressed to the Regional Director, CHED Region XIII, stating that Cutao was enrolled in 1994 up to 1997 and that they are re-applying to re-check the form of Cutao in the issuance of Special Order;
>
> 3. Letter dated June 21, 2012 issued by Labado, attested by Elison O. Tacasan and Shirely T. Lim, AIT Dean and President, respectively, addressed to the Regional Director, CHED Region XIII, certifying under oath that Cutao has fully complied with the requirements for graduation for the degree of Bachelor of Science in Criminology as of October 1996; and
>
> 4. Enrollment Forms of Cutao for the summer of 1994, first and second semester of 1994-1995, and first semester of 1996.[30]

However, the CSC Proper denied his motion for failure to proffer new evidence or cite errors of law that would justify a revision, modification, or reversal of its assailed ruling. It

---

[27] *Id.*

[28] *Id.* at 100-102.

[29] *Id.* at 100.

[30] *Id.* at 120.

found the above-enumerated documents as inconclusive as these do not controvert the CHED declaration that his transcript and CAV are not authentic.[31]

Undaunted, Cutao elevated the case to the CA arguing that the CSC violated his constitutional right to due process when the CSCRO promulgated Decision No. LSD-NDC-12-006 on January 19, 2012.[32]

Ruling of the CA

In its assailed Decision,[33] the CA overturned the CSC's rulings. It held as follows: *first*, the CHED-accomplished verification slip relied upon by the CSC in recalling Cutao's promotional appointments did not amount to substantial evidence—the burden of proof required in administrative cases.[34] *Second*, Cutao has served in the government as a member of the PNP for seven years. Thus, "he has already acquired a legal right to the office."[35] The CSC, in initially approving his promotions, led him to believe that his appointments were regular in all material respects.[36] *Third*, Cutao was in good faith. That his documents turned out to be inauthentic was not his fault, but that of AIT. He relied on the TOR and CAV issued by the AIT and was led to believe that he was duly qualified to apply for those positions and, thereafter, hold and assume the responsibilities of office. As held in *Obiasca v. Basallote*,[37] an appointment to civil service must be upheld, despite procedural lapses, if these were beyond the civil servant's control and not of his own making.[38] *Fourth*,

---

[31] *Id.* at 121.

[32] *Id.* at 37.

[33] *Id.* at 34-42.

[34] *Id.* at 39.

[35] *Id.* at 39-40.

[36] *Id.* at 40.

[37] 626 Phil. 775 (2010).

[38] *Rollo*, p. 41.

based on the foregoing, Cutao was duly qualified for the position and eventually "became a permanent[-]status civil servant."[39] Thus, he must be accorded due process—consisting of notice and hearing—before his appointments could be recalled,[40] and him removed from office.[41]

The CSC moved to reconsider arguing that Cutao's appointments were merely recalled. He was not dismissed from service. The present controversy is a "non-disciplinary" case. Under the circumstances, the CSC rules do not require notice and hearing, but allow the aggrieved party to appeal the case or move for reconsideration.

In denying the CSC's motion for lack of merit, the CA explained that while the CSC has power to recall appointments, it may only exercise it based on specific grounds.[42] Thus, the CSC bore the burden of proving that Cutao violated existing civil service laws or regulations and that fraud attended his appointments.[43]

Moreover, although it is a non-disciplinary case under the CSC rules, the CSC's recall without notice and hearing and after Cutao had already been occupying the positions for a total of six years "violated all norms of fair play and equity."[44]

Hence, the CSC filed the present petition.

Issues

The sole issue for the Court's resolution is whether the CSC may recall a previously approved appointment to civil service without prior notice and hearing.

---

[39] *Id.* at 40.

[40] *Id.* at 39.

[41] *Id.* at 40.

[42] *Id.* at 44.

[43] *Id.* at 45.

[44] *Id.*

The Court's Ruling

The petition is meritorious.

It is well-settled that the CSC's authority "to take appropriate action on all appointments and other personnel actions"[45] includes the power "to recall an appointment initially approved, [if later on found to be] in disregard of applicable provisions of the Civil Service law and regulations."[46]

The recall or invalidation of an appointment does not require a full-blown, trial-type proceeding. "[I]n approving or disapproving an appointment, [the CSC] only examines the conformity of the appointment with applicable provisions of law and whether the appointee possesses all the minimum qualifications and none of the disqualifications." Thus, in contrast to administrative disciplinary actions, a recall does not require notice and hearing.[47]

The essence of due process is the right to be heard. Thus, a party can be accorded due process through means other than a notice or hearing. The Revised Rules on Administrative Cases in the Civil Service (Civil Service Rules)[48] aptly provides for a remedial procedure applicable specifically to non-disciplinary cases, such as a recall or invalidation of appointment, *viz.*:

NON-DISCIPLINARY CASES

RULE 16

Invalidation or Disapproval of Appointment

SECTION 77. Invalidation or Disapproval; Who May Appeal. — Either the appointing authority or the appointee may assail the invalidation or disapproval of an appointment.

---

[45] Title I, Subtitle A, Chapter 3, Section 12(14) of Book V of Executive Order No. 292.

[46] *CSC v. Tinaya*, 491 Phil. 729, 739 (2005) citing *Mathay, Jr. v. CSC*, 371 Phil. 17, 29 (1999). Also see *City Mayor Debulgado v. Civil Service Commission*, 307 Phil. 195 (1994).

[47] *City Mayor Debulgado v. Civil Service Commission, supra* at 213.

[48] Revised Uniform Rules on Administrative Cases in the Civil Service, CSC Resolution No. 1101502, [November 8, 2011].

SECTION 78. Where and When to File. — Appointments invalidated or disapproved by the CSCFO may be appealed to the CSCRO while those invalidated or disapproved by the CSCRO may be appealed to the Commission within the fifteen (15)-day reglementary period.

To facilitate prompt actions on invalidated or disapproved appointments, motions for reconsideration filed with the CSCFO shall be treated as an appeal to the CSCRO and a Motion for Reconsideration at the CSCRO will be treated as an appeal to the Commission and all the records thereof including the comments of the CSCFO or CSCRO shall, within ten (10) days from receipt of the latter, be forwarded to the CSCRO or the Commission as the case may be.

The action of the CSCRO concerned may be appealed to the Commission within fifteen (15) days from receipt thereof.

The appeal filed before the CSCROs and the Commission shall comply with the requirements for the perfection of an appeal enumerated in Sections 113 and 114.

An appointment invalidated by the CSCRO, as in the present case, may be appealed to the CSC Proper. If the parties remain unsatisfied with the outcome, they may question the CSC Proper's Decision before the CA *via* Rule 43[49] of the Rules of Court. Later on, the CA decision may be reviewed by the Court *via* a petition for review on *certiorari* under Rule 45 of the Rules of Court.

It is not disputed that Cutao availed himself of these remedial measures. And even after obtaining a favorable decision from the CA, he was allowed to file his comment on the present petition. That he has taken every available opportunity to ventilate his defenses and other concerns only means that he has been sufficiently accorded due process.

In any case, the Court finds the CSC's recall or invalidation of the subject promotional appointments to be justified.

To recall, Cutao submitted his TOR and CAV as part of his application for promotion to show that he obtained a college degree from AIT, a qualification standard for the SPO2 position.

---

[49] See Sections 1 and 3, Rule 43 of the Rules of Court.

Upon the CSCFO's request, the CHED declared the documents as inauthentic. The lack of other documents showing his educational attainment led the CSC to conclude that Cutao did not hold the bachelor's degree required not only for the position of SPO2, but also for SPO1 and PO3.

When the CSC recalled his promotional appointments for not meeting the qualification standard,[50] it was merely performing its recognized duty of ensuring "that the appointee has all the qualifications for the position."[51] If it finds that the appointee does not "possess the appropriate eligibility or required qualification,"[52] it is duty-bound to disapprove his appointment.

The CSC properly relied on the CHED certification expressly declaring the subject documents as inauthentic for the following reasons: *First*, the certification is presumed to have been accomplished in the regular performance of CHED's official functions. It must be upheld absent clear and convincing proof

---

[50] Title I, Subtitle A, Chapter 5, Section 22 of Book V of Executive Order No. 292 defines qualification standards as follows: (1) A qualification standard expresses the minimum requirements for a class of positions in terms of education, training and experience, civil service eligibility, physical fitness, and other qualities required for successful performance. The degree of qualifications of an officer or employee shall be determined by the appointing authority on the basis of the qualification standard for the particular position.

Qualification standards shall be used as basis for civil service examinations for positions in the career service, as guides in appointment and other personnel actions, in the adjudication of protested appointments, in determining training needs, and as aid in the inspection and audit of the agencies personnel work programs.

It shall be administered in such manner as to continually provide incentives to officers and employees towards professional growth and foster the career system in the government service.

(2) The establishment, administration and maintenance of qualification standards shall be the responsibility of the department or agency with the assistance and approval of the Civil Service Commission and in consultation with the Wage and Position Classification Office.

[51] *Civil Service Commission v. Joson, Jr.*, 473 Phil. 844, 853 (2004).

[52] *Santiago, Jr. v. Civil Service Commission*, 258-A Phil. 519, 524 (1989).

to the contrary.[53] *Second*, it was based on CHED's independent evaluation and supported by official documents. That it was embodied in a *pro forma* verification slip did not diminish its credibility and veracity. *Third*, there is nothing on the records of the case clearly establishing that Cutao obtained a bachelor's degree. Verily, Cutao presented letters[54] from the AIT registrar stating that he was enrolled in AIT from 1994 to 1997 and that he had complied with the requirements for graduation. To the Court's mind, if he was able to obtain the letters, he should have also been capable of simply requesting the university to issue a copy of his official transcript of records and diploma to once and for all remove any doubt clouding his educational attainment. But he did not. This only leads to the inescapable conclusion that he does not have a bachelor's degree in criminology from AIT as he claims.

Finally, that Cutao's appointments were initially approved by the CSC and that he has been in position for six years do not preclude the CSC from reviewing his appointments and disapproving them if the appointee is eventually found ineligible to occupy such office. The fundamental rule is that "appointments in the civil service shall be made only according to merit and fitness."[55] As his promotional appointments violated the qualification standards set for the positions of PO3, SPO1, and SPO3, these were all null and void *ab initio*.[56] "A void appointment cannot give rise to security of tenure on the part of the holder of such appointment"[57] much less ripen into a vested right to office. Thus, contrary to the CA ruling, the Court cannot allow Cutao to hold office merely on the basis of good faith or the sheer length of time spent therein. Otherwise, the

---

[53] See *Yap v. Lagtapon*, 803 Phil. 652, 663 (2017).

[54] *Rollo*, p. 118.

[55] Article IX(B), Section 2(2), 1987 Constitution.

[56] See *Debulgado v. Civil Service Commission, supra* note 46 at 212-213. See also Section 3, Rule V of the Omnibus Implementing Rules.

[57] *Id.*

Court would be condoning the entrance of unqualified individuals to government service.

WHEREFORE, the instant petition is **GRANTED**. The Decision dated January 27, 2016 and the Resolution dated May 16, 2016, of the Court of Appeals in CA-G.R. SP No. 05397-MIN are **REVERSED** and **SET ASIDE**. The Civil Service Commission Decision No. 120653 dated October 2, 2012 and Resolution No. 1300213 dated January 28, 2013 are **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. 232120. September 30, 2020]

NATIONAL GRID CORPORATION OF THE PHILIPPINES, *Petitioner*, *v.* **CLARA C. BAUTISTA, married to REY R. BAUTISTA,** *Respondent*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PROCEDURE IN THE COURT OF APPEALS; GROUNDS FOR DISMISSAL OF APPEAL; THE COURT OF APPEALS HAS THE DISCRETION TO DISMISS OR NOT TO DISMISS AN APPEAL FOR NON-FILING OF AN APPELLANT'S BRIEF. — The CA has the discretion to dismiss or not to dismiss an appeal for non-filing of an Appellant's Brief under Section 1(e), Rule 50 of the Rules of Court: . . .

The Court is mindful of the policy of affording litigants the amplest opportunity for the determination of their cases on the merits and of dispensing with technicalities whenever compelling reasons so warrant or when the purpose of justice requires it. The usage of the word *may* in the aforementioned provision indicates that the dismissal of the appeal upon failure to file the Appellant's Brief is only discretionary and not mandatory. Failure to serve and file the required number of copies of the Appellant's Brief within the time provided by the Rules of Court does not have the immediate effect of causing the outright dismissal of the appeal. When the circumstances so warrant its liberality, the CA is bound to exercise its sound discretion and allow the appeal to proceed despite the late filing of the Appellant's Brief upon taking all the pertinent circumstances into due consideration. With that affirmation comes the caution that such discretion must be a sound one exercised in accordance with the tenets of justice and fair play having in mind the circumstances obtaining in each case.

The Court finds no reason to disturb the CA's exercise of discretion in dismissing the appeal. The explanation proffered by petitioner is not compelling as to convince the Court to reverse the CA.

2. ID.; PROCEDURAL RULES; LIBERAL APPLICATION THEREOF REQUIRES CREDIBLE EXPLANATION AND EVIDENTIARY SUPPORT. — [P]etitioner's harping on "public interest" as a reason for the Court to exercise its liberality is anathema to the intent and purpose of procedural rules which is to provide a just, speedy, and inexpensive disposition of every action or proceeding, when circumstances would show an attempt or design to circumvent the rules. The liberality with which the Court exercises equity jurisdiction is always anchored on the basic consideration that it must be warranted by the circumstances obtaining in each case. With petitioner's explanation less than worthy of credence and without evidentiary support, the Court is constrained to adhere strictly to the procedural rules on the timeliness of submission before the court.

3. ID.; SPECIAL CIVIL ACTIONS; EXPROPRIATION; JUST COMPENSATION; ZONAL VALUATION IS ONLY ONE OF THE FACTORS IN DETERMINING JUST COMPENSATION. — Zonal valuation is simply one of the indices of the fair market value of real estate. By itself, this index cannot be the sole basis of just compensation in expropriation cases since the standard is not the taker's gain but the owner's loss. . . . [I]t is only one of the several factors which the court may consider to facilitate the determination of just compensation. Zonal value alone of the properties in the area whether of recent or vintage years does not equate to just compensation. Otherwise, the determination of just compensation would cease to be judicial in nature which negates the exercise of judicial discretion.

4. ID.; ID.; ID.; ID.; CLASSIFICATION OF LANDS; COURTS CONSIDER THE CLASSIFICATION OF THE LAND IN ASSESSING ITS VALUE. — With respect to petitioner's assertion that the subject property must be valued as an agricultural land, courts enjoy sufficient judicial discretion to determine the classification of lands because such classification is one of the relevant standards for the assessment of the value of lands subject of expropriation proceedings.

5. ID.; ID.; ID.; ID.; THE COURT MAY TAKE JUDICIAL NOTICE OF OTHER EXPROPRIATION CASES INVOLVING PROPERTIES SIMILARLY SITUATED. — There is also no cogent reason for the Court to annul and set aside the amount fixed herein as just compensation on the ground that the RTC

took judicial notice of other expropriation cases involving properties similarly situated. . . . As opined by Associate Justice Edgardo L. Paras, "[*a*] *court will take judicial notice of its own acts and records in the same case, of facts established in prior proceedings in the same case, of the authenticity of its own records of another case between the same parties, of the files of related cases in the same court, and of public records on file in the same court.* In any case, it was not the only factor considered by the RTC.

6. ID.; ID.; ID.; ID.; JUST COMPENSATION SHOULD BE MEASURED NOT BY THE TAKER'S GAIN, BUT BY THE OWNER'S LOSS. — [T]he RTC's computation is more in accord with the principle that payment of just compensation for private property taken for public use, as guaranteed no less by our Constitution and is included in the Bill of Rights, should be measured not by the taker's gain, but the owner's loss and that the amount to be tendered for the property to be taken shall be real, substantial, full and ample.

APPEARANCES OF COUNSEL

NGCP Office of the General Counsel for petitioner.
Galeon Law Office and *Angelino Galeon* for respondent.

D E C I S I O N

INTING, *J.*:

For resolution of the Court is the Petition[1] for Review on *Certiorari* filed by National Grid Corporation of the Philippines (petitioner) seeking to reverse and set aside the Resolutions dated July 26, 2016[2] and May 16, 2017[3] of the Court of Appeals

---

[1] *Rollo*, pp. 19-39.

[2] *Id.* at 42-44; penned by Associate Justice Perpetua T. Atal-Paño with Associate Justices Edgardo A. Camello and Maria Filomena D. Singh, concurring.

[3] *Id.* at 46-48; penned by Associate Justice Perpetua T. Atal-Paño with Associate Justices Edgardo A. Camello and Edgardo T. Lloren, concurring.

(CA) in CA-G.R. CV No. 04229-MIN. The assailed Resolutions dismissed the appeal of petitioner for failure to file an Appellant's Brief within the reglementary period.

The Antecedents

In its bid to improve the capacity of its transmission system and meet the increasing demand for electricity, petitioner entered into the Kirahon-Maramag 230 KV Transmission Line Project which required the acquisition of Clara C. Bautista's (respondent) 1,314-square meter (sq. m.) property located in Brgy. North Poblacion, Maramag, Bukidnon registered under Transfer Certificate of Title No. T-76986.[4] Pursuant to Section 4 of Republic Act No. 9511, petitioner filed a Complaint[5] for Expropriation against respondent. It alleged that the Bureau of Internal Revenue (BIR) zonal valuation for the property is ₱10.00 per sq. m. or ₱13,140.00, while the cost of the improvement stands at ₱40,679.36 for a total price of ₱53,819.36.[6]

Respondent opposed the petition and countered that the BIR zonal valuation is less than the property's fair market value.[7] She further asserted that although the property is classified as agricultural, its actual use is residential and the lots adjacent thereto are already industrial in character.[8]

After the requisite provisional deposit of the valuation of the property, Branch 8, Regional Trial Court (RTC), City of Malaybalay issued a Writ of Possession[9] to petitioner. The RTC then appointed Commissioners to determine the fair market value of the property: (1) Evelyn A. Lantong (Commissioner

---

[4] *Id.* at 71-72.

[5] *Id.* at 64-70.

[6] *Id.* at 94-95; as culled from the Judgment dated August 20, 2015 of Branch 8, Regional Trial Court, City of Malaybalay.

[7] *Id.* at 95.

[8] *Id.* at 105.

[9] *Id.* at 93.

Lantong), Municipal Assessor of Maramag, Bukidnon as Chairperson; (2) Francisco Y. Cipriano, Jr. (Commissioner Cipriano), Chief of the Municipal Planning and Development Office of Maramag, Bukidnon, as Member; and (3) Engr. Gilbert Polloso (Commissioner Polloso) from petitioner's office in Iligan City, also as Member.[10]

Based on the Court Commissioner's Report[11] prepared by Commissioner Lantong and Commissioner Cipriano, the fair market of the property is at ₱3,000.00 per sq. m. on the basis of the current average sales for commercial and industrial land, including the highest and best use of the land and the valuation of sales and direct comparison, the unit base market value computation, and the deed of sale and conformity involving the property. They likewise explained that the actual ocular inspection of the property indicated that its use is industrial or built-up.[12]

However, Commissioner Polloso submitted his own Commissioner's Report[13] wherein he recommended that the just compensation for the property is only at ₱25.00 per sq. m. upon considering its extent and character, zoning value, current land classification in the locality, its assessment value, and highest and best use. He further indicated that the property is classified as an agricultural land based on its tax declaration and zoned as "agricultural protection" per Municipal Zoning Ordinance No. 04, Series of 2008. But he also noted that in another certification, the property identified as Lot No. 653-A-2-A, Psd-10-028431 with an area of 3,365 sq. m. is classified as "built-up."

---

[10] *Id.* at 95.

[11] *Id.* at 115.

[12] *Id.* See also Commissioner's Appraisal & Assessment Report, *id.* at 116.

[13] *Id.* at 130-131.

Ruling of the RTC

On August 20, 2015, the RTC rendered a Judgment,[14] the dispositive portion of which reads:

ACCORDINGLY, in view of all the foregoing, judgment is hereby rendered ordering plaintiff NGCP to pay defendants the following:

1. Just compensation in the amount of ₱600.00 per square meter or a total of ₱788,400.00, for the area expropriated, which shall bear six percent (6%) interest per annum from the time of taking until fully paid.

2. Commissioners' fees to Evelyn A. Lantong, chairperson of the panel of commissioners, and Francisco Y. Cipriano, Jr., member of the panel of commissioners, in the amount of ₱1,500.00 each as part of the costs, pursuant to Section 12, Rule 67 of the 1997 Rules of Civil Procedure and Section 16, A.M. No. 04-2-04-SC.

3. Cost of the suit.

SO ORDERED.

The RTC found that the valuation of the property at ₱25.00 per sq. m. is too low, impractical, and unreasonable;[15] that, in the same manner, the ₱10.00 per sq. m. valuation of the BIR for taxation purposes is long overdue for revision;[16] that, on the other hand, respondent's ₱3,000.00 per sq. m. valuation is too high and speculative as it is based only on one deed of sale and the proposed Comprehensive Land Use Plan of the Municipality of Maramag, Bukidnon.[17] Thus, the RTC took judicial notice of the other expropriation cases pending therein that involved properties similarly located in Brgy. North Poblacion, Maramag, Bukidnon classified as agricultural land and yet, upon ocular inspection, were industrial and/or zoned as "built-up"

---

[14] *Id.* at 94-112; penned by Presiding Judge Isobel G. Barroso.

[15] *Id.* at 111.

[16] *Id.*

[17] *Id.*

wherein the recommended amounts for just compensation were ₱220.00 and ₱600.00 per sq. m.[18]

Upon petitioner's Motion for Reconsideration,[19] the RTC only deleted the award for cost of suit in an Order[20] dated October 30, 2015.

Dissatisfied, petitioner appealed to the Court of Appeals.[21]

Ruling of the CA

The CA declared that despite the receipt of the Notice to File Brief addressed to the counsel of petitioner, the latter failed to file an Appellant's Brief. Thus, pursuant to Section 7, Rule 44 of the Rules of Court, the CA, in a Resolution[22] dated July 26, 2016, ruled that petitioner's failure to file an Appellant's Brief was an abandonment of its appeal which caused its dismissal.[23]

Petitioner filed an Urgent Omnibus Motion for Reconsideration Cum Clarification,[24] but the CA denied it in a Resolution[25] dated May 16, 2017. It found petitioner's explanation of not having been properly notified regarding the Appellant's Brief as insufficient considering the Letter Tracer dated June 1, 2016 that the Notice to File Brief sent to petitioner's counsel was duly received by one Grepah Crisen Ilogon on April 6, 2016.[26]

---

[18] *Id.* at 110.

[19] *Id.* at 141-145.

[20] *Id.* at 146-147.

[21] See Notice of Appeal dated November 26, 2015, *id.* at 148.

[22] *Id.* at 42-44.

[23] *Id.* at 43.

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

[25] *Id.* at 46-48.

[26] *Id.* at 47.

Hence, the petition.

Issues Before the Court

Petitioner questions the CA's automatic dismissal of the appeal based on a mere failure to file an Appellant's Brief within the reglementary period which the rules only made discretionary. It also alleges the existence of overriding public interest which requires that the discretion to dismiss of the CA be exercised with liberality. Furthermore, petitioner posits that the CA failed to recognize that the RTC overvalued the expropriated property as an industrial land despite the zoning ordinance which classified the property as agricultural.

Our Ruling

The petition must fail.

Preliminarily, records of the case reveal that respondent failed to comply with the Court's Resolutions dated July 9, 2018[27] and December 5, 2018[28] that required her to submit a soft copy in compact disc, USB, or e-mail containing the PDF file of the signed Comment within the period which expired on April 9, 2019.[29] Nevertheless, petitioner filed its Reply (To the Comment on Petition for *Certiorari*)[30] to respondent's Comment in compliance with the Court Resolution dated July 9, 2018.

Section 7, Rule 44 of the Rules of Court provides:

SEC. 7. *Appellant's brief* — It shall be the duty of the appellant to file with the court, within forty-five (45) days from receipt of the notice of the clerk that all the evidence, oral and documentary, are attached to the record, seven (7) copies of his legibly typewritten, mimeographed or printed brief, with proof of service of two (2) copies thereof upon the appellee.

---

[27] *Id.* at 171.

[28] *Id.* at 175-178.

[29] *Id.* at 186-187.

[30] *Id.* at 220-222.

The CA has the discretion to dismiss or not to dismiss an appeal for non-filing of an Appellant's Brief under Section 1 (e), Rule 50 of the Rules of Court:

> Section 1. *Grounds for dismissal of appeal*. — An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:
>
> x x x x
>
> (e) Failure of the appellant to serve and file the required number of copies of his brief or memorandum within the time provided by these Rules.

The Court is mindful of the policy of affording litigants the amplest opportunity for the determination of their cases on the merits and of dispensing with technicalities whenever compelling reasons so warrant or when the purpose of justice requires it.[31] The usage of the word *may* in the aforementioned provision indicates that the dismissal of the appeal upon failure to file the Appellant's Brief is only discretionary and not mandatory.[32] Failure to serve and file the required number of copies of the Appellant's Brief within the time provided by the Rules of Court does not have the immediate effect of causing the outright dismissal of the appeal.[33] When the circumstances so warrant its liberality, the CA is bound to exercise its sound discretion and allow the appeal to proceed despite the late filing of the Appellant's Brief upon taking all the pertinent circumstances into due consideration.[34] With that affirmation comes the caution that such discretion must be a sound one exercised in accordance

---

[31] *Aguam v. Court of Appeals*, 388 Phil. 587, 593-594 (2000); *Philippine Merchant Marine School, Inc. v. Court of Appeals*, 432 Phil. 733, 740-741 (2002), citing *Rep. of the Phil. v. Imperial, Jr.*, 362 Phil. 466, 477 (1999), further citing *Republic v. Court of Appeals*, 172 Phil. 741, 766 (1978).

[32] *Sibayan v. Costales*, 789 Phil. 1, 8 (2016), citing *Diaz v. People, et al.*, 704 Phil. 146, 157 (2013).

[33] *Id.*

[34] *Id.*

with the tenets of justice and fair play having in mind the circumstances obtaining in each case.[35]

The Court finds no reason to disturb the CA's exercise of discretion in dismissing the appeal. The explanation proffered by petitioner is not compelling as to convince the Court to reverse the CA.

In *Beatingo v. Bu Gasis*,[36] the Court clarified the CA's discretionary power of dismissal of an appeal for failure to file Appellant's Brief in this wise:

> The question of whether or not to sustain the dismissal of an appeal due to petitioner's failure to file the Appellant's Brief had been raised before this Court in a number of cases. In some of these cases, we relaxed the Rules and allowed the belated filing of the Appellant's Brief. In other cases, however, we applied the Rules strictly and considered the appeal abandoned, which thus resulted in its eventual dismissal. In *Government of the Kingdom of Belgium v. Court of Appeals*, we revisited the cases which we previously decided and laid down the following guidelines in confronting the issue of non-filing of the Appellant's Brief:
>
> (1) The general rule is for the Court of Appeals to dismiss an appeal when no appellant's brief is filed within the reglementary period prescribed by the rules;
>
> (2) The power conferred upon the Court of Appeals to dismiss an appeal is discretionary and directory and not ministerial or mandatory;
>
> (3) The failure of an appellant to file his brief within the reglementary period does not have the effect of causing the automatic dismissal of the appeal;
>
> (4) In case of late filing, the appellate court has the power to still allow the appeal; however, for the proper exercise of the court's leniency[,] it is imperative that:

---

[35] *PNB v. Philippine Milling Co., Inc., et al.*, 136 Phil. 212, 215 (1969) as cited in *Philippine Merchant Marine School, Inc. v. Court of Appeals, supra* note 31 at 741-742.

[36] 657 Phil. 552 (2011).

(a) the circumstances obtaining warrant the court's liberality;

(b) that strong considerations of equity justify an exception to the procedural rule in the interest of substantial justice;

(c) no material injury has been suffered by the appellee by the delay;

(d) there is no contention that the appellee's cause was prejudiced;

(e) at least there is no motion to dismiss filed.

(5) In case of delay, the lapse must be for a reasonable period; and

(6) Inadvertence of counsel cannot be considered as an adequate excuse as to call for the appellate court's indulgence except:

(a) where the reckless or gross negligence of counsel deprives the client of due process of law;

(b) when application of the rule will result in outright deprivation of the client's liberty or property; or

(c) where the interests of justice so require.[37]

In the present case, there is no showing that petitioner filed an Appellant's Brief despite receipt of a Notice to File Brief. As a consequence, the CA dismissed the appeal for failure to file an Appellant's Brief. It now devolved upon petitioner to refute the presumption of regularity and convince the Court that a reversal of the dismissal is warranted. Petitioner notably failed to prove this.

Contrary to petitioner's assertion, the CA justified that a Notice to File Brief was sent and duly received by petitioner's counsel of record, Atty. Zaldy Cataluña Lim (Atty. Lim).[38]

Petitioner likewise improperly invoked the case of *Aguam v. Court of Appeals*[39] wherein the Court ruled that the Notice

---

[37] *Id.* at 559-560.

[38] *Rollo*, pp. 46-48.

[39] 388 Phil. 587 (2000).

to File Appellant's Brief should be given to the party appellant and not to the counsel for the *rationale* was not served in the instant case considering that there was no showing that petitioner changed its counsel after filing its Notice of Appeal. Records reveal that Atty. Lim was retained as petitioner's counsel as indicated by the latter's filing of the Urgent Omnibus Motion for Reconsideration Cum Clarification of the CA's dismissal on the ground of abandonment of appeal.[40]

More importantly, petitioner's harping on "public interest" as a reason for the Court to exercise its liberality is anathema to the intent and purpose of procedural rules which is to provide a just, speedy, and inexpensive disposition of every action or proceeding, when circumstances would show an attempt or design to circumvent the rules. The liberality with which the Court exercises equity jurisdiction is always anchored on the basic consideration that it must be warranted by the circumstances obtaining in each case. With petitioner's explanation less than worthy of credence and without evidentiary support, the Court is constrained to adhere strictly to the procedural rules on the timeliness of submission before the court. As the Court held in *Viva Shipping Lines, Inc. v. Keppel Phils. Marine, Inc., et al.*:[41]

> x x x *Liberality in the application of the rules is not an end in itself. It must be pleaded with factual basis and must be allowed for equitable ends. There must be no indication that the violation of the rule is due to negligence or design. Liberality is an extreme exception, justifiable only when equity exists.*[42] (Italics supplied.)

Nevertheless, to put an end to the controversy in the case, the Court upholds the findings of the RTC that just compensation for the expropriated property should be valued at ₱600.00 per sq. m.

---

[40] *Rollo,* p. 26.

[41] 781 Phil. 95 (2016).

[42] *Id.* at 99.

Zonal valuation is simply one of the indices of the fair market value of real estate.[43] By itself, this index cannot be the sole basis of just compensation in expropriation cases since the standard is not the taker's gain but the owner's loss.[44] The insistence of petitioner to base the value of the subject property solely on the BIR zonal valuation at ₱10.00 per square meter is misplaced considering that it is only one of the several factors which the court may consider to facilitate the determination of just compensation. Zonal value alone of the properties in the area whether of recent or vintage years does not equate to just compensation.[45] Otherwise, the determination of just compensation would cease to be judicial in nature which negates the exercise of judicial discretion.[46]

With respect to petitioner's assertion that the subject property must be valued as an agricultural land, courts enjoy sufficient judicial discretion to determine the classification of lands because such classification is one of the relevant standards for the assessment of the value of lands subject of expropriation proceedings.[47] Thus, despite the subject property's zonal classification as agricultural in the tax declaration and municipal zoning ordinance, the zoning classification made by the designated Municipal Zoning Administrator, Commissioner Cipriano, backed by the Municipal Assessor, Commissioner Lantong, is more persuasive considering that an actual ocular inspection of the subject property indicated that it has become a "built-up"[48] area based on the present development trend of the land and use pattern.[49]

---

[43] *Leca Realty Corp. v. Rep. of the Phils.*, 534 Phil. 693, 696 (2006).

[44] *Id.*

[45] *Republic v. Spouses Darlucio,* G.R. No. 227960, July 24, 2019.

[46] *Id.*

[47] *National Power Corp. v. Marasigan, et al.*, 820 Phil. 1107, 1127 (2017).

[48] "Built-up" areas are areas that have ten or more dwelling units within the vicinity. *Rollo,* p. 102, as culled from the RTC Decision.

[49] *Rollo,* p. 101; as culled from the RTC Decision.

There is also no cogent reason for the Court to annul and set aside the amount fixed herein as just compensation on the ground that the RTC took judicial notice of other expropriation cases involving properties similarly situated. The RTC did not merely adopt by reference the commissioner's reports in the other cited expropriation cases, but took it into account in assessing just compensation because the properties subject of the other cases were situated in the same place. As opined by Associate Justice Edgardo L. Paras, "[*a*] *court will take judicial notice of its own acts and records in the same case, of facts established in prior proceedings in the same case, of the authenticity of its own records of another case between the same parties, of the files of related cases in the same court, and of public records on file in the same court.*"[50] In any case, it was not the only factor considered by the RTC. As can be gleaned from the RTC Decision, the court also factored in the subject property's actual use, its location, and its current market value. Between the valuation submitted by petitioner's commissioner at a measly sum of ₱25.00 per sq. m., and that of the other two commissioners at ₱3,000.00 per sq. m. based on the purchase price of a single deed of sale, the RTC's computation is more in accord with the principle that payment of just compensation for private property taken for public use, as guaranteed no less by our Constitution and is included in the Bill of Rights, should be measured not by the taker's gain, but the owner's loss and that the amount to be tendered for the property to be taken shall be real, substantial, full and ample.[51]

WHEREFORE, the instant petition is **DENIED**. The Resolutions dated July 26, 2016 and May 16, 2017 of the Court of Appeals in CA-G.R. CV No. 04229-MIN are **AFFIRMED**. The denial of the appeal due to the non-filing of an Appellant's Brief pursuant to Section 1(e), Rule 50 of the Rules of Court is hereby declared **FINAL**.

---

[50] *Rep. of the Phils. v. CA*, 343 Phil. 428, 437 (1997), citing Graham on Evidence, 1986 ed.

[51] *National Power Corp. v. Spouses Zabala*, 702 Phil. 491, 499-500 (2013). Citations omitted.

SO ORDERED.

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

Baltazar-Padilla, J., on leave.

THIRD DIVISION

[G.R. No. 246195. September 30, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **HERMIE ESTOLANO *y* CASTILLO,** *Accused-Appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST; A TRAFFIC VIOLATION DOES NOT JUSTIFY THE APPREHENDING OFFICER TO ORDER THE OFFENDER TO ALIGHT FROM THE VEHICLE FOR A BODY SEARCH. — [T]he Court ruled in *Mendoza v. People* that the commission of a traffic violation does not justify the arrest of the accused. Under Section 29 of R.A. 4136 or the Land Transportation Code, such violation merely warrant the confiscation of the offender's driver's license and issuance of a traffic violation receipt from the apprehending officer. The same procedure is found in the PNP Handbook which states that in flagging down or accosting *vehicles*, "if it concerns traffic violations, immediately issue a Traffic Citation Ticket or Traffic Violation Report. Never indulge in prolonged, unnecessary conversation or argument with the driver or any of the vehicle's occupants." Furthermore, the PNP Guidebook on Human Rights-based Policing instructs that "[p]ersons stopped during a checkpoint are not required and must not be forced to answer any questions posed during spot checks or accosting. Failure to respond to an officer's inquiries is not, in and of itself, a sufficient ground to make an arrest. A person's failure or refusal to respond to questions made by the police officer, however, may provide sufficient justification for additional observation and investigation." Nothing in the said handbook authorizes the police officer to order the driver or passengers to alight the vehicle for a body search. Contrary to these rules and guidelines, Estolano was ordered by the police officers to alight from the vehicle that had no plate number.

2. ID.; ID.; WARRANTLESS SEARCH; IN A SEARCH OF A MOVING VEHICLE, THE VEHICLE IS THE TARGET, AND NOT A SPECIFIC PERSON; CASE AT BAR. — [T]he search

in this case cannot be classified as a search of a moving vehicle. In this particular type of warrantless search, the vehicle is the target and not a specific person. Further, in a search of a moving vehicle, the vehicle is intentionally used as a means to transport illegal items. In this case before the Court, the main target of the search was the *person* of Estolano before a search on the vehicle was even conducted. Worse, there was no information or tip relayed to the police officers about a crime, other than the traffic violation, that had just been committed or about to be committed. The police officers, therefore, had no probable cause to believe that they will find in the person of Estolano any instrument or evidence pertaining to a crime.

3. POLITICAL LAW; POLICE POWER; ESTABLISHMENT OF CHECKPOINTS; *OPLAN SITA* IS NEGATED BY THE ABSENCE OF PROOF RELATED TO THE PROCEDURE ON CHECKPOINT OPERATIONS. — [T]he prosecution did not submit any evidence pertaining to *Oplan Sita*. The Revised Philippine National Police Operational Procedures state that the establishment of checkpoints must always be authorized by the Head of Office of the territorial PNP Unit. In addition, the police and civilian components of the checkpoint operations must submit their respective after-operations report to their unit/organization. The prosecution failed to present anything related to these procedures on checkpoint operations. Thus, there is no proof that the checkpoint *Oplan Sita* actually took place.

4. REMEDIAL LAW; CRIMINAL PROCEDURE; WARRANTLESS SEARCH; AS AN EXCEPTION TO THE RIGHT AGAINST UNREASONABLE SEARCHES AND SEIZURES, WARRANTLESS SEARCHES MUST BE STRICTLY CONSTRUED AGAINST THE GOVERNMENT AND ITS AGENTS. — [W]arrantless searches are mere exceptions to the constitutional right of a person against unreasonable searches and seizures; thus, they must be strictly construed against the government and its agents. The prosecution is reasonably burdened to present every ounce of evidence in order to justify a warrantless search. While the power to search and seize is necessary to the public welfare, still it must be exercised and the law enforced, without transgressing the constitutional rights of the Filipino citizens.

5. ID.; ID.; ID.; WITH THE QUESTIONABLE CONDUCT OF WARRANTLESS SEARCH AND ARREST, THE *CORPUS*

***DELICTI*, THE HAND GRENADE ALLEGEDLY CONFISCATED, IS INADMISSIBLE IN EVIDENCE. —** The questionable conduct of the warrantless search and arrest left the Court with no alternative but to acquit Estolano of the offense charged against him. With the *corpus delicti* – the hand grenade allegedly confiscated from Estolano – inadmissible in evidence, there is simply no evidence against Estolano. The constitutionally enshrined presumption of innocence must be upheld and the accused must be exonerated as a matter of right.

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

CARANDANG, *J.*:

On appeal is the Decision[1] dated September 27, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07976. The CA affirmed the Decision[2] dated December 11, 2015 of the Regional Trial Court of the City of Manila, Branch 54 convicting accused-appellant Hermie Estolano *y* Castillo for violation of Presidential Decree No. (PD) 1988[3] as amended by Republic Act No. (R.A.) 9516.[4]

In an Information[5] dated May 4, 2015, accused-appellant Hermie Estolano *y* Castillo (Estolano) was charged before the

---

[1] Penned by Associate Justice Myra V. Garcia-Fernandez with the concurrence of Associate Justices Apolinario D. Bruselas, Jr. and Ronaldo Roberto B. Martin; *rollo*, pp. 3-18.

[2] Penned by Presiding Judge Maria Paz R. Reyes-Yson; CA *rollo*, pp. 13-21.

[3] Codified Laws on Illegal/Unlawful Possession, etc. of Firearms, Ammunition or Explosives.

[4] Amending PD 1866, as Amended Re: Illegal Possession of Firearms.

[5] Records, p. 1.

RTC in Criminal Case No. 15-315577, for violation of PD 1866 as amended by R.A. 9516 for possessing a fragmentation hand grenade:

> That on or about April 17, 2015, in the City of Manila, Philippines, the said accused, did then and there willfully, unlawfully and knowingly have in his possession and under his custody and control one (1) MK2 Fragmentation Hand Grenade marked as "HEC", a device which is capable of destructive effect, with knowledge of its explosive or incendiary character, without first having secured from the proper authorities the necessary license thereof.
>
> Contrary to law.[6] (Emphasis omitted)

The prosecution tends to prove as follows:

On April 17, 2015, at around 6:15 a.m., members of the V. Mapa Police Station were at the corner of V. Mapa and Peralta streets of Sta. Mesa, Manila to conduct *Oplan Sita*. PO3 Ruel Aguilar (PO3 Aguilar) saw a yellow Mitsubishi Lancer without a plate number. PO3 Aguilar flagged down the vehicle and approached Estolano who was driving the car. PO3 Aguilar asked Estolano for his license and the registration documents of the car. Estolano failed to present anything. PO3 Aguilar ordered Estolano to alight from the vehicle. Estolano initially refused and acted as if he was trying to hide something in the pocket of his pants. Several minutes after, Estolano finally alighted from the vehicle.[7]

PO1 Sonny Boy Lubay (PO1 Lubay) approached Estolano to conduct a body search. While approaching, PO1 Lubay noticed that Estolano tried to get something from his right front pocket. PO1 Lubay also saw Estolano hold the pin of a hand grenade placed inside Estolano's pocket. Immediately, PO1 Lubay and PO1 Lucky Samson (PO1 Samson) grabbed the hands of Estolano to prevent him from holding the grenade causing possible explosion. Thereafter, the other police officers, including SPO2 Jayson

---

[6] Id.

[7] *Rollo*, p. 6.

Sanchez, PO3 Ronaldo Robles, PO2 Patrick Guevarra, PO2 Ulysses San Diego, PO3 Ruel Aguilar, Police Inspector Lee Chui, and PO2 Eligio Valencia conducted a search on the vehicle where they recovered the plate number PFG-453. The police officers likewise noticed that the rear portion of the vehicle had an improvised plate with "SUPREMA" written on it.[8]

The confiscated hand grenade was turned over to police investigator SPO1 Benigno Lino Corado Jr. (SPO1 Corado Jr.), and then to SPO1 Allan Salinas (SPO1 Salinas) of the Explosives Ordinance Division of the Manila Police District. SPO1 Salinas placed a masking tape on the hand grenade and marked it with "HEC," the initials of Estolano.[9] PO3 Aguilar and SPO1 Corado Jr. explained that they did not mark the hand grenade for fear that it might explode.[10] In the meantime, PO1 Lubay brought Estolano to the Ospital ng Maynila for medical examination[11] and eventually turned him over to Manila Police District - Police Station 8.[12]

On April 17, 2015, SPO1 Salinas issued a certificate[13] stating that "the main components of [a] hand grenade such as [the] fuze assembly, the body, and explosive filler are all still intact and capable [of] explode[ing]."[14] On November 10, 2015, P/C Supt. Elmo Francis O. Sarona (Supt. Sarona) of the Firearms and Explosives Office, Civil Security Group of the Philippine National Police issued a certification[15] stating that Estolano "has not been issued a permit or license to possess/transport a hand grenade, military ordnance or any explosives/explosive

---

[8] Id. at 6-7.

[9] CA *rollo*, p. 67.

[10] TSN dated September 2, 2015, p. 25.

[11] Id. at 11.

[12] Id. at 24.

[13] Records, p. 9.

[14] Id.

[15] Id. at 104.

ingredients based on available records filed with this Office of this date."[16]

The charge was denied by Estolano.[17]

Estolano claims that on April 16, 2015, he attended a birthday celebration in Acacia Lane, Mandaluyong City. He left the party at past midnight and took the ride home with his friends Lou, Marivic, and Andrea. Estolano took the back seat with Marivic while Lou drove the Mitsubishi Lancer. Then, they were flagged down at the checkpoint located at the corner of V. Mapa and Peralta Streets. The police officer instructed Lou to park the vehicle on the right side of the road and ordered them to alight from the vehicle. Thereafter, the police officer told them to go inside the nearby police station for verification. The police officer following them said that a hand grenade was found inside their vehicle. Estolano was suddenly kicked at the stomach. He fell on his knees, and then to the ground with his face down. He was asked to go inside a room where he was instructed to hold the gun tucked on the waist of a police officer. Estolano refused. Another police officer asked him if he had a relative whom he could call for help. Estolano said that he could call his aunt working at the Office of the City Prosecutor. The police officer asked him to go outside the room. Asked if he knew the amount of bail for illegal possession of hand grenade and answering no, the police officer told him that the bail is ₱2,000,000.00. Estolano was asked to produce the said amount in exchange for his freedom. Meanwhile, Estolano saw Lou also enter the room. A lady who was crying then arrived. Estolano heard Lou telling the lady that he would take care of everything. Thereafter, Estolano was brought to the Ospital ng Maynila and then to the Manila Police District - Police Station 8 (Police Station 8). Estolano did not see Lou, Marivic, and Andrea in Police Station 8. He was later on informed by a police officer that Lou gave ₱120,000.00 to the police.

---

[16] Id.

[17] CA *rollo*, p. 15.

Since he did not give money, only Estolano was charged with illegal possession of hand grenade.[18]

Estolano entered the plea of *not guilty*. After trial, the RTC convicted Estolano of the offense charged. According to the trial court, the denial of the accused and the defense of frame-up cannot overcome the positive, categorical and clear testimonies of the police officers who enjoy the presumption that they performed their official duty with regularity. The RTC sentenced Estolano to suffer the penalty of *reclusion perpetua*.[19]

On appeal to the CA, the defense maintained that the RTC erred in convicting Estolano of illegal possession of hand grenade. *First*, the defense attacked the credibility of PO1 Lubay's testimony because it is unimaginable for Estolano to simply place a dangerous weapon such as the hand grenade inside his pocket; at the very least, he could have placed the hand grenade inside the trunk of the car, far from the prying eyes of his friends and of the police.[20] *Second*, the defense contended that the hand grenade is inadmissible in evidence for having been confiscated in an invalid warrantless search. *Third*, the defense argued that the prosecution failed to prove the elements of illegal possession of firearms since no certification proving that Estolano has no authority to possess the hand grenade was presented at the time of the filing of the Information.[21]

The CA in its Decision[22] dated September 27, 2018 affirmed Estolano's conviction and found that the prosecution successfully proved the essential elements of the crime charged. The existence of the hand grenade was established through the testimony of PO1 Lubay. PO1 Lubay and SPO1 Corrado, Jr. identified the hand grenade confiscated from Estolano. Further, the certification issued by the Philippine National Police (PNP) Firearms and

---

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

[19] CA *rollo*, pp. 20-21.

[20] Id. at 48.

[21] Id. at 54.

[22] Supra note 1.

Explosives Office states that Estolano had no license or permit to own or possess the hand grenade.[23]

The Public Attorney's Office manifested Estolano's intent to appeal in a Notice of Appeal.[24] The Office of the Solicitor General filed a Manifestation[25] dated December 10, 2019 stating that it will adopt the Appellee's Brief[26] dated February 6, 2017 as its Supplemental Brief. Likewise, the defense, through the Public Attorney's Office, filed its Manifestation in Lieu of Supplemental Brief[27] dated November 25, 2019.

The theory of the prosecution was that the warrantless search was justified as part of the routine checkpoint *Oplan Sita*, which falls under a valid warrantless search on a moving vehicle. The scope of a valid warrantless search on moving vehicles, however, does not come without limitations. Jurisprudence has always insisted that the warrantless search on moving vehicles is not violative of the Constitution for only as long as the vehicle is neither searched nor its occupants subjected to a body search, and the inspection of the vehicle is merely limited to a visual search.[28] An extensive search is allowed only if the officers conducting the search had probable cause to believe before the search that either the motorist was a law offender or that they would find evidence pertaining to the commission of a crime in the vehicle to be searched.

The Joint Affidavit of Apprehension[29] submitted by the prosecution to the City Prosecutor of Manila, as well as PO1 Lubay's testimony, tells this Court that an extensive search

---

[23] *Rollo*, p. 17.

[24] Id. at 19-20.

[25] *Rollo*, pp. 33-34.

[26] CA *rollo*, pp. 90-102.

[27] *Rollo*, p. 27.

[28] *Valmonte v. Gen. De Villa*, 264 Phil. 265, 270 (1990).

[29] Records, p. 5.

was conducted. Nonetheless, the Court sees no circumstance that would justify the extensive search conducted in this case of Estolano.

First, the Court ruled in *Mendoza v. People*[30] that the commission of a traffic violation does not justify the arrest of the accused. Under Section 29[31] of R.A. 4136 or the Land Transportation Code, such violation merely warrant the confiscation of the offender's driver's license and issuance of a traffic violation receipt from the apprehending officer. The same procedure is found in the PNP Handbook which states that in flagging down or accosting *vehicles*, "if it concerns traffic violations, immediately issue a Traffic Citation Ticket or Traffic Violation Report. Never indulge in prolonged, unnecessary conversation or argument with the driver or any of the vehicle's occupants."[32] Furthermore, the PNP Guidebook on Human Rights-based Policing instructs that "[p]ersons stopped

---

[30] G.R. No. 234196, November 21, 2018.

[31] Section 29. *Confiscation of Driver's Licenses.* – Law enforcement and peace officers duly designated by the Commissioner shall, in apprehending any driver for violations of this Act or of any regulations issued pursuant thereto, or of local traffic rules and regulations, confiscate the license of the driver concerned and issue a receipt prescribed and issued by the Commission therefor which shall authorize the driver to operate a motor vehicle for a period not exceeding seventy-two hours from the time and date of issue of said receipt. The period so fixed in the receipt shall not be extended, and shall become invalid thereafter. Failure of the driver to settle his case within fifteen days from the date of apprehension will cause suspension and revocation of his license.

[32] 11.7(m) of Rule 11 of the PNP Handbook

> Rule 11. CHECKPOINTS
>
> x x x x
>
> 11.7 Procedure in Flagging Down or Accosting Vehicles While in Mobile Car
>
> x x x x
>
> m. If it concerns traffic violations, immediately issue a Traffic Citation Ticket (TCT) or Traffic Violation Report (TVR). Never indulge in prolonged, unnecessary conversation or argument with the driver or any of the vehicle's occupants;

during a checkpoint are not required and must not be forced to answer any questions posed during spot checks or accosting. Failure to respond to an officer's inquiries is not, in and of itself, a sufficient ground to make an arrest. A person's failure or refusal to respond to questions made by the police officer, however, may provide sufficient justification for additional observation and investigation."[33] Nothing in the said handbook authorizes the police officer to order the driver or passengers to alight the vehicle for a body search. Contrary to these rules and guidelines, Estolano was ordered by the police officers to alight from the vehicle that had no plate number.

Second, the search in this case cannot be classified as a search of a moving vehicle. In this particular type of warrantless search, the vehicle is the target and not a specific person. Further, in a search of a moving vehicle, the vehicle is intentionally used as a means to transport illegal items.[34] In this case before the Court, the main target of the search was the *person* of Estolano before a search on the vehicle was even conducted. Worse, there was no information or tip relayed to the police officers about a crime, other than the traffic violation, that had just been committed or about to be committed. The police officers, therefore, had no probable cause to believe that they will find in the person of Estolano any instrument or evidence pertaining to a crime.

Third, it is worthy to note that the prosecution did not submit any evidence pertaining to *Oplan Sita*. The Revised Philippine

---

[33] 3(g) of PNP Guidebook on Human Rights-based Policing.

3. POLICE CHECKPOINT

x x x x

g. Persons stopped during a checkpoint are not required and must not be forced to answer any questions posed during spot checks or accosting. Failure to respond to an officer's inquiries is not, in and of itself, a sufficient ground to make an arrest. A person's failure or refusal to respond to questions made by the police officer, however, may provide sufficient justification for additional observation and investigation.

[34] *People v. Comprado*, 829 Phil. 229, 245-246 (2018).

National Police Operational Procedures state that the establishment of checkpoints must always be authorized by the Head of Office of the territorial PNP Unit.[35] In addition, the police and civilian components of the checkpoint operations must submit their respective after-operations report to their unit/organization.[36] The prosecution failed to present anything related to these procedures on checkpoint operations. Thus, there is no proof that the checkpoint *Oplan Sita* actually took place.

It must be remembered that warrantless searches are mere exceptions to the constitutional right of a person against unreasonable searches and seizures; thus, they must be strictly construed against the government and its agents. The prosecution is reasonably burdened to present every ounce of evidence in order to justify a warrantless search. While the power to search and seize is necessary to the public welfare, still it must be exercised and the law enforced, without transgressing the constitutional rights of the Filipino citizens.

The questionable conduct of the warrantless search and arrest left the Court with no alternative but to acquit Estolano of the offense charged against him. With the *corpus delicti* – the hand grenade allegedly confiscated from Estolano – inadmissible in evidence, there is simply no evidence against Estolano. The constitutionally enshrined presumption of innocence must be

---

[35] 11.1 of Rule 11 of the PNP Handbook.

RULE 11. CHECKPOINTS

11.1 *Authority to Establish Checkpoints.* x x x. The establishment of checkpoints must always be authorized by the Head of Office of the territorial PNP Unit x x x.

[36] 3(d) of PNP Guidebook on Human Rights-based Policing.

3. USE OF FORCE

x x x x

d. Police personnel involved in shootouts and discharge of firearms must submit an after-operations report. Assessments must be conducted to determine the validity of the use of force during a police operation.

upheld and the accused must be exonerated as a matter of right.[37]

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated September 27, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 07976 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Hermie Estolano *y* Castillo is **ACQUITTED** of the crime charged, and is **ORDERED** to be **IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Decision be furnished to the Superintendent of the New Bilibid Prison, Muntinlupa City for immediate implementation. The Superintendent is **ORDERED** to report to this Court the action he has taken within five (5) days from receipt of this Decision.

SO ORDERED.

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

---

[37] *Mendoza v. People*, G.R. No. 234196, November 21, 2018.

THIRD DIVISION

[G.R. No. 248021. September 30, 2020]

PROSEL PHARMACEUTICALS & DISTRIBUTORS, INC., *Petitioner*, *v.* **TYNOR DRUG HOUSE, INC.**, *Respondent*.

SYLLABUS

1. COMMERCIAL LAW; TRADEMARKS; TRADEMARK INFRINGEMENT; THERE IS TRADEMARK INFRINGEMENT WHEN THE TRADE NAME OR LOGO IS CONFUSINGLY SIMILAR WITH THE ALREADY REGISTERED MARK. — Petitioner's CEEGEEFER mark and packaging is a colorable imitation of respondent's CHERIFER + Logo.

On the use of the words CHERIFER and CEEGEEFER, this Court subscribes to the CA's view that both names are confusingly similar in sound and spelling. This Court has already found other words less similar to each other to still be confusingly similar in sound. . . .

As regards the logos used by the parties, the same are strikingly similar. A side by side comparison of the pictures in CHERIFER and CEEGEEFER show the right profile/side of a boy wearing a basketball jersey and a baseball cap shooting a basketball on a hoop with their knees slightly bent and with the words that start with the letters "H" and "M" on top in an arc that both have a different colored line in the middle. Note, too, that both packages use orange and yellow.

. . . The fact that CEEGEEFER is *idem sonans* for CHERIFER is enough to violate respondent's right to protect its trademark, CHERIFER.

2. ID.; ID.; ID.; THE GRAVAMEN OF THE OFFENSE IS THE LIKELIHOOD OF CONFUSION BETWEEN THE TWO MARKS; CASE AT BAR. — Petitioner's registration of CEEGEEFER as a drug and not just a vitamin food supplement does not exculpate it from liability. CEEGEEFER's classification as a drug is immaterial. Since the case involves a violation of a trademark, the gravamen of the offense is a likelihood of

confusion between the two marks. Both products are over-the-counter multivitamins that do not require a medical prescription. As such, CEEGEEFER and CHERIFER may be easily obtained without the advice of another person. Therefore, the parties' target market may be confused, mistaken, or deceived into thinking that CEEGEEFER is the same as CHERIFER. Note, too, that different drug stores even displayed and sold CEEGEEFER and CHERIFER products beside each other.

Given the phonetic and visual similarities between the two products (*i.e.*, how the product names are spelled, the sound of both product names, and the colors and shapes combination of the products' respective packaging), it is obvious that petitioner attempted to pass CEEGEEFER as a colorable imitation of CHERIFER.

3. ID.; ID.; ID.; THE DOMINANCY AND HOLISTIC/TOTALITY TESTS; THERE SHOULD BE "OBJECTIVE, SCIENTIFIC, AND ECONOMIC STANDARDS TO DETERMINE WHETHER GOODS OR SERVICES OFFERED BY TWO PARTIES ARE SO RELATED THAT THERE IS A LIKELIHOOD OF CONFUSION." — While jurisprudence has developed the Dominancy Test and Holistic/Totality Test to determine whether there is a likelihood of confusion between competing marks, the application of such tests is normally left to the subjective judgment of the Intellectual Property Office (IPO) or the courts. Albeit this Court recognizes the expertise of the IPO on matters involving trademark and copyright infringement, the fact remains that the products are aimed at a particular target market outside of the individual personalities of those in the IPO and the courts. Therefore, there may be underlying factors in a mark that are discernible by a product's target market which the IPO or the courts might not observe. Conversely, there may be factors which the IPO or the courts may deem considerable but are immaterial to the target market. Thus, the *ponencia* adopts the observations of Justice Leonen in *Asia Pacific Resources International Holdings, Ltd. v. Paperone, Inc.*, that there should be "objective, scientific, and economic standards to determine whether goods or services offered by two parties are so related that there is a likelihood of confusion."

4. ID.; ID.; ID.; DAMAGES; NOMINAL DAMAGES; REDUCED IN CASE AT BAR. — Anent the award of nominal damages, the same should be reduced. Following this Court's ruling in the

case of *San Miguel Pure Foods Company, Inc. v. Foodsphere, Inc.*, We find the award of nominal damages in the amount of ₱100,000.00 more reasonable.

5. **ID.; ID.; ID.; ID.; ATTORNEY'S FEES. —** We affirm the award of attorney's fees in the amount of ₱100,000.00 as respondent proved that "it hired lawyers and incurred expenses to protect its right." Although respondent claimed that it incurred ₱823,603.20 as attorney's fees and ₱135,926.67 as litigation expenses, We find the CA's reduced award of attorney's fees at ₱100,000.00 equitable.

6. **ID.; ID.; ID.; ID.; LEGAL INTEREST ON AWARDS; TOTAL JUDGMENT AWARDS TO EARN 6% ANNUAL LEGAL INTEREST. —** The total judgment awards in favor of respondent shall earn a 6% annual legal interest from the time of the finality of this Resolution until the same is fully paid in accordance with this Court's ruling in *Nacar v. Gallery Frames*.

LEONEN, *J., dissenting opinion*:

1. **COMMERCIAL LAW; PHILIPPINE INTELLECTUAL PROPERTY CODE (RA NO. 8293); TRADEMARKS; TRADEMARK INFRINGEMENT; ELEMENTS THEREOF. —** Section 155 of Republic Act No. 8293, otherwise known as the Philippine Intellectual Property Code, states what constitutes trademark infringement: …

   For there to be a finding of trademark infringement, the following elements must concur: (1) the plaintiff has a valid mark; (2) the plaintiff is the owner of the mark; and (3) the alleged infringer's use of the mark, or its colorable imitation, results in a likelihood of confusion.

2. **ID.; ID.; ID.; REGISTRATION; THE RIGHT TO ANY VISIBLE SIGN CAPABLE OF DISTINGUISHING A PARTICULAR GOOD OR SERVICE MAY BE ACQUIRED THROUGH REGISTRATION. —** Subject to the limitations on registrability enumerated in Section 123, the rights to any visible sign capable of distinguishing a particular good or service may be acquired by means of registration with the Philippine Intellectual Property Office. This "visible sign" may be a word, name, symbol, emblem, sign, device, drawing, or figure: . . .

3. ID.; ID.; ID.; ID.; REGISTRABLE MARKS; COMPOSITE MARKS; A MARK THAT CONTAINS BOTH A DISTINCT WORD AND A DEVICE COMPRISING SEVERAL OTHER ELEMENTS IS A COMPOSITE MARK. — Registrable marks may be two- or three-dimensional, in color, or in a form that could require transliteration or translation. They may be what are described in the Philippine Intellectual Property Office Trademark Regulations of 2017 as "word marks," represented in standard characters.…

There are instances when a person will have registered both a "word mark" and some kind of device or design incorporating this "word mark" as two (2) separate trademarks or service marks. When the "word mark" and the "device mark" are included in one (1) composition—and registered, it may be known as a "composite mark."

. . .

Clearly, the [respondent's] mark is a composite mark: one which contains both a distinct word — namely — "CHERIFER" — and a device comprising several other elements, including the words "HEIGHT IS MIGHT."

4. ID.; ID.; ID.; THE USE IN TRADE BY UNAUTHORIZED PARTIES OF A SIGN IDENTICAL OR SIMILAR TO A REGISTERED MARK MAY BE PREVENTED IF IT WOULD RESULT TO A LIKELIHOOD OF CONFUSION. — The composition of the mark being sought protection from infringement is important because the Intellectual Property Code confers the owner of a registered mark the right to prevent the use in trade by unauthorized parties of a sign identical or similar to the registered mark, where the use would result in a likelihood of confusion[.]

5. ID.; ID.; ID.; MARK'S "COLORABLE IMITATION" OR "DOMINANT FEATURE"; THE DETERMINATION OF A MARK'S DOMINANT FEATURE IS INDEPENDENT EVEN OF ITS OWNER'S INTENT OR JUDGMENT OF THE MAIN, ESSENTIAL, AND DOMINANT FEATURES OF THE MARK THEY OWN OR USE. — Not every word, symbol, logo, device, or figure that shares similarities with the allegedly-infringed mark will be barred from use in commerce. Section 155 of the Intellectual Property Code points specifically to a registered mark's "colorable imitation" or "dominant feature."

" A "colorable imitation":

> [D]enotes such a "close or ingenious imitation as to be calculated to deceive ordinary persons, or such a resemblance to the original as to deceive an ordinary purchaser giving such attention as a purchaser usually gives, and to cause him to purchase the one supposing it to be the other."

What constitutes a mark's "dominant feature" can also be highly subjective. . . .

The determination of a mark's dominant feature is independent even of its owner's intent or judgment of the "main, essential and dominant" features of the mark they own or use, . . .

6. ID.; ID.; ID.; COMPOSITE MARK; IT IS HIGHLY IRREGULAR TO DIVIDE THE ELEMENTS OF A COMPOSITE MARK AND SEPARATELY DETERMINE THE CONFUSING SIMILARITY OF THESE ELEMENTS WITH TWO DIFFERENT ALLEGEDLY INFRINGING MARKS. — [I]t is highly irregular to divide the elements of a composite mark and separately determine the confusing similarity of these elements with two (2) different allegedly-infringing marks. To emphasize, the registered mark which is the basis for respondent's cause of action is not merely a word mark, but a composite mark. The mark covered by Registration No. 4-2002-004546 is not only the word "CHERIFER," but also the "HEIGHT IS MIGHT" device above it. The absurdity of cherry-picking the elements of respondent's registered mark for comparison is highlighted, should one try to compare "CEEGEEFER" with respondent's "HEIGHT IS MIGHT" device, or petitioner's "healthy & mighty" drawing with the word "CHERIFER" using either a visual or aural test.

To permit the injunction of petitioner's "CEEGEEFER" because of the mark covered by Registration No. 4-2002-004546 defeats the purpose of registration of this mark as a composite mark. The protection that has been granted to respondent is beyond the bounds of the mark it has registered. The *ponencia* has, in essence, permitted respondent to claim a monopoly for every component of its composite mark, when the Intellectual Property Office had only granted it exclusivity based on the mark as a whole. This bypasses and undermines the procedures of examination, publication, and opposition required by the Intellectual Property Code.

7. ID.; ID.; ID.; THE ® SYMBOL IS NOTICE THAT THE MARK IS REGISTERED. — Notably, a close examination of the specimen of respondent's packaging, provided by respondent, reveals that the word "CHERIFER" has an ® symbol appended to it, separate from the ® symbol appending the depicted "HEIGHT IS MIGHT" device.

Section 158 of the Intellectual Property Code provides that the ® symbol is notice that the mark is registered: . . .

8. ID.; ID.; ID.; TRADEMARK INFRINGEMENT; THE "LIKELIHOOD OF CONFUSION" BETWEEN THE REGISTERED MARK AND THE ALLEGEDLY INFRINGING MARK MUST HAVE SUFFICIENT FACTUAL BASIS. — [I]n all instances of trademark infringement, there must be a "likelihood of confusion" between the registered mark and the allegedly-infringing mark: . . .

Evidence-based standards for determining "likelihood of confusion" are imperative, lest courts and administrative agencies succumb to *ad hoc* reasoning and this Court promulgate essentially *pro hac vice* decisions without coherent and consistent precedents to guide the bench and bar: . . .

In this case, there is insufficient factual basis to justify the conclusion that a likelihood of confusion had arisen, such that the relevant market for petitioner and respondent's goods have been misled into buying the other's products due to the packaging or marks used.

9. ID.; ID.; ID.; PURPOSE OF TRADEMARKS AND SERVICE MARKS. — The purpose of trademarks and service marks are: (1) to indicate a good or service's origin and ownership; (2) to ensure that the maker of a superior good or provider of superior service could be identified; and (3) to prevent fraud in commerce. Trademarks and service marks are not intended to unduly restrict free trade, foster monopolistic practices, or remove competitors from the market: . . .

APPEARANCES OF COUNSEL

Quiason Makalintal Barot Torres Ibarra Sison & Damaso for petitioner.

Castillo Laman Tan Pantaleon & San Jose for respondent.

D E C I S I O N

CARANDANG, *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated January 28, 2019 and the Resolution[3] dated June 21, 2019 of the Court of Appeals (CA) in CA-G.R. CV No. 102569. The Decision and the Resolution enjoined Prosel Pharmaceuticals & Distributors, Inc. (petitioner) from using CEEGEEFER as a brand name as it was a violation of Tynor Drug House, Inc.'s (respondent) CHERIFER + Logo trademark.

Petitioner alleged that CEEGEEFER was an improved version of its previous product, Selvon C — a product that was granted a Bureau of Food and Drugs (BFAD) Certificate of Product Registration on December 3, 1999.[4] Petitioner claimed that since it was a customary practice in the pharmaceutical industry for companies to use the generic names of products as basis for creating brand names, it phonetically derived CEEGEEFER from one of its ingredients, Chlorella[5] Growth Factor (CGF). Being an improved version of Selvon-C, the packaging used for CEEGEEFER was the same as Selvon C's in order to expedite the approval of its application for registration of CEEGEEFER with BFAD.[6]

---

[1] *Rollo*, pp. 9-39.

[2] Penned by Associate Justice Germano Francisco D. Legaspi, with the concurrence of Associate Justices Sesinando E. Villon and Edwin D. Sorongon; id. at 43-54.

[3] Penned by Associate Justice Germano Francisco D. Legaspi, with the concurrence of Associate Justices Rodil V. Zalameda (now a Member of this Court) and Edwin D. Sorongon; id. at 56-57.

[4] Id. at 61.

[5] Misspelled as Chlorela; *see* id. at 12.

[6] Id. at 60-61.

However, petitioner received respondent's Demand Letter[7] dated March 28, 2007 requiring petitioner to: (1) stop distributing CEEGEEFER products; (2) recall CEEGEEFER products that were already distributed; and (3) execute an undertaking to stop using or imitating respondent's trademark and design. The Demand Letter claimed that CEEGEEFER was confusingly similar to respondent's multivitamin product, CHERIFER.[8]

Although petitioner denied any confusing similarity between the two products in a Letter-Reply[9] dated April 13, 2007, petitioner still undertook to withdraw all of CEEGEEFER's promotional materials that bore any resemblance to the trade box of CHERIFER. Petitioner then issued an internal Memorandum[10] dated April 12, 2007 instructing its field personnel and medical representatives to withdraw all promotional materials that resembled CHERIFER's trade box. As to products already in possession of its exclusive distributor, Metro Drug, Inc. (MDI), petitioner claimed that they would need time to coordinate with MDI for MDI to remove its CEEGEEFER stocks. Petitioner then submitted a sample of its new trade box design to BFAD for approval.[11]

For its part, respondent claimed that it formulated CHERIFER in 1993 and incorporated its mark to its packages since March 10, 1993. On July 3, 2002, Respondent deposited a copy of the packaging material with the Philippine National Library, which resulted in the issuance of a Certificate of Copyright Registration and Deposit[12] on July 25, 2002. On July 8, 2004, respondent's

---

[7] Records, pp. 935-936.

[8] Id.

[9] Id. at 937-939.

[10] Id. at 372.

[11] Id.

[12] Under a Certificate of Copyright Registration and Deposit registered/deposited on July 3, 2002 with Title of Work described as "CHERIFER PLUS LOGO WITH HEIGHT IS MIGHT"; id. at 933.

Certificate of Registration No. 4-2002-004546[13] was registered and its trademark described as follows:

> CHERIFER + LOGO
> (THE MARK CONSISTS OF THE WORD CHERIFER WITH A LOGO OF A YOUNG BOY DUNKING AND TOUCHING THE BASKETBALL GOAL. THE YOUNG BOY IS WEARING A RED BASKETBALL UNIFORM WITH A WHITE STRIPE, AND RUBBER SHOES. THE BASKETBALL SHIRT HAS A "C" PRINT ON IT IN BASKETBALL SHIRT HAS A "C" PRINT ON IT IN BLUE INK. ABOVE THE HEAD IS A SLOGAN THAT READS "HEIGHT IS MIGHT" PRINTED ON BLUE & PINK ARK. BEHIND THE BOY IS A GREEN TRIANGULAR BACKGROUND WITH SHADOW)

In 2007, respondent received reports that petitioner is promoting and selling CEEGEEFER, whose logo and packaging is similar, if not identical, to respondent's registered trademark and copyrighted packaging. Thus, it sent petitioner a demand letter directing petitioner to stop distributing its products using respondent's trademark and design.[14]

For failure to cause the immediate recall of petitioner's products from the market, respondent filed a Complaint[15] for trademark and copyright infringement, unfair competition, and damages, with applications for temporary restraining order and/or a writ of preliminary injunction with the Regional Trial Court (RTC). Respondent prayed for the seizure of petitioner's products, a minimum of ₱500,000.00 each as nominal damages, exemplary damages, and attorney's fees, and ₱100,000.00 as litigation expenses. A Writ of Preliminary Injunction[16] was issued on February 21, 2008.[17]

---

[13] Id. at 940.

[14] Id. at 59.

[15] Docketed as Civil Case No. 07-086 and raffled to Branch 256 of the Regional Trial Court of Muntinlupa City; id. at 263-281.

[16] Records, pp. 647-648.

[17] Id. at 279-281.

Ruling of the Regional Trial Court

In a Decision[18] dated December 23, 2013, the RTC dismissed respondent's complaint and lifted the Writ of Preliminary Injunction. Respondent's preliminary injunction bond was awarded to petitioner as nominal damages to vindicate petitioner's rights.[19]

The RTC rejected respondent's claim that CEEGEEFER and CHERIFER are confusingly similar, following the principle of *idem sonans*. By reiterating this Court's ruling that *idem sonans* is applicable when "the attentive ear finds difficulty in distinguishing [two names] when pronounced,"[20] the RTC held that the parties' consumers are attentive enough to distinguish between CEEGEEFER and CHERIFER. The RTC refused to apply this Court's ruling in the case of *Del Monte Corporation v. Court of Appeals*[21] because this Court's pronouncement in the case of *Asia Brewery, Inc. v. Court of Appeals*[22] warned against the application of *Del Monte* to all kinds of products. In *Asia Brewery, Inc.*, trial courts were directed to consider several other factors like the consumer's age, training, and education; the nature and cost of the article; and the conditions under which a product is purchased in determining infringement and unfair competition.[23]

The RTC ruled that there was no copyright infringement as the overall appearances of the subject products do not substantially look alike. The RTC noted that the colors orange and yellow (which CEEGEEFER and CHERIFER use, respectively) are easily associated with citrus, a source of vitamin

---

[18] Penned by Presiding Judge Leandro C. Catalo.

[19] Id. at 68.

[20] Id. at 62, citing *Manebo v. SPO1 Acosta*, 619 Phil. 614 (2009).

[21] 260 Phil. 435 (1990).

[22] 296 Phil. 298 (1993).

[23] *Rollo*, p. 64.

C. Citing *Alhambra Cigar v. Mojica*,[24] the trial court ruled that respondent failed to prove that petitioner tried to pass off CEEGEEFER as CHERIFER especially since CEEGEEFER was designed from its predecessor product, Selvon C – a product that has been used since 1999.[25]

Aggrieved, respondent filed an appeal under Rule 41 of the Rules of Court with the CA.[26]

Ruling of the Court of Appeals

In its Decision[27] dated January 29, 2018, the CA reversed the RTC and found petitioner liable for trademark infringement. On the other hand, petitioner was not found liable for copyright infringement. The CA then ordered petitioner to pay respondent ₱500,000.00 as nominal damages and ₱100,000.00 as attorney's fees. Petitioner was also enjoined from using CEEGEEFER as a brand name and from using the CHERIFER + Logo trademark in any of petitioner's goods.[28]

The CA deduced that petitioner knew CEEGEEFER had some colorable imitation of CHERIFER because petitioner admitted the similarity between the two brands in its letter-reply.[29] The CA pointed out that petitioner could not explain why the suffix "*fer*" in CEEGEEFER was used, whereas the same suffix in CHERIFER referred to its original ingredient, *ferrous sulfate*. The packaging of both products were also found to be similar, particularly on the following points:

---

[24] 27 Phil. 266 (1914). In *Alhambra*, this Court ruled that "the true test of unfair competition is whether the acts of defendant are such as are calculated to deceive the ordinary buyer making his purchases under the ordinary conditions which prevail in the particular trade to which the controversy related."

[25] Id. at 65-67.

[26] CA *rollo*, p. 32.

[27] Supra note 2.

[28] *Rollo*, p. 23.

[29] Id. at 292-294.

(1) color combination used; (2) picture of a young boy doing a basketball dunk; (3) logo of an arc with the slogan "Height is Might" for CHERIFER and "Healthy and Mighty" for CEEGEEFER; and (4) use of ribbon in the packaging.[30]

The CA ruled that there was no unfair competition because petitioner indicated itself as the manufacturer of CEEGEEFER. Hence, there was no attempt to deceive the public that the goods originated from respondent.[31]

On respondent's claim for damages, the appellate court awarded ₱500,000.00 as nominal damages following Article 2222[32] of the Civil Code. Attorney's fees were also awarded because respondent hired lawyers and incurred expenses to protect its right. The CA rejected respondent's claims for exemplary damages due to respondent's failure to prove its entitlement thereto.[33]

Petitioner filed a Motion for Reconsideration[34] but was denied by the CA in its Resolution[35] dated June 21, 2019. This prompted petitioner to file the instant Petition for Review on *Certiorari*[36] under Rule 45 of the Rules of Court.

In the instant petition, petitioner insists that there is no confusing similarity between CHERIFER and CEEGEEFER's sound and spelling. It claims that respondent's failure to oppose the CEEGEEFER mark when it was first offered in the market bolsters respondent's allegation that there is no confusing similarity between the two. The *idem sonans* rule cannot apply

---

[30] Id. at 49.

[31] Id. at 51.

[32] Art. 2222. The Court may award nominal damages in every obligation arising from any source enumerated in Article 1157, or in every case where any property right has been invaded.

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

[34] Id. at 216-230.

[35] Supra note 3.

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

because the only similarity between both brands is the suffix "*fer*."[37] Petitioner reiterated that since CEEGEEFER was phonetically coined from the product's Chlorella Growth Factor, it used "*fer*" as a slang for the last word "factor." Thus, it denied respondent's claim that petitioner also used the same suffix to imitate respondent (with respondent explaining the use of "*fer*" to describe *ferrous sulfate*, a component present in earlier formulations of CHERIFER).[38]

Petitioner also differentiates the two products. According to petitioner, the products are not used in the sale of the same goods: CEEGEEFER is a drug with vitamin C and CGF as its components while CHERIFER is only a multivitamin without a vitamin C component.[39]

Petitioner also insists that CEEGEEFER and CHERIFER are still not confusingly similar even if the holistic test was used because the logos are different. While both logos show a boy wearing a basketball jersey and cap doing a slam dunk, petitioner enumerates the variances between the two logos, *viz.*:

Features of logo	**CEEGEEFER**	**CHERIFER**
Boy's built	Fit	Heavy
Boy's face	Chiseled with a genuine smile	Round with a fake smile
Boy's action	Reverse slam dunk	Ordinary slam dunk with feet curled up together
Boy's baseball cap	Strapback cap with hook & loop fastener in reverse	Fitted cap in reverse

[37] Id. at 20-21.

[38] Id. at 25-27.

[39] Id. at 21.

Boy's hair	Long with bangs reaching the nose	Cannot be discerned/hidden in the baseball cap
Boy's socks	Low-cut and loosely fitted	Mid-cut and fitted
Slogan	"Healthy & Mighty" referring to the effect of taking the product	"Height is Might" also referring to the effect of taking the product[40]

Petitioner noted other differences between CEEGEEFER and CHERIFER – claiming CEEGEEFER to be more expensive because of its vitamin C component. Anent the target market, petitioner avers that the purchaser will not be confused between the two products because it is the mother who buys them and not the child who will be drinking it.[41]

In its Comment[42] dated November 29, 2019, respondent sought to have the instant petition dismissed because of petitioner's defective Verification and Certification against Forum Shopping – having been executed a day earlier than the instant petition (dated August 16, 2019), or on August 15, 2019.[43]

On the merits, respondent avers that the CA's ruling is consistent with the facts and the law. Respondent echoes the appellate court's finding of a colorable imitation between CEEGEEFER and CHERIFER and explains that not all details have to be copied to constitute a colorable imitation.[44] Respondent claims that the differences enumerated by petitioner between

---

[40] Id. at 22-23.

[41] Id. at 23-24.

[42] Id. at 237-260.

[43] Id. at 249-250.

[44] Id. at 250-251.

CHERIFER and CEEGEEFER's logos are minute and negligible, and thus, do not change the fact that the two are similar to each other. Lastly, respondent denies petitioner's claim that CEEGEEFER is descriptive of one of its components, CGF.[45]

Ruling of the Court

The instant petition must be denied. Petitioner's CEEGEEFER mark and packaging is a colorable imitation of respondent's CHERIFER + Logo.

On the use of the words CHERIFER and CEEGEEFER, this Court subscribes to the CA's view that both names are confusingly similar in sound and spelling. This Court has already found other words less similar to each other to still be confusingly similar in sound. In the case of *Mcdonald's Corp. v. L.C. Big Mak Burger, Inc.*,[46] We said:

> The following random list of confusingly *similar sounds* in the matter of trademarks, culled from Nims, Unfair Competition and Trade Marks, 1947, Vol. 1, will reinforce our view that "**SALONPAS**" and "**LIONPAS**" are confusingly similar in sound: "**Gold Dust**" and "**Gold Drop**"; "**Jantzen**" and "**Jass-Sea**"; "**Silver Flash**" and "**Supper Flash**"; "**Cascarete**" and "**Celborite**"; "**Celluloid**" and "**Cellonite**"; "**Chartreuse**" and "**Charseurs**"; "**Cutex**" and "**Cuticlean**"; "**Hebe**" and "**Meje**"; "**Kotex**" and "**Femetex**"; "**Zuso**" and "**Hoo Hoo**." Leon Amdur, in his book "Trade-Mark Law and Practice", pp. 419-421, cities, as coming within the purview of the *idem sonans* rule, "**Yusea**" and "**U-C-A**," "**Steinway Pianos**" and "**Steinberg Pianos**", and "**Seven-Up**" and "**Lemon-Up**". In *Co Tiong v. Director of Patents*, this Court unequivocally said that "**Celdura**" and "**Cordura**" are confusingly similar in sound; this Court held in *Sapolin Co. v. Balmaceda*, 67 Phil. 795 that the name "**Lusolin**" is an infringement of the trademark "**Sapolin**", as the sound of the two names is almost the same.[47] (Emphasis supplied)

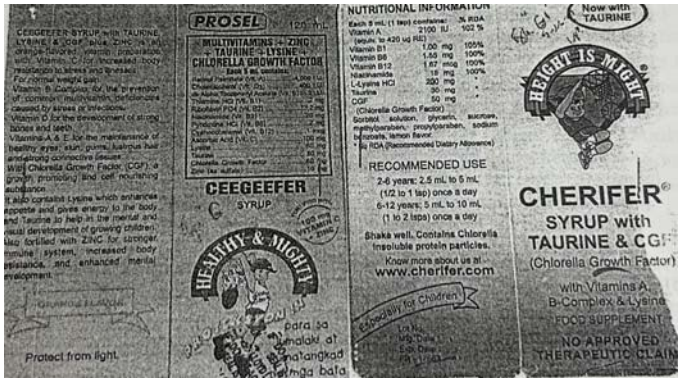
---

[45] Id. at 254-256.

[46] 480 Phil. 402 (2004).

[47] Id. at 436, citing *Marvex Commercial Co., Inc. v. Petra Hawpia & Co.,* 25 Phil. 295 (1966).

As regards the logos used by the parties, the same are strikingly similar. A side by side comparison of the pictures in CHERIFER and CEEGEEFER show the right profile/side of a boy wearing a basketball jersey and a baseball cap shooting a basketball on a hoop with their knees slightly bent and with the words that start with the letters "H" and "M" on top in an arc that both have a different colored line in the middle. Note, too, that both packages use orange and yellow.



Petitioner insists on minor differences (such as how the characters in both products are of different body types or that the baseball caps were worn differently) to prove that there is no trademark infringement.

This Court does not agree.

In the case of *ABS-CBN Publishing, Inc. v. Director of Bureau of Trademarks*,[48] this Court acknowledged how "in committing the infringing act, the infringer merely introduces negligible changes in an already registered mark, and then banks on these slight differences to state that there was no identity or confusing similarity, which would result in no infringement."[49]

---

[48] G.R. No. 217916, June 20, 2018.

[49] Id.

Given the respective packages of CHERIFER and CEEGEEFER shown above, it is indubitable that the two products are strikingly similar.

Note that petitioner admitted a resemblance between CEEGEEFER and CHERIFER. In its letter-reply, petitioner stated that "[e]ffective April 12, 2007, Prosel will immediately withdraw all promotional materials of CEEGEEFER **that bears any resemblance to the trade box of CHERIFER**. Prosel will stop using the logo in our Physician's Samples by immediately instructing Prosel people in field to remove the boxes before giving them to doctors."[50] Petitioner is thus estopped from taking a different stance.

Petitioner's registration of CEEGEEFER as a drug and not just a vitamin food supplement does not exculpate it from liability. CEEGEEFER's classification as a drug is immaterial. Since the case involves a violation of a trademark, the gravamen of the offense is a likelihood of confusion between the two marks.[51] Both products are over-the-counter multivitamins that do not require a medical prescription. As such, CEEGEEFER and CHERIFER may be easily obtained without the advice of another person. Therefore, the parties' target market may be confused, mistaken, or deceived into thinking that CEEGEEFER is the same as CHERIFER. Note, too, that different drug stores even displayed and sold CEEGEEFER and CHERIFER products beside each other.

Given the phonetic and visual similarities between the two products (*i.e.*, how the product names are spelled, the sound of both product names, and the colors and shapes combination of the products' respective packaging), it is obvious that petitioner attempted to pass CEEGEEFER as a colorable imitation of CHERIFER.

---

[50] *Rollo*, p. 13. Emphasis supplied.

[51] *Diaz v. People*, 704 Phil. 146, 161 (2013), citing *Societe Des Produits Nestle, S.A. v. Dy, Jr.*, 641 Phil. 345, 358 (2010).

Petitioner alleged that CEEGEEFER was a result of an enhancement of its previous product, Selvon C – particularly that CEEGEEFER is a drug with the vitamins and minerals of Selvon C plus CGF. It adopted the name CEEGEEFER because it describes its CGF component and it used the same packaging as Selvon C.

Again, the determining point in trademark infringement is a likelihood of confusion. The fact that CEEGEEFER is *idem sonans* for CHERIFER is enough to violate respondent's right to protect its trademark, CHERIFER. Surprisingly, petitioner never showed proof of CEEGEEFER's trademark registration. Even a quick search on the Intellectual Property Office's (IPO) website reveals that petitioner's application for CEEGEEFER's registration was abandoned with finality.[52] A subsequent trademark registration for CEEGEEFER was made by a certain Korn C. Philippines, Inc. only on August 28, 2014. Meanwhile, respondent secured a trademark registration on CHERIFER as early as July 8, 2004. At that time, even petitioner's trademark registration for Selvon-C (CEEGEEFER's alleged predecessor product) was not yet obtained – with Selvon-C's trademark only registered on May 21, 2005. The only Certificate of Registration petitioner had over CEEGEEFER was one issued by BFAD. Under Section 3 of Republic Act No. 9711,[53] BFAD (now renamed to the Food and Drug Administration) is tasked to carry out the State's policy of protecting and promoting the Filipino people's right to health by establishing and maintaining an effective health products regulatory system. It has no authority over trademark infringement.

This Court is aware that countless products circulate around the market today which may be viewed as strikingly similar and may bring forth a likelihood of confusion to its target market. With increasing product and service competition, the determination of a likelihood of confusion becomes more complex. While

---

[52] Philippine Trademark Database, <https://www3.wipo.int/branddb/ph/en>, last visited on September 17, 2020.

[53] Food and Drug Administration Act of 2009.

jurisprudence has developed the Dominancy Test and Holistic/ Totality Test to determine whether there is a likelihood of confusion between competing marks, the application of such tests is normally left to the subjective judgment of the IPO or the courts.[54] Albeit this Court recognizes the expertise of the IPO on matters involving trademark and copyright infringement, the fact remains that the products are aimed at a particular target market outside of the individual personalities of those in the IPO and the courts. Therefore, there may be underlying factors in a mark that are discernible by a product's target market which the IPO or the courts might not observe. Conversely, there may be factors which the IPO or the courts may deem considerable but are immaterial to the target market. Thus, the *ponencia* adopts the observations of Justice Leonen in *Asia Pacific Resources International Holdings, Ltd. v. Paperone, Inc.*[55] that there should be "objective, scientific, and economic standards to determine whether goods or services offered by two parties are so related that there is a likelihood of confusion."[56]

Notwithstanding such standards, CEEGEEFER's use of its brand name and packaging undeniably creates a likelihood of confusion with CHERIFER. The similarities are apparent: (1) CHERIFER and CEEGEEFER are phonetically alike; (2) the pictures on CHERIFER and CEEGEEFER's packages are practically indistinguishable – both depicting the right profile or side of a boy wearing a basketball jersey and a baseball cap shooting a basketball on a hoop with their knees slightly bent; (3) both phrases on top of CHERIFER and CEEGEEFER's picture start with the letters "H" and "M" in an arc that both have a different colored line in the middle; (4) the packages have a drawing of a ribbon; and (5) the packages use the colors

---

[54] *See* J. Leonen's Separate Concurring Opinion, *Asia Pacific Resources International Holdings, Ltd. v. Paperone, Inc.*, G.R. Nos. 213365-66, December 10, 2018.

[55] G.R. Nos. 213365-66, December 10, 2018.

[56] Supra note 54.

orange and yellow. More importantly, CHERIFER and CEEGEEFER are both over-the-counter vitamin supplements promoting growth for children by including the CGF component. The addition of its star ingredient, CGF, is what separates CEEGEEFER and CHERIFER from other children's vitamin supplements sold in the market. The reason for CHERIFER's and CEEGEEFER's focus on a child's growth is simple: it addresses one of a parent's main concerns for their early childhood and pre-adolescent children. With CHERIFER and CEEGEEFER targeting the same relevant market (*i.e.*, over-the-counter children's growth vitamin supplement) and given their glaring similarities, CHERIFER and CEEGEEFER are reasonably interchangeable and are almost perfect substitutes of each other. Note, too, that since CHERIFER and CEEGEEFER are over-the-counter products (and were, in fact even sold side-by-side in some establishments), the propensity to mistakenly purchase one for the other is high.

Anent the award of nominal damages, the same should be reduced. Following this Court's ruling in the case of *San Miguel Pure Foods Company, Inc. v. Foodsphere, Inc.*,[57] We find the award of nominal damages in the amount of ₱100,000.00 more reasonable.

We affirm the award of attorney's fees in the amount of ₱100,000.00 as respondent proved that "it hired lawyers and incurred expenses to protect its right."[58] Although respondent claimed that it incurred ₱823,603.20 as attorney's fees and ₱135,926.67 as litigation expenses, We find the CA's reduced award of attorney's fees at ₱100,000.00 equitable.

The total judgment awards in favor of respondent shall earn a 6% annual legal interest from the time of the finality of this

---

[57] G.R. Nos. 217781 and 217788, June 20, 2018. This is a 2018 case between San Miguel's PUREFOODS FIESTA HAM and Foodsphere's PISTA ham.

[58] *Rollo*, p. 53.

Resolution until the same is fully paid in accordance with this Court's ruling in *Nacar v. Gallery Frames*.[59]

WHEREFORE, the instant petition is **DENIED**. The Decision dated January 28, 2019 and the Resolution dated June 21, 2019 of the Court of Appeals in CA-G.R. CV No. 102569 are **AFFIRMED with MODIFICATION** in that the award of nominal damages is **REDUCED** to ₱100,000.00.

The awards of ₱100,000.00 nominal damages and ₱100,000.00 attorney's fees shall earn a six percent (6%) annual interest from the finality of this Decision until fully paid.

SO ORDERED.

Gesmundo, Lazaro-Javier,[*] and *Gaerlan, JJ.*, concur.

Leonen, J. (*Chairperson*), see dissenting opinion.

DISSENTING OPINION

LEONEN, *J.*:

With due respect to the analysis in the *ponencia*, the Court of Appeals committed a reversible error when it enjoined petitioner from using the brand name "CEEGEEFER" for allegedly infringing upon respondent's registered trademark and awarding respondent damages.[1]

---

[59] 716 Phil. 267, 282-283 (2013).

[*] Designated additional Member per Raffle dated June 22, 2020.

[1] *Rollo*, p. 53, the dispositive portion of the Court of Appeals' Decision stated:

WHEREFORE, premises considered, the Decision dated December 23, 2013 of the Regional Trial Court of Muntinlupa City, Branch 256 in Civil Case No. 07-086 is REVERSED and SET ASIDE. Defendant-appellee Prosel Pharmaceuticals & Distributors, Inc. is found liable for TRADEMARK INFRINGEMENT and is ORDERED to PAY plaintiff-appellant Tynor Drug House, Inc. ₱500,000.00 as nominal damages and ₱100,000.00 as attorney's fees. Defendant-appellee Prosel Pharmaceuticals & Distributors, Inc., its agents, representatives, assigns, distributors, dealers and sellers

Section 155 of Republic Act No. 8293, otherwise known as the Philippine Intellectual Property Code, states what constitutes trademark infringement:

SECTION 155. *Remedies; Infringement*. — Any person who shall, without the consent of the owner of the registered mark:

155.1. Use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark or the same container or a dominant feature thereof in connection with the sale, offering for sale, distribution, advertising of any goods or services including other preparatory steps necessary to carry out the sale of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; or

155.2. Reproduce, counterfeit, copy or colorably imitate a registered mark or a dominant feature thereof and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive, shall be liable in a civil action for infringement by the registrant for the remedies hereinafter set forth: Provided, That the infringement takes place at the moment any of the acts stated in Subsection 155.1 or this subsection are committed regardless of whether there is actual sale of goods or services using the infringing material.

For there to be a finding of trademark infringement, the following elements must concur: (1) the plaintiff has a valid mark; (2) the plaintiff is the owner of the mark; and (3) the alleged infringer's use of the mark, or its colorable imitation, results in a likelihood of confusion.[2]

---

are hereby ENJOINED from using its CEEGEEFER brand name and the CHERIFER + Logo trademark in connection with the sale, offering for sale, distribution, advertising of any goods including other preparatory steps necessary to carry out the sale of any goods bearing such trademarks in the Philippines, or from otherwise infringing plaintiff-appellant Tynor Drug House, Inc.'s CHERIFER + Logo trademark covered under Registration No. 4-2002-004546.

[2] *McDonald's Corporation v. L.C. Big Mak Burger, Inc.*, 480 Phil. 402, 424-425 (2004) [Per J. Carpio].

A "mark" is defined in the Intellectual Property Code as:

SECTION 121. *Definitions*. — As used in Part III, the following terms have the following meanings:

> 121.1. "Mark" means any visible sign capable of distinguishing the goods (trademark) or services (service mark) of an enterprise and shall include a stamped or marked container of goods[.]

Subject to the limitations on registrability enumerated in Section 123,[3] the rights to any visible sign capable of distinguishing a

---

[3] INTELLECTUAL PROP. CODE, sec. 123 states:

SECTION 123. *Registrability*. — 123.1. A mark cannot be registered if it:

(a) Consists of immoral, deceptive or scandalous matter, or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt or disrepute;

(b) Consists of the flag or coat of arms or other insignia of the Philippines or any of its political subdivisions, or of any foreign nation, or any simulation thereof;

(c) Consists of a name, portrait or signature identifying a particular living individual except by his written consent, or the name, signature, or portrait of a deceased President of the Philippines, during the life of his widow, if any, except by written consent of the widow;

(d) Is identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date, in respect of:

(i) The same goods or services, or
(ii) Closely related goods or services, or
(iii) If it nearly resembles such a mark as to be likely to deceive or cause confusion.

(e) Is identical with, or confusingly similar to, or constitutes a translation of a mark which is considered by the competent authority of the Philippines to be well-known internationally and in the Philippines, whether or not it is registered here, as being already the mark of a person other than the applicant for registration, and used for identical or similar goods or services: Provided, That in determining whether a mark is well-known, account shall be taken of the knowledge of the relevant sector of the public, rather than of the public at large, including knowledge in the Philippines which has been obtained as a result of the promotion of the mark;

(f) Is identical with, or confusingly similar to, or constitutes a translation of a mark considered well-known in accordance with the preceding paragraph, which is registered in the Philippines with respect to goods or services

particular good or service may be acquired by means of registration[4] with the Philippine Intellectual Property Office. This "visible sign" may be a word, name, symbol, emblem, sign, device, drawing, or figure:

The foregoing unmistakably show that petitioner, through its predecessor-in-interest, had made use of the location of the restaurant where it manufactures and sells its products, but as a trade-mark to

---

which are not similar to those with respect to which registration is applied for: Provided, That use of the mark in relation to those goods or services would indicate a connection between those goods or services, and the owner of the registered mark: Provided, further, That the interests of the owner of the registered mark are likely to be damaged by such use;

(g) Is likely to mislead the public, particularly as to the nature, quality, characteristics or geographical origin of the goods or services;

(h) Consists exclusively of signs that are generic for the goods or services that they seek to identify;

(i) Consists exclusively of signs or of indications that have become customary or usual to designate the goods or services in everyday language or in bona fide and established trade practice;

(j) Consists exclusively of signs or of indications that may serve in trade to designate the kind, quality, quantity, intended purpose, value, geographical origin, time or production of the goods or rendering of the services, or other characteristics of the goods or services;

(k) Consists of shapes that may be necessitated by technical factors or by the nature of the goods themselves or factors that affect their intrinsic value;

(l) Consists of color alone, unless defined by a given form; or

(m) Is contrary to public order or morality.

123.2. As regards signs or devices mentioned in paragraphs (j), (k), and (l), nothing shall prevent the registration of any such sign or device which has become distinctive in relation to the goods for which registration is requested as a result of the use that have been made of it in commerce in the Philippines. The Office may accept as prima facie evidence that the mark has become distinctive, as used in connection with the applicant's goods or services in commerce, proof of substantially exclusive and continuous use thereof by the applicant in commerce in the Philippines for five (5) years before the date on which the claim of distinctiveness is made.

[4] INTELLECTUAL PROP. CODE, sec. 122 states:

SECTION 122. *How Marks are Acquired.* — The rights in a mark shall be acquired through registration made validly in accordance with the provisions of this law.

indicate the goods it offers for sale to the public. No other conclusion can be drawn. This is the very meaning or essence in which a trade-mark is used. This is not only in accordance with its general acceptance but with our law on the matter.

> "'Trade-mark' or "trade-name", distinction being highly technical, is sign, device, or mark by which articles produced are dealt in by particular person or organization are distinguished or distinguishable from those produced or dealt in by others." (Church of God v. Tomlinson Church of God, 247 SW 2d. 63, 64)
>
> "A 'trade-mark' is a distinctive mark of authenticity through which the merchandise of a particular producer or manufacturer may be distinguished from that of others, and its sole function is to designate distinctively the origin of the products to which it is attached." (Reynolds & Reynolds Co. v. Norick, et al., 114 F 2d, 278)
>
> "The term 'trade-mark' includes any word, name, symbol, emblem, sign or device or any combination thereof adopted and used by a manufacturer or merchant to identify his goods and distinguished them from those manufactured, sold or dealt in by others". (Section 38, Republic Act No. 166)

Verily, the word "SELECTA" has been chosen by petitioner and has been inscribed on all its products to serve not only as a sign or symbol that may indicate that they are manufactured and sold by it but as a mark of authenticity that may distinguish them from the products manufactured and sold by other merchants or businessmen. The Director of Patents, therefore, erred in holding that petitioner made use of that word merely as a trade-name and not as trade-mark within the meaning of the law.[5]

Registrable marks may be two- or three- dimensional,[6] in

---

[5] *Arce Sons and Company v. Selecta Biscuit Company, Inc.*, 110 Phil. 858, 867-868 (1961) [Per J. Bautista Angelo, En Banc].

[6] See the definition of a "mark" in INTELLECTUAL PROP. CODE, sec. 121.1, which encompasses "a stamped or marked container of goods" and INTELLECTUAL PROP. CODE, sec. 124, the relevant subsection of which states:

color,[7] or in a form that could require transliteration or translation.[8] They may be what are described in the Philippine Intellectual Property Office Trademark Regulations of 2017[9] as "word marks," represented in standard characters:

RULE 402. *Reproduction of the Mark*. – One (1) reproduction of the mark shall be submitted upon filing of the application which shall substantially represent the mark as actually used or intended to be used on or in connection with the goods and/or services of the applicant. The reproduction may be added or pasted on the space provided for in the application form or printed on an ordinary bond paper. The reproduction must be clear and legible, printed in black ink or in color, if colors are claimed, and must be capable of being clearly reproduced when published in the IPO eGazette. An electronic

---

SECTION 124. *Requirements of Application*. — 124.1. The application for the registration of the mark shall be in Filipino or in English and shall contain the following:

. . . .

(h) Where the mark is a three-dimensional mark, a statement to that effect;

[7] See INTELLECTUAL PROP. CODE, sec. 124, the relevant subsection of which states:

SECTION 124. *Requirements of Application*. — 124.1. The application for the registration of the mark shall be in Filipino or in English and shall contain the following:

. . . .

(g) Where the applicant claims color as a distinctive feature of the mark, a statement to that effect as well as the name or names of the color or colors claimed and an indication, in respect of each color, of the principal parts of the mark which are in that color;

[8] See INTELLECTUAL PROP. CODE, sec. 124, the relevant subsection of which states:

SECTION 124. *Requirements of Application*. — 124.1. The application for the registration of the mark shall be in Filipino or in English and shall contain the following:

. . . .

(j) A transliteration or translation of the mark or of some parts of the mark, as prescribed in the Regulations;

[9] IPO Memorandum Circular No. 010-17.

copy of the reproduction may likewise be submitted in lieu of the printed reproduction. The electronic reproduction should be in .jpg format and must not exceed one (1) megabyte.

In the case of word marks or if no special characteristics have to be shown, such as design, style of lettering, color, diacritical marks, or unusual forms of punctuation, the mark must be represented in standard characters. The specification of the mark to be reproduced will be indicated in the application form and/or published on the website.

The provisions of this Rule shall, however, be construed liberally in determining whether the application shall be considered complete for purposes of granting a filing date. (Emphasis supplied)

There are instances when a person will have registered both a "word mark" and some kind of device or design incorporating this "word mark" as two (2) separate trademarks or service marks. When the "word mark" and the "device mark" are included in one (1) composition—and registered, it may be known as a "composite mark."[10]

Under the Intellectual Property Code, marks applied for registration must undergo examination and publication,[11] and

---

[10] See *The East Pacific Merchandising Corp. v. Director of Patents*, 110 Phil. 443 (1960) [Per J. Reyes, J.B.L., Second Division], concerning the trademark application for a "composite trademark" which consisted of:

[T]he word "Verbena" and the representation of a Spanish lady, more particularly described as follows:

Against a blue background is the bust figure of a Spanish Señorita dressed in a typically pink dancer's attire with her upper arms partly covered with a Spanish shawl of green and white. The figure appears with black well groomed hair adorned by red roses. The figure also appears to be wearing two green earrings. At the left of this figure is shown a balcony decked with plants and flowers characteristics of Spanish houses. (p. 10, Records)

[11] INTELLECTUAL PROP. CODE, sec. 133 states:

SECTION 133. *Examination and Publication*. — 133.1. Once the application meets the filing requirements of Section 127, the Office shall examine whether the application meets the requirements of Section 124 and the mark as defined in Section 121 is registrable under Section 123.

the application may be opposed by any person who believes that they may be damaged by the registration.[12] Examination, publication, and opposition are integral to the registration process. By having all marks undergoing all these steps, the Philippine Intellectual Property Office ensures the integrity of the Philippine Trademark Database along with the validity of all registered marks in it, protecting the rights of existing trade and service mark registrants, as well as other relevant stakeholders.

In this case, respondent's mark, with Registration No. 4-2002-004546, is:

133.2. Where the Office finds that the conditions referred to in Subsection 133.1 are fulfilled, it shall, upon payment of the prescribed fee, forthwith cause the application, as filed, to be published in the prescribed manner.

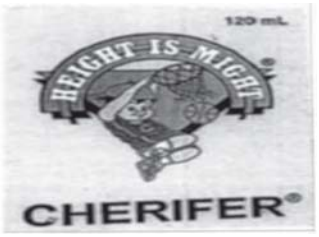
133.3. If after the examination, the applicant is not entitled to registration for any reason, the Office shall advise the applicant thereof and the reasons therefor. The applicant shall have a period of four (4) months in which to reply or amend his application, which shall then be re-examined. The Regulations shall determine the procedure for the re-examination or revival of an application as well as the appeal to the Director of Trademarks from any final action by the Examiner.

133.4. An abandoned application may be revived as a pending application within three (3) months from the date of abandonment, upon good cause shown and the payment of the required fee.

133.5. The final decision of refusal of the Director of Trademarks shall be appealable to the Director-General in accordance with the procedure fixed by the Regulations.

[12] INTELLECTUAL PROP. CODE, sec. 134 states:

SECTION 134. *Opposition*. — Any person who believes that he would be damaged by the registration of a mark may, upon payment of the required fee and within thirty (30) days after the publication referred to in Subsection 133.2, file with the Office an opposition to the application. Such opposition shall be in writing and verified by the oppositor or by any person on his behalf who knows the facts, and shall specify the grounds on which it is based and include a statement of the facts relied upon. Copies of certificates of registration of marks registered in other countries or other supporting documents mentioned in the opposition shall be filed therewith, together with the translation in English, if not in the English language. For good cause shown and upon payment of the required surcharge, the time for filing an opposition may be extended by the Director of Legal Affairs, who shall notify the applicant of such extension. The Regulations shall fix the maximum period of time within which to file the opposition.



The mark is described as:

CHERIFER + LOGO
(THE MARK CONSISTS OF THE WORD CHERIFER WITH A LOGO OF A YOUNG BOY DUNKING AND TOUCHING THE BASKETBALL GOAL. THE YOUNG BOY IS WEARING A RED BASKETBALL UNIFORM WITH A WHITE STRIPE, AND RUBBER SHOES. THE BASKETBALL SHIRT HAS A "C" PRINT ON IT IN BLUE INK. ABOVE THE HEAD IS A SLOGAN THAT READS "HEIGHT IS MIGHT" PRINTED ON BLUE & PINK ARK. BEHIND THE BOY IS A GREEN TRIANGULAR BACKGROUND WITH SHADOW)[13]

Clearly, the mark is a composite mark: one which contains both a distinct word—namely "CHERIFER"—and a device comprising several other elements, including the words "HEIGHT IS MIGHT."

The composition of the mark being sought protection from infringement is important because the Intellectual Property Code confers the owner of a registered mark the right to prevent the use in trade by unauthorized parties of a sign identical or similar to the registered mark, where the use would result in a likelihood of confusion:

SECTION 147. *Rights Conferred.* — 147.1. The owner of a registered mark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs or containers for goods or services which are identical or similar to those in respect of which the trademark is registered

---

[13] *Ponencia,* p. 3.

where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed.

Not every word, symbol, logo, device, or figure that shares similarities with the allegedly-infringed mark will be barred from use in commerce. Section 155 of the Intellectual Property Code points specifically to a registered mark's "colorable imitation" or "dominant feature."

A "colorable imitation":

> [D]enotes such a "close or ingenious imitation as to be calculated to deceive ordinary persons, or such a resemblance to the original as to deceive an ordinary purchaser giving such attention as a purchaser usually gives, and to cause him to purchase the one supposing it to be the other."[14]

What constitutes a mark's "dominant feature" can also be highly subjective. As explained in *Prosource International, Inc. v. Horphag Research Management SA*:[15]

> The Dominancy Test focuses on the similarity of the prevalent features of the competing trademarks that might cause confusion and deception, thus constituting infringement. If the competing trademark contains the main, essential and dominant features of another, and confusion or deception is likely to result, infringement takes place. Duplication or imitation is not necessary; nor is it necessary that the infringing label should suggest an effort to imitate. The question is whether the use of the marks involved is likely to cause confusion or mistake in the mind of the public or to deceive purchasers. Courts will consider more the aural and visual impressions created by the marks in the public mind, giving little weight to factors like prices, quality, sales outlets, and market segments.[16] (Citations omitted)

---

[14] *Etepha v. Director of Patents*, 123 Phil. 329, 333 (1966) [Per J. Sanchez, En Banc].

[15] 620 Phil. 539 (2009) [Per J. Nachura, Third Division].

[16] Id. at 550.

The determination of a mark's dominant feature is independent even of its owner's intent or judgment of the "main, essential and dominant" features of the mark they own or use, as demonstrated in *UFC Philippines, Inc. v. Barrio Fiesta Manufacturing Corp.*:[17]

> A scrutiny of petitioner's and respondent's respective marks would show that the IPO-BLA and the IPO Director General correctly found the word "PAPA" as the dominant feature of petitioner's mark "PAPA KETSARAP." Contrary to respondent's contention, "KETSARAP" cannot be the dominant feature of the mark as it is merely descriptive of the product. Furthermore, it is the "PAPA" mark that has been in commercial use for decades and has established awareness and goodwill among consumers.
>
> We likewise agree with the IPO-BLA that the word "PAPA" is also the dominant feature of respondent's "PAPA BOY & DEVICE" mark subject of the application, such that "the word 'PAPA' is written on top of and before the other words such that it is the first word/figure that catches the eyes." Furthermore, as the IPO Director General put it, the part of respondent's mark which appears prominently to the eyes and ears is the phrase "PAPA BOY" and that is what a purchaser of respondent's product would immediately recall, not the smiling hog.[18] (Citation omitted)

Here, the *ponencia* adopts the findings of the Court of Appeals: (1) that "CEEGEEFER" and "CHERIFER" are aurally similar under *idem sonans*; and (2) that the "healthy & mighty" drawing used in petitioner's packaging is visually similar to the "HEIGHT IS MIGHT" device that is a part of respondent's registered mark.

Respectfully, it is highly irregular to divide the elements of a composite mark and separately determine the confusing similarity of these elements with two (2) different allegedly-infringing marks. To emphasize, the registered mark which is the basis for respondent's cause of action is not merely a word

---

[17] 778 Phil. 763 (2016) [Per J. Leonardo-de Castro, First Division].

[18] Id. at 803.

mark, but a composite mark. The mark covered by Registration No. 4-2002-004546 is not only the word "CHERIFER," but also the "HEIGHT IS MIGHT" device above it. The absurdity of cherry-picking the elements of respondent's registered mark for comparison is highlighted, should one try to compare "CEEGEEFER" with respondent's "HEIGHT IS MIGHT" device, or petitioner's "healthy & mighty" drawing with the word "CHERIFER" using either a visual or aural test.

To permit the injunction of petitioner's "CEEGEEFER" because of the mark covered by Registration No. 4-2002-004546 defeats the purpose of registration of this mark as a composite mark. The protection that has been granted to respondent is beyond the bounds of the mark it has registered. The *ponencia* has, in essence, permitted respondent to claim a monopoly for every component of its composite mark, when the Intellectual Property Office had only granted it exclusivity based on the mark as a whole. This bypasses and undermines the procedures of examination, publication, and opposition required by the Intellectual Property Code.

Notably, a close examination of the specimen of respondent's packaging, provided by respondent,[19] reveals that the word "CHERIFER" has an ® symbol appended to it, separate from the ® symbol appending the depicted "HEIGHT IS MIGHT" device:

[19] *Rollo*, p. 239.

Section 158 of the Intellectual Property Code provides that the ® symbol is notice that the mark is registered:

> SECTION 158. *Damages; Requirement of Notice*. — In any suit for infringement, the owner of the registered mark shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such imitation is likely to cause confusion, or to cause mistake, or to deceive. Such knowledge is presumed if the registrant gives notice that his mark is registered by displaying with the mark the words "'Registered Mark" or the letter R within a circle or if the defendant had otherwise actual notice of the registration.

Evidently, at the time its cause of action for infringement accrued against petitioner, the word mark "CHERIFER" had not been registered by respondent. Otherwise, it would have invoked its registration of the word mark "CHERIFER" to defeat petitioner's "CEEGEEFER." Instead, respondent attempted to prevent petitioner's use in commerce, not only of petitioner's "healthy & mighty" drawing, but also of the word "CEEGEEFER," with a registered composite mark. Respondent's use of a composite mark to prematurely invoke exclusivity for a later registered word mark should not be countenanced by this Court.

Moreover, in all instances of trademark infringement, there must be a "likelihood of confusion" between the registered mark and the allegedly-infringing mark:

> A crucial issue in any trademark infringement case is the likelihood of confusion, mistake or deceit as to the identity, source or origin of the goods or identity of the business as a consequence of using a certain mark. Likelihood of confusion is admittedly a relative term, to be determined rigidly according to the particular (and sometimes peculiar) circumstances of each case. Thus, in trademark cases, more than in other kinds of litigation, precedents must be studied in the light of each particular case.
>
> There are two types of confusion in trademark infringement. The first is "confusion of goods" when an otherwise prudent purchaser is induced to purchase one product in the belief that he is purchasing another, in which case defendant's goods are then bought as the plaintiff's and its poor quality reflects badly on the plaintiff's

reputation. The other is "confusion of business" wherein the goods of the parties are different but the defendant's product can reasonably (though mistakenly) be assumed to originate from the plaintiff, thus deceiving the public into believing that there is some connection between the plaintiff and defendant which, in fact, does not exist.

In determining the likelihood of confusion, the Court must consider: [a] the resemblance between the trademarks; [b] the similarity of the goods to which the trademarks are attached; [c] the likely effect on the purchaser; and [d] the registrant's express or implied consent and other fair and equitable considerations.[20] (Citations omitted)

Evidence-based standards for determining "likelihood of confusion" are imperative, lest courts and administrative agencies succumb to *ad hoc* reasoning and this Court promulgate essentially *pro hac vice* decisions without coherent and consistent precedents to guide the bench and bar:

My discomfort with the prevailing doctrine is that determining whether goods or services are related is left solely to the subjective evaluation of the Philippine Intellectual Property Office or the judgment of the court. It is based on ad hoc inferences of similarity in class, physical attributes or descriptive properties, purpose, or points of sale of the goods or services. Here, the Bureau of Legal Affairs of the Intellectual Property Office, as affirmed by the Director-General, found that respondent committed unfair competition based on a simplistic conclusion that "[b]oth Complainant APRIL and Respondent's main business product is paper[;] both offer papers for sale to the public." We should improve on the standard by which likelihood of confusion is measured, considering the advances in the study of competition and economics in general.

There should be objective, scientific, and economic standards to determine whether goods or services offered by two parties are so related that there is a likelihood of confusion. In a market, the relatedness of goods or services may be determined by consumer preferences. When two goods are proved to be perfect substitutes, where the marginal rate of substitution, or the "consumer's willingness to substitute one good for another while maintaining the same level

---

[20] *Mighty Corporation v. E & J Gallo Winery*, 478 Phil. 615, 655-656 (2004) [Per J. Corona, Third Division].

of satisfaction" is constant, then it may be concluded that the goods are related for the purposes of determining likelihood of confusion. Even goods or services, which superficially appear unrelated, may be proved related if evidence is presented showing that these have significant cross-elasticity of demand, such that changes of price in one party's goods or services change the price of the other party's goods and services. Should it be proved that goods or services belong to the same relevant market, they may be found related even if their classes, physical attributes, or purposes are different.[21]

In this case, there is insufficient factual basis to justify the conclusion that a likelihood of confusion had arisen, such that the relevant market for petitioner and respondent's goods have been misled into buying the other's products due to the packaging or marks used.

According to respondent, it had discovered that petitioner's CEEGEEFER products were sold alongside its own CHERIFER products beside or near each other in drugstores in Metro Manila and Valenzuela.[22] However, it does not appear to have proffered evidence in the trial court that the alleged target market for CEEGEEFER—"mothers, fathers and people with small children"[23]—had actually or likely mistaken one product from another.

Thus, respondent had not shown that the introduction of CEEGEEFER products in the brand name and packaging complained of had adversely affected the sales of CHERIFER products. It has not even shown that goodwill had been built up on the CHERIFER brand—which it claims to have been "ahead in the market for more than 10 years"[24]—to such an

---

[21] Separate Opinion of Justice Leonen, *Asia Pacific Resources International Holdings, Ltd. v. Paperone, Inc.*, G.R. Nos. 213365-66, December 10, 2018, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64829> [Per J. Gesmundo, Third Division].

[22] *Rollo*, p. 241.

[23] Id.

[24] Id.

extent that CEEGEEFER would have consciously emulated the brand name and packaging to benefit from it.

The purpose of trademarks and service marks are: (1) to indicate a good or service's origin and ownership; (2) to ensure that the maker of a superior good or provider of superior service could be identified; and (3) to prevent fraud in commerce.[25] Trademarks and service marks are not intended to unduly restrict free trade, foster monopolistic practices, or remove competitors from the market:

Courts should take care not to interfere in a free and fair market, or to foster monopolistic practices. Instead, they should confine themselves to prevent fraud and misrepresentation on the public. In Alhambra Cigar, etc., Co. v. Mojica:

> Protection against unfair competition is not intended to create or foster a monopoly and the court should always be careful not to interfere with free and fair competition, but should confine itself, rather, to preventing fraud and imposition resulting from some real resemblance in name or dress of goods. Nothing less than conduct tending to pass off one man's goods or business as that of another will constitute unfair competition. Actual or probable deception and confusion on the part of customers by reason of defendant's practices must always appear.[26] (Citations omitted)

The *ponencia* places great emphasis on the same "star ingredient," relevant market, and over-the-counter point of sale in arriving at its conclusion.[27] With due respect, these are markers of two competitors, especially absent sufficient factual basis of petitioner committing fraud or misrepresentation on the market.

---

[25] *See Etepha v. Director of Patents*, 123 Phil. 329-338 (1966) [Per J. Sanchez, En Banc].

[26] Separate Opinion of Justice Leonen, *Asia Pacific Resources International Holdings, Ltd. v. Paperone, Inc.*, G.R. Nos. 213365-66, December 10, 2018, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64829> [Per J. Gesmundo, Third Division].

[27] *Ponencia*, pp. 14-15.

The result of this case unduly represses competition in the marketplace, to the detriment of the consuming public.

Accordingly, I vote to **GRANT** the Petition for Review. The Court of Appeals' January 29, 2018 Decision and June 21, 2019 Resolution in CA-G.R. CV No. 102569 are **REVERSED** and **SET ASIDE**. The December 23, 2013 Decision of the Regional Trial Court is **REINSTATED**.

THIRD DIVISION

[G.R. No. 249092. September 30, 2020]

ARMANDO N. SERRANO, *Petitioner*, *v.* **LOXON PHILIPPINES, INC.,** *Respondent*.

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; PROJECT EMPLOYEES; EMPLOYERS MUST PROVE THAT THE DURATION AND SCOPE OF THE EMPLOYMENT WAS SPECIFIED AT THE TIME THE WORKERS WERE ENGAGED AND THE PROJECT WHERE THEY HAVE BEEN ASSIGNED; PROJECTS THAT MAY BE PERFORMED. —** In order to safeguard the rights of workers against the arbitrary use of the word **"project"** to prevent employees from attaining the status of regular employees, employers claiming that their workers are project employees should not only prove that the duration and scope of the employment was specified at the time they were engaged, but also the project where the employee has been assigned. A project for which a project employee may be engaged to perform may refer to either: (a) a particular job or undertaking that is within the regular or usual business of the employer company, but which is *distinct* and separate, and identifiable as such, from the other undertakings of the company; or (b) a particular job or undertaking that is *not* within the regular business of the corporation.

2. **ID.; ID.; ID.; AN EMPLOYEE IS NOT CONSIDERED A PROJECT EMPLOYEE WHEN HIRED TO PERFORM SERVICES WHICH ARE NOT DISTINCT, SEPARATE, AND IDENTIFIABLE FROM THE USUAL UNDERTAKINGS OF THE EMPLOYER. —** [A]lthough Armando's employment contracts considered him as a project employee, the undeniable fact remains that he was hired to perform technical services which were not shown as distinct, separate, and identifiable from the usual undertakings of the company. Certainly, the task of installing and maintaining the devices or equipment provided to its clients is well within the regular or usual business of Loxon. Armando's work as a service technician is not even classified as one distinct, separate, and identifiable from the other undertakings of Loxon,

but in the pursuit of its business rendered to its clients to install and maintain smoke detectors, fire alarms, sprinklers, and CCTV cameras.

3. **ID.; ID.; ID.; AN EMPLOYEE IS NOT A PROJECT EMPLOYEE WHEN HIS/HER SERVICE IS INDISPENSABLE FOR THE REGULAR BUSINESS OF THE EMPLOYER. —** In fact, true to the nature of its business of building management that supplies, installs, and maintains necessary building devices or equipment, Loxon has its *own* service department where Armando was assigned. This department needs to employ service technicians like Armando to fulfill its undertaking to its clients. The necessity for a service helper technician does not merely arise on the availability of a project, but one that is *indispensable* for the regular business of Loxon.

4. **ID.; ID.; ID.; THE LENGTH OF TIME MAY NOT BE THE CONTROLLING TEST FOR PROJECT EMPLOYMENT, BUT IT IS CRUCIAL IN DETERMINING THE NATURE OF THE EMPLOYMENT. —** Armando was hired continuously for the various clients of Loxon and was only out of work for a few days in between, one month being the longest. This re-hiring continued for 21 long years. While length of time may not be the controlling test for project employment, it is crucial in determining if the employee is hired for a specific undertaking to perform functions vital, necessary, and indispensable to the *usual* business of the company.

5. **ID.; ID.; ID.; WHEN A PROJECT EMPLOYEE HAS BEEN REPEATEDLY RE-HIRED DUE TO THE DEMANDS OF THE EMPLOYER'S BUSINESS, THE PERIODS INDICATED IN THE PROJECT EMPLOYMENT CONTRACT SHOULD BE STRUCK DOWN AS CONTRARY TO PUBLIC POLICY, MORALS, GOOD CUSTOMS OR PUBLIC ORDER. —** It is obvious in this case that his periodic contracts of employment were resorted to in order to prevent Armando from becoming a regular employee of Loxon. Where the employee has been a project employee several times over as he was repeatedly re-hired due to the demands of the employer's business, as in this case, the periods indicated in the project employment contract or *Kontrata sa Pagtatrabaho sa Proyekto* should be struck down as contrary to public policy, morals, good customs or public order.

6. ID.; ID.; REGULAR EMPLOYMENT; AN EMPLOYEE WHOSE CONTRACT HAD BEEN CONTINUOUSLY EXTENDED OR RENEWED TO THE SAME POSITION, WITH THE SAME DUTIES AND UNDER THE SAME EMPLOY WITHOUT ANY INTERRUPTION IS A REGULAR EMPLOYEE. — Here, the Court re-affirms the principle held in *Fuji Television Network v. Espiritu* that an employment contract indicating a fixed term did not automatically mean that the employee could never be a regular employee. This is what Article 295 of the Labor Code seeks to avoid. . . .

. . .

Where an employee's contract had been continuously extended or renewed to the same position, with the same duties and under the same employ without any interruption, then such employee is a regular employee. The continuous renewal is a scheme to prevent regularization.

7. ID.; ID.; PROJECT EMPLOYMENT; THE FAILURE OF AN EMPLOYER TO SUBMIT THE REQUIRED REPORT OF TERMINATION OF THE WORKERS' SERVICE EVERY TIME A PROJECT OR A PHASE THEREOF IS COMPLETED INDICATES THAT THE WORKERS ARE NOT PROJECT EMPLOYEES. — Department Order No. 19, issued by the Department of Labor and Employment (DOLE) on April 1, 1993, requires employers to submit a report of termination of employees after every completion of project or phase thereof. Loxon failed to present proof of compliance for all the project assignments of Armando from 1994 to 2014. Also, the Court cannot consider the Termination Reports dated May 15, 2015 and September 15, 2015 because the name of Armando is not included in the list of project employees reported therein. Jurisprudence abounds with the consistent rule that the failure of an employer to report to the DOLE the termination of its workers' services *every time* a project or a phase thereof is completed indicates that said workers are not project employees. With no termination reports to be considered except for the Establishment Employment Report dated January 26, 2016, the Court can only conclude that Armando was not a project employee of Loxon.

8. ID.; ID.; REGULAR EMPLOYMENT; A REGULAR EMPLOYEE IS ENTITLED TO SECURITY OF TENURE AND CAN ONLY BE REMOVED FOR JUST AND AUTHORIZED CAUSE. — [I]t

cannot escape the attention of the Court that Armando was included in the 2014 payroll of Loxon despite not being assigned to any project during that year. Since Loxon did not bother to provide an explanation, the Court has no other way of interpreting this circumstance but that Armando is a regular employee of Loxon.

As a regular employee, Armando is entitled to security of tenure under Article 294 of the Labor Code, and can only be removed for just or authorized cause.

9. ID.; ID.; ID.; ID.; ILLEGAL DISMISSAL; THE REMOVAL OF A REGULAR EMPLOYEE DUE TO REFUSAL TO SIGN A NEW PROJECT CONTRACT AMOUNTS TO ILLEGAL DISMISSAL, WHICH WARRANTS THE AWARD OF BACKWAGES AND SEPARATION PAY IN LIEU OF REINSTATEMENT; CASE AT BAR. — Armando was dismissed by Loxon on the basis of his refusal to sign a new project employment contract. This was not removal for causes contemplated under Article 294. In the first place, there was no need to sign a new project employment contract because Armando's employment as a regular employee subsists despite project completions. Armando's dismissal was therefore *illegal*. Backwages and separation pay in lieu of reinstatement shall be granted to Armando.

10. CIVIL LAW; OBLIGATIONS AND CONTRACTS; DAMAGES; MORAL AND EXEMPLARY DAMAGES; A DISMISSED EMPLOYEE WHO SUFFERED FROM THE BAD FAITH OF THE EMPLOYER MUST BE AWARDED MORAL AND EXEMPLARY DAMAGES; CASE AT BAR. — [T]his Court also finds that the awards of moral and exemplary damages are in order. For 21 years, Armando suffered from the bad faith of Loxon when he was treated as a project employee, and yet was repeatedly and continuously re-hired to perform services which are vital, necessary, and indispensable to the trade or business of his employer. The working man has long been exploited and his employer has to learn its lesson.

APPEARANCES OF COUNSEL

Diokno & Diokno Law Offices for petitioner.
Angara Abello Concepcion Regala & Cruz for respondent.

D E C I S I O N

CARANDANG, *J.*:

This is a Petition for Review on *Certiorari* [1] of the Decision[2] dated March 8, 2019 of the Court of Appeals (CA), affirming the Decision[3] of the National Labor Relations Commission (NLRC). The Commission affirmed the findings of the Labor Arbiter (LA)[4] that Loxon Philippines, Inc. did not illegally dismiss Armando S. Serrano from employment.

Antecedents

Loxon Philippines, Inc. (Loxon) is engaged in the business of building management. It supplies, installs, and maintains smoke detectors, fire alarms, sprinklers, CCTV cameras, etc.[5] In 1994, Loxon hired Armando N. Serrano (Armando) as a Helper Service Technician. Armando's main task is focused on the installation and maintenance of smoke detectors and fire alarms installed by Loxon.[6] He was continuously and repeatedly hired for 21 years to perform the same tasks or nature of tasks for various projects of Loxon, namely:

---

[1] *Rollo*, pp. 10-36.

[2] Penned by Associate Justice Gabriel T. Robeniol, with the concurrence of Associate Justices Ramon R. Garcia and Eduardo B. Peralta; id. at 730-742.

[3] Penned by Commissioner Isabel G. Panganiban-Ortiguerra, with the concurrence of Presiding Commissioner Joseph Gerard E. Mabilog and Commissioner Nieves E. Vivar-De Castro; id. at 536-548.

[4] Penned by Labor Arbiter Fe S. Cellan; id. at 447-459.

[5] Id. at 447.

[6] Id. at 448.

Project	Duration
PCIB Tower – FPS Project	July 11, 1996 – June 11, 1997
PCIB Tower Project	June 12, 1997 – July 31, 1999
NWH, HIM, PRC – FAS Servicing Project	August 2, 1999 – December 31, 1999
MSH, TSP FAS Servicing Project	January 1, 2000 – December 31, 2000
SVC, HIM, NWH, ROB & BAS System Project	January 1, 2001 – December 31, 2001
NWH/HIM/PRC/ROB. APP/ MJC/AIS/GSD. R.M. SIA Project	January 2, 2002 – December 31, 2002
FAS SVC, HIM, NWH, ROB, ULP, AIS, GSD & MJC Project	January 1, 2003 – December 31, 2003
AFDAS SVC – New World Hotel Project	January 19, 2004 – December 31, 2004
New World Hotel Project	January 17, 2005 – December 31, 2005
New World Hotel – AFDAS SVC Project	January 16, 2006 – December 31, 2006
Service – Robinson Apartelle Project	January 2, 2007 – September 30, 2007
Service – HIM – FAS Project	October 8, 2007 – March 31, 2009
Unilever Philippines (S-ULP-FAS-025) Project	April 13, 2009 – March 31, 2012
Ayala Center Area 1 Project	May 2, 2012 – December 2, 2012
Manila Area 1 Project	January 1, 2013 – December 31, 2013
Ayala Center Project Area	January 3, 2015 – December 31, 2015[7]

On December 12, 2015, Loxon required Armando and its other employees to sign a document stating that their contract would expire at the end of December 2015. They were informed that they will be re-hired upon signing another contract valid for three months. Submission of NBI Clearance and Medical

[7] Id. at 452-453.

Certification was also required. Armando refused. To his mind, there was no need for him to sign the new employment contract since he is a regular employee who worked long enough with Loxon.[8] Armando went to the Human Resource Department of Loxon to voice out his concern. In response, Loxon clarified to Armando that he cannot continue with his work unless he signs the document because his existing contract is already about to end. Despite his doubts, Armando submitted his NBI Clearance and his Medical Certificate on January 12, 2016.[9]

Armando then inquired about his employment status from both the Human Resource Department and the Service Department of Loxon. However, he did not obtain any answer and was merely sent back and forth to both departments. Armando was also not assigned to any work or project despite repeatedly reporting to the office of Loxon. With no choice left, Armando filed a complaint for illegal dismissal. Mainly, Armando avers that he is a regular employee of Loxon and cannot be terminated on the ground of project completion.[10]

In a Decision[11] dated August 30, 2016, the LA dismissed the complaint filed by Armando. The Labor Arbiter found that Armando belongs to the regular work pool of Loxon. As such, Armando "could be tapped and rehired immediately or given priority, as needed in their new projects" and that he "was not free to contract out his services to other employers during those days that [Loxon is] without any project."[12] The LA ruled that there was no dismissal since Armando merely assumed that his employment had been "terminated when he was required to sign another employment contract for only three months and, as a requirement for his new contract, he needs to first undergo medical examinations and submit his NBI Clearance."[13]

---

[8] Id. at 448-449.

[9] Id. at 449.

[10] Id.

[11] *Supra* note 4.

[12] *Rollo*, p. 456.

[13] Id. at 458.

Armando's contract simply expired. Hence, Loxon offered him another employment contract valid for another three months. The requirement to submit a medical certificate and NBI Clearance is to update the employee's files, which is a valid exercise of management prerogative. The claim for damages was denied for lack of basis. Further, the complaint filed against the officers of Loxon was dismissed with prejudice on the ground that they are separate and distinct from Loxon. However, the LA ordered Loxon to give priority employment to Armando. On the other hand, Armando was ordered to return to work immediately. Further, Loxon was ordered to report compliance within 15 days from receipt of copy of the Decision.[14]

On appeal, the NLRC affirmed the dismissal of the complaint. In its Decision[15] dated December 29, 2016, the NLRC considered Armando a project employee whose employment contract had already ended. The project employment contract Armando signed effectively apprised him at the time of his engagement of the following: (1) his status as a project employee; (2) that Armando was hired for a specific or identified project to carry out a specific undertaking; and (3) the duration of the project from January 3, 2015 to December 31, 2015. In addition, Loxon complied with DOLE Department Order No. 19 when it filed an Establishment Employment Report after the expiration of the project employment contract.[16] Therefore, Armando cannot claim illegal dismissal when his employment ended upon the expiration of his project employment contract.[17] The NLRC also ruled that Armando's length of service with Loxon did not remove him from the category of project employees since length of service is not the controlling determinant of the tenure of employment of a project employee.[18]

---

[14] Id. at 457-458.

[15] *Supra* note 3.

[16] *Rollo*, p. 547.

[17] Id. at 546.

[18] Id. at 547.

Armando's Petition for *Certiorari*[19] filed before the CA was also denied. According to the CA, the NLRC correctly relied on the *Kontrata sa Pagtatrabaho sa Proyekto* which Armando signed.[20] The *Kontrata sa Pagtatrabaho sa Proyekto* clearly indicated the name, scope, and duration of the last project for which Armando was engaged.[21] By presenting the *Kontrata* and the Establishment Employment Report, Loxon effectively overturned the presumption of regular employment and proved that Armando is a project employee. Furthermore, the CA upheld the Quit Claim signed by Armando and did not find any indication that it was secured through fraud, deceit, intimidation, error or mistake, or coercion.[22] Lastly, the CA held that Armando's refusal to comply with the company requirement to sign an end of contract document was not the cause of his termination from employment. Rather, his refusal to sign a new contract disqualified him from receiving another project employment contract with Loxon.[23]

In this Petition for Review on *Certiorari*,[24] Armando strongly pushes the argument that he is a regular, and not a project employee because he was continuously and repeatedly hired by Loxon for more than two decades to do tasks which are necessary and indispensable to the usual trade and business of the company.[25] Armando prays for the payment of backwages, separation pay, attorney's fees, and damages.[26]

Loxon, in its Comment[27] dated June 9, 2020, reiterated its position that Armando was engaged for specific projects or

---

[19] Id. at 574-606.

[20] Id. at 738.

[21] Id. at 738-739.

[22] Id. at 740.

[23] Id. at 741.

[24] Supra note 1.

[25] *Rollo*, p. 26.

[26] Id. at 35.

[27] Id. at 796-840.

undertakings and the completion or termination of his employment is determined at the time of his engagement as a project employee.[28] For the last project for which Armando was engaged, he signed a "*Kontrata sa Pagtatrabaho sa Proyekto*," which states that:

> 1. Ikaw a[y] kinukuha bilang isang 'project employee' at ito a[y] magsisimula Enero 03, 2015 hanggang sa Disyembre 31, 2015 [o] hanggang sa aktwal na pagk[a]kumpleto [o] pagtapos ng proyekto, [o] bahagi ng proyekto, kung saan ikaw ay tinanggap. Ang proyekto na kung saan ikaw ay magtatrabaho ay sa Ayala Center Project Area[.][29]

Issue

The issue in this case is whether Armando is a regular employee of Loxon.

Ruling of the Court

Armando is a regular employee of Loxon, and cannot be considered a project employee.

In order to safeguard the rights of workers against the arbitrary use of the word **"project"** to prevent employees from attaining the status of regular employees, employers claiming that their workers are project employees should not only prove that the duration and scope of the employment was specified at the time they were engaged, but also the project where the employee has been assigned.[30] A project for which a project employee may be engaged to perform may refer to either: (a) a particular job or undertaking that is within the regular or usual business of the employer company, but which is *distinct* and separate, and identifiable as such, from the other undertakings of the company; or (b) a particular job or undertaking that is *not* within the regular business of the corporation.[31]

---

[28] Id. at 817.

[29] Id. at 820.

[30] *GMA Network, Inc. v. Pabriga*, 722 Phil. 161, 172 (2013).

[31] *ALU-TUCP v. NLRC*, 304 Phil. 844, 851 (1994).

In *Paregele v. GMA*,[32] where GMA repeatedly engaged camera operators for its television programs, the Court ruled that:

> It would be absurd to consider the nature of their work of operating cameras as distinct or separate from the business of GMA, a broadcasting company that produces, records, and airs television programs. From this alone, the [camera operators] cannot be considered project employees for there is no distinctive (project) to even speak of. . . There is no denying that a reasonable connection exists between petitioners' work as camera operators and GMA's business as both a television and broadcasting company. The repeated engagement of petitioners over the years only reinforces the indispensability of their services to GMA's business.[33]

This case of the camera operators and GMA squarely applies to the case now before this Court.

First, although Armando's employment contracts considered him as a project employee, the undeniable fact remains that he was hired to perform technical services which were not shown as distinct, separate, and identifiable from the usual undertakings of the company. Certainly, the task of installing and maintaining the devices or equipment provided to its clients is well within the regular or usual business of Loxon. Armando's work as a service technician is not even classified as one distinct, separate, and identifiable from the other undertakings of Loxon, but in the pursuit of its business rendered to its clients to install and maintain smoke detectors, fire alarms, sprinklers, and CCTV cameras.

In fact, true to the nature of its business of building management that supplies, installs, and maintains necessary building devices or equipment, Loxon has its *own* service department where Armando was assigned. This department needs to employ service technicians like Armando to fulfill its

---

[32] G.R. No. 235315, July 13, 2020.

[33] Id.

undertaking to its clients. The necessity for a service helper technician does not merely arise on the availability of a project, but one that is *indispensable* for the regular business of Loxon. Verily, Armando was hired continuously for the various clients of Loxon and was only out of work for a few days in between, one month being the longest.[34] This re-hiring continued for 21 long years.[35] While length of time may not be the controlling test for project employment, it is crucial in determining if the employee is hired for a specific undertaking to perform functions vital, necessary, and indispensable to the *usual* business of the company.[36] It is obvious in this case that his periodic contracts of employment were resorted to in order to prevent Armando from becoming a regular employee of Loxon. Where the employee has been a project employee several times over as he was repeatedly re-hired due to the demands of the employer's business, as in this case, the periods indicated in the project employment contract or *Kontrata sa Pagtatrabaho sa Proyekto* should be struck down as contrary to public policy, morals, good customs or public order.[37]

Here, the Court re-affirms the principle held in *Fuji Television Network v. Espiritu*[38] that an employment contract indicating a fixed term did not automatically mean that the employee could never be a regular employee. This is what Article 295[39] of the Labor Code seeks to avoid:

---

[34] *Rollo*, p. 457.

[35] Id. at 4.

[36] *Filipinas Pre-Fabricated Building Systems (Filsystems), Inc. v. Puente*, 493 Phil. 923 (2005).

[37] *Integrated Contractor and Plumbing Works, Inc. v. NLRC*, 503 Phil. 875 (2005).

[38] 749 Phil. 388, 439 (2014).

[39] Article 295. [280] *Regular and Casual Employment*. – The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking

> Article 295. [280] *Regular and Casual Employment*. — The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.
>
> An employment shall be deemed to be casual if it is not covered by the preceding paragraph: *Provided*, That any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.[40]

Where an employee's contract had been continuously extended or renewed to the same position, with the same duties and under the same employ without any interruption, then such employee is a regular employee. The continuous renewal is a scheme to prevent regularization.[41]

Second, Department Order No. 19, issued by the Department of Labor and Employment (DOLE) on April 1, 1993, requires employers to submit a report of termination of employees after

---

the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season. An employment shall be deemed to be casual if it is not covered by the preceding paragraph: *Provided*, That any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

[40] Id.

[41] Supra note 37.

every completion of project or phase thereof.[42] Loxon failed to present proof of compliance for all the project assignments of Armando from 1994 to 2014. Also, the Court cannot consider the Termination Reports dated May 15, 2015 and September 15, 2015 because the name of Armando is not included in the list of project employees reported therein.[43] Jurisprudence abounds with the consistent rule that the failure of an employer to report to the DOLE the termination of its workers' services *every time* a project or a phase thereof is completed indicates that said workers are not project employees. With no termination reports to be considered except for the Establishment Employment Report[44] dated January 26, 2016, the Court can only conclude that Armando was not a project employee of Loxon.

Third, it cannot escape the attention of the Court that Armando was included in the 2014 payroll[45] of Loxon despite not being assigned to any project during that year. Since Loxon did not bother to provide an explanation, the Court has no other way of interpreting this circumstance but that Armando is a regular employee of Loxon.

As a regular employee, Armando is entitled to security of tenure under Article 294[46] of the Labor Code, and can only be

---

[42] *Dacuital v. L.M. Camus Engineering Corp.*, 644 Phil. 158, 172 (2010); *Equipment Technical Service v. CA*, 589 Phil. 116 (2008); *Goma v. Pamplona Plantation, Inc.*, 579 Phil. 402 (2008); *Belle Corp. v. Macasusi*, 575 Phil. 350 (2008).

[43] *Rollo*, p. 365.

[44] Id. at 239-242.

[45] Id. at 351-364.

[46] Article 294. [279] Security of Tenure. - In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

removed for just or authorized cause. Armando was dismissed by Loxon on the basis of his refusal to sign a new project employment contract. This was not removal for causes contemplated under Article 294. In the first place, there was no need to sign a new project employment contract because Armando's employment as a regular employee subsists despite project completions.[47] Armando's dismissal was therefore *illegal*. Backwages and separation pay in lieu of reinstatement shall be granted to Armando. Aside from that, this Court also finds that the awards of moral and exemplary damages are in order. For 21 years, Armando suffered from the bad faith of Loxon when he was treated as a project employee, and yet was repeatedly and continuously re-hired to perform services which are vital, necessary, and indispensable to the trade or business of his employer. The working man has long been exploited and his employer has to learn its lesson.

WHEREFORE, the Petition for Review on *Certiorari* is **GRANTED**. The Decision dated March 8, 2019 of the Court of Appeals in CA-G.R. SP No. 150812 is **REVERSED** and **SET ASIDE**. Loxon Philippines, Inc. is **ORDERED** to pay Armando N. Serrano the following:

(1) Backwages computed from January 2016 until finality of this Decision;

(2) Separation pay in lieu of reinstatement equivalent to one (1) month salary for every year of service from the start of his employment;

(3) Moral damages in the amount of ₱50,000.00;

(4) Exemplary damages in the amount of ₱50,000.00; and

(5) Attorney's fees equivalent to ten percent (10%) of the total monetary award.

---

[47] *Freyssinet Filipinas Corp. v. Lapuz*, G.R. No. 226722, March 18, 2019.

All monetary awards shall earn interest at the legal rate of six percent (6%) *per annum* from the date of finality of this Decision until full paid.[48]

SO ORDERED.

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

[48] *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

INDEX

INDEX

ADMINISTRATIVE PROCEEDINGS

Degree of proof — Only substantial evidence is required, and the standard of substantial evidence is satisfied when there is reasonable ground to believe that respondent is responsible for the misconduct complained of, even if such evidence might not be overwhelming or even preponderant. (Anonymous Complaint Against Judge Edmundo P. Pintac, *et al*., Stenographer, Both of the RTC, Branch 15, Ozamiz City, A.M. No. RTJ-20-2597 [Formerly OCA I.P.I. No. 10-3510-RTJ], Sept. 22, 2020) p. 1

ANTI-GRAFT AND CORRUPT PRACTICES ACT (R.A. NO. 3019)

Evident bad faith — Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud. (Oliveros *v*. Office of the Ombudsman, *et al.*, G.R. No. 210597, Sept. 28, 2020) p. 415

Gross negligence — Has been so defined as negligence characterized by the want of even slight care, acting, or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected; it is the omission of that care which even in attentive and thoughtless men never fail to take on their own property. (Oliveros *v*. Office of the Ombudsman, *et al.*, G.R. No. 210597, Sept. 28, 2020) p. 415

Manifest partiality — Partiality is synonymous with bias which excites a disposition to see and report matters as they are wished for rather than as they are. (Oliveros *v*. Office of the Ombudsman, *et al.*, G.R. No. 210597, Sept. 28, 2020) p. 415

preserve the decorum and respectability of the law profession; hence, the Court must thwart any and every effort of clients already served by their attorneys' worthy services to deprive them of their hard-earned compensation. (*Id.*)

— Is the right which the attorney has upon all judgments for the payment of money, and executions issued in pursuance of said judgments, which he has secured in litigation of his client. (*Id.*)

Code of Professional Responsibility — A lawyer's failure to account and return upon demand the money received from a client gives rise to the presumption that it was appropriated for the lawyer's use. (Gow *v.* De Leon, *et al.*, A.C. No. 12713, Sept. 23, 2020) p. 227

— Failure to establish violation of the Code of Professional Responsibility (CPR) warrants the dismissal of the administrative complaint. (*Id.*)

— It is essential that the lawyer timely and adequately inform his client of important updates and changes as to the status of his client's case; the lawyer's duty to keep his client constantly updated on the developments of his case is crucial in maintaining the client's confidence. (Ocampo *v.* Lorica IV, A.C. No. 12790, Sept. 23, 2020) p. 240

— It is settled that the Court may deny a litigant relief if his conduct has been inequitable, unfair, and dishonest. (Gow *v.* De Leon, *et al.*, A.C. No. 12713, Sept. 23, 2020) p. 227

— Violations of the CPR and lawyer's oath in case at bar warranted the penalty of one year suspension from the practice of law. (Ocampo *v.* Lorica IV, A.C. No. 12790, Sept. 23, 2020) p. 240

Compromise — A compromise agreement entered into by the client without the conformity of his counsel should not unjustly deprive the latter of the compensation for legal services rendered. (Dimayuga Law Offices *v.* Titan-Ikeda

presumption of innocence; a court that would lend its imprimatur to this act would be at a loss, for indeed, the sea of suspicion has no shore, and the court that embarks upon it is without rudder or compass. (*Id.*)

— Justice cannot be achieved at the expense of trampling on accused-appellant's constitutional rights to due process, presumption of innocence, and speedy disposition of cases; in that case, justice would not be justice at all; for while the sovereign power has the inherent right to protect itself and its people from vicious acts which endanger the proper administration of justice. (*Id.*)

— The Court has issued guidelines regarding the waiver of the accused of his right to present evidence under this rule, thus: to protect the constitutional right to due process of every accused in a capital offense and to avoid any confusion about the proper steps to be taken when a trial court comes face to face with an accused or his counsel who wants to waive his client's right to present evidence and be heard, it shall be the unequivocal duty of the trial court to observe, as a prerequisite to the validity of such waiver, a procedure akin to a searching inquiry. (*Id.*)

— To construe the silence and lack of action to withdraw his guilty plea as an evidence of his guilt would not only read too much on such omission but rather run afoul against the right of the accused-appellant to remain silent; to be sure, to require or even expect the accused-appellant to act in a particular way lest he be adjudged guilty would not only make his right to be silent, but also the presumption of innocence, an empty constitutional promise. (*Id.*)

— To require that he undergo re-trial, when the failure of the prosecution to prove his guilt beyond reasonable doubt was through no fault of his, is unreasonably oppressive; remand of the case for re-trial would give rise to violation of the accused's right of speedy disposition of cases. (*Id.*)

— The special agrarian court has original and exclusive jurisdiction over cases involving the determination of just compensation. (*Id.*)

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Chain of custody rule — In cases where strict compliance with the chain of custody procedure is not possible, the seizure and custody of the seized items will not be rendered void if the prosecution satisfactorily proves that there is justifiable ground for the deviation, and the integrity and evidentiary value of the seized items are properly preserved; non-compliance with the witness requirement may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of the required witnesses, albeit the latter failed to appear. (Sayson *v.* People, G.R. No. 249289, Sept. 28, 2020) p. 480

— It is essential that the identity of the dangerous drug be established with moral certainty; to achieve this, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime; as part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photographing of the seized items be conducted immediately after seizure and confiscation; the law further requires that the inventory and photographing be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (a) if prior to the amendment of R.A. No. 9165 by R.A. No. 10640, a representative from the media and the Department of Justice (DOJ), and any elected public official; or (b) if after the amendment of R.A. No. 9165 by R.A. No. 10640, an elected public official and a representative of the National Prosecution Service (NPS) or the media. (*Id.*)

to present evidence as to the guilt of the accused and the precise degree of his culpability; failure to comply with these mandates constitute grave abuse of discretion; a) in case the plea of guilty to a capital offense is supported by proof beyond reasonable doubt, the trial court shall enter a judgment of conviction; b) in case the prosecution presents evidence but fails to prove the accused's guilt beyond reasonable doubt, the trial court shall enter a judgment of acquittal in favor of the accused; c) in case the prosecution fails to present any evidence despite opportunity to do so, the trial court shall enter a judgment of acquittal in favor of the accused; in the above instance, the trial court shall require the prosecution to explain in writing within ten (10) days from receipt its failure to present evidence; any instance of collusion between the prosecution and the accused shall be dealt with to the full extent of the law; AT THE APPEAL STAGE: a) when the accused is convicted of a capital offense on the basis of his plea of guilty, whether improvident or not, and proof beyond reasonable doubt was established, the judgment of conviction shall be sustained; b) when the accused is convicted of a capital offense solely on the basis of his plea of guilty, whether improvident or not, without proof beyond reasonable doubt because the prosecution was not given an opportunity to present its evidence, or was given the opportunity to present evidence but the improvident plea of guilt resulted to an undue prejudice to either the prosecution or the accused, the judgment of conviction shall be set aside and the case remanded for re-arraignment and for reception of evidence pursuant to Sec. 3, Rule 116 of the 2000 Revised Rules of Criminal Procedure; c) when the accused is convicted of a capital offense solely on the basis of a plea of guilty, whether improvident or not, without proof beyond reasonable doubt because the prosecution failed to prove the accused's guilt despite opportunity to do so, the judgment of conviction shall be set aside and the accused acquitted. (*Id.*)

— The essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard; in administrative proceedings, procedural due process has been recognized to include the following: (1) the right to actual or constructive notice of the institution of proceedings which may affect a respondent's legal rights; (2) a real opportunity to be heard personally or with the assistance of counsel, to present witnesses and evidence in one's favor, and to defend one's rights; (3) a tribunal vested with competent jurisdiction and so constituted as to afford a person charged administratively a reasonable guarantee of honesty as well as impartiality; and (4) a finding by said tribunal which is supported by substantial evidence submitted for consideration during the hearing or contained in the records or made known to the parties affected. (Former Municipal Mayor Helen C. De Castro, *et al. v.* Commission on Audit, G.R. No. 228595, Sept. 22, 2020) p. 104

— The Implementing Rules in relation to Article 297 of the Labor Code provides for the procedure that must be observed in order to comply with the required procedural due process in dismissal cases: a) a written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side; b) a written notice of termination served on the employee indicating that upon due consideration of all circumstances, grounds have been established to justify his termination. (JR Hauling Services, *et al. v.* Solamo, *et al.*, G.R. No. 214294, Sept. 30, 2020) p. 842

EJECTMENT

Action for — A person claiming to be the owner of a piece of real property cannot simply wrest possession thereof from whoever is in actual occupation of the property; to recover possession of real property, said party claiming to be the owner thereof must first resort to the proper judicial remedy, and thereafter, satisfy all the conditions

Just cause — Article 297 of the Labor Code enumerates the just causes for termination; it provides, 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; (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative. (JR Hauling Services, *et al. v.* Solamo, *et al.*, G.R. No. 214294, Sept. 30, 2020) p. 842

Loss of trust and confidence — In order to constitute a just cause for dismissal, the act complained of must be work-related and shows that the employee concerned is unfit to continue working for the employer; loss of confidence as a just cause for termination of employment is premised on the fact that the employee concerned holds a position of responsibility, trust and confidence or that the employee concerned is entrusted with confidence with respect to delicate matters, such as the handling or care and protection of the property and assets of the employer; it is not the job title but the nature of the work that the employee is duty-bound to perform which is material in determining whether he holds a position where greater trust is placed by the employer and from whom greater fidelity to duty is concomitantly expected. (JR Hauling Services, *et al. v.* Solamo, *et al.*, G.R. No. 214294, Sept. 30, 2020) p. 842

Procedural due process — Non-compliance with the procedural requisites entitles dismissed employees to nominal damages. (JR Hauling Services, *et al. v.* Solamo, *et al.*, G.R. No. 214294, Sept. 30, 2020) p. 842

Separation pay — As a general rule, the law does not require employers to pay employees that have resigned any separation pay, unless there is a contract that provides otherwise or there exists a company practice of giving separation pay to resignees. (Italkarat 18, Inc. *v.* Gerasmio, G.R. No. 221411, Sept. 28, 2020) p. 433

shall be a personal liability of the official or employee found to be directly responsible therefor. (Former Municipal Mayor Helen C. De Castro, *et al. v.* Commission on Audit, G.R. No. 228595, Sept. 22, 2020) p. 104

— The fact that a person is the final approving authority of the transaction in question and that the officers who processed the same are directly under her supervision do not suffice to make her liable, in the absence of indication that she has notice of any circumstance that could arouse her suspicion that what she is approving falls within the purview of an excessive transaction. (*Id.*)

Transfer of government funds — From one officer to another; such transfer must be authorized by the Commission on Audit. (Fact-Finding Investigation Bureau Military and Other Law Enforcement Offices (FFIB-MOLEO) *v.* Jandayan, G.R. No. 218155, Sept. 22, 2020) p. 66

HABEAS CORPUS

Concept — *Habeas corpus* plays a vital role in protecting constitutional rights; it is a proceeding against some person who has the immediate custody of the party detained, with the power to produce the body of such party before the court or judge, that he may be liberated if no sufficient reason is shown to the contrary; habeas corpus does not compensate for past wrongful incarceration, nor does it punish the State for imposing it. (Jody C. Salas, ex rel Person Deprived of Liberty (PDL) Rodolfo C. Salas *v.* Hon. Bunyi-Medina, Presiding Judge of the RTC of the City of Manila, Br. 32, *et al.*, G.R. No. 251693, Sept. 28, 2020) p. 489

— It is not a writ of error, but an inquiry into the validity of the proceeding or judgment under which the person has been restrained of liberty; the concern is not merely whether an error has been committed in ordering or holding the petitioner in custody, but whether such error is sufficient to render void the judgment, order, or process in question. (*Id.*)

there must be reliable evidence showing that the judicial acts complained of were corrupt or inspired by an intention to violate the law; it must (1) be serious, important, weighty, momentary, and not trifling; (2) imply wrongful intention and not mere error of judgment; and (3) have a direct relation to and be connected with the performance of his or her duties. (Anonymous Complaint Against Judge Edmundo P. Pintac, *et al*., Stenographer, Both of the RTC, Branch 15, Ozamiz City, A.M. No. RTJ-20-2597 [Formerly OCA I.P.I. No. 10-3510-RTJ], Sept. 22, 2020) p. 1

JUDGMENTS

Finality of — A judgment becomes final upon the expiration of the reglementary period to appeal if no appeal is perfected. (Land Bank of the Philippines *v*. Garcia, G.R. No. 208865, Sept. 28, 2020) p. 376

Immutability of judgment — A judgment that lapses into finality can neither be modified nor altered by courts even if the purpose of the modification or alteration is to correct an erroneous judgment. (Land Bank of the Philippines *v*. Garcia, G.R. No. 208865, Sept. 28, 2020) p. 376

Judgments in criminal cases — In the essential elements of a good decision, the disposition should include a finding of innocence or guilt, the specific crime committed, the penalty imposed, the participation of the accused, the modifying circumstances if any, and the civil liability and costs. (People *v*. Pagal, *a.k.a*. "Dindo," G.R. No. 241257, Sept. 29, 2020) p. 570

JUDICIAL PROCESS

Concept — For all its broad, latitudinarian even, scope, the range of inquiry in a *habeas corpus* application is considerably narrowed, where the detention complained of may be traced to judicial action; a judicial process is defined as a writ, warrant, subpoena, or other formal writing issued by authority of law; also the means of accomplishing an end, including judicial proceedings,

— It is well-settled that the CSC's authority to take appropriate action on all appointments and other personnel actions includes the power to recall an appointment initially approved, if later on found to be in disregard of applicable provisions of the Civil Service law and regulations; the recall or invalidation of an appointment does not require a full-blown, trial-type proceeding; in approving or disapproving an appointment, the CSC only examines the conformity of the appointment with applicable provisions of law and whether the appointee possesses all the minimum qualifications and none of the disqualifications; in contrast to administrative disciplinary actions, a recall does not require notice and hearing. (*Id.*)

— The essence of due process is the right to be heard; a party can accorded due process through means other than a notice or hearing; the Revised Rules on Administrative Cases in the Civil Service (Civil Service Rules) aptly provides for a remedial procedure applicable specifically to non-disciplinary cases, such as a recall or invalidation of appointment. (*Id.*)

***Dishonesty* —** Dishonesty, like bad faith, does not connote mere bad judgment or negligence, but involves a question of intention, which can be ascertained by taking into consideration not only of the facts and circumstances which gave rise to the act committed by the person accused of dishonesty but also of his or her state of mind at the time the offense was committed, the time he or she might have had at his or her disposal for the purpose of meditating on the consequences of his or her act, and the degree of reasoning he or she could have had at that moment. (Anonymous Complaint Against Judge Edmundo P. Pintac, *et al.*, Stenographer, Both of the RTC, Branch 15, Ozamiz City, A.M. No. RTJ-20-2597 [Formerly OCA I.P.I. No. 10-3510-RTJ], Sept. 22, 2020) p. 1

— Disposition to lie, cheat, deceive, or defraud; untrustworthiness, lack of integrity," is classified in three (3) gradations, namely: serious, less serious, and simple.

Rules of procedure — Rules of procedure are mere tools to expedite the resolution of cases and other matters pending in court; a strict and rigid application of the rules that would result in technicalities that tend to frustrate rather than promote justice must be avoided. (Land Bank of the Philippines *v.* Hilado, G.R. No. 204010, Sept. 23, 2020) p. 258

STATUTORY CONSTRUCTION

Doctrine of operative fact — The doctrine of operative fact nullifies the effects of an unconstitutional law, executive act, or similar issuances by recognizing that the existence of a statute prior to a determination of unconstitutionality is an operative fact and may have consequences that cannot always be ignored; it applies as a matter of equity and fair play when a declaration of unconstitutionality will impose an undue burden on those who have relied on the invalid law, act, or the like. (Power Sector Assets and Liabilities Management Corporation Represented by Mr. Emmanuel R. Ledesma, Jr., in his capacity as President and Chief Executive Officer, *et al*. *v*. Commission on Audit, G.R. No. 205490, Sept. 22, 2020) p. 24

Ejusdem generis — Augmented benefits must conform to the principle of ejusdem generis; aesthetic or enhancement procedures depart from the principle of ejusdem generis: where a general word or phrase follows an enumeration of particular and specific words of the same class or where the latter follow the former, the general word or phrase is to be construed to include, or to be restricted to persons, things or cases akin to, resembling, or of the same kind or class as those specifically mentioned; the purpose is to give effect to both the particular and general words, by treating the particular words as indicating the class and the general words as including all that is embraced in said class, although not specifically named by the particular words; for if the lawmaking body intended the general terms to be used in their unrestricted sense, it would have not made an enumeration of particular

— The fact that CEEGEEFER is idem sonans for CHERIFER is enough to violate respondent's right to protect its trademark, CHERIFER. (*Id*.)

— While jurisprudence has developed the Dominancy Test and Holistic/Totality Test to determine whether there is a likelihood of confusion between competing marks, the application of such tests is normally left to the subjective judgment of the Intellectual Property Office (IPO) or the courts. (*Id*.)

UNJUST ENRICHMENT

Elements of — For one to be liable under the principle of unjust enrichment, the essential elements must be present: (1) that the defendant has been enriched, (2) that the plaintiff has suffered a loss, (3) that the enrichment of the defendant is without just or legal ground, and (4) that the plaintiff has no other action based on contract, quasi-contract, crime or quasi-delict. (Former Municipal Mayor Helen C. De Castro, *et al. v*. Commission on Audit, G.R. No. 228595, Sept. 22, 2020) p. 104

UNLAWFUL DETAINER

Action for — The fact of tolerance is of utmost importance in an action for unlawful detainer; this rule is so stringent such that the Court categorically declared that tolerance cannot be presumed from the owner's failure to eject the occupants from the land; rather, tolerance always carries with it 'permission' and not merely silence or inaction for silence or inaction is negligence, not tolerance. (Reyes *v*. Manalo, *et al*., G.R. No. 237201, Sept. 22, 2020) p. 184

WARRANTLESS ARREST

Body Frisk — A traffic violation does not justify the apprehending officer to order the offender to alight from the vehicle for a body search. (People *v*. Estolano, G.R. No. 246195, Sept. 30, 2020) p. 904

CITATION

Page

I. LOCAL CASES

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

II. FOREIGN CASES