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CASES

DECIDED BY THE

SUPREME COURT

OF THE

PHILIPPINES

FOR THE PERIOD

OCTOBER 5 - 13, 2020

SUPREME COURT OF THE PHILIPPINES
(as of June 2023)

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[G.R. No. 204684. October 5, 2020]

ALLAN REGALA, *Petitioner*, *v.* **MANILA HOTEL CORPORATION,** *Respondent*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45 PETITION; THE SUPREME COURT DOES NOT MAKE FINDINGS OF FACTS PARTICULARLY ON EVIDENCE SUBMITTED FOR THE FIRST TIME ON APPEAL, AS POINTS OF LAW, THEORIES, ISSUES AND ARGUMENTS NOT BROUGHT TO THE ATTENTION OF THE LOWER COURT NEED NOT BE CONSIDERED BY A REVIEWING COURT, AS THEY CANNOT BE RAISED FOR THE FIRST TIME AT THAT LATE STAGE; UNJUSTIFIED BELATED SUBMISSION OF THE PAYROLL RECORDS MAKES A MOCKERY OF THE COURT'S JUDICIAL PROCESSES AND CASTS DOUBT ON THEIR CREDIBILITY.— . . .[M]HC is requesting this Court to receive belatedly submitted evidence and consider its new theory that no actual dismissal took place.

This we shall not tolerate.

This Court does not make findings of facts particularly on evidence submitted for the first time on appeal. It is well settled in this jurisdiction that "[p]oints of law, theories, issues and arguments not brought to the attention of the lower court x x x

need not be considered by a reviewing court, as they cannot be raised for the first time at that late stage. Basic considerations of fairness and due process impel this rule." In the present case, MHC did not even provide any justifiable reason why it had failed to present Regala's DTRs and Payroll Journals during the proceedings held before the LA or the NLRC. It bears noting that the DTRs and Payroll Journals have been in MHC's possession since January 2009, and yet it was only after more than seven (7) years therefrom that it presented the same to this Court on appeal for its appreciation. Not only does the unjustified belated submission of these records make a mockery of this Court's judicial processes, but this also casts doubt on their credibility, more so when they are not even newly discovered evidence. . . .

. . .

This being the case, MHC's plea that its evidence be admitted in the interest of justice does not deserve any consideration.

2. ID.; ID.; ID.; ID.; A PARTY CANNOT BE PERMITTED TO RAISE A NEW ISSUE, TAKE AN INCONSISTENT POSITION, OR CHANGE ITS THEORY ON APPEAL, AS THESE WOULD OFFEND THE BASIC RULES OF FAIR PLAY, JUSTICE AND DUE PROCESS; AN EMPLOYER CANNOT BE ALLOWED, ON APPEAL, TO TAKE AN INCONSISTENT POSITION, FROM CLAIM OF VALIDITY OF THE EMPLOYEE'S DISMISSAL TO NO ACTUAL DISMISSAL TRANSPIRED, FOR TO HOLD OTHERWISE WILL RESULT IN A GREAT INJUSTICE TO THE EMPLOYEE AS HE NO LONGER HAS THE OPPORTUNITY TO PRESENT COUNTER EVIDENCE TO OVERCOME AND REFUTE THE EMPLOYER'S EVIDENCE ON NEW ISSUES RAISED BY IT AT THE VERY LATE STAGE OF THE PROCEEDINGS. — We cannot also allow MHC, at this point of the proceedings, to take an inconsistent position — that no actual dismissal transpired. To be clear, the hotel had argued before the labor tribunals that there is no basis to support the claim that Regala was illegally dismissed from employment as the expiration of the term under his Service Agreements simply caused the natural cessation of his fixed-term employment with MHC. Contrarily, it now asserts in its March 10, 2016 Manifestation that "there was never any severance or break in [Regala's] employment with the Hotel."

In other words, while MHC earlier argued that Regala's dismissal was valid, it now posits in a mere Manifestation filed before this Court that no actual dismissal transpired.

This Court cannot simply permit MHC to raise a new issue, take an inconsistent position, or change its theory on appeal as these would offend the basic rules of fair play, justice and due process.

We have held in *Maxicare PCIB Cigna Healthcare v. Contreras* that:

> As a rule, a party who deliberately adopts a certain theory upon which the case is tried and decided by the lower court, will not be permitted to change theory on appeal. Points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as these cannot be raised for the first time at such late stage. It would be unfair to the adverse party who would have no opportunity to present further evidence material to the new theory, which it could have done had it been aware of it at the time of the hearing before the trial court. . . .

This Court cannot tolerate this procedural scheme adopted by MHC. To hold otherwise will result in a great injustice to Regala as he no longer has the opportunity to present counter evidence to overcome and refute MHC's evidence on new issues raised by it at this very late stage of the proceedings.

3. ID.; ID.; ID.; ID.; THE COURT IS NOT A TRIER OF FACTS, AND THIS IS STRICTLY ADHERED TO IN LABOR CASES; HOWEVER, WHERE THERE IS A CONFLICT BETWEEN THE FACTUAL FINDINGS OF THE LABOR ARBITER AND THE COURT OF APPEALS, ON ONE HAND, AND THOSE OF THE NATIONAL LABOR RELATIONS COMMISSION, ON THE OTHER, IT BECOMES PROPER FOR THE COURT, IN THE EXERCISE OF ITS EQUITY JURISDICTION, TO REVIEW THE FACTS AND RE-EXAMINE THE RECORDS OF THE CASE.— Whether Regala is a regular or fixed-term employee of MHC, or whether he was

constructively dismissed from employment, are essentially questions of fact, which, as a rule, cannot be entertained in a Petition for Review on *Certiorari* filed under Rule 45 of the Rules of Court. Consistent therewith is the doctrine that this Court is not a trier of facts, and this is strictly adhered to in labor cases. However, where, like in the instant case, there is a conflict between the factual findings of the LA and the CA, on one hand, and those of the NLRC, on the other, it becomes proper for this Court, in the exercise of its equity jurisdiction, to review the facts and re-examine the records of the case. Thus, this Court shall take cognizance of and resolve the factual issues involved in this case.

4. LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; REGULAR EMPLOYMENT; AN EMPLOYEE ENJOYS THE PRESUMPTION OF REGULAR EMPLOYMENT IN HIS FAVOR WHERE THERE IS NO CLEAR AGREEMENT OR CONTRACT, WHETHER WRITTEN OR OTHERWISE, WHICH WOULD CLEARLY SHOW THAT HE OR SHE IS PROPERLY INFORMED OF HIS OR HER EMPLOYMENT STATUS WITH THE COMPANY.— . . . [M]HC has not categorically denied in its pleadings before the labor tribunals that Regala was employed by it as early as February 2000. On this point, the records of the case are bereft of evidence that Regala was duly informed of the nature and status of his engagement with the hotel. Notably, in the absence of a clear agreement or contract, whether written or otherwise, which would clearly show that Regala was properly informed of his employment status with MHC, Regala enjoys the presumption of regular employment in his favor.

5. ID.; ID.; ID.; THE EMPLOYMENT STATUS OF A PERSON IS DEFINED AND PRESCRIBED BY LAW AND NOT BY WHAT THE PARTIES SAY IT SHOULD BE; AN EMPLOYEE WHO WAS ALLOWED TO WORK FOR THE COMPANY ON SEVERAL OCCASIONS FOR SEVERAL YEARS UNDER VARIOUS SERVICE AGREEMENTS IS INDICATIVE OF THE REGULARITY AND INDISPENSABILITY OF HIS FUNCTIONS TO THE COMPANY'S BUSINESS; PETITIONER IS A REGULAR EMPLOYEE OF THE RESPONDENT, AS HE PERFORMS ACTIVITIES WHICH ARE USUALLY NECESSARY OR

DESIRABLE IN THE BUSINESS OR TRADE OF THE RESPONDENT.— The employment status of a person is defined and prescribed by law and not by what the parties say it should be. In this regard, Article 295 of the Labor Code "provides for two types of regular employees, namely: (a) those who are engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer (first category); and (b) those who have rendered at least one year of service, whether continuous or broken, with respect to the activity in which they are employed (second category)." While MHC insists that Regala was engaged under a fixed-term employment agreement, the circumstances and evidence on record, and provision of law, however, dictate that Regala is its regular employee.

First, Regala is performing activities which are usually necessary or desirable in the business or trade of MHC. This connection can be determined by considering the nature of the work performed by Regala and its relation to the nature of the particular business or trade of MHC in its entirety. Being part of the hotel and food industry, MHC, as a service-oriented business enterprise, depends largely on its manpower complement to carry out or perform services relating to food and beverage operations, event planning and hospitality. As such, it is essential, if at all necessary, that it retains in its employ waiting staff, such as Regala, specifically tasked to attend to its guests at its various dining establishments.

Notably, the desirability of his functions is bolstered by the fact that MHC retains in its employ regular staff of waiters charged with like duties or functions as those of Regala's.

Second, the fact alone that Regala was allowed to work for MHC on several occasions for several years under various Service Agreements is indicative of the regularity and necessity of his functions to its business. Moreover, it bears to emphasize that MHC has admitted, albeit implicitly, that it renewed Regala's Service Agreements on various occasions, *i.e.*, during temporary spikes in the volume of its business since February 2000. Thus, the continuing need for his services for the past several years is also sufficient evidence of the indispensability of his duties as waiter to MHC's business. Additionally, Regala has already been working with the hotel for many years when he was

supposedly constructively dismissed from employment on December 2, 2009.

6. ID.; ID.; FIXED-TERM EMPLOYMENT; IT DOES NOT NECESSARILY FOLLOW THAT WHERE THE DUTIES OF THE EMPLOYEE CONSIST OF ACTIVITIES USUALLY NECESSARY OR DESIRABLE IN THE USUAL BUSINESS OF THE EMPLOYER, THE PARTIES ARE FORBIDDEN FROM AGREEING ON A PERIOD OF TIME FOR THE PERFORMANCE OF SUCH ACTIVITIES; HOWEVER, IF IT IS APPARENT FROM THE CIRCUMSTANCES OF THE CASE THAT PERIODS HAVE BEEN IMPOSED TO PRECLUDE ACQUISITION OF TENURIAL SECURITY BY THE EMPLOYEE, SUCH FIXED-TERM CONTRACTS ARE DISREGARDED FOR BEING CONTRARY TO LAW AND PUBLIC POLICY.— . . . [T]he CA ratiocinated that the fact that the nature of Regala's work is necessary and indispensable to its business did not impair the validity of the Service Agreements which specifically stipulated that his employment was only for a specific term or duration.

This Court is aware that there is nothing contradictory between the nature of an employee's duties and the setting of a definitive period of his or her employment. We have held in *St. Theresa's School of Novaliches Foundation v. National Labor Relations Commission* that "[i]t does not necessarily follow that where the duties of the employee consist of activities usually necessary or desirable in the usual business of the employer, the parties are forbidden from agreeing on a period of time for the performance of such activities." However, this Court also held that if it is apparent from the circumstances of the case "that periods have been imposed to preclude acquisition of tenurial security by the employee," such fixed term contracts are disregarded for being contrary to law and public policy. Thus, to our mind, while the principle enunciated by the CA is true, it is accurate only if the same is premised on the finding the fixed-term employment agreement entered into between the employer and the employee complies with the requirements of a valid fixed-term employment arrangement provided for under the labor laws.

7. ID.; ID.; ID.; THE DECISIVE DETERMINANT IN TERM EMPLOYMENT SHOULD NOT BE THE ACTIVITIES

THAT THE EMPLOYEE IS CALLED UPON TO PERFORM, BUT THE DAY CERTAIN AGREED UPON BY THE PARTIES FOR THE COMMENCEMENT AND TERMINATION OF THEIR EMPLOYMENT RELATIONSHIP; A FIXED-TERM EMPLOYMENT CONTRACT WHICH FAILS TO SPECIFY THE DATE OF EFFECTIVITY AND THE DATE OF EXPIRATION OF AN EMPLOYEE'S ENGAGEMENT CANNOT BE REGARDED AS SUCH DESPITE ITS NOMENCLATURE OR CLASSIFICATION GIVEN BY THE PARTIES.— A fixed-term employment, while not expressly mentioned in the Labor Code, has been recognized by this Court as a type of employment "embodied in a contract specifying that the services of the employee shall be engaged only for a definite period, the termination of which occurs upon the expiration of said period irrespective of the existence of just cause and regardless of the activity the employee is called upon to perform." Along the same lines, it has been held that "[t]he fixed-term character of employment essentially refers to the period agreed upon between the employer and the employee." Accordingly, "the decisive determinant in term employment should not be the activities that the employee is called upon to perform, but the *day certain* agreed upon by the parties for the *commencement and termination* of their employment relationship. Specification of the date of termination is significant because an employee's employment shall cease upon termination date without need of notice.

In other words, a fixed-term employment contract which otherwise fails to specify the date of effectivity *and* the date of expiration of an employee's engagement cannot, by virtue of jurisprudential pronouncement, be regarded as such despite its nomenclature or classification given by the parties. The employment contract may provide for or describe some other classification or type of employment depending on the circumstances, but it is not, properly speaking, a fixed-term employment contract.

8. ID.; ID.; ID.; ID.; THE SERVICE AGREEMENTS EXECUTED BETWEEN THE EMPLOYEES AND EMPLOYER CANNOT BE REGARDED AS TRUE FIXED-

TERM EMPLOYMENT CONTRACTS, WHERE THE SAME SPECIFY ONLY THE EFFECTIVITY DATES OF THE EMPLOYEES' ENGAGEMENT, BUT NOT THE PERIODS OF THEIR EXPIRATION; MERE PRESENTATION OF THE SERVICE AGREEMENTS WHICH DO NOT EXPRESS THE TERMS OF THE EMPLOYEE'S ENGAGEMENT DOES NOT PROVE THAT THE EMPLOYEE IS A MERE FIXED-TERM EMPLOYEE.— . . . [W]e find that the three Service Agreements presented by MHC cannot be regarded as true fixed-term employment contracts. A perusal thereof shows that the term of Regala's engagement with the hotel merely indicate the dates March 1, 2010, March 2, 2010, and March 3, 2010 — all of which pertain only to specified effectivity dates of Regala's engagement as waiter of MHC. The Service Agreements do not, however, unequivocally specify the periods of their expiration.

Notably, even the very terms of the Service Agreements purportedly proving Regala's fixed-term employment status are uncertain, if not altogether evasive of Regala's actual period of employment with MHC, which, in this case, commenced as early as February 2000. It bears noting that the Service Agreements furnished by MHC do not even account for Regala's employment for the previous years, especially at the time of Regala's hiring in February 2000. On this point, it is incredulous, to say the least, that the hotel merely hired Regala under a fixed-term agreement since February 2000.

All things considered, the Service Agreements presented by MHC deserves scant consideration from this Court. Mere presentation thereof does not prove that Regala had been a mere fixed-term employee. The Court cannot simply rely on the vague provisions of the Service Agreements as proof of his fixed-term employment status. To do so would erroneously warrant their enforcement despite their apparent failure to express the term/s of Regala's engagement as waiter since February 2000.

9. ID.; ID.; ID.; ID.; CRITERIA FOR A VALID FIXED-TERM EMPLOYMENT CONTRACTS; NOT MET.— Even if this Court gives credence to the Service Agreements, it can be deduced with certainty from the circumstances of the case that they do not meet the criteria of valid fixed-term employment contracts.

. . .

While this Court has recognized the validity of fixed-term employment contracts, it has consistently held that they are the exception rather than the general rule. A fixed-term employment is valid only under certain circumstances. We thus laid down in *Brent School, Inc. v. Zamora* parameters or criteria under which a "term employment" cannot be said to be in circumvention of the law on security of tenure, namely:

> 1) The fixed period of employment was knowingly and voluntarily agreed upon by the parties without any force, duress, or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent; or
>
> 2) It satisfactorily appears that the employer and the employee dealt with each other on more or less equal terms with no moral dominance exercised by the former or the latter.

10. ID.; ID.; ID.; ID.; A FIXED-TERM EMPLOYMENT AGREEMENT SHOULD RESULT FROM *BONA FIDE* NEGOTIATIONS BETWEEN THE EMPLOYER AND THE EMPLOYEE; AS SUCH, THEY MUST HAVE DEALT WITH EACH OTHER ON AN ARM'S LENGTH BASIS WHERE NEITHER OF THE PARTIES HAVE UNDUE ASCENDANCY AND INFLUENCE OVER THE OTHER; THE SERVICE AGREEMENTS AND FIXED-TERM SERVICE CONTRACTS BETWEEN THE EMPLOYER AND EMPLOYEE SHOULD BE STRUCK DOWN AS ILLEGAL, WHERE THE CRITERIA FOR THEIR VALIDITY WERE NOT MET.— As to the first guideline, the Service Agreements signed by Regala do not even prove that he knowingly agreed to be hired by MHC for a fixed-term way back in February 2000. At best, they only account for Regala's supposed fixed-term status from March 1 to 3, 2009.

It is worth noting at this point that MHC persistently asserted that Regala agreed upon a fixed-term employment while making reference to his fixed-term service contracts. Concomitantly, it failed to disprove the allegations of Regala that he was made to sign various fixed-term service contracts prepared by MHC before he can be given work assignments. . . .

. . .

As to the second guideline, this Court is inclined to believe that Regala can hardly be on equal terms with MHC insofar as negotiating the terms and conditions of his employment is concerned. To be clear, a fixed-term employment agreement should result from *bona fide* negotiations between the employer and the employee. As such, they must have dealt with each other on an arm's length basis where neither of the parties have undue ascendancy and influence over the other. As a waiter, a rank-and-file employee, Regala can hardly stand on equal terms with MHC. Moreover, no particulars in the Service Agreements or the fixed-term service contract regarding the terms and conditions of employment indicate that Regala and MHC were on equal footing in negotiating them. . . .

Considering that the foregoing criteria were not met, the Service Agreements and the fixed-term service contracts which MHC had Regala execute should be struck down for being illegal.

11. ID.; ID.; ID.; ID.; ONE'S EMPLOYMENT SHOULD NOT BE LEFT ENTIRELY TO THE WHIMS OF THE EMPLOYER FOR AT STAKE IS NOT ONLY THE EMPLOYEE'S POSITION OR TENURE, BUT ALSO HIS MEANS OF LIVELIHOOD; THE SERVICE AGREEMENTS AND/OR THE FIXED-TERM SERVICE CONTRACTS BETWEEN THE PETITIONER AND RESPONDENT SHOULD BE DISREGARDED FOR BEING CONTRARY TO LAW, PUBLIC POLICY OR MORALS, AS THEY WERE ONLY MEANT TO PRECLUDE THE PETITIONER FROM ATTAINING REGULAR EMPLOYMENT STATUS.— The practice of utilizing fixed-term contracts in the industry does not mean that such contracts, as a matter of course, are valid and compliant with labor laws. Moreover, the rise and fall of customer demands are presumed in all businesses or commercial industries, more so in the industry where MHC has been a part of for several years. At this point in time, it would be incredulous to believe that it cannot yet anticipate business fluctuations to the point that it has to employ ruses and subterfuges to deny workers from attaining regular employment status. Indeed, one's employment should not be left entirely to the whims of the employer for at stake is not only the employee's position or tenure, but also his means of livelihood. . . .

In sum, Regala attained regular employment status long before he executed the Service Agreements considering that at the time he signed them in March 2010, he has already been in the employ of MHC for more than nine (9) years. Moreover, . . . the nature of Regala's work is necessary and desirable, if not indispensable, in the business in which MHC is engaged. Undoubtedly, Regala has been a regular employee of the hotel since February 2000. At any rate, the Service Agreements and/or the fixed-term service contracts which MHC and Regala executed were only meant to preclude Regala from attaining regular employment status, and, thus, should be struck down or disregarded for being contrary to law, public policy or morals.

12. ID.; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; CONSTRUCTIVE DISMISSAL; THERE IS CONSTRUCTIVE DISMISSAL WHERE THERE IS CESSATION OF WORK BECAUSE CONTINUED EMPLOYMENT IS RENDERED IMPOSSIBLE, UNREASONABLE OR UNLIKELY, AS AN OFFER INVOLVING A DEMOTION IN RANK OR A DIMINUTION IN PAY AND OTHER BENEFITS; REDUCTION IN THE EMPLOYEE'S WORKDAYS WHICH RESULTED TO THE DIMINUTION OF HIS TAKE HOME SALARY, IS TANTAMOUNT TO CONSTRUCTIVE DISMISSAL.— Being a regular employee of MHC, Regala is entitled to security of tenure. Hence, he cannot be dismissed from employment, constructive or otherwise, except for just or authorized causes.

At this juncture, Regala claims that despite having attained regular employment status, MHC, without any valid cause, reduced his regular work days to two (2) days from the normal five (5) day work week starting December 2, 2009. Regala insisted that MHC's act of unreasonably reducing his work days is tantamount to constructive dismissal.

. . .

There is constructive dismissal where "there is cessation of work because 'continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank or a diminution in pay' and other benefits. Aptly called a dismissal in disguise or an act amounting to dismissal but made to appear as if it were not, constructive dismissal may,

likewise, exist if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment."

Patently, the reduction of Regala's regular work days from five (5) days to two (2) days resulted to a diminution in pay. Regala's change in his work schedule resulting to the diminution of his take home salary is, therefore, tantamount to constructive dismissal.

13. ID.; ID.; ID.; ID.; CONSTRUCTIVE DISMISSAL OCCURS NOT WHEN THE EMPLOYEE CEASES TO REPORT FOR WORK, BUT WHEN THE UNWARRANTED ACTS OF THE EMPLOYER ARE COMMITTED TO THE END THAT THE EMPLOYEE'S CONTINUED EMPLOYMENT SHALL BECOME SO INTOLERABLE; THE FACT THAT AN EMPLOYEE CONTINUED TO REPORT FOR WORK DESPITE THE CHANGES IN HIS WORK SCHEDULE WHICH RESULTED TO DIMINUTION OF HIS TAKE HOME SALARY, DOES NOT RULE OUT CONSTRUCTIVE DISMISSAL, NOR DOES IT OPERATE AS A WAIVER.— The fact that Regala may have continued reporting for work does not rule out constructive dismissal, nor does it operate as a waiver. Thus, in *The Orchard Golf and Country Club v. Francisco*, this Court held that:

> Constructive dismissal occurs not when the employee ceases to report for work, but when the unwarranted acts of the employer are committed to the end that the employee's continued employment shall become so intolerable. In these difficult times, an employee may be left with no choice but to continue with his employment despite abuses committed against him by the employer, and even during the pendency of a labor dispute between them.

Considering the foregoing recitals, the fact of constructive dismissal should be reckoned on December 2, 2009, or from the time Regala was made to accept the changes of his work schedule which thereby resulted in the diminution of his take home pay.

14. ID.; ID.; ID.; ID.; A CONSTRUCTIVELY DISMISSED EMPLOYEE IS ENTITLED TO REINSTATEMENT TO HIS FORMER POSITION WITHOUT LOSS OF SENIORITY RIGHTS AND PAYMENT OF BACKWAGES.— In view therefore of Regala's constructive dismissal, reinstatement and payment of backwages must necessarily be made. Regala must be reinstated to his former position as a regular waiter of MHC without loss of seniority rights and shall enjoy the same employment benefits and privileges of a regular employee of MHC. Regala's backwages **must be computed from the time he was made to accept the changes of his work schedule which thereby resulted in the diminution** of his take home pay, or from December 2, 2009, up to actual reinstatement. The amount thereof shall include benefits and allowances, or their monetary equivalent, regularly received by a regular employee of MHC with like position and rank of Regala as of the time he was constructively dismissed, as well as those granted under the Collective Bargaining Agreement, if any.

APPEARANCES OF COUNSEL

Pro-labor Legal Assistance Center for petitioner.
Laguesma Magsalin Consulta & Gastardo Law Offices for respondent.

D E C I S I O N

HERNANDO, *J.*:

This Petition for Review on *Certiorari*[1] assails the May 22, 2012 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 120748, which set aside the March 24, 2011 Decision[3] and

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[1] *Rollo,* pp. 8-27.

[2] Id. at 264-274; penned by Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Stephen C. Cruz and Myra V. Garcia-Fernandez.

[3] Id. at 171-179; penned by Presiding Commissioner Alex A. Lopez and concurred in by Commissioner Gregorio O. Bilog III.

May 31, 2011 Resolution[4] of the National Labor Relations Commission (NLRC) declaring herein petitioner Allan Regala (Regala) a regular employee of respondent Manila Hotel Corporation (MHC) who was constructively dismissed from employment. In a November 19, 2012 Resolution,[5] the CA refused to reconsider its earlier Decision.

Antecedent Facts

This case stemmed from a complaint for constructive dismissal and regularization, non-payment of paternity leave pay, and claims for backwages filed by Regala against MHC, and Emilio Yap (Yap), Teresita Gabut (Gabut), and Marcelo Ele (Ele), President, Food and Beverage Manager, and Vice President for Legal, Personnel and Security Administration, respectively, of MHC.

Regala was hired by MHC sometime in February 2000[6] as one of its waiters assigned to the Food and Beverage Department.[7] He was later assigned as cook helper at MHC's Chocolate Room/ Cookies Kitchen during the period from October 18, 2004 to June 26, 2006.[8] In the course of his employment as waiter/ cook helper, Regala worked for six (6) days every week,[9] and was paid a daily salary of ₱382.00 until sometime in December 2009.[10] MHC also remitted contributions in Regala's behalf to the Social Security System (SSS) and Philippine Health Insurance Corporation (PhilHealth).[11]

As waiter, Regala's duties and responsibilities included preparing the *mise en place*, taking of orders, and serving food

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[4] Id. at 196-197.

[5] Id. at 289.

[6] CA *rollo*, p. 95.

[7] *Rollo*, p. 11.

[8] CA *rollo*, p. 94.

[9] *Rollo*, p. 12.

[10] Id. at 10.

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

and beverages to hotel guests at tables and inside MHC's dining establishments. In the course of his engagement with MHC, Regala was directed to report to a Captain Waiter, and assigned to work for its Cowrie Grill, Pool Bar, Mini Bar, Kitchen Ginza, Tap Room, Champagne Room, Room Service, Mabuhay Palace, Banquet Services, and Pastry and House Keeping.[12] From October 2008 to May 2009, Regala was made to attend and participate in hotel trainings for Basic Food Safety Strategies,[13] Food Safety Awareness,[14] and Customer Service Awareness.[15]

Regala alleged that he was not recognized as a regular rank-and-file employee despite having rendered services to MHC for several years. Regala also claimed that MHC constructively dismissed him from employment when it allegedly reduced his regular work days to two (2) days from the normal five (5)-day work week starting December 2, 2009, which resulted in the diminution of his take home salary.[16]

On its part, MHC denied outright that Regala is its regular employee, and claimed that he is a mere freelance or "extra waiter" engaged by MHC on a short term basis. It explained that it employs extra waiters at fixed and/or determinable periods particularly when there are temporary spikes in the volume of its business. It is during these specific periods when management is forced to supplement the hotel's regular staff of waiters with temporary fixed-term employees, such as Regala, in order to meet increases in business activities in its food and beverage functions, special events and banquets. In engaging extra or temporary waiters, MHC relies on loose referrals from its employees and on a list of waiters who have expressed interest in part-time or temporary engagements.[17] It further explained

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[12] *Rollo*, p. 12.

[13] CA *rollo*, p. 74.

[14] Id. at 75.

[15] Id. at 76.

[16] *Rollo*, p. 22.

[17] Id. at 300.

that its system of hiring freelance waiters on an informal and temporary basis is a common practice in the hotel and restaurant industry and that it is through this industry practice that these extra waiters, including Regala, are able to offer their services to other hotels, restaurants, and food catering companies despite their existing engagement with MHC.[18]

MHC then presented a sample fixed-term service contract,[19] and copies of Regala's Department Outlet Services Contracts for Extra Waiters/Cocktail Attendants (Service Agreements)[20] covering the periods of his supposed temporary engagement with MHC, or from March 1, 2010 to March 3, 2010. MHC contended that prior to engaging the services of extra waiters, applicant waiters, such as Regala, and MHC execute fixed-term service contracts and agree on a specific duration of engagement depending on the requirement of the hotel in a given period. The Service Agreements and the fixed-term service contracts similarly state the following terms, *to wit*:

> This is to confirm your engagement to render Extra Waiter/Cocktail Attendant with Manila Hotel strictly under the following terms only:
>
> DATE (Duration): _____
> DEPARTMENT/OUTLET_____
> TIME:
> RATE PER HOUR: _____
> FUNCTION (If applicable)_____
>
> It is understood that the above rate is inclusive of emergency cost of living allowance and that this Service/Function Contract is only for the above-indicated outlet/department or function and which Terminates or Co-terminus with the completion of the function, work or services for which you have been engaged.
>
> For all intents and purposes, you are not considered employees of the Company. You shall, however, abide and be bound by rules and regulations issued.

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[18] Id. at 302.

[19] Id. at 304.

[20] CA *rollo*, pp. 33-35.

MANILA HOTEL

By:

Personnel Department[21]

On this premise, MHC argued that there can be no illegal dismissal to speak of since the expiration of the period under Regala's Service Agreements simply caused the natural cessation of his fixed-term employment with MHC.[22]

Ruling of the Labor Arbiter

On September 8, 2010, the Labor Arbiter promulgated a Decision[23] dismissing the complaint for lack of merit, the dispositive portion of which states:

WHEREFORE, premises considered, judgement is hereby rendered DISMISSING the instant complaint for lack of merit.

SO ORDERED.[24]

The LA held that Regala is a fixed-term employee of MHC and that he voluntarily executed the Service Agreements with MHC with a full understanding that his engagement with it was only for a fixed period. Meanwhile, Regala failed to present evidence which would prove that he was forced or coerced into executing the said Service Agreements, that his consent was vitiated by any unlawful means when he signed the same, or that MHC exerted moral dominance over him at the time he was engaged by it as a waiter for a fixed period.

On the issue of constructive dismissal, the LA held that Regala's claim of constructive dismissal must fail considering that he continued reporting for work at MHC at the time he instituted the instant complaint for illegal or constructive dismissal.

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[21] *Rollo*, p. 309.

[22] Id. at 313.

[23] Id. at 127-134.

[24] Id. at 134.

The LA also denied Regala's claims for payment of paternity leave pay and backwages and exonerated MHC, Yap, Gabut, and Ele from any liability.

Ruling of the National Labor Relations Commission

In his appeal[25] to the NLRC, Regala averred that the LA erred in finding that he was a fixed-term employee of MHC and that he was not constructively dismissed from employment. Petitioner mainly contended that, using the four-fold test, he is a regular employee of MHC. Petitioner added that his duties and functions as a waiter are necessary and desirable to the food and beverage business of MHC, and that his continued employment since February 2000 is sufficient evidence of the necessity and indispensability of his services to its business. Petitioner further argued that MHC's practice of making him sign fixed-term service contracts from time to time is a scheme devised by it to preclude him from attaining regular employment status. Petitioner also claimed that MHC outsourced the services of a contractor which supplied the "extra waiters." This purportedly affected Regala's working hours.

Being a regular employee of MHC, Regala argued that MHC's act of unreasonably reducing his work days is tantamount to constructive dismissal.

In its March 24, 2011 Decision,[26] the NLRC reversed the Decision of the LA and held that Regala is a regular employee of MHC.

In so ruling, the NLRC noted that MHC failed to furnish a copy of Regala's written contract executed at the time of his engagement on February 2000, which would show that he was engaged for a fixed period or duration. In the absence of a clear agreement or contract, the NLRC held that Regala enjoys the presumption of regular employment in his favor. The NLRC

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[25] Id. at 135-149.

[26] Id. at 171-179.

also emphasized that Regala's position as waiter required him to perform activities which are usually necessary and desirable to the usual trade and business of MHC.

Being a regular employee of MHC, the NLRC found that Regala was constructively dismissed from employment when MHC reduced his take-home pay as a consequence of the hotel's changes in his work schedule which reduced his work days from five (5) days a week to two (2) days a week. The NLRC thus ordered Regala's reinstatement to his former position without loss of seniority rights, and payment of full backwages computed from December 2, 2009 up to his actual reinstatement, less the amount of wages he actually received beginning December 2, 2009, and from March 1 to 3, 2010.

The dispositive of the Decision states, as follows:

> **WHEREFORE**, the Labor Arbiter's Decision dated September 8, 2010 is hereby REVERSED and SET ASIDE. Respondent MHC Corporation is ordered to reinstate the complainant to his former position without loss of seniority rights and to pay his full backwages computed from December 2, 2009 up to his actual reinstatement, but deducting therefrom the wages he received for two (2) days a week beginning December 2, 2009 and his wages for March 1-3, 2010, and is tentatively computed up to March 30, 2011 in the amount of P170,618.54 x x x.
>
> **SO ORDERED**.[27]

MHC filed a Motion for Reconsideration[28] which was, however, denied in the May 31, 2011 Resolution[29] of the NLRC.

Ruling of the Court of Appeals

Aggrieved, MHC filed a Petition for *Certiorari*[30] (with Application for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction) before the CA ascribing

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[27] Id. at 177.

[28] Id. at 181-194.

[29] Id. at 196-197.

[30] Id. at 28-54.

upon the NLRC grave abuse of discretion when it held that Regala is a regular employee of MHC and that he was constructively dismissed from employment.

MHC averred that its practice of hiring additional waiters on a fixed or short term contractual basis is a valid exercise of its management prerogative in order for it to meet client demands as a result of unforeseen spikes in the volume of its business.[31] It further argued that the fact Regala was engaged to perform activities which are usually necessary or desirable to its business does not preclude the fixing of employment for a specified duration or period.[32]

In his Comment/Opposition[33] to respondents' Petition for *Certiorari*, Regala averred that his fixed-term contract of employment basically rendered his work at the pleasure of MHC which was intended to prevent security of tenure from accruing in his favor.[34]

On May 22, 2012, the CA rendered its assailed Decision[35] granting MHC's Petition for *Certiorari* and setting aside the March 24, 2011 Decision and May 31, 2011 Resolution of the NLRC. The dispositive portion of the May 22, 2012 Decision reads, as follows:

> **WHEREFORE**, the instant petition is **GRANTED**. Setting aside NLRC's assailed Decision dated March 24, 2011, and Resolution dated May 31, 2011, the complaint below is dismissed for being devoid of merit.
>
> **SO ORDERED**.[36]

The CA concluded that Regala showed no proof that MHC forced or coerced him to execute his fixed-term employment

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[31] Id. at 38-39.

[32] Id. at 44.

[33] Id. at 198-211.

[34] Id. at 204-205.

[35] Id. at 264-274.

[36] Id. at 274.

contracts, nor did he establish that MHC was "engaged in hiring workers for work for such periods [which were] deliberately crafted to prevent the regularization of employees x x x."[37] As Regala validly entered into fixed-term employment agreements with MHC, his displacement each time the said fixed-term employment expired did not result in illegal dismissal.

Petitioner filed a Motion for Reconsideration[38] but the CA denied the same in its November 19, 2012 Resolution.[39] Hence, the instant Petition.

It is worth noting at this point that MHC filed before this Court its March 10, 2016 Motion for Leave of Court to File and Admit Attached Manifestation[40] and the Manifestation[41] on March 31, 2016. Annexed to the March 10, 2016 Manifestation were photocopies of Regala's Daily Time Records (DTR)[42] covering the period from March 4, 2009 to March 4, 2016, and his Regular Payroll Journals (Payroll Journals)[43] for the period from January 25, 2009 to February 25, 2016.

Issues

Regala raised the following issues for resolution:

THE HONORABLE [CA] ERRED IN DISMISSING THE CASE FOR REGULARIZATION AND CONSTRUCTIVE DISMISSAL FILED BY PETITIONER.

THE HONORABLE [CA] ERRED IN RESOLVING THAT PETITIONER IS A FIXED-TERM EMPLOYEE OF THE RESPONDENT [MHC].[44]

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[37] Id. at 272.

[38] Id. at 275-278.

[39] Id. at 196-197.

[40] Id. at 328-332.

[41] Id. at 335-337.

[42] Id. at 339-392.

[43] Id. at 393-543.

[44] Id. at 13.

It is undisputed that Regala is an employee of MHC. The crux of the controversy lies in petitioner's employment status.

Simply stated, the issues before this Court are the following: 1) whether Regala is a regular employee of MHC; and 2) whether he was constructively dismissed from employment.

Our Ruling

The Court grants the Petition.

Preliminary Matters

The belated submission of additional documentary evidence by MHC cannot be permitted.

In a March 10, 2016 Manifestation filed before this Court, MHC, for the first time, submitted photocopies of Regala's DTRs covering the period from March 4, 2009 to March 4, 2016, and his Payroll Journals for the period from January 25, 2009 to February 25, 2016.

While it admitted that it inadvertently failed to attach the documents to its April 24, 2013 Comment to Regala's Petition for Review, it requested this Court to admit the same as part of the records of this case.[45] Petitioner argued that an examination of the DTRs and Payroll Journals reveals that Regala continuously reports for work in MHC since January 11, 2010, or at the time he filed the instant complaint for constructive dismissal. In this regard, MHC brings to fore the following propositions, *viz.*: (1) there is no dismissal to speak of, let alone one that is illegal or constructive, as there was no actual severance of employment from January 11, 2010, the date Regala filed the instant complaint, to date, or at least until the time the March 10, 2016 Manifestation was filed before this Court, or on March 31, 2016; and (2) Regala is not entitled to his claim for payment of backwages as he has been continuously receiving his salaries since January 2009.[46]

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[45] Id. at 330.

[46] Id. at 329.

In sum, MHC is requesting this Court to receive belatedly submitted evidence and consider its new theory that no actual dismissal took place.

This we shall not tolerate.

This Court does not make findings of facts particularly on evidence submitted for the first time on appeal. It is well settled in this jurisdiction that "[p]oints of law, theories, issues and arguments not brought to the attention of the lower court x x x need not be considered by a reviewing court, as they cannot be raised for the first time at that late stage. Basic considerations of fairness and due process impel this rule."[47] In the present case, MHC did not even provide any justifiable reason why it had failed to present Regala's DTRs and Payroll Journals during the proceedings held before the LA or the NLRC. It bears noting that the DTRs and Payroll Journals have been in MHC's possession since January 2009, and yet it was only after more than seven (7) years therefrom that it presented the same to this Court on appeal for its appreciation. Not only does the unjustified belated submission of these records make a mockery of this Court's judicial processes, but this also casts doubt on their credibility, more so when they are not even newly discovered evidence.

In its attempt to persuade this Court to allow the reception of additional evidence, MHC cites *CMTC International Marketing Corporation v. Bhagis International Trading Corporation (CMTC International Marketing Corporation)*.[48] Its reliance, however, on the said case is misplaced as the factual milieu therein is not on all fours with the case at bench. *CMTC International Marketing Corporation* involves, on one hand, the belated filing of the appellant's brief before the trial court. The case before this Court, on the other hand, underlines the

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[47] *SPO2 Jamaca v. People*, 764 Phil. 683, 692 (2015), citing *S.C. Megaworld Construction and Development Corporation v. Parada*, 717 Phil. 752 (2013).

[48] 700 Phil. 575 (2012).

belated submission to it of evidence and argument of new issues on appeal.

This being the case, MHC's plea that its evidence be admitted in the interest of justice does not deserve any consideration.

We cannot also allow MHC, at this point of the proceedings, to take an inconsistent position — that no actual dismissal transpired. To be clear, the hotel had argued before the labor tribunals that there is no basis to support the claim that Regala was illegally dismissed from employment as the expiration of the term under his Service Agreements simply caused the natural cessation of his fixed-term employment with MHC.[49] Contrarily, it now asserts in its March 10, 2016 Manifestation that "there was never any severance or break in [Regala's] employment with the Hotel."[50]

In other words, while MHC earlier argued that Regala's dismissal was valid, it now posits in a mere Manifestation filed before this Court that no actual dismissal transpired.

This Court cannot simply permit MHC to raise a new issue, take an inconsistent position, or change its theory on appeal as these would offend the basic rules of fair play, justice and due process.

We have held in *Maxicare PCIB Cigna Healthcare v. Contreras*[51] that:

> As a rule, a party who deliberately adopts a certain theory upon which the case is tried and decided by the lower court, will not be permitted to change theory on appeal. Points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as these cannot be raised for the first time at such late stage. It would be unfair to the adverse party who would have no opportunity to present further evidence material to the new theory, which it could

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[49] *Rollo*, p. 313.

[50] Id. at 329.

[51] 702 Phil. 688 (2013).

have done had it been aware of it at the time of the hearing before the trial court. x x x[52]

This Court cannot tolerate this procedural scheme adopted by MHC. To hold otherwise will result in a great injustice to Regala as he no longer has the opportunity to present counter evidence to overcome and refute MHC's evidence on new issues raised by it at this very late stage of the proceedings.

The issue of Regala's employment status is essentially a question of fact.

Whether Regala is a regular or fixed-term employee of MHC, or whether he was constructively dismissed from employment, are essentially questions of fact, which, as a rule, cannot be entertained in a Petition for Review on *Certiorari* filed under Rule 45 of the Rules of Court. Consistent therewith is the doctrine that this Court is not a trier of facts, and this is strictly adhered to in labor cases.[53] However, 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, it becomes proper for this Court, in the exercise of its equity jurisdiction, to review the facts and re-examine the records of the case.[54] Thus, this Court shall take cognizance of and resolve the factual issues involved in this case.

Regala is a regular employee of MHC.

MHC does not deny that Regala was employed as one of its waiters.[55] It maintains, however, that Regala was only engaged for a fixed duration or period, and, therefore, the severance of

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[52] Id. at 696.

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

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

[55] *Rollo,* p. 300.

his employment upon the expiration of the duration or term specified in his Service Agreements cannot be made as a basis for any claim of illegal or constructive dismissal.[56] The CA, on its part, gave credence to MHC's assertions and held that "Regala is one of its fixed-term employees whose contracts with [MHC] were validly entered into and whose displacement each time said fixed-term employment expired did not result in illegal dismissal."[57]

We disagree.

Presumption of regularity in favor of Regala.

At the outset, MHC has not categorically denied in its pleadings before the labor tribunals that Regala was employed by it as early as February 2000. On this point, the records of the case are bereft of evidence that Regala was duly informed of the nature and status of his engagement with the hotel. Notably, in the absence of a clear agreement or contract, whether written or otherwise, which would clearly show that Regala was properly informed of his employment status with MHC, Regala enjoys the presumption of regular employment in his favor.[58]

Regala is performing activities which are necessary and desirable, if not indispensable, in the business of MHC. Moreover, Regala has been working for MHC for several years since February 2000.

The employment status of a person is defined and prescribed by law and not by what the parties say it should be.[59] In this

[56] Id. at 313.

[57] Id. at 273.

[58] See *Omni Hauling Services, Inc. v. Bon*, 742 Phil. 335, 344-345 (2014), and *Basan v. Coca-Cola Bottlers Philippines*, 753 Phil. 74, 90-91 (2015).

[59] *Fuji Television Network, Inc. v. Espiritu*, 749 Phil. 388, 439 (2014), citing *Price v. Innodata Philippines Corp.*, 588 Phil. 568, 582-583 (2008).

regard, Article 295 of the Labor Code "provides for two types of regular employees, namely: (a) those who are engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer (first category); and (b) those who have rendered at least one year of service, whether continuous or broken, with respect to the activity in which they are employed (second category)."[60] While MHC insists that Regala was engaged under a fixed-term employment agreement, the circumstances and evidence on record, and provision of law, however, dictate that Regala is its regular employee.

First, Regala is performing activities which are usually necessary or desirable in the business or trade of MHC. This connection can be determined by considering the nature of the work performed by Regala and its relation to the nature of the particular business or trade of MHC in its entirety.[61] Being part of the hotel and food industry, MHC, as a service-oriented business enterprise, depends largely on its manpower complement to carry out or perform services relating to food and beverage operations, event planning and hospitality. As such, it is essential, if at all necessary, that it retains in its employ waiting staff, such as Regala, specifically tasked to attend to its guests at its various dining establishments.

Notably, the desirability of his functions is bolstered by the fact that MHC retains in its employ regular staff of waiters charged with like duties or functions as those of Regala's.

Second, the fact alone that Regala was allowed to work for MHC on several occasions for several years under various Service Agreements is indicative of the regularity and necessity of his functions to its business. Moreover, it bears to emphasize that MHC has admitted, albeit implicitly, that it renewed Regala's Service Agreements on various occasions, *i.e.*, during temporary

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

[61] Id. at 222.

spikes in the volume of its business since February 2000. Thus, the continuing need for his services for the past several years is also sufficient evidence of the indispensability of his duties as waiter to MHC's business.[62] Additionally, Regala has already been working with the hotel for many years when he was supposedly constructively dismissed from employment on December 2, 2009.

In any event, it is worth noting that MHC failed to deny that Regala's work as waiter is necessary and desirable to its business.

The foregoing notwithstanding, the CA ratiocinated that the fact that the nature of Regala's work is necessary and indispensable to its business did not impair the validity of the Service Agreements which specifically stipulated that his employment was only for a specific term or duration.[63]

This Court is aware that there is nothing contradictory between the nature of an employee's duties and the setting of a definitive period of his or her employment. We have held in *St. Theresa's School of Novaliches Foundation vs. National Labor Relations Commission*[64] that "[i]t does not necessarily follow that where the duties of the employee consist of activities usually necessary or desirable in the usual business of the employer, the parties are forbidden from agreeing on a period of time for the performance of such activities." However, this Court also held that if it is apparent from the circumstances of the case "that periods have been imposed to preclude acquisition of tenurial security by the employee," such fixed term contracts are disregarded for being contrary to law and public policy.[65] Thus, to our mind, while the principle enunciated by the CA is true,

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[62] See *Philips Semiconductors (Phils.), Inc. v. Fadriquela*, 471 Phil. 355, 370 (2004).

[63] *Rollo*, p. 271.

[64] 351 Phil. 1038, 1043 (1998).

[65] *University of Santo Tomas v. Samahang Manggagawa ng UST*, *supra* note 60, at 225.

it is accurate only if the same is premised on the finding the fixed-term employment agreement entered into between the employer and the employee complies with the requirements of a valid fixed-term employment arrangement provided for under the labor laws.

The Service Agreements and fixed-term service contracts executed between MHC and Regala are invalid and are not true fixed-term employment contracts.

As proof of Regala's fixed-term employment status, MHC depended heavily on Regala's Service Agreements[66] covering the periods of his supposed temporary engagement with MHC, or from March 1, 2010 to March 3, 2010. It then asserted that the Service Agreements entered into by and between MHC and Regala are valid for the following reasons: (1) the terms thereof are clear and bereft of ambiguity; (2) the duration or terms of Regala's employment as indicated in the Service Agreements were determined and made known to him before each engagement; and (3) the Service Agreements were freely entered into by both parties.

A fixed-term employment, while not expressly mentioned in the Labor Code, has been recognized by this Court as a type of employment "embodied in a contract specifying that the services of the employee shall be engaged only for a definite period, the termination of which occurs upon the expiration of said period irrespective of the existence of just cause and regardless of the activity the employee is called upon to perform."[67] Along the same lines, it has been held that "[t]he fixed-term character of employment essentially refers to the period agreed upon between the employer and the employee."[68]

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[66] CA *rollo*, pp. 33-35.

[67] *Basan v. Coca-Cola Bottlers Philippines, supra* note 58, at 89.

[68] *Colegio Del Santisimo Rosario v. Rojo*, 717 Phil. 265, 279 (2013) citing *Mercado v. AMA Computer College Parañaque City, Inc.*, 632 Phil. 228 (2010).

Accordingly, "the decisive determinant in term employment should not be the activities that the employee is called upon to perform, but the *day certain* agreed upon by the parties for the *commencement and termination* of their employment relationship.[69] Specification of the date of termination is significant because an employee's employment shall cease upon termination date without need of notice.[70]

In other words, a fixed-term employment contract which otherwise fails to specify the date of effectivity *and* the date of expiration of an employee's engagement cannot, by virtue of jurisprudential pronouncement, be regarded as such despite its nomenclature or classification given by the parties. The employment contract may provide for or describe some other classification or type of employment depending on the circumstances, but it is not, properly speaking, a fixed-term employment contract.

The case of *Poseidon Fishing v. National Labor Relations Commission*[71] is instructive:

> Moreover, unlike in the Brent case where the period of the contract was fixed and clearly stated, **note that in the case at bar, the terms of employment of private respondent as provided in the Kasunduan was not only vague, it also failed to provide an actual or specific date or period for the contract.** As adroitly observed by the Labor Arbiter:
>
> > There is nothing in the contract that says complainant, who happened to be the captain of said vessel, is a casual, seasonal or a project worker. The date July 1 to 31, 1998 under the heading *"Pagdating" had been placed there merely to indicate the possible date of arrival of the vessel and is not an indication of the status of employment of the crew of the vessel.*
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> **Actually, the exception under Article 280 of the Labor Code in which the respondents have taken refuge to justify its**

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[69] *Brent School, Inc. v. Zamora*, 260 Phil. 747, 756-757 (1990).

[70] *Labayog v. M.Y. San Biscuits, Inc.*, 527 Phil. 67, 73 (2006).

[71] 518 Phil. 146 (2006).

> **position does not apply in the instant case.** The proviso, "Except where the employment has been fixed for a specific project or undertaking the completion or determination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season." (Article 280 Labor Code), **is inapplicable because the very contract adduced by respondents is unclear and uncertain. The kasunduan does not specify the duration that complainant had been hired** x x x.[72] (Emphasis and underscoring supplied.)

Considering the above premises, we find that the three Service Agreements presented by MHC cannot be regarded as true fixed-term employment contracts. A perusal thereof shows that the term of Regala's engagement with the hotel merely indicate the dates March 1, 2010, March 2, 2010, and March 3, 2010 — all of which pertain only to specified effectivity dates of Regala's engagement as waiter of MHC. The Service Agreements do not, however, unequivocally specify the periods of their expiration.

Notably, even the very terms of the Service Agreements purportedly proving Regala's fixed-term employment status are uncertain, if not altogether evasive of Regala's actual period of employment with MHC, which, in this case, commenced as early as February 2000. It bears noting that the Service Agreements furnished by MHC do not even account for Regala's employment for the previous years, especially at the time of Regala's hiring in February 2000. On this point, it is incredulous, to say the least, that the hotel merely hired Regala under a fixed-term agreement since February 2000.

All things considered, the Service Agreements presented by MHC deserves scant consideration from this Court. Mere presentation thereof does not prove that Regala had been a mere fixed-term employee. The Court cannot simply rely on the vague provisions of the Service Agreements as proof of his fixed-

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[72] Id. at 158-159.

term employment status. To do so would erroneously warrant their enforcement despite their apparent failure to express the term/s of Regala's engagement as waiter since February 2000.

The Service Agreements and/or fixed-term service contracts do not meet the criteria for valid contracts of employment with a fixed period.

Even if this Court gives credence to the Service Agreements, it can be deduced with certainty from the circumstances of the case that they do not meet the criteria of valid fixed-term employment contracts.

MHC contends that the Service Agreements, including the fixed-term service contracts, which Regala was required to sign from time to time were freely entered into by him, that the terms thereof were determined and made known to Regala at the time of his engagement, and that there was no showing that he was forced, coerced, or manipulated into signing the same.[73] In the same vein, the CA held in its May 22, 2012 Decision that "an examination of the employment contracts between the parties shows no indication that [Regala] was forced or coerced to execute the same.[74]

The foregoing contentions deserve no merit.

While this Court has recognized the validity of fixed-term employment contracts, it has consistently held that they are the exception rather than the general rule.[75] A fixed-term employment is valid only under certain circumstances. We thus laid down in *Brent School, Inc. v. Zamora*[76] parameters or criteria under which a "term employment" cannot be said to be in circumvention of the law on security of tenure, namely:

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[73] *Rollo*, p. 310.

[74] Id. at 272.

[75] *Price v. Innodata Philippines Corp.*, *supra* note 59, at 582 (2008).

[76] *Supra* note 69, at 763.

> 1) The fixed period of employment was knowingly and voluntarily agreed upon by the parties without any force, duress, or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent; or
>
> 2) It satisfactorily appears that the employer and the employee dealt with each other on more or less equal terms with no moral dominance exercised by the former or the latter.[77]

In *GMA Network, Inc. v. Pabriga*,[78] we held that "[t]hese indications, which must be read together, make the Brent doctrine applicable only in a few special cases wherein the employer and employee are more or less in equal footing in entering into the contract." The reason for this precept is premised on the following principles — "when a prospective employee, on account of special skills or market forces, is in a position to make demands upon the prospective employer, such prospective employee needs less protection than the ordinary worker. Lesser limitations on the parties' freedom of contract are thus required for the protection of the employee."[79]

As to the first guideline, the Service Agreements signed by Regala do not even prove that he knowingly agreed to be hired by MHC for a fixed-term way back in February 2000. At best, they only account for Regala's supposed fixed-term status from March 1 to 3, 2009.

It is worth noting at this point that MHC persistently asserted that Regala agreed upon a fixed-term employment while making reference to his fixed-term service contracts. Concomitantly, it failed to disprove the allegations of Regala that he was made to sign various fixed-term service contracts prepared by MHC before he can be given work assignments.[80] Indeed, MHC's

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[77] Id. at 763.

[78] 722 Phil. 161, 178 (2013).

[79] Id.

[80] *Rollo*, p. 18.

failure to furnish copies thereof gives rise to the presumption that their presentation is prejudicial to its cause.[81]

At any rate, the sample fixed-term service contract[82] presented by MHC, including the Service Agreements of Regala, readily show that they were entirely prepared by its Personnel Department. On this premise, it appears that the Service Agreements and/or the fixed-term service contracts are contracts of adhesion whose terms must be strictly construed against its unilateral crafter, MHC.[83]

A contract of adhesion is one wherein a party, such as MHC in this case, prepares the stipulations in the contract, and the other party, like Regala, merely affixes his signature or his "adhesion" thereto. It is an agreement in which the parties bargaining are not on equal footing, the weaker party's participation being reduced to the alternative 'to take it or leave it.'[84] Clearly, the Service Agreements and fixed-term service contracts were contracts of adhesion, which evidently gave Regala no realistic chance to negotiate the terms and conditions of his employment, or at best, bargain for his job at MHC. Hence, it cannot be gainsaid that Regala signed the Service Agreements and the fixed-term service contracts willingly and with full knowledge of their impact.

As to the second guideline, this Court is inclined to believe that Regala can hardly be on equal terms with MHC insofar as negotiating the terms and conditions of his employment is concerned. To be clear, a fixed-term employment agreement should result from *bona fide* negotiations between the employer and the employee. As such, they must have dealt with each other on an arm's length basis where neither of the parties have

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[81] *Basan v. Coca-Cola Bottlers Philippines, supra* note 58, at 90-91.

[82] *Rollo*, p. 304.

[83] See *Philippine Federation of Credit Cooperatives, Inc. v. National Labor Relations Commission*, 360 Phil. 254, 261 (1998).

[84] *Rowell Industrial Corporation v. Court of Appeals*, 546 Phil. 516, 528 (2007).

undue ascendancy and influence over the other. As a waiter, a rank-and-file employee, Regala can hardly stand on equal terms with MHC. Moreover, no particulars in the Service Agreements or the fixed-term service contract regarding the terms and conditions of employment indicate that Regala and MHC were on equal footing in negotiating them. The case of *Rowell Industrial Corporation v. Court of Appeals*[85] is instructive on this point:

> With regard to the second guideline, this Court agrees with the Court of Appeals that petitioner RIC and respondent Taripe cannot be said to have dealt with each other on more or less equal terms with no moral dominance exercised by the former over the latter. As a power press operator, a rank and file employee, he can hardly be on equal terms with petitioner RIC. As the Court of Appeals said, almost always, employees agree to any terms of an employment contract just to get employed considering that it is difficult to find work given their ordinary qualifications.[86] [Citation omitted]

Considering that the foregoing criteria were not met, the Service Agreements and the fixed-term service contracts which MHC had Regala execute should be struck down for being illegal.

In an attempt to convince the Court of the validity of Regala's Service Agreements, MHC contended that its system of hiring freelance waiters on an informal and temporary basis is a common practice in the hotel and restaurant industry if only to address the unforeseen rises or spikes in the volume of business.

We are not persuaded.

The practice of utilizing fixed-term contracts in the industry does not mean that such contracts, as a matter of course, are valid and compliant with labor laws.[87] Moreover, the rise and fall of customer demands are presumed in all businesses or

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[85] Id.

[86] Id.

[87] See *Dumpit-Morillo v. Court of Appeals*, 551 Phil. 725, 735 (2007).

commercial industries, more so in the industry where MHC has been a part of for several years. At this point in time, it would be incredulous to believe that it cannot yet anticipate business fluctuations to the point that it has to employ ruses and subterfuges to deny workers from attaining regular employment status. Indeed, one's employment should not be left entirely to the whims of the employer for at stake is not only the employee's position or tenure, but also his means of livelihood. In *Innodata Philippines, Inc. v. Quejada-Lopez*,[88] we held that:

> By their very nature, businesses exist and thrive depending on the continued patronage of their clients. Thus, to some degree, they are subject to the whims of clients who may decide to discontinue patronizing their products or services for a variety of reasons. Being inherent in any enterprise, this entrepreneurial risk may not be used as an excuse to circumvent labor laws; otherwise, no worker could ever attain regular employment status.[89]

In sum, Regala attained regular employment status long before he executed the Service Agreements considering that at the time he signed them in March 2010, he has already been in the employ of MHC for more than nine (9) years. Moreover, as discussed above, the nature of Regala's work is necessary and desirable, if not indispensable, in the business in which MHC is engaged. Undoubtedly, Regala has been a regular employee of the hotel since February 2000. At any rate, the Service Agreements and/or the fixed-term service contracts which MHC and Regala executed were only meant to preclude Regala from attaining regular employment status, and, thus, should be struck down or disregarded for being contrary to law, public policy or morals.

Regala was constructively dismissed from employment.

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[88] 535 Phil. 263 (2006).

[89] Id. at 273.

Being a regular employee of MHC, Regala is entitled to security of tenure. Hence, he cannot be dismissed from employment, constructive or otherwise, except for just or authorized causes.

At this juncture, Regala claims that despite having attained regular employment status, MHC, without any valid cause, reduced his regular work days to two (2) days from the normal five (5) day work week starting December 2, 2009. Regala insisted that MHC's act of unreasonably reducing his work days is tantamount to constructive dismissal.

Without addressing the issue of constructive dismissal, MHC contended, by way of rebuttal, that Regala's supposed severance from service simply resulted from the expiration of his fixed-term employment contract. Along the same lines, the CA held in its May 22, 2012 Decision that Regala's "displacement each time said fixed-term employment expired did not result in illegal dismissal."[90]

Both MHC and the CA completely missed the point at issue.

Regala's case is premised on the notion that he is a regular employee entitled to security of tenure but was otherwise constructively dismissed when MHC, without valid cause, reduced his regular work days from five (5) days to two (2) days. In other words, the question to be resolved here is whether the *reduction* of his regular work days and consequent *diminution* of his salary amounted to constructive dismissal, and not whether the supposed *cessation* of his services constituted illegal dismissal. Indeed, the determination of the latter issue is impracticable in the case at bench as MHC, and even the CA, cannot even show or identify to this Court when or at what point in time Regala's services were terminated by MHC.

Nor can it be said that MHC's defenses were responsive to Regala's allegations as they did not address the propriety or

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[90] *Rollo*, p. 273.

impropriety of the reduction of his regular work days.[91] Notably, on this point, what is clear to this Court is that MHC failed to deny Regala's allegation of constructive dismissal. Nor did it present any controverting evidence to prove otherwise. It is worth noting that, Section 11, Rule 8 of the Rules of Court, which supplements the NLRC Rules of Procedure,[92] provides that allegations which are not specifically denied are deemed admitted.[93]

In any event, this Court will look into the merits of Regala's allegations in resolving the issue of constructive dismissal.

There is constructive dismissal where "there is cessation of work because 'continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank or a diminution in pay' and other benefits. Aptly called a dismissal in disguise or an act amounting to dismissal but made to appear as if it were not, constructive dismissal may, likewise, exist if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment."[94]

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[91] In fact, in addressing Regala's claims of constructive dismissal, Regala's employment status, *i.e.*, regular or fixed-term, is inconsequential as both types of employees enjoy security of tenure. In particular, while a regular employee is entitled to security of tenure during the period of his employment, a fixed-term employee enjoys security of tenure during the pre-determined period of employment agreed upon by him and his employer. Hence, granting for the sake of argument that Regala is a fixed-term employee, MHC may not pre-terminate his services, constructive or otherwise, or commit such other acts to that effect, unless of course there are just or authorized causes and only after compliance with procedural and substantive due process.

[92] 2011 NLRC RULES OF PROCEDURE, AS AMENDED, Rule 1, Sec. 3.

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

[94] *Ico v. Systems Technology Institute, Inc.*, 738 Phil. 641, 669 (2014).

Patently, the reduction of Regala's regular work days from five (5) days to two (2) days resulted to a diminution in pay. Regala's change in his work schedule resulting to the diminution of his take home salary is, therefore, tantamount to constructive dismissal.

The fact that Regala may have continued reporting for work does not rule out constructive dismissal, nor does it operate as a waiver.[95] Thus, in *The Orchard Golf and Country Club v. Francisco*,[96] this Court held that:

> Constructive dismissal occurs not when the employee ceases to report for work, but when the unwarranted acts of the employer are committed to the end that the employee's continued employment shall become so intolerable. In these difficult times, an employee may be left with no choice but to continue with his employment despite abuses committed against him by the employer, and even during the pendency of a labor dispute between them.[97]

Considering the foregoing recitals, the fact of constructive dismissal should be reckoned on December 2, 2009, or from the time Regala was made to accept the changes of his work schedule which thereby resulted in the diminution of his take home pay.

In view therefore of Regala's constructive dismissal, reinstatement and payment of backwages must necessarily be made. Regala must be reinstated to his former position as a regular waiter of MHC without loss of seniority rights and shall enjoy the same employment benefits and privileges of a regular employee of MHC. Regala's backwages **must be computed from the time he was made to accept the changes of his work schedule which thereby resulted in the diminution** of his take home pay, or from December 2, 2009, up to actual

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[95] *The Orchard Golf and Country Club v. Francisco,* 706 Phil. 479, 499 (2013).

[96] Id.

[97] Id.

reinstatement. The amount thereof shall include benefits and allowances, or their monetary equivalent, regularly received by a regular employee of MHC with like position and rank of Regala as of the time he was constructively dismissed, as well as those granted under the Collective Bargaining Agreement, if any.

WHEREFORE, the instant Petition is hereby **GRANTED**. The May 22, 2012 Decision and November 19, 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 120748 are **REVERSED** and **SET ASIDE**. The March 24, 2011 Decision and May 31, 2011 Resolution of the National Labor Relations Commission, which declared petitioner Allan Regala, a regular employee of respondent Manila Hotel Corporation, to have been constructively dismissed from employment, are **REINSTATED and AFFIRMED**.

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

SO ORDERED.

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

Baltazar-Padilla, J., on leave.

SECOND DIVISION

[G.R. No. 207511. October 5, 2020]

PHILIPPINE TRANSMARINE CARRIERS, INC., CARLOS C. SALINAS, AND/OR GENERAL MARITIME MANAGEMENT LLC, *Petitioners, v.* **ALMARIO C. SAN JUAN,** *Respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; SEAFARER; 2000 PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (2000 POEA-SEC); DISABILITY BENEFITS; DISABILITIES, WHEN DEEMED TOTAL AND PERMANENT; REPORTING REQUIREMENT; BEFORE A SEAFARER MAY CLAIM PERMANENT TOTAL DISABILITY BENEFITS FROM HIS EMPLOYER, IT MUST BE FIRST ESTABLISHED THAT THE LATTER'S COMPANY-DESIGNATED PHYSICIAN FAILED TO ISSUE A DECLARATION AS TO HIS FITNESS TO ENGAGE IN SEA DUTY OR DISABILITY GRADING WITHIN THE 120-DAY PERIOD OR 240-DAY EXTENSION PROVIDED FOR BY LAW.— Since San Juan's employment contract was executed on August 26, 2009, his entitlement to disability benefits is governed by the Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships (2000 POEA-SEC), and pertinent labor laws, which are deemed incorporated into his employment contract with PTCI.

In this regard, Article 192(c)(1) [now Article 198(c)(1)] of the Labor Code, as amended, defines permanent total disability, as follows:

> Art. 192. Permanent total disability. – x x x
>
> (c) The following disabilities shall be deemed total and permanent:
>
> (1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules;

The Rules being referred to in Article 192(c)(1) is Section 2, Rule X of the Amended Rules on Employees' Compensation Implementing Title II, Book IV of the Labor Code . . . .

. . .

In *Vergara v. Hammonia Maritime Services, Inc.*, this Court aptly explained the foregoing recitals in this wise, *viz.*:

> As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on *temporary total disability* as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.

2. ID.; ID.; ID.; SEAFARER'S CAUSE OF ACTION FOR TOTAL AND PERMANENT DISABILITY, WHEN ARISES; A SEAFARER HAS NO BASIS TO CLAIM TOTAL AND PERMANENT DISABILITY BENEFITS, WHERE HE WAS DECLARED FIT TO RESUME SEA DUTIES BY THE COMPANY-DESIGNATED PHYSICIANS WITHIN THE 120-DAY PERIOD PROVIDED UNDER THE LAW.— Based on *Vergara*, it is settled that before a seafarer may claim permanent total disability benefits from his employer, it must be first established that the latter's company-designated physician failed to issue a declaration as to his fitness to engage in sea-duty or disability grading within the 120-day period or 240-

day extension provided for by law. From *Vergara*, this Court, in *C.F. Sharp Crew Management, Inc. v. Taok* proceeded a step further by delineating the circumstances under which a seafarer may pursue an action for total and permanent disability benefits, *viz.*:

> Based on this Court's pronouncements in Vergara, it is easily discernible that the 120-day or 240-day period and the obligations the law imposed on the employer are determinative of when a seafarer's cause of action for total and permanent disability may be considered to have arisen. Thus, a seafarer may pursue an action for total and permanent disability benefits if: **(a) the company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lapse of the 120-day period and there is no indication that further medical treatment would address his temporary total disability, hence, justify an extension of the period to 240 days; (b) 240 days had lapsed without any certification being issued by the company-designated physician; (c) the company-designated physician declared that he is fit for sea duty within the 120-day or 240-day period, as the case may be, but his physician of choice and the doctor chosen under Section 20-B(3) of the POEA-SEC are of a contrary opinion;** . . .

We have held that the 120-day period should be reckoned from the time the seafarer reported to the company-designated physician. If the company-designated physician fails to give his assessment within the period of 120 days with sufficient justification, then the period of diagnosis and treatment shall be extended to 240 days.

In the instant case, there is no dispute that San Juan reported to the company-designated physicians for examination and treatment immediately upon repatriation on February 1, 2010. Nor is there dispute on the medical treatment received by San Juan from MMC, or that he was eventually certified by two company-designated physicians as normal and fit to work for seaman duties on April 20, 2010 and April 30, 2010. Notably, the company-designated physicians issued San Juan's fit-to-

work certifications 89 days after February 1, 2010, which is well within the 120-day period provided under Section 20(B)(3) of the 2000 POEA-Standard Employment Contract (SEC). Significantly, this finding was not disputed nor controverted by the parties.

As he was declared fit to resume sea duties, there was, therefore, no basis for San Juan to claim total and permanent disability benefits from PTCI.

3. ID.; ID.; ID.; WHEN A SEAFARER SUSTAINS A WORK-RELATED ILLNESS OR INJURY WHILE ON BOARD THE VESSEL, THE COMPANY-DESIGNATED PHYSICIAN SHALL MAKE A VALID AND TIMELY ASSESSMENT OF HIS FITNESS OR UNFITNESS FOR WORK, AND IF THE APPOINTED DOCTOR OF THE SEAFARER REFUTED SUCH ASSESSMENT, REFERRAL OF THE CONFLICTING MEDICAL ASSESSMENTS TO A THIRD DOCTOR IS MANDATORY, WHOSE DECISION SHALL BE FINAL AND BINDING ON BOTH PARTIES; IN THE ABSENCE OF A THIRD DOCTOR'S OPINION, THE MEDICAL ASSESSMENT OF THE COMPANY-DESIGNATED PHYSICIAN PREVAILS.— Settled is the rule that when a seafarer sustains a work-related illness or injury while on board the vessel, his fitness or unfitness for work shall be determined by the company-designated physician, and that "in case of conflicting medical assessments [between the company-designated physician and the seafarer's own physician], referral to a third doctor is *mandatory*; and that in the absence of a third doctor's opinion, it is the medical assessment of the company-designated physician that should prevail." Relevant to this rule is Section 20(B)(3) of the 2000 POEA-SEC, which similarly states that "[i]f a doctor appointed by the seafarer disagrees with the assessment [of the company-designated physician], a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties."

In *Marlow Navigation Philippines, Inc. v. Osias* (*Marlow*), this Court held that "the referral to a third doctor is mandatory when: (1) there is a valid and timely assessment by the company-designated physician[;] and (2) the appointed doctor of the seafarer refuted such assessment." Notably, both these circumstances are present in this case.

4. ID.; ID.; ID.; ID.; THIRD-DOCTOR REFERRAL; IN CASE OF DISAGREEMENT BETWEEN THE FINDINGS OF THE SEAFARER'S PHYSICIAN AND THAT OF THE COMPANY-DESIGNATED PHYSICIANS, THE SEAFARER IS DUTY-BOUND TO ACTIVELY REQUEST FROM THE COMPANY THAT THE CONFLICTING ASSESSMENT BE REFERRED TO A THIRD DOCTOR; UPON NOTIFICATION, THE COMPANY CARRIES THE BURDEN OF INITIATING THE PROCESS FOR THE REFERRAL TO A THIRD DOCTOR COMMONLY AGREED BETWEEN THE PARTIES; THE SEAFARER SEEKING TO IMPUGN THE CERTIFICATION THAT THE LAW ITSELF RECOGNIZES AS PREVAILING, BEARS THE BURDEN OF POSITIVE ACTION TO PROVE THAT HIS PHYSICIAN'S FINDINGS ARE CORRECT, AS WELL AS THE BURDEN TO NOTIFY THE COMPANY THAT A CONTRARY FINDING HAD BEEN MADE BY HIS OWN PHYSICIAN.— . . . [T]he prescribed procedure in contesting the findings of the company-designated physicians has been laid out by this Court in *Carcedo v. Maine Marine Philippines, Inc. (Carcedo), viz*.:

> To definitively clarify how a conflict situation should be handled, upon notification that the seafarer disagrees with the company doctor's assessment based on the duly and fully disclosed contrary assessment from the seafarer's own doctor, the seafarer shall then signify his intention to resolve the conflict by the referral of the conflicting assessments to a third doctor whose ruling, under the POEA-SEC, shall be final and binding on the parties. Upon notification, the company carries the burden of initiating the process for the referral to a third doctor commonly agreed between the parties. . . .
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> . . .

. . . [B]ased on *Carcedo,* San Juan was duty-bound to actively request that the disagreement between his physician's findings and that of the findings of PTCI's company-designated physicians be referred to a final and binding third opinion. The records, however, are bereft of any such evidence that San Juan requested PTCI to refer the conflicting assessments of the physicians to

a third doctor. Notably, "[a]s the party seeking to impugn the certification that the law itself recognizes as prevailing, [San Juan] bears the burden of *positive action* to prove that his [physician's] findings are correct, as well as the burden to notify [PTCI] that a contrary finding had been made by his own physician." Clearly, in the absence of any such request, PTCI cannot be expected to respond, more so refer the conflicting findings to a third doctor.

In the absence of a third doctor resolution, the assessments of PTCI's company-designated physicians should stand. As held in *Marlow*, "[a]bsent proper compliance, the final medical report and the certification of the company-designated physician declaring him fit to return to work must be upheld. Ergo, he is not entitled to permanent and total disability benefits."

5. ID.; ID.; ID; ID.; THE FINDINGS OF THE COMPANY-DESIGNATED PHYSICIANS WHO ASSESS THE ILLNESS OF THE SEAFARER BASED ON A NUMBER OF TESTS AND MEDICAL EVALUATION DONE ON HIM, DESERVE TO BE GIVEN GREATER EVIDENTIARY WEIGHT, THAN THE FINDINGS OF THE PHYSICIAN DESIGNATED BY THE SEAFARER WHICH WERE BASED ON A SINGLE MEDICAL REPORT EXAMINATION OF THE SEAFARER; THE CERTIFICATION ISSUED BY THE SEAFARER'S OWN PHYSICIAN CANNOT BE THE BASIS FOR HIS CLAIM FOR PERMANENT AND TOTAL DISABILITY BENEFITS WHERE THE SAME MERELY PROVIDES THAT THE SEAFARER IS UNFIT TO RESUME SEA DUTIES, BUT DID NOT STATE THE DISABILITY GRADING AS REQUIRED BY THE POEA-SEC.— . . . [T]he certification issued by San Juan's physician cannot prevail over the conclusions of PTCI's company-designated physicians. The company-designated physicians were in a better position to assess the illness or disability of San Juan considering that their findings were based on a number of tests *i.e.*, stress test and Cranial MRI, and medical evaluation done on San Juan. Contrarily, it is undisputed that the recommendation of San Juan's physician was based on a single medical report who examined San Juan only once, which, we note, was issued several months after his fit-to-work certifications were issued by PTCI's company-designated physicians. Thus, as between the findings of the company-designated physicians, and the physician designated

by San Juan, the former deserves to be given greater evidentiary weight. In any event, the certification issued by San Juan's own physician could not serve as basis for his claim for permanent and total disability benefits because it merely stated that he is unfit to resume sea duties; it did not state the disability grading as required by the POEA-SEC.

6. ID.; ID.; ID.; ID.; THE NON-HIRING OF THE SEAFARER BY THE MANNING AGENCY IS NOT A CONVINCING PROOF THAT HIS ILLNESS OR DISABILITY IS PERMANENT.— Neither can we lend credence to the CA's findings that the non-hiring of San Juan served as convincing proof that his illness or disability is permanent. Our pronouncement in *Philippine Hammonia Ship Agency, Inc. v. Dumadag* is instructive, to wit: . . .

. . .

> **Finally, we find the pronouncement that Dumadag's non-hiring by the petitioners as the most convincing proof of his illness or disability without basis. There is no evidence on record showing that he sought re-employment with the petitioners or that it was a** matter **of course for the petitioners to re-hire him after the expiration of his contract. Neither is there evidence on Dumadag's claim that he applied with other manning agencies, but was turned down due to his illness.**

7. ID.; ID.; ID.; ID.; A SEAFARER IS ENTITLED TO SICKNESS ALLOWANCE COMPUTED FROM THE TIME HE SIGNED-OFF FROM THE VESSEL FOR MEDICAL TREATMENT UNTIL HE IS DECLARED MEDICALLY FIT TO WORK OR HIS FINAL MEDICAL DISABILITY HAS BEEN ASSESSED BY THE COMPANY-DESIGNATED PHYSICIAN; RESPONDENT IS ENTITLED TO THE BALANCE OF HIS SICKNESS ALLOWANCE, WHICH SHALL EARN INTEREST AT THE RATE OF SIX PERCENT (6%) *PER ANNUM*.— Section 20(B)(3) of the 2000 POEA-SEC provides that:

> 3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is

> declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.
>
> Clearly, a seafarer's sickness allowance is computed from the time he signed-off from the vessel for medical treatment until he is declared medically fit to work or his final medical disability has been assessed by the company-designated physician. In this case, it is undisputed that San Juan signed off from the vessel on January 23, 2010 and was declared fit to work on April 20, 2010 and April 30, 2010 by the company-designated physicians, or after an interval of 97 days. Considering that San Juan was paid his sickness allowance for only 89 days, then he is entitled to receive additional sickness allowance of eight more days. Moreover, the additional sickness allowance shall earn interest at the rate of six percent (6%) per *annum* from the date of finality of this Decision until fully paid.

APPEARANCES OF COUNSEL

Del Rosario Del Rosario for petitioners.
Rowena A. Martin for respondent.

D E C I S I O N

HERNANDO, *J.*:

This Petition for Review on *Certiorari*[1] assails the December 11, 2012 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 121634, which set aside the May 26, 2011 Decision[3]

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[1] *Rollo*, pp. 33-53.

[2] Id. at 62-79; penned by Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Jane Aurora C. Lantion and Eduardo B. Peralta, Jr.

[3] CA *rollo*, pp. 308-315; penned by Commissioner Romeo L. Go and concurred in by Presiding Commissioner Gerardo C. Nograles and Commissioner Perlita B. Velasco.

and July 15, 2011 Resolution[4] of the National Labor Relations Commission (NLRC) denying the award of permanent total disability benefits, sickness allowance, damages and attorney's fees to respondent Almario C. San Juan (San Juan). In a June 6, 2013 Resolution,[5] the CA refused to reconsider its earlier Decision.

Antecedent Facts

This case stemmed from a Complaint[6] for recovery of permanent total disability benefits, medical expenses, compensatory, moral, and exemplary damages, and attorney's fees filed by San Juan against petitioners Philippine Transmarine Carriers, Inc. (PTCI), General Maritime Management LLC, and Carlos C. Salinas (Salinas), president and/or local manager of PTCI.

PTCI is engaged in the business of providing marine management services. It hired San Juan on several occasions as Chief Cook during the periods from February 24, 1992 to May 15, 2008.[7] He was re-hired on August 26, 2009 in behalf of PTCI's principal, General Maritime Management LLC, to work as a Chief Cook aboard the vessel MV Genmar George T for a period of eight (8) months.[8] Prior to his embarkation, San Juan underwent a routine Pre-Employment Medical Examination (PEME) where he declared that he suffered from "hypertension treated with medication."[9] San Juan was eventually given cardiac clearance and was certified as "fit to work"[10] by PTCI's company-designated physicians.

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[4] Id. at 338-339.

[5] Id. at 102.

[6] CA *rollo*, pp. 49-50.

[7] Id. at 83.

[8] Id. at 53.

[9] *Rollo*, p. 111.

[10] CA *rollo*, p. 80.

On September 12, 2009,[11] San Juan departed from the Philippines and commenced his work on board the vessel. San Juan claimed that he performed hard manual labor and engaged in strenuous physical activities for twelve (12) hours a day. He eventually suffered fatigue, shortness of breath, and severe headaches. His condition worsened when he worked on food preparations for three (3) consecutive days, or from December 24 to 26, 2009. San Juan further alleged that he collapsed several times during the voyage due to lack of medications and medical attention.

Due to his condition, San Juan was brought to a medical facility in India for a medical examination and treatment. On January 19, 2010, his attending physician issued a Medical Certificate[12] indicating the following, *viz.*:

> The crewmember has presented high blood pressure which is not controlled by the medication he is taking currently.[13]

On January 23, 2010, San Juan signed off from the vessel and was medically repatriated to the Philippines on February 1, 2010. He was immediately referred to the company-designated physicians at the Metropolitan Medical Center (MMC) for medical examination and further treatment.[14]

After treatment and having undergone a treadmill stress test and Cranial Magnetic Resonance Imaging (Cranial MRI), Dr. Jaime Cayetano and Dr. Raymond L. Rosales, attending cardiologist and neurologist, respectively, of MMC, certified on April 20, 2010 and April 30, 2010 that San Juan was fit for duty. The Medical Certificates issued by Dr. Cayetano and Dr. Rosales state as follows:

> Mr. Almario San Juan, 54-year-old male followed up. Patient was diagnosed to have Hypertension Stage II controlled with medications.

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[11] Id. at 84.

[12] Id. at 87.

[13] Id.

[14] *Rollo*, p. 118.

His Stress Test is normal. **He is fit to resume sea duties cardiovascular-wise**. Final clearance care of neurologic service.

Continue lifestyle and medications onboard.

Dr. Jaime F. Cayetano[15] (Emphasis supplied)

Cranial MRI did not show frontal white matter hypodensity nor any other abnormality.

No headaches.

May resume sea duties from neurological standpoint.

RAYMOND L. ROSALES M.D., Ph.D.[16] (Emphasis supplied)

San Juan averred that although he executed a Certificate of Fitness for Work[17] on April 30, 2010, he was not, however, rehired by PTCI. He also claimed that he applied for employment with other manning agencies, but was unsuccessful.

On May 26, 2010, San Juan filed the instant complaint against PTCI, General Maritime Management LLC, and Salinas seeking payment of his permanent disability benefits and sickness allowance, among others. Meanwhile, on July 8, 2010, San Juan sought a second medical opinion from Dr. Antonio C. Pascual, a cardiologist from the Philippine Heart Center, who, on the same day, certified that San Juan was "medically unfit to work in any capacity as seaman."[18] The following are Dr. Pascual's findings, *viz.*:

This is to certify that SAN JUAN, ALMARIO of 295 Molave St., Sabang Subd., Lipa City was seen and examined on 08-Jul-10 with the following finding/s and/or diagnoses:

Hypertensive Heart Disease, Uncontrolled.

x x x x x x x x x

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[15] CA *rollo*, p. 131.

[16] Id. at 132.

[17] Id. at 133.

[18] Id. at 98.

- Patient consulted at the clinic with complains of recurrent headache and dizziness. On examination, BP = 200/135 mm Hg, HR = 90/ min. ECG: Sinus rhythm. Left atrial abnormality.

- At present, patient is **MEDICALLY UNFIT TO WORK** in any capacity as a seaman.

- Advised to have regular medical check-up and maintain on the following medications: Atenolol (Tenorvas) 100 mg/tab, 1 tablet daily; Telmisartan + HCTZ (Micardis Plus) 80+25 mg/tab, 1 tablet daily; Amlodipine Besylate (Provasc) 10 mg/tab, 1 tablet daily; Aspirin (Aspilets) 80 mg/tab; 1 tablet daily; and Fenofibrate 200 mg/cap, 1 capsule daily.[19] (Emphasis supplied)

San Juan further alleged that he was only given sickness allowance for three (3) months instead of four (4) months, which only amounted to US$2,094.00, or US$698.00 per month, leaving a balance of US$698.00.

Ruling of the Labor Arbiter

On November 18, 2010, the Labor Arbiter (LA) promulgated a Decision,[20] the dispositive portion of which states:

WHEREFORE, in view of the foregoing, respondents are hereby ordered to pay complainant his permanent total disability benefit in the amount of **US$60,000.00** and sickness wages in the amount of **US$698.00** plus attorney's fees amounting to **US$6,069.80** in their equivalent in Philippine Currency at the time of payment.

All other claims are denied.

SO ORDERED.[21]

The LA concluded that San Juan's engagement as Chief Cook since 1992 proved that he acquired his illness in the course of his employment with PTCI, and that his medical condition was aggravated by his day-to-day duties on board the vessel.

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[19] Id.

[20] Id. at 237-252.

[21] Id. at 252.

The LA further held that San Juan could no longer qualify as a person fit for work at sea under the Philippine Overseas Employment Administration (POEA) standards for the following reasons: *First*, his recurrent hypertension is listed as one of the occupational diseases under the POEA rules; *second*, he has been taking a total of five medications for his hypertension; and *third*, his blood pressure ranges from 140/90 mmHG to 200/135 mmHG on average.

The LA noted that the fact that PTCI did not rehire San Juan as Chief Cook, or that he was unable to find employment with other manning agencies, support the conclusion that he is not physically fit to work. The LA also disregarded the Certification of Fitness to Work on the finding that PTCI forced San Juan to sign and execute the same.

The LA thus awarded San Juan permanent and total disability benefits amounting to US$60,000.00. As San Juan has been undergoing medication and treatment for his hypertension, the LA also awarded him the balance of his sickness allowance amounting to US$698.00. Although the LA awarded San Juan attorney's fees in the amount of US$6,069.80, his claims for moral, exemplary, and compensatory damages were denied for lack of merit.

Ruling of the National Labor Relations Commission

In their appeal[22] to the NLRC, petitioners averred that the LA committed serious and palpable error in awarding San Juan total and permanent disability benefits. Petitioners mainly contended that San Juan's successive employment with the PTCI does not necessarily prove that his illness is work-related. Petitioners also argued that San Juan has not presented substantial evidence to show that his illness was aggravated by his work as Chief Cook. To further counter San Juan's claim for disability benefits, petitioners emphasized that the fact that San Juan was declared as physically fit to work by no less than two physicians

[22] Id. at 205-223.

proved that he is not beset with any disability, which therefore negates his claim of entitlement to permanent total disability benefits.

In discrediting the medical certificate issued by San Juan's own physician, petitioners pointed out that San Juan procured the said certificate only after more than two (2) months since the PTCI's company-designated physicians issued their respective fit-to-work certifications. Petitioners concluded that the certification of San Juan's designated physician did not accurately present San Juan's medical condition considering the intervening time and possible external factors that may have aggravated San Juan's condition prior to his consultation with his chosen physician. Petitioners also alleged that since San Juan's fit-to-work certifications were issued by the company-designated physicians within the 120-day period as prescribed under the POEA rules, then he cannot, by legal contemplation, be considered as permanently disabled.

Petitioners further insisted that the Certification of Fitness of Work is valid and binding absent any showing that San Juan was coerced or deceived by PTCI into signing or executing the same. Petitioners also disagreed with the findings of the LA that San Juan's non-rehiring served as a badge of his unfitness to work at sea since re-hiring of employees is within PTCI's management prerogative.

Anent the claim for the balance of San Juan's sickness allowance, petitioners argued that the POEA rules state that sickness allowance for 120 days must be paid if the seafarer is under medical treatment for 120 days. As San Juan was declared fit to work on his 89th day of treatment, he can no longer claim the balance of his sickness allowance amounting to US$698.00.

In its May 26, 2011 Decision,[23] the NLRC reversed the Decision of the LA and dismissed San Juan's complaint for payment of permanent total disability benefits and sickness

[23] Id. at 308-315.

allowance. The dispositive portion of the Decision states, as follows:

> **WHEREFORE**, the instant appeal is GRANTED. Accordingly, the Decision of Labor Arbiter Fe S. Cellan dated November 18, 2010 is REVERSED and SET ASIDE. Complainant's complaint is dismissed for lack of merit.
>
> **SO ORDERED**.[24]

The NLRC found that San Juan failed to substantiate his claim that the conditions of his employment caused or aggravated the risk of contracting his illness. It held that his hypertension cannot be classified as an occupational disease under the POEA rules. It emphasized that as early as April of 2010, San Juan's blood pressure was controlled at 130/80 mmHg, and that the company-designated physicians have already certified his fitness to work. Although San Juan's blood pressure was 200/135 mmHg during his follow-up consultation with his physician on July 8, 2010, the NLRC noted that such finding was made months after he was declared fit to work by the company-designated physicians. Moreover, San Juan's execution of the Certification of Fitness for Work belied his allegation that he is unfit to work.

The NLRC also held that San Juan is not totally and permanently disabled considering that his degree of his disability was established within 240 days from his repatriation, thus:

> The fitness of work of complainant was established within the 240-day period. Complainant was medically signed [off] on February 1, 2010 while his degree of disability was established on [April] 30, 2010. Complainant is under medical treatment for eighty nine (89) days or for less than 240 days. A temporary total disability only becomes permanent when so declared by the company physician within the periods he is allowed to do so, or upon the expiration of the maximum 240-day medical treatment period without a declaration of either fitness to work or the existence of a permanent disability. In this case, complainant within the 240-day period, he was declared

[24] Id. at 314.

fit to work. In the absence of any disability after his temporary disability was addressed, any further discussion of permanent partial and total disability, their existence, distinctions and consequences, becomes a surplusage that serves no useful purpose. x x x[25] (Citations omitted)

Moreover, the NLRC denied San Juan's claim for the balance of his sickness allowance since he was already declared fit to work on his 89th day of treatment. The NLRC also denied his claim for attorney's fees.

San Juan filed a Motion for Reconsideration[26] which was, however, denied by the NLRC in its July 15, 2011 Resolution.[27]

Ruling of the Court of Appeals

Aggrieved, San Juan filed a Petition for *Certiorari*[28] with the CA ascribing upon the NLRC grave abuse of discretion when it denied his claims for disability benefits, sickness allowance, damages and attorney's fees. In his petition, San Juan discredited the fit-to-work certifications of the company-designated physicians given that they were squarely contradicted by the subsequent findings of his own physician, which attested to his unfitness to work due to hypertensive heart disease. On this point, San Juan averred that the medical certificate issued by his physician, as opposed to the fit-to-work certifications of the company-designated physicians, is in accord with the Department of Health Administrative Order No. 2007-0025, series of 2007, or the Revised Guidelines for Conducting Medical Fitness Examinations for Seafarers.

In their Comment[29] to San Juan's Petition for *Certiorari*, petitioners argued that the report and findings of PTCI's company-designated physicians should be accorded great weight

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[25] Id. at 313.

[26] Id. at 316-335.

[27] Id. at 338-339.

[28] Id. at 3-42.

[29] Id. at 356-404.

and respect considering the amount of time and effort these physicians spent in treating and evaluating San Juan's condition. Moreover, petitioners argued that although San Juan was diagnosed with hypertension and vascular headache, these illnesses, however, are not classified as compensable under the POEA rules.

On December 11, 2012, the CA rendered its assailed Decision[30] granting San Juan's Petition for *Certiorari* and setting aside the May 26, 2011 Decision and July 15, 2011 Resolution of the NLRC. The dispositive portion of the appellate court's December 11, 2012 Decision reads as follows:

> **WHEREFORE**, the instant petition is **GRANTED**. The assailed Decision and Resolution of the National Labor Relations Commission dated May 26, 2011 and July 15, 2011, respectively, in NLRC NCR OFW Case No. (M) 05-07351-10 [are] hereby **REVERSED** and **SET ASIDE**. The November 18, 2010 Decision of the Labor Arbiter is **REINSTATED** with **MODIFICATION** in that the award for attorney's fees is deleted for want of factual and legal bases.
>
> **SO ORDERED.**[31] (Emphasis in the original)

In granting permanent total disability benefits to San Juan, the CA found that San Juan was able to establish a causal connection between the conditions of his work and his illness. Although San Juan's illness is not among the list of occupational diseases under the POEA rules, the CA held that his condition is, nonetheless, disputably presumed to be work-related which petitioners failed to rebut by controverting evidence. The appellate court also found that San Juan's illness was acquired in the course of his employment with PTCI. It further held that:

> x x x assessments of the company-designated physicians are not final, binding, or conclusive on the courts. x x x
>
> Here, We note that petitioner was employed by private respondents as chief cook since 1992. However, from the time he was repatriated

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[30] *Rollo*, pp. 62-79.

[31] Id. at 78.

in February 2010 until the filing of the instant Petition more than a year later, petitioner had not been able to obtain gainful employment as a seaman, not even with herein private respondents. If petitioner San Juan was fit to work on April 30, 2010, private respondents could then have taken him back to continue his work as chief cook. That he was not, his disability, therefore, is undoubtedly permanent.[32]

The CA also granted San Juan's claims for the balance of his sickness allowance amounting to US$698.00. His claims for moral, exemplary, and compensatory damages, and attorney's fees were, however, denied for lack of merit.

Petitioners filed a Motion for Reconsideration[33] but the CA denied the same in its June 6, 2013 Resolution.[34]

Hence, the instant Petition.

Issues

Petitioners raise the following assignment of errors:

I. With all due respect, the [CA] committed serious, reversible error of law in disregarding the fit to work assessment of the company-designated physician[s]. x x x

x x x x x x x x x[35]

II. With all due respect, the [CA] committed serious, reversible error of law in awarding disability benefits in favor of [San Juan] despite the ruling of this Honorable Supreme Court in the recent case of [*CF Sharp Crew Management, Inc. v. Taok*] x x x

x x x x x x x x x[36]

III. With all due respect, the [CA] committed serious, reversible error of law in awarding in favor of [San Juan] despite his failure to

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[32] Id. at 26.

[33] Id. at 80-98.

[34] CA *rollo*, p. 102.

[35] *Rollo*, p. 41.

[36] Id. at 47.

prove by substantial evidence a causal connection between his illness and the work for which he had been contracted to perform x x x

x x x x x x x x x[37]

IV. With all due respect, the [CA] committed serious, reversible error of law in awarding further payment of sickness wages to [San Juan].[38]

Simply put, the issue in the instant case is whether or not the CA erred in awarding San Juan permanent total disability benefits and the balance of his sickness allowance amounting to US$698.00.

Our Ruling

San Juan is not entitled to his claim for permanent and total disability benefits.

In granting San Juan permanent total disability benefits, the CA emphasized that San Juan's medical condition is disputably presumed to be work-related, that it was acquired in the course of his employment with PTCI, and it was caused or aggravated by the working conditions aboard the vessel. The appellate court also held that while the company-designated physicians were qualified to assess San Juan's disability, their findings, nonetheless, are not conclusive on the courts. On this point, the CA noted that despite having been certified as fit to work, San Juan was refused employment by PTCI when he reported back for work. The appellate court ratiocinated that if San Juan was indeed fit to work as of April 30, 2010, PTCI could have allowed him to continue his work on board the vessel as Chief Cook. It is on this premise that the CA concluded that San Juan's disability is total and permanent.

It appears that the CA, in finding San Juan's disability as total and permanent, completely disregarded the prescribed

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[37] Id. at 50-51.

[38] Id. at 52.

procedure for the determination of disability compensation claims, particularly with respect to the resolution of conflicting disability assessments of PTCI's company-designated physicians and San Juan's own physician. The appellate court even went as far as to say that petitioners failed to present controverting evidence which would merit denial of payment of disability benefits to San Juan despite their submission of his fit-to-work certifications. We thus find the ruling of the CA seriously flawed as it was rendered in flagrant disregard of established rules on permanent disability compensation.

San Juan was declared fit to resume sea duties.

Since San Juan's employment contract was executed on August 26, 2009, his entitlement to disability benefits is governed by the Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships (2000 POEA-SEC),[39] and pertinent labor laws, which are deemed incorporated into his employment contract with PTCI.[40]

In this regard, Article 192 (c) (1) [now Article 198 (c) (1)] of the Labor Code, as amended, defines permanent total disability, as follows:

> Art. 192. Permanent total disability. — x x x
>
> (c) The following disabilities shall be deemed total and permanent:
>
> (1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules;

The Rules being referred to in Article 192 (c) (1) is Section 2, Rule X of the Amended Rules on Employees' Compensation Implementing Title II, Book IV of the Labor Code,[41] which states:

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[39] POEA Memorandum Circular No. 9, Series of 2000, dated June 4, 2000.

[40] *TSM Shipping Phils., Inc. v. Patiño*, 807 Phil. 666, 676 (2017).

[41] Id. at 676-677.

Sec. 2. Period of Entitlement. — (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.

Meanwhile, Section 20 (B) (3) of the 2000 POEA-SEC also provides that:

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.

In *Vergara v. Hammonia Maritime Services, Inc.*,[42] this Court aptly explained the foregoing recitals in this wise, *viz.*:

As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on *temporary total disability* as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.[43]

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[42] 588 Phil. 895 (2008).

[43] Id. at 912.

Based on *Vergara*, it is settled that before a seafarer may claim permanent total disability benefits from his employer, it must be first established that the latter's company-designated physician failed to issue a declaration as to his fitness to engage in sea-duty or disability grading within the 120-day period or 240-day extension provided for by law. From *Vergara*, this Court, in *C.F. Sharp Crew Management, Inc. v. Taok*[44] proceeded a step further by delineating the circumstances under which a seafarer may pursue an action for total and permanent disability benefits, *viz.*:

> Based on this Court's pronouncements in Vergara, it is easily discernible that the 120-day or 240-day period and the obligations the law imposed on the employer are determinative of when a seafarer's cause of action for total and permanent disability may be considered to have arisen. Thus, a seafarer may pursue an action for total and permanent disability benefits if: **(a) the company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lapse of the 120-day period and there is no indication that further medical treatment would address his temporary total disability, hence, justify an extension of the period to 240 days; (b) 240 days had lapsed without any certification being issued by the company-designated physician; (c) the company-designated physician declared that he is fit for sea duty within the 120-day or 240-day period, as the case may be, but his physician of choice and the doctor chosen under Section 20-B(3) of the POEA-SEC are of a contrary opinion**; (d) the company-designated physician acknowledged that he is partially permanently disabled but other doctors who he consulted, on his own and jointly with his employer, believed that his disability is not only permanent but total as well; (e) the company-designated physician recognized that he is totally and permanently disabled but there is a dispute on the disability grading; (f) the company-designated physician determined that his medical condition is not compensable or work-related under the POEA-SEC but his doctor-of-choice and the third doctor selected under Section 20-B(3) of the POEA-SEC found otherwise and declared him unfit to work; (g) the company-designated physician declared him totally and permanently disabled

[44] 691 Phil. 521 (2012).

but the employer refuses to pay him the corresponding benefits; and (h) the company-designated physician declared him partially and permanently disabled within the 120-day or 240-day period but he remains incapacitated to perform his usual sea duties after the lapse of the said periods.[45] (Emphasis supplied)

We have held that the 120-day period should be reckoned from the time the seafarer reported to the company-designated physician.[46] If the company-designated physician fails to give his assessment within the period of 120 days with sufficient justification, then the period of diagnosis and treatment shall be extended to 240 days.[47]

In the instant case, there is no dispute that San Juan reported to the company-designated physicians for examination and treatment immediately upon repatriation on February 1, 2010. Nor is there dispute on the medical treatment received by San Juan from MMC, or that he was eventually certified by two company-designated physicians as normal and fit to work for seaman duties on April 20, 2010 and April 30, 2010. Notably, the company-designated physicians issued San Juan's fit-to-work certifications 89 days after February 1, 2010, which is well within the 120-day period provided under Section 20 (B) (3) of the 2000 POEA-Standard Employment Contract (SEC). Significantly, this finding was not disputed nor controverted by the parties.

As he was declared fit to resume sea duties, there was, therefore, no basis for San Juan to claim total and permanent disability benefits from PTCI.

The findings of the company-designated physicians should prevail.

It is significant to note that when San Juan filed the instant complaint on May 26, 2010, he was under the belief that he is

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[45] Id. at 538-539.

[46] *Talaroc v. Arpaphil Shipping Corporation*, 817 Phil. 598, 612 (2017).

[47] Id.

totally and permanently disabled from rendering work as he was unable to resume work since his repatriation on February 1, 2010. Notably, the complaint was also prematurely filed since at that time, San Juan was not yet armed with a medical certificate from his physician of choice. It was only after the filing of the complaint, or on July 8, 2010, that San Juan sought the opinion of Dr. Pascual, his own physician. It is on the basis of finding of his physician, *i.e.*, that he is "medically unfit to work in any capacity as seaman,"[48] that San Juan is claiming for permanent total disability benefits.

The issue thus brought to fore is whether the contrary findings of San Juan's own physician should be upheld over the fit-to-work certifications issued by PTCI's company-designated physicians.

Settled is the rule that when a seafarer sustains a work-related illness or injury while on board the vessel, his fitness or unfitness for work shall be determined by the company-designated physician,[49] and that "in case of conflicting medical assessments [between the company-designated physician and the seafarer's own physician], referral to a third doctor is *mandatory*; and that in the absence of a third doctor's opinion, it is the medical assessment of the company-designated physician that should prevail."[50] Relevant to this rule is Section 20 (B) (3) of the 2000 POEA-SEC, which similarly states that "[i]f a doctor appointed by the seafarer disagrees with the assessment [of the company-designated physician], a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties."

In *Marlow Navigation Philippines, Inc. v. Osias (Marlow)*,[51] this Court held that "the referral to a third doctor is mandatory

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[48] CA *rollo*, p. 98.

[49] POEA-SEC, Section 20 [B] (3).

[50] *Abosta Shipmanagement Corporation v. Delos Reyes*, G.R. No. 215111, June 20, 2018.

[51] 773 Phil. 428 (2015).

when: (1) there is a valid and timely assessment by the company-designated physician[;] and (2) the appointed doctor of the seafarer refuted such assessment."[52] Notably, both these circumstances are present in this case.

To emphasize, this referral to a third doctor has been consistently held by this Court as a mandatory procedure.[53] The case of *INC Navigation Co., Philippines, Inc. v. Rosales*[54] is instructive, *viz.*:

> This referral to a third doctor has been held by this Court to be a mandatory procedure as a consequence of the provision that it is the company-designated doctor whose assessment should prevail. In other words, **the company can insist on its disability rating even against a contrary opinion by another doctor, unless the seafarer expresses his disagreement by asking for the referral to a third doctor who shall make his or her determination and whose decision is final and binding on the parties.** We have followed this rule in a string of cases, among them, *Philippine Hammonia [v. Dumadag], Ayungo v. Beamko Ship Management Corp., Santiago v. Pacbasin Ship Management, Inc., Andrada v. Agemar Manning Agency, and Masangkay v. Trans-Global Maritime Agency, Inc.* Thus, at this point, the matter of referral pursuant to the provision of the POEA-SEC is a settled ruling.[55] (Emphasis supplied; citations omitted)

Accordingly, the prescribed procedure in contesting the findings of the company-designated physicians has been laid out by this Court in *Carcedo v. Maine Marine Philippines, Inc. (Carcedo)*,[56] *viz.*:

> To definitively clarify how a conflict situation should be handled, upon notification that the seafarer disagrees with the company doctor's

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[52] Id. at 446.

[53] *INC Navigation Co. Philippines v. Rosales*, 774 Phil. 774 (2014). Citations omitted.

[54] Id. at 787.

[55] Id.

[56] 758 Phil. 166 (2015).

assessment based on the duly and fully disclosed contrary assessment from the seafarer's own doctor, the seafarer shall then signify his intention to resolve the conflict by the referral of the conflicting assessments to a third doctor whose ruling, under the POEA-SEC, shall be final and binding on the parties. Upon notification, the company carries the burden of initiating the process for the referral to a third doctor commonly agreed between the parties.[57] (Citations omitted.)

There is no dispute that under the 2000 POEA-SEC, San Juan was not precluded from seeking a second opinion of his disability, which he in fact did on July 8, 2010 with Dr. Pascual, his own physician, who found San Juan unfit to work. San Juan, however, pursued his claim without observing the laid-out procedure above. It bears emphasis that it is only through this procedure provided by the 2000 POEA-SEC that San Juan can question the fit-to-work certifications of PTCI's company-designated physicians and compel PTCI to jointly seek an assessment from a third doctor.[58] However, instead of setting into motion the process of selecting a third doctor, he preempted the mandated procedure by filing the instant complaint for permanent total disability benefits without referring the conflicting opinions to a third doctor for final determination. On this point, non-referral cannot be blamed on PTCI as the opinion of San Juan's own physician was only sought two months after the instant complaint for disability benefits was filed by San Juan.

At any rate, based on *Carcedo*,[59] San Juan was duty-bound to actively request that the disagreement between his physician's findings and that of the findings of PTCI's company-designated physicians be referred to a final and binding third opinion. The records, however, are bereft of any such evidence that San Juan requested PTCI to refer the conflicting assessments of the

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[57] Id. at 189-190.

[58] See *Marlow Navigation Philippines, Inc. v. Osias,* supra note 51 at 446.

[59] Supra note 56.

physicians to a third doctor. Notably, "[a]s the party seeking to impugn the certification that the law itself recognizes as prevailing, [San Juan] bears the burden of *positive action* to prove that his [physician's] findings are correct, as well as the burden to notify [PTCI] that a contrary finding had been made by his own physician."[60] Clearly, in the absence of any such request, PTCI cannot be expected to respond, more so refer the conflicting findings to a third doctor.

In the absence of a third doctor resolution, the assessments of PTCI's company-designated physicians should stand. As held in *Marlow*,[61] "[a]bsent proper compliance, the final medical report and the certification of the company-designated physician declaring him fit to return to work must be upheld. Ergo, he is not entitled to permanent and total disability benefits."[62]

At any rate, the certification issued by San Juan's physician cannot prevail over the conclusions of PTCI's company-designated physicians. The company-designated physicians were in a better position to assess the illness or disability of San Juan considering that their findings were based on a number of tests, *i.e.*, stress test and Cranial MRI, and medical evaluation done on San Juan. Contrarily, it is undisputed that the recommendation of San Juan's physician was based on a single medical report who examined San Juan only once, which, we note, was issued several months after his fit-to-work certifications were issued by PTCI's company-designated physicians. Thus, as between the findings of the company-designated physicians, and the physician designated by San Juan, the former deserves to be given greater evidentiary weight.[63] In any event, the certification issued by San Juan's own physician could not serve as basis for his claim for permanent and total disability benefits

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[60] *Bahia Shipping Services, Inc. v. Constantino*, 738 Phil. 564, 576 (2014).

[61] *Supra* note 51.

[62] Id. at 446.

[63] See *Abosta Shipmanagement Corporation v. Delos Reyes, supra* note 50.

because it merely stated that he is unfit to resume sea duties; it did not state the disability grading as required by the POEA-SEC.

Neither can we lend credence to the CA's findings that the non-hiring of San Juan served as convincing proof that his illness or disability is permanent. Our pronouncement in *Philippine Hammonia Ship Agency, Inc. v. Dumadag*[64] is instructive, to wit:

> LA Carpio noted that the petitioners suddenly stopped rehiring Dumadag despite the fact that they had continuously employed him for at least fifteen (15) times for the last 15 years. He viewed this as the most convincing proof that Dumadag's inability to work was due to the illness he contracted in the course of his last employment.
>
> x x x x x x x x x
>
> With respect to Dumadag's non-hiring, the petitioners submit that the CA gravely abused its discretion when it held that the fact that they did not rehire him is the most convincing proof that his inability to work was due to his illness. x x x.
>
> x x x x x x x x x
>
> **Finally, we find the pronouncement that Dumadag's non-hiring by the petitioners as the most convincing proof of his illness or disability without basis. There is no evidence on record showing that he sought re-employment with the petitioners or that it was a** matter **of course for the petitioners to re-hire him after the expiration of his contract. Neither is there evidence on Dumadag's claim that he applied with other manning agencies, but was turned down due to his illness.**[65] (Emphasis supplied)

Considering the foregoing premises, and "[i]n the absence of any disability after [San Juan's] temporary total disability was addressed, any further discussion of [permanent total disability], [its] existence, distinctions and consequences, becomes a surplusage that serves no useful purpose."[66]

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[64] 712 Phil. 507 (2013).

[65] Id. at 514-523. Emphasis supplied.

[66] *Vergara v. Hammonia Maritime Services, supra* note 42 at 913.

San Juan is entitled to the balance of his sickness allowance.

Section 20 (B) (3) of the 2000 POEA-SEC provides that:

> 3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.

Clearly, a seafarer's sickness allowance is computed from the time he signed-off from the vessel for medical treatment until he is declared medically fit to work or his final medical disability has been assessed by the company-designated physician. In this case, it is undisputed that San Juan signed off from the vessel on January 23, 2010 and was declared fit to work on April 20, 2010 and April 30, 2010 by the company-designated physicians, or after an interval of 97 days. Considering that San Juan was paid his sickness allowance for only 89 days, then he is entitled to receive additional sickness allowance of eight more days. Moreover, the additional sickness allowance shall earn interest at the rate of six percent (6%) per *annum* from the date of finality of this Decision until fully paid.

WHEREFORE, the instant Petition is **GRANTED**. The December 11, 2012 Decision and June 6, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 121634 are **REVERSED** and **SET ASIDE**. The May 26, 2011 Decision and July 15, 2011 Resolution of the NLRC, which dismissed respondent Almario C. San Juan's complaint for payment of permanent total disability benefits, sickness allowance, damages and attorney's fees are **REINSTATED and AFFIRMED** with **MODIFICATION** in that respondent San Juan is entitled to additional sickness allowance of eight more days, which shall earn interest at the rate of six percent (6%) per *annum* from the date of finality of this Decision until fully paid.

This case is **REMANDED** to the Labor Arbiter for the computation of respondent San Juan's additional sickness allowance.

SO ORDERED.

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

Baltazar-Padilla, J., on leave.

THIRD DIVISION

[G.R. No. 230576. October 5, 2020]

ABS-CBN CORPORATION, *Petitioner*, *v.* **JAIME C. CONCEPCION,** *Respondent*.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; MOTION FOR RECONSIDERATION; WHILE A MOTION FOR RECONSIDERATION IS A CONDITION *SINE QUA NON* FOR *CERTIORARI* TO LIE, THIS RULE ADMITS OF EXCEPTIONS.— It is a settled rule that a special civil action for *certiorari* under Rule 65 will not lie unless a motion for reconsideration is filed before the respondent court. However, there are well-defined exceptions established by jurisprudence, such as: (a) where the order is a patent nullity, as where the court *a quo* has no jurisdiction; (b) where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceedings were *ex parte* or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or where public interest is involved.

In this case, exceptions (b) and (d) are present. The issues raised before the NLRC, which pertain to the existence of an employer-employee relationship between ABS-CBN and herein respondent and the issue of illegal dismissal were the very same questions raised before the CA. Moreover, respondent's failure to file a motion for reconsideration is adequately explained in

the Prefatory Statement of his Petition for *Certiorari*. This is not to say, however, that respondent's suspicions are correct. Only that under the circumstances, respondent could not be faulted for opting not to file a motion for reconsideration anymore.

2. ID.; RULES OF PROCEDURE, ESPECIALLY IN LABOR CASES, ARE ADOPTED TO HELP SECURE SUBSTANTIAL JUSTICE.— In any event, it must be emphasized that the rules of procedure, especially in labor cases, ought not to be applied in a very rigid, technical sense for they have been adopted to help secure, not override, substantial justice.Where a decision may be made to rest on informed judgment rather than rigid rules, the equities of the case must be accorded their due weight because labor determinations should not only be *secundum rationem* but also *secundum caritatem*.

3. ID.; CIVIL PROCEDURE; DOCTRINE OF *STARE DECISIS*; THE COURT IS NOT PRECLUDED FROM REVISITING DOCTRINES AND PRECEDENTS.—ABS-CBN points [out that] the CA disregarded its own ruling in the case of *Jalog, et al. v. ABS-CBN Broadcasting Corporation*, wherein the appellate court declared that complainants therein, *i.e.*, cameramen, crane operators, VTR men and drivers, are independent contractors. The Decision was eventually affirmed by this Court. It calls this Court to "set straight" the departure made by the CA in accordance with the doctrine of *stare decisis*.

While this Court affirmed the CA Decision in *Jalog*, it was not a signed decision or resolution, but a Minute Resolution promulgated on 05 October 2011. In the said Minute Resolution, this Court dismissed the petition filed by various workers who were members of the Internal Job Market, for lack of verification and for failure of the petition to show reversible error in the assailed judgment.

. . .

Even assuming that Jalog has a binding effect, this Court is not precluded from revisiting doctrines and precedents. *Abaria v. National Labor Relations Commission* expounds on *stare decisis* in this wise:

> Under the doctrine of *stare decisis*, once a court has laid down a principle of law as applicable to a

> certain state of facts, it will adhere to that principle and apply it to all future cases where the facts are substantially the same, even though the parties may be different. It proceeds from the first principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike. Thus, where the same questions relating to the same event have been put forward by parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue.

4. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; EMPLOYER-EMPLOYEE RELATIONSHIP; INDEPENDENT CONTRACTOR, DISTINGUISHED FROM AN EMPLOYEE; THE EMPLOYER HAS THE BURDEN TO PROVE THAT A PERSON WHOSE SERVICES IT PAYS FOR IS AN INDEPENDENT CONTRACTOR.— [I]t is settled that the employer has the burden to prove that a person whose services it pays for is an independent contractor rather than a regular employee. Jurisprudential law has recognized another kind of independent contractor — those individuals with unique skills and talents that set them apart from ordinary employees. . . .

. . .

An independent contractor enjoys independence and freedom from the control and supervision of his principal. This is opposed to an employee who is subject to the employer's power to control the means and methods by which the employee's work is to be performed and accomplished.

5. ID.; ID.; ID.; FOUR-FOLD TEST IN DETERMINING THE EXISTENCE OF AN EMPLOYER-EMPLOYEE RELATIONSHIP; CASE AT BAR.— Jurisprudence has adhered to the four-fold test in determining the existence of an employer-employee relationship. These are: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct, or the so-called control test.

The records show that respondent was directly hired by ABS-CBN. He was receiving salaries twice a month with payslips bearing the ABS-CBN's corporate name. His Certificates of

Compensation Payment/Tax Withheld, indicate that his salary is being deducted for SSS, Pag-Ibig, Philhealth, among others, which certificates indicate that his employer is ABS-CBN.

. . .

Here, ABS-CBN has production and field supervisors to monitor respondent in his works and to see to it that he follows the required standards set by ABS-CBN. The network has the power to discipline respondent, and in fact, he was once subjected to a disciplinary action. Respondent, just like any normal employee, was required to attend seminars and workshops to ensure their optimal performance at work.

6. ID.; ID.; ID.; TWO TYPES OF REGULAR EMPLOYEES; CASE AT BAR.— The law provides for two (2) types of regular employees, namely: (a) those who are engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer (first category); and (b) those who have rendered at least one year of service, whether continuous or broken, with respect to the activity in which they are employed (second category).

There is no doubt that as OB van driver and generator set operator, respondent performed job which is necessary or desirable in the usual business or trade of employer. It is equally true that he had been performing his job since 1999 until his services was terminated in 2010. Thus, being a member of the Internal Job Market System, respondent is deemed regular work pool employee under the second category.

7. ID.; ID.; SECURITY OF TENURE; TERMINATION OF EMPLOYMENT; REMEDIES OF AN ILLEGALLY DISMISSED EMPLOYEE.— Security of tenure is a constitutionally guaranteed right. Employees may not be terminated from their regular employment except for just or authorized causes under the Labor Code. In this case, respondent was illegally dismissed, since his dismissal does not fall under the just or authorized causes.

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.

8. ID.; ID.; ID.; ID.; BACKWAGES, HOW COMPUTED.— In computing for the backwages, this Court deems it wise to apply the case of *Maraguinot*, where this Court aptly discussed: . . .

> [F]ollowing the principles of "suspension of work" and "no pay" between the end of one project and the start of a new one, in computing petitioners' back wages, the amounts corresponding to what could have been earned during the periods from the date petitioners were dismissed until their reinstatement when petitioners' respective Shooting Units were not undertaking any movie projects, should be deducted.

9. ID.; ID.; ID.; ID.; AWARDS FOR ATTORNEY'S FEES; LEGAL INTEREST ON MONETARY AWARDS.—In addition to backwages, respondent is entitled to 13th month pay, and holiday pay, computed by deducting the amounts corresponding to the periods that respondent's production group was not engaged in the shooting of programs. Likewise, respondent is entitled to attorney's fees equivalent to ten percent of the total monetary award. All amounts due shall earn legal interest pursuant to *Nacar v. Gallery Frames*.

APPEARANCES OF COUNSEL

Laguesma Magsalin Consulta & Gastardo for petitioner.
Pro-Labor Legal Assistance Center for respondent.

D E C I S I O N

ZALAMEDA, *J.*:

An independent contractor enjoys independence and freedom from control and supervision of his principal. In order to be considered an independent contractor and not an employee of a television network, it must be shown that an OB van driver was hired because of his unique skills and talents, and the television network did not exercise control over the means and methods of his work.[1]

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[1] See *Paragale v. GMA Network, Inc.*, G.R. No. 235315, 13 July 2020.

The Case

Before this Court is a Petition for Review[2] which seeks to reverse and set aside the Decision[3] dated 20 October 2016 and Resolution[4] dated 13 March 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 125867, which annulled and set aside the Decision[5] dated 29 May 2012 of the Special Division of the National Labor Relations Commission (NLRC) and reinstated the Decision[6] dated 29 December 2011 of the Fifth Division of the NLRC. The dispositive portion of the CA Decision reads:

> "**WHEREFORE**, foregoing considered, the petition is **GRANTED**. The assailed Decision dated May 29, 2012 of the National Labor Relations Commission-Special Division in LAC No. 05-001370-11 granting the motion for reconsideration of the private respondent and reversing and setting aside the earlier decision dated December 29, 2011 rendered by the National Labor Relations Commission-Fifth Division is **VACATED** and **SET ASIDE**.
>
> Accordingly, the Decision dated December 29, 2011 of the NLRC-Fifth Division is **REINSTATED** and **AFFIRMED** en toto.
>
> **SO ORDERED**."[7]

Antecedents

ABS-CBN Corporation[8] (ABS-CBN) is a domestic corporation principally engaged in the business of broadcasting television and radio content in the Philippines. Under its Amended Articles of Incorporation,[9] its principal purpose is:

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[2] *Rollo*, Vol. I, pp. 15-76.

[3] *Rollo*, Vol. II, pp. 693-705; penned by Justice Leoncia Real-Dimagiba and concurred in by Justices Ramon R. Garcia and Jhosep Y. Lopez of the Fifteenth Division, Court of Appeals, Manila.

[4] Id. at 761-763.

[5] *Rollo*, Vol. I, pp. 453-461.

[6] Id. at 418-427.

[7] *Rollo*, Vol. II, p. 704.

[8] Formerly known as ABS-CBN Broadcasting Corporation.

[9] *Rollo*, Vol. I, pp. 90-97.

To carry on the business of television and radio network broadcasting of all kinds and types; to carry on all other businesses incident thereto; and to establish, construct, maintain and operate for commercial purposes and in the public interest, television and radio broadcasting stations within or without the Philippines, using microwave, satellite or whatever means including the use of any new technologies in television and radio systems.[10]

Among its secondary purposes are:

1. To broadcast, disseminate, distribute, transmit, retransmit, receive, or collect by satellite, microwave, electronic, electrical or other means, news, sports, entertainment, educational and informative matter, advertisements or any other matter which may be transmitted by television, radio or electronic signals, and to provide for the use of other equipment or facilities for such purpose.

x x x x x x x x x

3. To engage in any manner, shape or form in the recording and reproduction of the human voice, musical instruments, and sound of every nature, name and description; to engage in any manner, shape or form in the recording and reproduction of moving pictures, visuals and stills of every nature, name and description; and to acquire and operate audio and video recording, magnetic recording, digital recording and electrical transcription exchanges, and to purchase, acquire, sell, rent, lease, operate, exchange, or otherwise dispose of any and all kinds of recordings, electrical transcription or other devices by which sight and sound may be reproduced.

4. To carry on the business of providing graphic design, videographic, photographic and cinematographic reproduction services and other creative production services; and to engage in any manner, shape or form in post-production mixing, dubbing, overdubbing, audio-video processing sequence alteration and modification of every nature of all kinds of audio and video productions.

5. To carry on the business of promotion and sale of all kinds of advertising and marketing services and generally to conduct all lines of business allied to and interdependent with that of advertising and marketing services.[11]

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[10] Id. at 93.

[11] Id. at 93-94.

ABS-CBN claims that it is not its principal business nor its legal obligation to produce television programs. It can operate its business without producing any of its own television programs. Just like any other broadcasting companies, it has several options in terms of where and how to obtain content to broadcast or air, and the means of generating revenues. These options include the following schemes: (1) block-time;[12] (2) line production;[13]

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[12] Id. at 19. In this scheme, an external producer — the "block-timer" — purchases from the Company a fixed number of airtime on a specific day or days, i.e., from 8:00 to 9:00 o'clock in the evening every Saturday, for six (6) months. During this time, the external producer's program is aired and the advertising revenues thereof will pertain solely to him as the "block-timer." The external producer seeks or awaits advertisers for its program. The advertisers then directly deal with the "block-timer" for their advertisement placements ["ad placements"] as the latter effectively "owns" the blocked time slot. The following are examples of the programs on block-time: *Kabuhayang Swak na Swak*, produced by Bayan Productions, Inc.; and *The Healing Eucharist* which is produced by Healing Eucharist, Inc. In effect, Bayan Productions, Inc. and Healing Eucharist, Inc. purchased from the Company the particular time slot when the shows they produced are aired. All advertisers who want their advertisement shown during the time slot purchased by Bayan Productions, Inc. or Healing Eucharist, Inc. will contract directly with the latter for the time their advertisements are aired. All personnel involved in the production of said shows, such as cameramen and lightmen are engaged and paid by Bayan Productions, Inc. or Healing Eucharist, Inc., both of which are separate and distinct entities from the Company. Examples of previous programs on block time were *Trip and Trip* and *Urban Zone* which were produced by Bayan Productions, Inc.

[13] Id. Under this set-up, an external producer conceptualizes, implements and creates a particular program, which is in turn bought by a broadcasting company at a specific price. In this arrangement, the Line Producer is responsible for all aspects of production: from engaging the services of all production personnel such as the director, cameramen, audiomen, lightmen, production assistants, drivers, etc. to the procurement of equipment needed such as cameras, lights, microphones, vehicles, etc. The Line Producer is likewise solely obligated to pay for all the fees and expenses associated with the production of the program. The broadcasting company, in turn, is responsible for paying the Line Producer the agreed contract fee. The advertising revenues generated from the airing of such program are for the sole account of the broadcasting company. Examples of line-produced programs are *Goin' Bulilit*, which is produced by Edgar Mortiz and *Agimat:*

(3) Co-production;[14] (4) Self-production;[15] (5) Foreign canned shows;[16] (6) Live Coverages;[17] (7) Licensed Programs;[18] and (8) a combination of the foregoing schemes.[19]

Mga Alamat ni Ramon Revilla, which was produced by Classified Media. In the past, the long-running show *Palibhasa Lalake* was line-produced by Regal Films.

[14] Id. at 19-20. The broadcasting company and the external producer join forces and resources to produce a show, with the former normally contributing the airtime, among other things. In any case, they share the entire cost of the production of a program and any advertising revenue is similarly shared by the broadcasting company and the external producer. An example would be *Divalicious*, a co-production of the Company and ALV Productions, Inc. for the telecast of the concert of Pops Fernandez; *Lea Salonga: My Life on Stage*, a co-production of the Company with Global Content Center Corporation; and *Kahit Isang Saglit*, a co-production of the Company with Double Vision SDN BHD, a Malaysian company.

[15] Id. at 20. The broadcasting company handles all aspects of production of a particular program to be aired on a particular time slot. Naturally, the profits generated or losses incurred from the same are for the broadcasting company's sole account. Examples would be the drama series *May Bukas Pa*, which starred Zaijan Jaranilla; *Tayong Dalawa*, which starred Gerald Anderson, Kim Chiu and Jake Cuenca; and the defunct variety show *Wowowee*. This type of production is resorted to in order that all valuable time slots have shows to be aired. To ensure that no prime time slot is left without any show to air, the Company sets aside a particular budget for a show on that slot unless it can obtain a worthy show or program through blocktime, line production or co-production. The budget is for the entire production cost. However, such a show is merely temporary as the Company will sell the airtime to an interested independent producer who might subsequently bid for the same time slot.

For business reasons, the Company ventures into production especially for prime time slots that are so called because these are the hours that attract the maximum percentage of viewership. As such, the prime time slots command the highest broadcasting rate per minute that no external producer could probably afford or would risk investing in.

[16] Id. at 20-21. This could be the simplest option involving foreign shows — "taped" or digitally recorded — for which the Company acquired limited license to re-broadcast. These shows are ready for airing, leaving nothing much to be done except dubbing, if such be the intention. The profits generated or losses incurred are likewise for the broadcasting company's sole account. Of course, this is still determined by the number of advertisers for the show. An example would be the hit Korean soap opera, *He is Beautiful*, which was aired on 16 August 2010 to replace the Company's self-produced *Precious*

Respondent maintains that he was hired by ABS-CBN as OB (Outside Broadcast) van driver in June 1999 under the Engineering Department and was given the task to oversee the generator used during tapings/shooting of programs aired by ABS-CBN. He was assigned to different TV Programs at the time of his employment,[20] and acted as property custodian over

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Hearts Romance, a Filipino drama series. Other examples are the animated series *Hana Yori Dango, Huntik: Secrets of the Seekers, Dora the Explorer, Spongebob Squarepants, Avatar*, the Korean soap opera, *Honey Watch Out* and Taiwan telenovela, *Meteor Garden*. Other networks' shows x x x like *Charlie's Angels, Three's Company, Golden Girls*, and other situation comedies, police, detective — or adventure-type shows like *McGyver, Starsky and Hutch, Miami Vice*, or *Six Million Dollar Man* also fall under this category.

[17] Id. at 21. Closely related to canned shows would be live coverages in the sense that the broadcasting company does not handle any aspect of production, the only obvious difference being that canned shows are pre-recorded. Live coverage are not regular contents for airing since the same pertain to occasional big international or major events abroad that the target market prefers watching live. Examples would be the Miss Universe Pageant or major boxing bouts and other sports events.

[18] Id. Another type of content would be shows that the broadcasting or production company may obtain under license or authority from the "owner" thereof. The content may be already existing like the movies of Fernando Poe Jr. for which the Company was given the license by FPJ Productions, Inc. to broadcast. They were shown every Saturday afternoon some years back.

[19] Id. A combination of the foregoing schemes is also possible depending on the intention, preference, requirement or purpose of the parties to the contract namely, the broadcasting company and the content-provider. For example, the live concerts of Gary Valenciano are usually produced by his own outfit, Genesis Production. For purposes of a subsequent broadcast on television, the Company may purchase the rights over the concert or it may enter into a contract with Genesis under which it will handle recording the concert, and air the same on an agreed date.

[20] *Rollo*, Vol. II, pp. 768-769. Including *Ariba-Ariba, Bituin, Maalala Mo Kaya, Sa Dulo ng Walang Hanggan, Tabing Ilog, Wansapanatym*, TFPO-EG Technical FA, *Berks, Kailangan Kita, Kay Tagal Kang Hinintay, Tayong Dalawa*, UAAP Volleyball 2008, SOCO 2006, I Love Betty La Fea, Christmas Special 2008, *Wowowee, Pare Koy, Basta't Kasama Kita*, It Might Be You, Star in a Million, *Malay Mo Madevelop, Kokey* Returns, *Showtime, Momay, Rated K, Nagsimula sa Puso, Agimat: Mga Alamat ni Ramon Revilla, Tanging*

all equipment, especially the generator used in their tapings/ shootings. According to respondent, he was supervised by ABS-CBN personnel with respect to his work schedules, the programs he was assigned to, and the time he was supposed to report for work. He was made to comply with company rules, and for infractions committed, he was subjected to penalties and sanctions. In one instance in 2003 he was issued a Memo from ABS-CBN TV Engineering Division for the alleged overheating of a generator set.[21]

Respondent asserts that eventually, he was placed in the Internal Job Market work pool devised by ABS-CBN and joined the workers' union. As a result of the union's constant demands for regularization, ABS-CBN started coercing complainant and other union members to sign contracts indicating they were waiving their rights to regularization and giving them deadlines within which to do so. Thus, respondent filed an initial complaint

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Yaman, Habang May Buhay, Magkano ang Iyong Dangal, Boy & Kris, Lobo, TV Patrol World, *Volta*, Kung Fu Kid, *Super Inggo, Walang Kapalit*, Flordeluna, *Mga Anghel na Walang Langit, Nginig*, Vietnam Rose, *Sa Piling Mo, Komiks, Goin' Bulilit*, ASAP Mania, *Krystala, Spirit, Sana'y Walang Wakas, Home Along Da* Airport, The Buzz, *Magandang Tanghali Bayan, Sa Puso Ko, Iingatan Ka*.

[21] *Rollo*, Vol. I, p. 246. It reads:

"This is to formally inform you about the explanation regarding the incident about the generator 3 which overheat[ed]. The 1st explanation I asked from you was verbal[.] This time I will reapeat (sic) that im (sic) still waiting for your explanation within 24 hrs upon receipt of this memorandum. Failure to do so will merit the next disciplinary action.

I was also inform[ed] that you are requesting your emergency leave from the HRANI driver, which I think [is] not acceptable. Please explain why you do this kind of action.

For your [i]nformation and strict compliance.

(Sgd.)

WILSON I. BANZALES
OB Van Supervisor

Noted:

(Sgd.)
Mr. Carlos S. Tolentino
TFM Manager"

for regularization on 06 August 2010. A month later, or on 01 September 2010, respondent was dismissed from service after he refused to sign the employment contract prepared by ABS-CBN. This prompted respondent to amend his labor complaint to include illegal dismissal. At the time of his dismissal on 01 September 2010, he was receiving a salary of Php558.16/day or Php69.77 per hour.

The Labor Arbiter (LA) dismissed respondent's complaint upon finding that there is no employer-employee relationship between ABS-CBN and respondent. The dispositive portion of the Decision[22] dated 31 March 2011 reads:

"WHEREFORE, premises considered, the complaint for regularization, illegal dismissal and damages is dismissed for lack of jurisdiction, there being no employer-employee relationship between complainant and respondent company ABS-CBN Broadcasting Corporation.

SO ORDERED."[23]

Respondent appealed to the NLRC. The Fifth Division, through Commissioner Mercedes R. Posada-Lacap, reversed the Labor Arbiter's Decision, and held that respondent is a regular employee of ABS-CBN. In its Decision[24] dated 29 December 2011, the Fifth Division disposed:

"WHEREFORE, the decision of the labor arbiter a quo is hereby VACATED and SET ASIDE. A new one is entered finding that complainant is a regular employee of respondents, and that his dismissal was without just cause nor due process, therefore illegal. Respondents are therefore directed to reinstate complainant to the position of OB Van Driver/Gen Set Operator immediately, and to pay him backwages from the time of his illegal dismissal until the reinstatement and attorney's fees of ten (10%) percent of total award.

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[22] Id. at 326-351.

[23] Id. at 351.

[24] Id. at 418-427.

SO ORDERED."[25]

ABS-CBN filed a Motion for Reconsideration[26] and sought the inhibition of Commissioner Lacap on the ground that she had previously ruled against ABS-CBN and prayed that the case be re-assigned to another Division of the NLRC.[27] Consequently, Chairman Gerardo C. Nograles issued Administrative Order No. 03-19, series of 2012, creating a Special Division[28] to resolve the Motion for Reconsideration filed by ABS-CBN.

In its *Per Curiam* Decision dated 29 May 2012,[29] the Special Division reversed the earlier Decision of Commissioner Lacap and reinstated the Decision of the Labor Arbiter. Without filing a motion for reconsideration, respondent filed a Petition for *Certiorari*[30] under Rule 65 of the Rules of Court before the CA.

On 20 October 2016, the CA annulled and set aside the *Per Curiam* Decision of the NLRC Special Division and reinstated the Decision of Commissioner Lacap. ABS-CBN filed a Motion for Reconsideration[31] but the same was denied by the CA.

ABS-CBN thus filed the instant Petition for Review, on the ground that respondent failed to file a Motion for Reconsideration before it filed the Petition for *Certiorari* before the Court of Appeals and that the appellate court erred in holding that respondent is a regular employee of ABS-CBN.

Ruling of the Court

This Court finds the Petition devoid of merit.

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[25] Id. at 427.

[26] Id. at 428-448.

[27] Id. at 449-452.

[28] Composed of Presiding Commissioner Raul T. Aquino, Commissioners Julie C. Rendoque and Gregorio O. Bilog III.

[29] *Rollo*, Vol. I, pp. 453-461.

[30] Id. at 462-499.

[31] *Rollo*, Vol. II, pp. 706-759.

The failure of respondent to file a motion for reconsideration is not fatal

ABS-CBN avers that the CA should have dismissed the case for failure of respondent to file a motion for reconsideration before the Special Division of the NLRC. We are not persuaded.

It is a settled rule that a special civil action for *certiorari* under Rule 65 will not lie unless a motion for reconsideration is filed before the respondent court. However, there are well-defined exceptions established by jurisprudence, such as: (a) where the order is a patent nullity, as where the court *a quo* has no jurisdiction; (b) where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceedings were *ex parte* or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or where public interest is involved.[32]

In this case, exceptions (b) and (d) are present. The issues raised before the NLRC, which pertain to the existence of an employer-employee relationship between ABS-CBN and herein respondent and the issue of illegal dismissal were the very same questions raised before the CA. Moreover, respondent's failure to file a motion for reconsideration is adequately explained in the Prefatory Statement[33] of his Petition for *Certiorari*. This is

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[32] *Philippine Bank of Communications v. Court of Appeals*, 805 Phil. 964-977 (2017); G.R. No. 218901, 15 February 2017.

[33] *Rollo*, Vol. I, pp. 462-464. It reads:

not to say, however, that respondent's suspicions are correct. Only that under the circumstances, respondent could not be

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"The case is for regularization, illegal dismissal and damages filed by the petitioner. The case filed by the petitioner was dismissed by Labor Arbiter Aliman D. Mangandog. Petitioner timely filed his appeal to the Commission-Fifth Division. The Commission-Fifth Division rendered a Decision dated December 29, 2011 vacating and setting aside the Decision of the Labor Arbiter. After receipt of the Decision dated December 29, 2011, private respondent filed a motion for reconsideration and sought the inhibition of the Honorable Commission-Fifth Division. The entire members of the Commission-Fifth Division inhibited without resolving the Motion for Reconsideration filed by herein private respondent.

Instead of re-raffling the case to the other Division of the NLRC, the Chairman of the NLRC issued Administrative Order No. 03-19, Series of 2012 creating a Special Division to resolve the motion for reconsideration of the private respondent. In a Per Curiam Decision, the Decision of the Honorable Commission-Fifth Division was VACATED and SET ASIDE.

A similar case for regularization and illegal dismissal entitled Antonio Bernardo Perez, et al. versus ABS-CBN Broadcasting Corp./Eugenio Lopez III docketed as LAC No. 04000965-11 was also decided by the Honorable Commission-Fifth Division on December 29, 2012 wherein the complainants (talent employees of ABS-CBN) were declared to be regular employees and to have been illegally dismissed by the respondent (ABS-CBN). Herein private respondent filed a motion for reconsideration and sought the inhibition of the Honorable Commission-Fifth Division. The entire Fifth Division inhibited from further resolving the motion for reconsideration.

Again, instead of re-raffling the case to another Division of the NLRC, the NLRC Chairman issued an Administrative Order No. 03-20, Series of 2012 creating a Special Division to resolve herein private respondents' motion for reconsideration. In resolving the motion for reconsideration filed by herein private respondents, in a Per Curiam Decision, the Special Division REVERSED and SET ASIDE the Decision of the Honorable Commission-Fifth Division.

There are several cases of similar nature involving talent employees of herein private respondents that were decided by the NLRC (Commissions) in favor of herein private respondents. Private respondents did not move for the inhibition of those Divisions of the NLRC. However, when the Fifth Division decided against the herein private respondents, they immediately sought the inhibition of the Fifth Division. In a very special accommodation, an Administrative Order was issued mainly to create a Special Division and decided the motion for reconsideration in a Per Curiam Decision.

By reason of the highly questionable procedure in the way the special division was created and the motion for reconsideration was resolved, and

faulted for opting not to file a motion for reconsideration anymore.

In any event, it must be emphasized that the rules of procedure, especially in labor cases, ought not to be applied in a very rigid, technical sense for they have been adopted to help secure, not override, substantial justice.[34] Where a decision may be made to rest on informed judgment rather than rigid rules, the equities of the case must be accorded their due weight because labor determinations should not only be *secundum rationem* but also *secundum caritatem*.[35]

Neither the Court of Appeals nor the respondent is bound by the Jalog case

ABS-CBN points the CA disregarded its own ruling in the case of *Jalog, et al. v. ABS-CBN Broadcasting Corporation*,[36] wherein the appellate court declared that complainants therein, i.e., cameramen, crane operators, VTR men and drivers, are independent contractors. The Decision[37] was eventually affirmed by this Court. It calls this Court to "set straight"[38] the departure made by the CA in accordance with the doctrine of *stare decisis*.

While this Court affirmed the CA Decision in *Jalog*, it was not a signed decision or resolution, but a Minute Resolution promulgated on 05 October 2011. In the said Minute Resolution,

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under the circumstances, filing a motion for reconsideration would be useless, the Petitioner elevated the case directly to this Honorable Court via Petition for Certiorari."

[34] *Peak Ventures Corporation v. Heirs of Nestor B. Villareal*, 747 Phil. 320-337 (2014); G.R. No. 184618, 19 November 2014.

[35] *Great Southern Maritime Services Corporation v. Acuña*, 492 Phil. 518-533 (2005); G.R. No. 140189, 28 February 2005.

[36] Docketed as CA-G.R. SP No. 110334.

[37] Penned by Associate Justice Normandie B. Pizzaro and concurred in by Associate Justices Amelita G. Tolentino and Ruben C. Ayson, Court of Appeals, Manila.

[38] *Rollo*, Vol. I, p. 63.

this Court dismissed the petition filed by various workers who were members of the Internal Job Market, for lack of verification and for failure of the petition to show reversible error in the assailed judgment.

In the case of *Read-Rite Philippines, Inc. v. Francisco*,[39] then Associate Justice (later Chief Justice) Teresita Leonardo-de Castro discussed:

> As to the final ruling in Zamora, the same is a minute resolution of the Court dated November 12, 2007 in G.R. No. 179022 that affirmed the judgment of the Court of Appeals. In *Alonso v. Cebu Country Club, Inc.*, we declared that a minute resolution may amount to a final action on a case, but the same cannot bind non-parties to the action. Further, in *Philippine Health Care Providers, Inc. v. Commissioner of Internal Revenue*, we expounded on the consequence of issuing a minute resolution in this wise:
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> > It is true that, although contained in a minute resolution, our dismissal of the petition was a disposition of the merits of the case. When we dismissed the petition, we effectively affirmed the CA ruling being questioned. As a result, our ruling in that case has already become final. When a minute resolution denies or dismisses a petition for failure to comply with formal and substantive requirements, the challenged decision, together with its findings of fact and legal conclusions, are deemed sustained. But what is its effect on other cases?
> >
> > With respect to the same subject matter and the same issues concerning the same parties, it constitutes res judicata. However, **if other parties or another subject matter (even with the same parties and issues) is involved, the minute resolution is not binding precedent**. x x x (Emphasis supplied)

Even assuming that Jalog has a binding effect, this Court is not precluded from revisiting doctrines and precedents. *Abaria v. National Labor Relations Commission*[40] expounds on *stare decisis* in this wise:

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[39] 816 Phil. 851-871 (2017); G.R. No. 195457, 16 August 2017.

[40] 678 Phil. 64-101 (2011); G.R. No. 154113, 07 December 2011.

Under the doctrine of *stare decisis*, once a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases where the facts are substantially the same, even though the parties may be different. It proceeds from the first principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike. Thus, where the same questions relating to the same event have been put forward by parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue.

The doctrine though is not cast in stone for upon a showing that circumstances attendant in a particular case override the great benefits derived by our judicial system from the doctrine of *stare decisis*, the Court is justified in setting it aside. For the Court, as the highest court of the land, may be guided but is not controlled by precedent. Thus, the Court, especially with a new membership, is not obliged to follow blindly a particular decision that it determines, after re-examination, to call for a rectification.

Respondent Concepcion is a regular employee of ABS-CBN, not an independent contractor

ABS-CBN insists that respondent is a talent who works as OB van driver and not a regular employee but an independent contractor. This Court however, is not convinced.

Preliminarily, it is settled that the employer has the burden to prove that a person whose services it pays for is an independent contractor rather than a regular employee.[41] Jurisprudential law has recognized another kind of independent contractor — those individuals with unique skills and talents that set them apart from ordinary employees.[42] In the recent case of *Paragele v.*

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[41] *Fuji Television Network, Inc. v. Espiritu*, 749 Phil. 388-450 (2014); G.R. Nos. 204944-45, 03 December 2014.

[42] In *Fuji Television Network*, Associate Justice Leonen cited the following cases:

In *Orozco v. Court of Appeals*, Wilhelmina Orozco was a columnist for the Philippine Daily Inquirer. This court ruled that she was an independent

GMA Network, Inc.,[43] this Court's Division emphasized that in order to be considered independent contractors and not employees of GMA Network, it must be shown that those cameramen were hired because of their unique skills and talents, and that GMA Network did not exercise control over the means and methods of their work.

Jurisprudence has adhered to the four-fold test in determining the existence of an employer-employee relationship. These are: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct, or the so-called control test.[44]

The records show that respondent was directly hired by ABS-CBN. He was receiving salaries twice a month with payslips bearing the ABS-CBN's corporate name.[45] His Certificates of Compensation Payment/Tax Withheld indicate that his salary is being deducted for SSS, Pag-Ibig, Philhealth, among others, which certificates indicate that his employer is ABS-CBN.[46]

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contractor because of her "talent, skill, experience, and her unique viewpoint as a feminist advocate." In addition, the Philippine Daily Inquirer did not have the power of control over Orozco, and she worked at her own pleasure.

Semblante v. Court of Appeals involved a *masiador* and a *sentenciador*. This court ruled that "petitioners performed their functions as masiador and sentenciador free from the direction and control of respondents" and that the masiador and sentenciador "relied mainly on their 'expertise that is characteristic of the cockfight gambling.'" Hence, no employer-employee relationship existed.

Bernarte v. Philippine Basketball Association involved a basketball referee. This court ruled that "a referee is an independent contractor, whose special skills and independent judgment are required specifically for such position and cannot possibly be controlled by the hiring party."

In these cases, the workers were found to be independent contractors because of their unique skills and talents and the lack of control over the means and methods in the performance of their work."

[43] G.R. No. 235315, 13 July 2020.

[44] *Expedition Construction Corporation v. Africa*, G.R. No. 228671, 14 December 2017.

[45] *Rollo*, Vol. I, pp. 236-245.

[46] Id. at 247-254.

At the time of respondent's dismissal on 01 September 2010, he was receiving a salary of Php558.16/day or Php69.77 per hour. Although wages are not a conclusive factor, it may indicate whether one is an independent contractor.[47]

An independent contractor enjoys independence and freedom from the control and supervision of his principal. This is opposed to an employee who is subject to the employer's power to control the means and methods by which the employee's work is to be performed and accomplished.[48]

Here, ABS-CBN has production and field supervisors to monitor respondent in his works and to see to it that he follows the required standards set by ABS-CBN. The network has the power to discipline respondent, and in fact, he was once subjected to a disciplinary action. Respondent, just like any normal employee, was required to attend seminars and workshops to ensure their optimal performance at work.

Undaunted, ABS-CBN insists that respondent is a talent, thus, an independent contractor. This argument, however, deserves scant consideration. Respondent cannot be considered a talent of ABS-CBN as he is neither an actor nor a star.[49] Independent contractors often present themselves to possess unique skills, expertise or talent to distinguish them from ordinary employees which respondent does not have.[50] Notwithstanding, ABS-CBN

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[47] In *Paragale v. GMA Network, Inc.*, G.R. No. 235315, 13 July 2020, Associate Justice Leonen discussed: "They were paid a meager salary ranging from P750.00 to P1500.00 per taping. Though wages are not a 'conclusive factor in determining whether one is an employee or an independent contractor,' it may indicate whether one is an independent contractor.' In this case, the sheer modesty of the remuneration rendered to petitioners undermines the assertion that there was something particularly unique about their status, talents, or skills."

[48] Id.

[49] *See ABS-CBN Broadcasting Corporation v. Nazareno*, 534 Phil. 306-338 (2006); G.R. No. 164156, 26 September 2006.

[50] *Sonza v. ABS-CBN Broadcasting Corporation*, G.R. No. 138051, 10 June 2004. In *Samonte v. La Salle Greenhills, Inc.*, 780 Phil. 778-794 (2016); G.R. No. 199683, 10 February 2016, the Court discussed:

tries to project respondent as not an ordinary office driver, but an OB van driver.[51]

Petitioner's asseveration rests on flimsy ground. Driving an OB van which is equipped with specialized equipment does not make the driver a standout. Parenthetically, ABS-CBN took pains in discussing what other workers do, such as audioman or sound engineer, cameraman, gaffer, and lightman but failed to discuss the nature of the job of an OB Van Driver, except that it includes the handling of the OB Van.

ABS-CBN has not disputed that at the time respondent was hired by the Human Resource Department, his driving skills were limited and that he had no knowledge in operating a generator set. It was the network which provided him the necessary trainings and seminars to develop his skills.[52] Moreover, the tools and instrumentalities needed by respondent for his work is provided to him[53] — the OB Van and the generator set. ABS-CBN could also assign him to any show or programs where the production group would need his services.

It does not escape our attention that respondent has no power to bargain and negotiate for his fee. The power to bargain talent

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"x x x On more than one occasion, we recognized certain workers to be independent contractors: individuals with unique skills and talents that set them apart from ordinary employees. We found them to be independent contractors because of these unique skills and talents and the lack of control over the means and methods in the performance of their work. In some instances, doctors and other medical professional may fall into this independent contractor category, legitimately providing medical professional services. x x x"

[51] *Rollo*, Vol. I, p. 24. "An OB Van Driver is likewise totally different from that of an ordinary office driver. An OB Van Driver's tasks usually involve handling the OB Van that is designed with accessory specialized equipment for outside broadcasting. Outside Broadcasting is the coverage of television programs, typically to cover news and live events, from a mobile television studio. In an external environment, the OB Van provides the video and audio facilities of a TVV production studio."

[52] *Rollo*, Vol. II, p. 785.

[53] *Supra* at note 49.

fees way above the salary scales of ordinary employees is a circumstance indicative of an independent contractual relationship.[54] That ABS-CBN classified him as a talent is of no moment and does not make him an independent contractor. It is not the will or word of the employer which determines the nature of employment of an employee but the nature of the activities performed by such employee in relation to the particular business or trade of the employer.[55] Hence, not being an independent contractor, respondent is necessarily an employee of ABS-CBN.

Article 294 (formerly Article 280) of the Labor Code reads:

> 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 services 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 actually exists.

The law provides for two (2) types of regular employees, namely: (a) those who are engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer (first category); and (b) those who have rendered at least one year of service, whether continuous or broken, with

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[54] *ABS-CBN Broadcasting Corporation v. Nazareno*, 534 Phil. 306-338 (2006); G.R. No. 164156, 26 September 2006.

[55] Id.

respect to the activity in which they are employed (second category).[56]

ABS-CBN insists that it is not legally obliged to produce programs as its main business is broadcasting. It has emphasized the available options to it in airing shows and generating revenues — block-time, line production, co-production, self-production, foreign canned shows, live coverages, licensed programs, and a combination of the foregoing schemes. Simply stated, it tries to distance itself from self-production, co-production, line production and live coverages, because it is in these schemes that ABS-CBN would need the services of its talents, including herein respondent. However, the nature of the work performed must be viewed from a perspective of the business or trade in its entirety and not on a confirmed scope.[57]

A reading of Amended Articles of Incorporation of ABS-CBN, particularly paragraphs 1, 3, 4 and 5 of its Secondary Purposes, shows that the network is likewise engaged in the business of production of shows. If it opts not to produce programs, it may rightfully do so, but it does not remove its employees from being regular employees.

There is no doubt that as OB van driver and generator set operator, respondent performed job which is necessary or

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[56] *University of Santo Tomas v. Samahang Manggagawa ng UST*, 809 Phil. 212-225 (2017); G.R. No. 184262, 24 April 2017.

[57] *Magsalin v. National Organization of Working Men*, 451 Phil. 254-264 (2003); G.R. No. 148492, 09 May 2003. An almost similar argument was debunked by the Court in this wise:

"The argument of petitioner that its usual business or trade is softdrink manufacturing and that the work assigned to respondent workers as sales route helpers so involves merely "postproduction activities," one which is not indispensable in the manufacture of its products, scarcely can be persuasive. If, as so argued by petitioner company, only those whose work are directly involved in the production of softdrinks may be held performing functions necessary and desirable in its usual business or trade, there would have then been no need for it to even maintain regular truck sales route helpers. The nature of the work performed must be viewed from a perspective of the business or trade in its entirety[4] and not on a confined scope."

desirable in the usual business or trade of employer. It is equally true that he had been performing his job since 1999 until his services was terminated in 2010. Thus, being a member of the Internal Job Market System, respondent is deemed regular work pool employee under the second category.[58]

Respondent was illegally dismissed

Security of tenure is a constitutionally guaranteed right. Employees may not be terminated from their regular employment except for just or authorized causes under the Labor Code.[59] In this case, respondent was illegally dismissed, since his dismissal does not fall under the just[60] or authorized causes.[61]

An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and

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[58] *See Maraguinot v. National Labor Relations Commission*, 348 Phil. 580-607 (1998); G.R. No. 120969, 22 January 1998. *See* also *Malicdem v. Marulas Industrial Corporation*, G.R. No. 204406, 26 February 2014.

[59] *SME Bank, Inc. v. De Guzman*, 719 Phil. 103-137 (2013); G.R. No. 184517, 08 October 2013.

[60] LABOR CODE, Art. 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;
b) Gross and habitual neglect by the employee of his duties;
c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and
e) Other causes analogous to the foregoing. (As renumbered by Republic Act No. 10151).

[61] LABOR CODE, Art. 298. *Closure of Establishment and Reduction of Personnel*. — The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the

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.[62]

In computing for the backwages, this Court deems it wise to apply the case of *Maraguinot*,[63] where this Court aptly discussed:

> In closing then, as petitioners had already gained the status of regular employees, their dismissal was unwarranted, for the cause invoked by private respondents for petitioners' dismissal, *viz.*: completion of project, was not, as to them, a valid cause for dismissal under Article 282 of the Labor Code. As such, petitioners are now entitled to back wages and reinstatement, without loss of seniority rights and other benefits that may have accrued. Nevertheless, following the principles of "suspension of work" and "no pay" between the end of one project and the start of a new one, in computing petitioners' back wages, the amounts corresponding to what could have been earned during the periods from the date petitioners were dismissed until their reinstatement when petitioners' respective Shooting Units were not undertaking any movie projects, should be deducted.

In addition to backwages, respondent is entitled to 13th month pay, and holiday pay, computed by deducting the amounts corresponding to the periods that respondent's production group was not engaged in the shooting of programs. Likewise, respondent is entitled to attorney's fees equivalent to ten percent

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installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at months shall be considered one (1) whole year. (As renumbered by Republic Act No. 10151).

[62] *Philippine National Oil Company–Energy Development Corporation v. Buenviaje*, G.R. Nos. 183200-01, 29 June 2016.

[63] *Supra* at note 57.

of the total monetary award.[64] All amounts due shall earn legal interest pursuant to *Nacar v. Gallery Frames*.[65]

There is, however, a need to remand the case to the Labor Arbiter for the computation of the monetary awards. In this regard, ABS-CBN is directed to provide the necessary data to enable the Labor Arbiter to compute such awards, in the light of this Decision.

WHEREFORE, the Petition is **DENIED**. The assailed Decision dated 20 October 2016 and Resolution dated 13 March 2017 of the Court of Appeals in CA-G.R. SP No. 125867 are **AFFIRMED**. The case is **REMANDED** to the Labor Arbiter, through the National Labor Relations Commission, for the computation of backwages and other monetary benefits. Petitioner ABS-CBN Corporation is **DIRECTED** to furnish the Labor Arbiter the necessary and relevant data to fast track the computation.

SO ORDERED.

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

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[64] *Alva v. High Capacity Security Force, Inc.*, G.R. No. 203328, 08 November 2017.

[65] 716 Phil. 267-283 (2013); G.R. No. 189871, 13 August 2013.

SECOND DIVISION

[G.R. No. 232623. October 5, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **OLIVER IMPERIO *y* ANTONIO,** *Accused-Appellant.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT 8042, OR THE "MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995," AS AMENDED BY RA 10022; ILLEGAL RECRUITMENT IN LARGE SCALE, OR ILLEGAL RECRUITMENT COMMITTED BY A SYNDICATE; ELEMENTS; PRESENT; TO PROVE ILLEGAL RECRUITMENT, IT MUST BE SHOWN THAT THE ACCUSED GAVE THE COMPLAINANTS THE DISTINCT IMPRESSION THAT HE OR SHE HAD THE POWER OR ABILITY TO DEPLOY THE COMPLAINANTS ABROAD IN SUCH A MANNER THAT THEY WERE CONVINCED TO PART WITH THEIR MONEY FOR THAT END. — Article 13(b) of the Labor Code, as amended, defines recruitment and placement as "any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers, and includes referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not." Recruitment, as defined in the Labor Code, becomes illegal when undertaken by non-licensees or non-holders of authority. . . .

. . .

To be clear, Illegal Recruitment, as defined under Article 38 of the Labor Code, encompasses illegal recruitment activities for both local and overseas employment which were undertaken by non-licensees or non-holders of authority.

RA 8042, or the "Migrant Workers and Overseas Filipinos Act of 1995," as amended by RA 10022, broadened the definition of Illegal Recruitment under the Labor Code, and provided stiffer penalties especially when it constitutes economic sabotage, which are either Illegal Recruitment in Large Scale, or Illegal

Recruitment Committed by a Syndicate. Notably, RA 8042 defines and penalizes Illegal Recruitment for employment abroad, whether undertaken by a non-licensee or non-holder of authority or by a licensee or holder of authority. . . .

. . .

Under RA 8042, a non-licensee or non-holder of authority is liable for Illegal Recruitment when the following elements concur: (1) the offender has no valid license or authority required by law to enable him to lawfully engage in recruitment and placement of workers; and (2) the offender undertakes any of the activities within the meaning of "recruitment and placement" under Article 13(b) of the Labor Code, or any of the prohibited practices enumerated under Article 34 of the Labor Code (now Section 6 of RA 8042). In the case of Illegal Recruitment in Large Scale, a third element is added: that the offender commits any of the acts of recruitment and placement against three or more persons, individually or as a group.

Moreover, "[t]o prove [I]llegal [R]ecruitment, it must be shown that the accused gave the complainants the distinct impression that [he or she] had the power or ability to deploy the complainants abroad in [such] a manner that they were convinced to part with their money for that end."

. . .

In this case, the prosecution sufficiently proved that appellant had indeed engaged in Large Scale Illegal Recruitment.

2. ID.; ID.; ID.; INCONSISTENCIES IN THE TESTIMONIES OF THE PRIVATE COMPLAINANTS WITH RESPECT TO MINOR DETAILS AND COLLATERAL MATTERS DO NOT AFFECT THE SUBSTANCE OF THEIR DECLARATIONS NOR THE VERACITY OR WEIGHT OF THEIR TESTIMONIES, FOR WHAT IS IMPORTANT IS THAT PRIVATE COMPLAINANTS HAVE POSITIVELY IDENTIFIED APPELLANT AS THE ONE WHO MADE MISREPRESENTATIONS OF HIS CAPACITY TO SECURE AND FACILITATE FOR THEM OVERSEAS EMPLOYMENT, AND INDUCED THEM TO PART WITH THEIR MONEY UPON THE FALSE PROMISE OF EMPLOYMENT ABROAD.— Appellant

attacks the credibility and veracity of their accounts for being faulty and inconsistent.

We find that the inconsistencies cited by appellant are immaterial and do not adversely affect their testimonies. To our mind, these are minor details and collateral matters which do not affect the weight and substance of their declarations. Nor do they touch on the essential elements of the crime charged. "It is an elementary rule in this jurisdiction that inconsistencies in the testimonies of prosecution witnesses with respect to minor details and collateral matters do not affect the substance of their declaration nor the veracity or weight of their testimony." Verily, what is important is that private complainants have positively identified appellant as the one who made misrepresentations of his capacity to secure and facilitate for them overseas employment, and induced them to part with their money upon the false promise of employment abroad.

3. ID.; ID.; ID.; ID.; GREATER WEIGHT IS GIVEN TO THE POSITIVE IDENTIFICATION OF THE APPELLANT BY THE PROSECUTION WITNESSES THAN THE APPELLANT'S DENIAL AND EXPLANATION CONCERNING THE COMMISSION OF THE CRIME; THUS, AS BETWEEN APPELLANT'S ALIBI AND BARE DENIALS, AND THE CATEGORICAL AND POSITIVE STATEMENTS OF THE PRIVATE COMPLAINANTS, THE LATTER MUST PREVAIL.— . . . [A]ppellant offered only his defense of denial and alibi which we hold to be unavailing. It is settled in this jurisdiction that "greater weight is given to the positive identification of the accused by the prosecution witnesses than the accused's denial and explanation concerning the commission of the crime." Moreover, a denial, when unsubstantiated by clear and convincing evidence, is negative and self-serving evidence undeserving of weight in law. Thus, as between appellant's alibi and bare denials, and the categorical and positive statements of the private complainants, the latter must prevail.

4. ID.; ID.; ID.; THE ABSENCE OF A DOCUMENT IN WHICH THE APPELLANT ACKNOWLEDGED THE RECEIPT OF MONEY FOR THE PROMISED OVERSEAS JOB EMPLOYMENT IS NOT FATAL TO THE PROSECUTION'S CASE, WHERE PRIVATE COMPLAINANTS CLEARLY NARRATED

APPELLANT'S INVOLVEMENT IN ILLEGAL RECRUITMENT ACTIVITIES; APPELLANT IS STILL CONSIDERED AS HAVING BEEN ENGAGED IN RECRUITMENT ACTIVITIES EVEN IF NO CASH WAS GIVEN TO HIM OR HER AT THE TIME HE OR SHE WAS PROMISING EMPLOYMENT, FOR THE ACT OF RECRUITMENT MAY BE FOR PROFIT OR NOT; IT SUFFICES THAT APPELLANT PROMISED OR OFFERED EMPLOYMENT FOR A FEE TO THE COMPLAINING WITNESSES TO WARRANT HIS CONVICTION FOR ILLEGAL RECRUITMENT.— It bears emphasis at this point that the fact that no receipt was issued by appellant is not fatal to the prosecution's cause, more so in this case where the respective testimonies of private complainants clearly narrated appellant's involvement in illegal recruitment activities. The case of *People v. Domingo* is instructive, *viz.*:

> That no receipt or document in which appellant acknowledged receipt of money for the promised jobs was adduced in evidence does not free him of liability. For even if at the time appellant was promising employment no cash was given to him, he is still considered as having been engaged in recruitment activities, since Article 13 (b) of the Labor Code states that the act of recruitment may *be for profit or not*. It suffices that appellant promised or offered employment for a fee to the complaining witnesses to warrant his conviction for illegal recruitment.

5. ID.; ID.; ID.; FINDINGS OF BOTH THE REGIONAL TRIAL COURT AND THE COURT OF APPEALS THAT APPELLANT HAD ENGAGED IN ILLEGAL RECRUITMENT ACTIVITIES, AFFIRMED; THE FACTUAL FINDINGS OF THE TRIAL COURT, ESPECIALLY WHEN THE SAME HAVE BEEN AFFIRMED BY THE APPELLATE COURT, ARE DEEMED BINDING AND CONCLUSIVE, BECAUSE TRIAL COURTS ARE IN A BETTER POSITION TO DECIDE THE QUESTION OF CREDIBILITY, HAVING HEARD THE WITNESSES THEMSELVES AND HAVING OBSERVED FIRST-HAND THEIR DEMEANOR AND MANNER OF TESTIFYING UNDER GRUELING

EXAMINATION; EXCEPTIONS NOT PRESENT.— There is no question at this point that both the RTC and the CA found that appellant had engaged in illegal recruitment activities. In this regard, we have consistently held that factual findings of the trial court, especially when the same have been affirmed by the appellate court, as in this case, are deemed binding and conclusive. This is because "trial courts are in a better position to decide the question of credibility, having heard the witnesses themselves and having observed first-hand their demeanor and manner of testifying under grueling examination." While this Court may revise the factual findings of the RTC on the notion that they were erroneous, unfounded, unreliable, or conflicted with the findings of fact of the CA, this notion, however, has not been demonstrated by appellant in the instant case.

Given all the foregoing premises, this Court finds no reason to deviate from the findings of the RTC and the CA.

6. ID.; ID.; ID.; APPELLANT FOUND GUILTY OF ILLEGAL RECRUITMENT IN LARGE SCALE, WHICH CONSTITUTES ECONOMIC SABOTAGE; PENALTY OF LIFE IMPRISONMENT AND A FINE OF ₱5,000,000.00, IMPOSED.— . . . [I]t was established that there were at least three (3) victims in this case, namely, Llave, Concrenio, and Sta. Maria, who all testified before the RTC in support of their respective complaints. In this regard, the Court is not swayed by appellant's assertion that he did not promise any kind of overseas employment to Sta. Maria. As found by the RTC and the CA, it was clearly established that appellant directly dealt with Sta. Maria relative to the latter's supposed employment abroad, and that appellant even charged him a placement fee to cover for the expenses of processing his documents.

Based on the foregoing, there is no doubt that appellant is guilty of Illegal Recruitment in Large Scale, which constitutes economic sabotage under Section 6 of RA 8042.

Anent the penalty that must be imposed, we note that both the RTC and the CA imposed the penalty of life imprisonment and a fine of ₱500,000.00. . . .

. . .

Significantly, RA 10022, which took effect on May 7, 2010, amended the fine under Section 7(b) of RA 8042 in this wise, *viz.*:

> The penalty of life imprisonment and a fine of not less than Two million pesos (₱2,000,000.00) nor more than Five million pesos (₱5,000,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined therein.
>
> *Provided, however*, That the maximum penalty shall be imposed if x x x committed by a non-licensee or non-holder of authority.

Considering that the crime charged was committed on January 11, 2012, which is almost two (2) years after the amendment took effect on May 7, 2010, the penalty as amended by RA 10022 should be, perforce, applied. Moreover, Section 7 of the latter statute provides that the maximum penalty shall be imposed if committed by a non-licensee or non-holder of authority.

Considering the foregoing premises, the proper penalty to be imposed upon appellant is life imprisonment and a fine of ₱5,000,000.00.

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

HERNANDO, *J.*:

This is an appeal from the February 10, 2017 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 08232, which denied the appeal brought therewith and affirmed the

[1] *Rollo*, pp. 2-17; penned by Associate Justice Ma. Luisa C. Quijano-Padilla and concurred in by Associate Justices Normandie B. Pizarro and Samuel H. Gaerlan (now a member of this Court).

March 16, 2016 Judgment[2] of the Regional Trial Court (RTC) of Pasig City, Branch 166 in Criminal Case No. 146959. The RTC convicted Oliver Imperio *y* Antonio (appellant) of Illegal Recruitment in Large Scale under Republic Act No. (RA) 8042, otherwise known as the "Migrant Workers and Overseas Filipinos Act of 1995."

Factual Antecedents

The Information[3] in Criminal Case No. 146959 alleged as follows:

> On or about January 11, 2012, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, representing himself to have the capacity to contract, enlist and transport Filipino workers for employment abroad, did then and there willfully, unlawfully and feloniously for a fee, recruit and promise employment/job placement abroad to the following persons, namely:
>
> 1. Cherry Beth A. Barabas
> 2. John Daryl V. De Leon
> 3. Edralin D. Sta. Maria
> 4. Shane S. Llave
> 5. Megallan III L. Concrenio
> 6. Annavey C. Flores
> 7. Maricor Ventura
> 8. Ma. Camella C. Luzana
> 9. Gregorio C. Daluz
>
> without first securing the required license and authority from the Philippine Overseas Employment Administration (POEA) and said accused failed to actually deploy without valid reasons said complainants abroad and to reimburse the expenses incurred by them in connection with their documentation and processing for purposes of deployment abroad, to their damage and prejudice.
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> Contrary to law.[4]

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[2] CA *rollo*, pp. 47-57; penned by Judge Rowena De Juan-Quinagoran.

[3] *Records*, pp. 1-2.

[4] Id. at 1.

Appellant pleaded *not guilty* to the charge. Thereafter, trial on the merits ensued.[5]

The prosecution presented seven witnesses, namely: (1) Shane S. Llave (Llave), (2) National Bureau of Investigation (NBI) Agent Yehlen Agus (Agent Agus), (3) Edralin Sta. Maria (Sta. Maria), (4) Marcelo Maningding, (5) Juliet Mahilum, (6) Magellan Concrenio III (Concrenio), and (7) Rodolfo Oliverio. Appellant was the sole witness in his defense.

Version of the Prosecution:

Sometime between June 2011 and July 2011, appellant informed Llave that his aunt, who was based in California, United States of America (USA), was hiring a data encoder with a salary of US$3,000.00. Due to appellant's representations, Llave forwarded her resume to appellant, and paid him the amount of ₱7,000.00 as processing fee for her visa application with the United States Embassy, for which no receipt was issued. Upon appellant's request for other referrals, Llave recommended Concrenio, Cherry Beth Barabas (Barabas), John Daryl De Leon (De Leon), Sta. Maria, and a certain Michelle[6] (applicants).

Appellant offered Concrenio overseas employment in Canada as a utility worker. Meanwhile, like Barabas and De Leon, appellant offered Sta. Maria overseas employment with a salary of ₱90,000.00. In consideration for their employment abroad, appellant collected from these applicants certain amounts of money.[7] Testimonies of the prosecution witnesses revealed that appellant received ₱7,000.00 each from Llave, Sta. Maria, Barbara, and De Leon, and ₱10,000.00[8] from Concrenio.

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[5] *Rollo*, p. 3.

[6] The records show that she was not able to file a complaint against appellant.

[7] *Records*, pp. 177 and 180.

[8] Id. at 170; partial payment amounting to ₱3,000.00 deposited in the Banco De Oro (BDO) account of appellant.

Despite the applicants' repeated inquiries, and the lapse of a considerable length of time, appellant failed to secure overseas employment for them as promised. The foregoing notwithstanding, he demanded an additional amount of ₱1,500.00 from each of the applicants as notarization fee for their papers submitted to the United States Embassy.

These circumstances prompted Llave, Concrenio, Barabas, De Leon, and Sta. Maria, together with the other private complainants, to file their respective complaints against appellant before the NBI. Upon further investigation by NBI Agent Agus, it was revealed that appellant has no license or authority to recruit applicants for overseas employment as certified by the Philippine Overseas Employment Agency (POEA).[9]

On January 11, 2012, appellant was arrested *via* an entrapment operation conducted by the NBI. It was during the entrapment operation that appellant received from Barabas, De Leon, and Sta. Maria payment for their processing fees collectively amounting to ₱21,000.00 as evidenced by a written receipt executed by appellant.[10]

Version of the Defense:

In his defense, appellant vehemently denied the allegations against him. Appellant alleged that he met Llave on June 3, 2011 when the latter applied for work at his office. It is through their continued friendship that Llave was able to secure a loan from appellant in the amount of ₱35,000.00 with an agreed interest rate of 20%. Despite repeated demands, Llave failed to pay her obligation to appellant. Appellant further claimed that he came to know the other private complainants through Llave, and, on one occasion, had an altercation with them at the latter's house. While appellant later admitted that he received various amounts from private complainants, he claimed that all these were made as payment for Llave's outstanding obligation to him.

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[9] Id. at 191.

[10] Id. at 160.

Appellant further testified that after the entrapment operation, and subsequent to his arrest, NBI Agent Agus instructed him to prepare and issue an acknowledgment receipt stating therein that he received from Barabas, De Leon, and Sta. Maria a sum of money amounting to ₱21,000.00 as processing fee for their overseas employment in California, USA.

Ruling of the Regional Trial Court:

In a Judgment[11] rendered on March 16, 2016, the RTC found appellant guilty beyond reasonable doubt of Illegal Recruitment in Large Scale. The RTC held that:

> The prosecution was able to prove that accused, indeed, is not a license holder or had any authority to engage in recruitment and placement activities. The defense failed to rebut this evidence presented by the prosecution but plainly denied and posed an alibi that the money he received represented payment for the loan obtained from him by private complainant, Shane Llave, without presenting further evidence to back up his claim. The fact that accused Imperio, who has no authority or license to recruit for work overseas, actually recruited the private complainants for work in California, U.S.A. and Canada, for a fee. x x x
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> x x x x x x x x x
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> The Information stated that there were nine (9) private complainants who executed their respective complaint affidavits against accused. Out of these nine (9) private complainants, the prosecution was able to present three (3) of them, particularly, Shane Llave, Edralin Sta. Maria and Magellan Concrenio III, whose testimonies corroborated one another and strengthen the evidence of guilt of the accused beyond reasonable doubt. As undoubtedly proven by the prosecution, the act committed by the accused falls within the ambit of illegal recruitment in large scale as defined under the law.[12]

The dispositive portion of the Judgment states:

> **WHEREFORE**, premises considered, judgment is hereby rendered finding accused, Oliver Imperio *y* Antonio, **GUILTY** beyond reasonable doubt of the crime of Illegal Recruitment in Large Scale.

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[11] CA *rollo*, pp. 47-57.

[12] Id. at 55-56.

Accordingly, pursuant to Sec. 7(b) of R.A. 8042, "Migrant Workers and Overseas Filipinos Act of 1995," accused Oliver Imperio y Antonio is sentenced to suffer the penalty of life imprisonment and a fine of Five Hundred Thousand Pesos (Php500,000.00). He is likewise ordered to pay the private complainants the following amounts as actual damages, to wit: 1) Shane Llave — Php7,000.00; 2) Edralin Sta. Maria — Php7,000.00; and 3) Magellan Concrenio III — Php10,000.00.

Let a mittimus order be issued to transfer custody of the accused to National Bilibid Prisons, Muntinlupa City.

SO ORDERED.[13]

Aggrieved, appellant appealed the Judgment to the CA.

Ruling of the Court of Appeals:

On February 10, 2017, the CA rendered its assailed Decision[14] affirming with modifications the Judgment of the RTC. The dispositive portion of the CA Decision reads:

WHEREFORE, premises considered, the appeal is **DENIED**. The March 16, 2016 Judgment of the Regional Trial Court, Branch 166, Pasig City in Criminal Case No. 146959 is hereby AFFIRMED. In addition, accused-appellant is obliged to pay the interest of 6% per *annum* on the respective sums due to each of the complainants, to be reckoned from the finality of this decision until fully paid considering the amount to be restituted became determinate only through this adjudication.

SO ORDERED.[15]

The CA held that the appellant's testimony is self-serving and uncorroborated, and that his denial of any illegal recruitment activity "cannot stand against the prosecution witnesses' positive identification of appellant as the person who induced them to part with their money upon the misrepresentation and false

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[13] Id. at 56.

[14] *Rollo*, pp. 2-17.

[15] Id. at 17.

promise of deployment abroad."[16] The appellate court also gave respect to the RTC's factual findings and assessment of the credibility of the prosecution's witnesses. It noted that the prosecution witnesses corroborated each other's testimonies — that appellant represented to the private complainants of his resources and ability to send them abroad for employment. The CA also found that appellant was, in no manner, authorized by law to engage in the recruitment and placement of workers, as evidenced by a Certification[17] issued by the POEA. It also held that there were at least three (3) victims in this case who all testified before the RTC in support of their respective complaints, which therefore made appellant liable for Illegal Recruitment in Large Scale.

Proceedings before this Court:

Appellant now seeks affirmative relief from this Court and pleads for his acquittal.

This Court, in its October 2, 2017 Resolution,[18] notified the parties that they may file their supplemental briefs, if they so desire. However, both parties manifested[19] that in lieu of filing supplemental briefs, they were adopting their respective briefs filed before the CA.

Issue

The main issue raised by appellant is whether the RTC erred in finding that his guilt for the crime charged had been proven beyond reasonable doubt.

Appellant maintains that the RTC gravely erred in giving weight to the testimonies of the prosecution witnesses despite their inconsistencies, which therefore casts doubt on the veracity and credibility of their declarations. In particular, appellant

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[16] Id. at 12.

[17] Records, p. 191.

[18] *Rollo*, pp. 24-25.

[19] Id. at 26-28, and 31-33.

points out that the testimony of Llave is unclear as to when she came to know of appellant.

Appellant also claims that: (1) Llave's failure to request from appellant a receipt for the amounts supposedly paid to him; and (2) Concrenio's act of paying appellant the sum of ₱10,000.00 as processing fee for his papers with the United States Embassy, but which pertains to his employment in Canada, are unnatural and contrary to human experience, which therefore cast doubt on the veracity of their accounts.

Appellant further denies promising any kind of overseas employment to Sta. Maria, and that the latter "parted with his money because of what he learned from [De Leon] and [Barabas] and not because of any representations made by [appellant]."[20] Appellant also faults the RTC for disregarding his defense of denial.

Our Ruling

We find the appeal unmeritorious.

Illegal recruitment in large scale:

Article 13 (b) of the Labor Code, as amended,[21] defines recruitment and placement as "any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers, and includes referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not." Recruitment, as defined in the Labor Code, becomes illegal when undertaken by non-licensees or non-holders of authority. In this regard, Article 38 of the Labor Code provides:

ARTICLE 38. *Illegal Recruitment*. — (a) Any recruitment activities, including the prohibited practices enumerated under Article 34 of this Code, to be undertaken by non-licensees or non-holders of authority, shall be deemed illegal and punishable under Article 39

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[20] CA *rollo*, p. 42.

[21] LABOR CODE OF THE PHILIPPINES, Presidential Decree No. 442 (Amended & Renumbered). Approved: July 21, 2015.

of this Code. The Department of Labor and Employment or any law enforcement officer may initiate complaints under this Article.

(b) Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage and shall be penalized in accordance with Article 39 hereof.

Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring and/or confederating with one another in carrying out any unlawful or illegal transaction, enterprise or scheme defined under the first paragraph hereof. Illegal recruitment is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

To be clear, Illegal Recruitment, as defined under Article 38 of the Labor Code, encompasses illegal recruitment activities for both local and overseas employment which were undertaken by non-licensees or non-holders of authority.

RA 8042, or the "Migrant Workers and Overseas Filipinos Act of 1995," as amended by RA 10022,[22] broadened the definition of Illegal Recruitment under the Labor Code, and provided stiffer penalties especially when it constitutes economic sabotage, which are either Illegal Recruitment in Large Scale, or Illegal Recruitment Committed by a Syndicate. Notably, RA 8042 defines and penalizes Illegal Recruitment for employment abroad, whether undertaken by a non-licensee or non-holder of authority or by a licensee or holder of authority. Relevant to the instant case is Section 6 of RA 8042, which provides:

SEC. 6. *Definition.* — For purposes of this Act, illegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers and includes referring, contract services, promising or advertising for employment abroad, whether for profit or not, when undertaken by a non-licensee or non-holder of authority contemplated under Article 13(f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the

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[22] AN ACT AMENDING REPUBLIC ACT NO. 8042, Otherwise Known as the Migrant Workers and Overseas Filipino Act of 1995, Republic Act No. 10022. Approved: March 8, 2010.

Philippines: *Provided*, That any such non-licensee or non-holder who, in any manner, offers or promises for a fee employment abroad to two or more persons shall be deemed so engaged. It shall likewise include the following acts, whether committed by any person, whether a non-licensee, non-holder, licensee or holder of authority: x x x

x x x x x x x x x

(m) Failure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of deployment, in cases where the deployment does not actually take place without the worker's fault. Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage; and

x x x x x x x x x

Illegal recruitment is deemed committee by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

Under RA 8042, a non-licensee or non-holder of authority is liable for Illegal Recruitment when the following elements concur: (1) the offender has no valid license or authority required by law to enable him to lawfully engage in recruitment and placement of workers; and (2) the offender undertakes any of the activities within the meaning of "recruitment and placement" under Article 13 (b) of the Labor Code, or any of the prohibited practices enumerated under Article 34 of the Labor Code (now Section 6 of RA 8042). In the case of Illegal Recruitment in Large Scale, a third element is added: that the offender commits any of the acts of recruitment and placement against three or more persons, individually or as a group.[23]

Moreover, "[t]o prove [I]llegal [R]ecruitment, it must be shown that the accused gave the complainants the distinct impression that [he or she] had the power or ability to deploy the complainants abroad in [such] a manner that they were convinced to part with their money for that end."[24]

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[23] *People v. Tolentino,* 762 Phil. 592, 611 (2015).

[24] *People v. Sison*, 816 Phil. 8, 22-23 (2017) citing *People v. Abat*, 661 Phil. 127, 132 (2011).

All the elements of Illegal Recruitment in Large Scale are present in the instant case.

In this case, the prosecution sufficiently proved that appellant had indeed engaged in Large Scale Illegal Recruitment.

First, appellant is a non-licensee or non-holder of authority. Among the documentary evidence submitted by the prosecution is a POEA Certification[25] dated May 31, 2013, which states that appellant is "not licensed nor authorized to recruit workers for overseas employment."[26] Significantly, appellant has not negated nor denied the contents of the Certification issued by the POEA.

Second, three (3) private complainants, namely, Llave, Concrenio, and Sta. Maria, all positively identified appellant as the person who promised them overseas employment in Canada or the USA in various capacities, which gave them the distinct impression that appellant had the ability to facilitate their applications and, eventually, deploy them for employment abroad. It bears noting that all these complainants corroborated each other on materials points, particularly that — (1) they were made to believe that appellant was capable of securing them of work abroad; (2) he exacted from them various sums of money as placement fees; (3) he required them to submit various documents for the processing of their visas with the Unites States Embassy; (4) he demanded an additional amount of ₱1,500.00 from each of the applicants as notarization fee for their papers submitted to the United States Embassy; and (5) he failed to secure overseas employment for them as promised.

Appellant attacks the credibility and veracity of their accounts for being faulty and inconsistent.

We find that the inconsistencies cited by appellant are immaterial to adversely affect their testimonies. To our mind,

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[25] Records, p. 191.

[26] Id.

these are minor details and collateral matters which do not affect the weight and substance of their declarations. Nor do they touch on the essential elements of the crime charged. "It is an elementary rule in this jurisdiction that inconsistencies in the testimonies of prosecution witnesses with respect to minor details and collateral matters do not affect the substance of their declaration nor the veracity or weight of their testimony."[27] Verily, what is important is that private complainants have positively identified appellant as the one who made misrepresentations of his capacity to secure and facilitate for them overseas employment, and induced them to part with their money upon the false promise of employment abroad.

In contrast, appellant offered only his defense of denial and alibi which we hold to be unavailing. It is settled in this jurisdiction that "greater weight is given to the positive identification of the accused by the prosecution witnesses than the accused's denial and explanation concerning the commission of the crime."[28] Moreover, a denial, when unsubstantiated by clear and convincing evidence, is negative and self-serving evidence undeserving of weight in law. Thus, as between appellant's alibi and bare denials, and the categorical and positive statements of the private complainants, the latter must prevail.[29]

It bears emphasis at this point that the fact that no receipt was issued by appellant is not fatal to the prosecution's cause, more so in this case where the respective testimonies of private complainants clearly narrated appellant's involvement in illegal recruitment activities. The case of *People v. Domingo*[30] is instructive, *viz.*:

That no receipt or document in which appellant acknowledged receipt of money for the promised jobs was adduced in evidence

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[27] *Calma v. People*, 820 Phil. 848, 866 (2017).

[28] *People v. Leoño*, G.R. No. 244379, December 5, 2019 citing *People v. Gharbia*, 369 Phil. 942, 953 (1999).

[29] *People v. Dela Cruz*, 811 Phil. 745, 764 (2017).

[30] 602 Phil. 1037 (2009).

does not free him of liability. For even if at the time appellant was promising employment no cash was given to him, he is still considered as having been engaged in recruitment activities, since Article 13 (b) of the Labor Code states that the act of recruitment may *be for profit or not*. It suffices that appellant promised or offered employment for a fee to the complaining witnesses to warrant his conviction for illegal recruitment.[31] (Underscoring supplied)

There is no question at this point that both the RTC and the CA found that appellant had engaged in illegal recruitment activities. In this regard, we have consistently held that factual findings of the trial court, especially when the same have been affirmed by the appellate court, as in this case, are deemed binding and conclusive.[32] This is because "trial courts are in a better position to decide the question of credibility, having heard the witnesses themselves and having observed first-hand their demeanor and manner of testifying under grueling examination."[33] While this Court may revise the factual findings of the RTC on the notion that they were erroneous, unfounded, unreliable, or conflicted with the findings of fact of the CA,[34] this notion, however, has not been demonstrated by appellant in the instant case.

Given all the foregoing premises, this Court finds no reason to deviate from the findings of the RTC and the CA.

Lastly, it was established that there were at least three (3) victims in this case, namely, Llave, Concrenio, and Sta. Maria, who all testified before the RTC in support of the irrespective complaints. In this regard, the Court is not swayed by appellant's assertion that he did not promise any kind of overseas employment to Sta. Maria. As found by the RTC and the CA, it was clearly established that appellant directly dealt with Sta. Maria relative to the latter's supposed employment abroad, and

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[31] Id. at 1045-1046.

[32] *People v. Tolentino, supra* note 23, at 613.

[33] *People v. Dela Cruz, supra* note 29.

[34] *People v. Molina*, G.R. No. 229712, February 28, 2018.

that appellant even charged him a placement fee to cover for the expenses of processing his documents.

Based on the foregoing, there is no doubt that appellant is guilty of Illegal Recruitment in Large Scale, which constitutes economic sabotage under Section 6 of RA 8042.

The penalty imposed.

Anent the penalty that must be imposed, we note that both the RTC and the CA imposed the penalty of life imprisonment and a fine of ₱500,000.00.

Section 7 (b) of RA 8042 provides that "the penalty of life imprisonment and a fine of not less than Five hundred thousand pesos (₱500,000.00) nor more than One million pesos (₱1,000,000.00) shall be imposed if Illegal Recruitment constitutes economic sabotage" such as in the case of Illegal Recruitment in Large Scale. Notably, the same section states that "the maximum penalty shall be imposed if x x x committed by a non-licensee or non-holder of authority."[35]

Significantly, RA 10022, which took effect on May 7, 2010,[36] amended the fine under Section 7 (b) of RA 8042 in this wise, *viz.*:

> The penalty of life imprisonment and a fine of not less than Two million pesos (₱2,000,000.00) nor more than Five million pesos (₱5,000,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined therein.
>
> *Provided, however,* That the maximum penalty shall be imposed if x x x committed by a non-licensee or non-holder of authority.[37]

Considering that the crime charged was committed on January 11, 2012, which is almost two (2) years after the amendment took effect on May 7, 2010, the penalty as amended by RA

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[35] Republic Act No. 8042, Section 7.

[36] *People v. Molina, supra* note 34.

[37] Republic Act No. 10022, Section 6.

10022 should be, perforce, applied. Moreover, Section 7 of the latter statute provides that the maximum penalty shall be imposed if committed by a non-licensee or non-holder of authority.

Considering the foregoing premises, the proper penalty to be imposed upon appellant is life imprisonment and a fine of ₱5,000,000.00.

WHEREFORE, the appeal is **DISMISSED**. The assailed February 10, 2017 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 08232, which affirmed the March 16, 2016 Judgment of the Regional Trial Court of Pasig City, Branch 166 in Criminal Case No. 146959 finding accused-appellant Oliver Imperio *y* Antonio **GUILTY** beyond reasonable doubt of Illegal Recruitment in Large Scale under Republic Act No. 8042, as amended by Republic Act No. 10022, and sentencing him to suffer the penalty of life imprisonment, is **AFFIRMED with MODIFICATION** in that the Fine is increased from ₱500,000.00 to ₱5,000,000.00.

The amounts ordered to be paid as actual damages in Criminal Case No. 146959 shall earn interest at the legal rate of six percent (6%) *per annum* which shall be computed from the date of finality of this Decision until fully paid.

SO ORDERED.

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

Baltazar-Padilla, J., on leave.

THIRD DIVISION

[G.R. No. 236544. October 5, 2020]

THE PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **EFREN LOMA *y* OBSEQUIO *alyas* "PUTOL",** *Accused-Appellant.*

SYLLABUS

1. CRIMINAL LAW; STATUTORY RAPE; ELEMENTS THEREOF.— Statutory rape is committed by sexual intercourse with a woman below 12 years of age regardless of her consent, or the lack of it, to the sexual act. Thus, to convict an accused of the crime of statutory rape, the prosecution carries the burden of proving: (a) the age of the complainant; (b) the identity of the accused; and (c) the sexual intercourse between the accused and the complainant.

2. ID.; ID.; REMEDIAL LAW; EVIDENCE; COMPETENT EVIDENCE OF AGE; FOR THE QUALIFYING ELEMENT OF AGE IN STATUTORY RAPE TO BE APPRECIATED, THERE MUST BE INDEPENDENT EVIDENCE OF THE SAME, OTHER THAN THE TESTIMONIES OF THE PROSECUTION WITNESSES.— With respect to the age of a victim, the settled rule is that there must be independent evidence proving the same, other than the testimonies of the prosecution witnesses and the absence of denial by appellant. The victim's original or duly certified birth certificate, baptismal certificate or school records would suffice as competent evidence of her age. . . . [A]side from the testimonies of the prosecution witnesses, coupled with accused-appellant's absence of denial, no independent substantial evidence was presented to prove the age of AAA. Neither was it shown by the prosecution that the said Certificate of Live Birth had been lost, destroyed, unavailable or were otherwise totally absent. Hence, the trial and appellate courts correctly ruled that the qualifying element of the crime of statutory rape was not established.

3. ID.; ID.; ID.; ID.; SIMPLE RAPE; ELEMENT OF FORCE; IN STATUTORY RAPE, PROOF OF FORCE OR INTIMIDATION IS UNNECESSARY, UNLIKE IN SIMPLE

RAPE THROUGH FORCE OR INTIMIDATION.— In statutory rape, proof of force, intimidation or consent is unnecessary as they are not elements thereof. This is because the law presumes that a person under 12 years of age does not possess discernment and is incapable of giving intelligent consent to the sexual act. While in simple rape through force or intimidation, the prosecution must prove that the accused had carnal knowledge of the victim and that said act was accomplished through the use of force or intimidation.

4. ID.; ID.; ID.; ID.; ID.; ID.; IN THE ABSENCE OF PROOF OF THE ELEMENT OF AGE IN STATUTORY RAPE, CONVICTION FOR SIMPLE RAPE IS PROPER WHERE THERE IS PHYSICAL EVIDENCE OF WOUNDS AND BLOODSTAINS SHOWING THE EMPLOYMENT OF FORCE.— In the present case, despite the failure to prove the age of the victim to enable the court to presume that AAA is incapable of giving consent, the prosecution was able to prove that the element of force was attendant in the commission of the crime. BBB testified that at the time she examined her daughter's body after the latter declared to her that accused-appellant sexually abused her at the banana plantation, she noticed a wound in her inner thigh and blood stains on her back near her anus and at the front in between her legs.

5. ID.; ID.; ID.; ID.; ID.; CIRCUMSTANTIAL EVIDENCE; IF FOR SOME REASON, THE RAPE VICTIM FAILS OR REFUSES TO TESTIFY, THE COURT MUST CONSIDER THE ADEQUACY OF THE CIRCUMSTANTIAL EVIDENCE ESTABLISHED BY THE PROSECUTION.— Direct evidence, such as the testimony of the victim, is not the only means of proving rape beyond reasonable doubt or is not indispensable to criminal prosecutions as a contrary rule would render convictions virtually impossible given that most crimes, by their nature, are purposely committed in seclusion and away from eyewitness. If for some reason the complainant fails or refuses to testify, as in this case, then the court must consider the adequacy of the circumstantial evidence established by the prosecution provided that (*a*) there was more than one circumstance; (*b*) the facts from which the inferences were derived were proved; and (*c*) the combination of all the circumstances was such as to produce a conviction beyond reasonable doubt. It is absolutely necessary, however, that the

unbroken chain of the established circumstances led to no other logical conclusion except the appellant's guilt.

6. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY OF EVIDENCE; HEARSAY RULE, EXCEPTIONS THERETO; *RES GESTAE*; REQUISITES FOR A DECLARATION TO BE DEEMED PART OF THE *RES GESTAE*.— [A]s a general rule, hearsay evidence is inadmissible in courts of law. However, the hearsay rule has several exceptions which includes Section 42 of Rule 130 of the Rules of Court, . . .

Clearly, a declaration is deemed part of the *res gestae* and is admissible as an exception to the hearsay rule when the following requisites are present: (1) the principal act, the *res gestae*, is a startling occurrence; (2) the statements were made before the declarant had time to contrive or devise; and (3) statements must concern the occurrence in question and its immediately attending circumstances.

7. ID.; ID.; ID.; ID.; ID.; THE DECLARATION OF THE VICTIM UTTERED IMMEDIATELY AFTER THE RAPE, WHICH IS AN UNDOUBTEDLY STARTING EVENT, IS CONSIDERED AS PART OF THE *RES GESTAE*.— Here, the declarations of AAA were correctly considered by the trial court as part of the *res gestae* as the same was uttered immediately after the rape, an undoubtedly startling event, committed against her by someone she considered as family. Also, there is no question that AAA had no opportunity to concoct a story different from what actually transpired as when she arrived home and immediately declared what accused-appellant did to her, her mother still found blood stains near her anus and in between her legs. Verily, all the requisites for a declaration to be considered as part of the *res gestae* were present.

8. ID.; ID.; ID.; ID.; INDEPENDENTLY RELEVANT STATEMENTS; THE RECOLLECTION OF A WITNESS OF THE VICTIM'S STATEMENTS MAY BE CONSIDERED AS AN INDEPENDENTLY RELEVANT STATEMENT THAT ESTABLISHES THE FACT THAT THE DECLARATION WAS MADE BY THE VICTIM, BUT IT DOES NOT ESTABLISH THE TRUTH OR VERACITY THEREOF.—BBB's recollection of AAA's statements, as well as her own observation of AAA during that time, was correctly considered by the appellate court as independently relevant

statements, also an exception to the hearsay rule. The appellate court explained that the testimony of BBB established the fact that the declaration was made or the tenor thereof. It does not establish the truth or veracity of AAA's statement since it is merely hearsay, AAA not being present in court to attest to such utterance. Nonetheless, evidence regarding the making of such independently relevant statement is not secondary but primary, because the statement itself may: (1) constitute a fact in issue or (2) be circumstantially relevant as to the existence of that fact. Unquestionably, BBB's statements that AAA declared to her that accused-appellant raped her at the banana plantation with the use of force is relevant to: (a) the manner by which the rape was committed and (b) the accused-appellant's culpability for the crime charged.

9. ID.; ID.; DENIAL; ALIBI; FOR THE DEFENSE OF ALIBI TO PROSPER, THE ACCUSED MUST PROVE THAT HE WAS SO FAR AWAY THAT IT WAS NOT POSSIBLE FOR HIM TO HAVE BEEN PHYSICALLY PRESENT AT THE PLACE OF THE CRIME OR AT ITS IMMEDIATE VICINITY AT THE TIME OF ITS COMMISSION.— [A]ccused-appellant's defenses of denial and alibi fail to impress. Alibi, like denial, is an inherently weak defense because it is easy to fabricate and highly unreliable. For the defense of alibi to prosper, the accused must prove that he was somewhere else when the offense was committed and that he was so far away that it was not possible for him to have been physically present at the place of the crime or at its immediate vicinity at the time of its commission. While accused-appellant alleged that he was in Tiaong, Quezon at the time of the commission of the crime, he was not able to support the same with adequate evidence.

APPEARANCES OF COUNSEL

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

D E C I S I O N

GAERLAN, *J.*:

This is an appeal from the Decision[1] of the Court of Appeals (CA) dated July 19, 2017 in CA-G.R. CR-HC No. 08351, which affirmed with modification the Decision[2] dated May 3, 2016 of the Regional Trial Court (RTC) of Ligao City in Criminal Case No. 5385, finding herein Efren Loma *y* Obsequio alyas "Putol" (accused-appellant) guilty beyond reasonable doubt of the crime of simple rape defined and penalized under Article 266-A, paragraph 1 (a) of the Revised Penal Code (RPC), as amended, in relation to Article 266-B thereof.

The Antecedents

The accused-appellant was charged with statutory rape defined and penalized under Article 266-A paragraph 1 (d)[3] in relation to Article 266-B[4] of the RPC, as amended, in an Information filed on January 9, 2007 which reads:

That on or about 6:00 o'clock in the afternoon of October 21, 2006 at [redacted] province of

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[1] *Rollo*, pp. 2-17; penned by Associate Justice Jane Aurora C. Lantion, with Associate Justices Fernanda Lampas-Peralta and Victoria Isabel A. Paredes, concurring.

[2] CA *rollo*, pp. 51-64; penned by Presiding Judge Annielyn B. Medes-Cabelis.

[3] 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.

[4] Article 266-B. *Penalty*. — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

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Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, taking advantage of the tender age of AAA, wilfully, unlawfully and feloniously[,] have carnal knowledge with her, a ten (10) years [sic] old girl and grade 1 student, against her will and consent, to her damage and prejudice."

ACTS CONTRARY TO LAW.[5]

Upon arraignment, accused-appellant, assisted by counsel, entered a plea of not guilty.[6]

The Facts

During the trial, BBB, the mother of AAA, testified that on October 21, 2006, AAA arrived home and narrated to her that she was sexually abused at the banana plantation by accused-appellant,[7] whom she knew fully well as he was a relative whom they considered as family. Prompted by the revelations made by her daughter, BBB then examined AAA's body and saw that her vagina was swollen[8] and that there was a wound in her inner thigh.[9] Immediately thereafter, she changed AAA's clothing and, together with her older daughter CCC,[10] brought AAA to a clinic.[11]

Dr. James Margallo Belgira (Dr. Belgira) attended to AAA. He conducted genital examination which revealed that AAA's hymen was then dilated and lacerated at 5 and 7 o'clock positions. He also found that the posterior fourchette was sharp.[12] During his time at the witness stand, Dr. Belgira explained that a dilated

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[5] Records, p. 1.

[6] Id. at 21.

[7] TSN, September 24, 2013, p. 9.

[8] Id. at 10.

[9] Id. at 11.

[10] Id. at 9.

[11] Id. at 11.

[12] TSN, November 27, 2012, p. 6.

hymen means that it has an abnormally large opening.[13] He concluded that the findings showed clear signs of blunt vaginal penetrating trauma.[14]

For the defense, accused-appellant testified that on October 21, 2006, he and his wife, together with Faustino Alcovendas (Alcovendas), were at Tiaong, Quezon. According to him, he was summoned by the parents of Gina Sumali, the would-be bride of his son Wilfred to plan for a wedding.[15] He also stated that from Tiaong, Quezon, he went straight to and stayed at Cavite where his children at that time attended school.[16] According to him, he also had a furniture business there.[17] He averred that he only learned of the charges against him when he was arrested while he was at their house in Albay in December 2011 to attend his father's wake.[18]

The testimony of Loma was corroborated by Alcovendas[19] who narrated that he joined the Lomas to serve as a cook in the *pamamanhikan*. According to him, they left Basicao Coastal, Piudoran, Albay for Tiaong, Quezon on October 20, 2006 at around 9 o'clock in the morning.[20]

The RTC Ruling

After trial, the RTC found him guilty beyond reasonable doubt for simple rape. It ruled that the victim's age was not sufficiently established as the prosecution failed to present AAA's Certificate of Live Birth and prove its unavailability.[21] Corollarily, the

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[13] Id. at 7-8.

[14] Id. at 8.

[15] TSN, September 8, 2015, pp. 5-6.

[16] Id. at 10-11.

[17] Id. at 8.

[18] Id. at 11.

[19] TSN, July 14, 2015, pp. 5-6.

[20] Id. at 10.

[21] CA *rollo*, pp. 57-58.

RTC enunciated that since the age of the complainant, an element of the crime charged, was not proven, herein accused-appellant cannot be convicted of statutory rape.[22]

The RTC considered the respective testimonies of BBB and Dr. Begira, as well as the medico-legal report.[23] In addition, it took into account the absence of accused-appellant in Basicao Coastal and considered it as a clear indication of guilt. The dispositive portion of the Decision reads:

> **WHEREFORE**, the court finds accused Efren Loma y Obsequio alyas "Putol" **GUILTY** beyond reasonable doubt of the crime of rape under Article 266-A paragraph 1 (a) of the Revised Penal Code and penalized under Article 266-B of the Revised Penal Code, as amended, and he is hereby sentenced to suffer the penalty of *reclusion perpetua*. He is also directed to indemnify AAA the amount of a) Fifty Thousand Pesos (P50,000.00) as civil indemnity; b) Fifty Thousand Pesos (P50,000.00) as moral damages; and c) Thirty Thousand Pesos (P30,000.00) as exemplary damages. Interest at the rate of six percent (6%) per annum is likewise imposed on all the damages awarded in this case from date of finality of this judgment until fully paid.
>
> **SO ORDERED.**[24]

The CA Ruling

The accused-appellant elevated his case to the CA via a notice of appeal dated May 4, 2016. Briefs were filed by the accused-appellant and the plaintiff-appellee.

Later, the CA affirmed the conviction of the accused-appellant of simple rape. The dispositive portion of the Decision reads:

> **WHEREFORE**, the Appeal is **DENIED**. The Decision dated 03 May 2016 issued by the Regional Trial Court of Ligao City, Branch 12 in Criminal Case No. 5385 is hereby **AFFIRMED WITH MODIFICATION** in that Accused-Appellant Efren O. Loma is

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[22] Id. at 58.

[23] Id. at 60.

[24] Id. at 63-64.

ordered to pay Private Complainant the amount of P75,000.00 as civil indemnity, P75,000.00 as moral damages, and P75,000.00 as exemplary damages plus interest of 6% per annum from the date of finality of this Decision until fully paid.

SO ORDERED.[25]

Issue

The issue to be resolved in this appeal is whether or not the CA erred in affirming the conviction of the accused-appellant.

Accused-appellant invoked the same arguments he raised before the CA in assailing his conviction. He alleged that the appellate court erred in giving weight and credence to the testimony of BBB and considering it as part of *res gestae*, and in sustaining his conviction despite the prosecution's failure to prove his guilt beyond reasonable doubt. He argued that the testimony of BBB is hearsay and, thus, inadmissible in evidence.

The Court's Ruling

The appeal lacks merit.

Statutory rape is committed by sexual intercourse with a woman below 12 years of age regardless of her consent, or the lack of it, to the sexual act.[26] Thus, to convict an accused of the crime of statutory rape, the prosecution carries the burden of proving: (a) the age of the complainant; (b) the identity of the accused; and (c) the sexual intercourse between the accused and the complainant.[27]

With respect to the age of a victim, the settled rule is that there must be independent evidence proving the same, other than the testimonies of the prosecution witnesses and the absence of denial by appellant.[28] The victim's original or duly certified

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[25] Id. at 113.

[26] *People v. Baguion*, G.R. No. 223553, July 4, 2018.

[27] Id.

[28] *People v. Padilla*, 617 Phil. 170, 181 (2009); *People v. Codilan*, 581 Phil. 588, 600 (2008); *People v. Dela Cruz*, 570 Phil. 287, 310 (2008); *People v. Alvarado*, 429 Phil. 208, 224 (2002).

birth certificate, baptismal certificate or school records would suffice as competent evidence of her age.[29] In this case, the Information alleged that at the time of the commission of the crime, AAA was 10 years old. Aside from the testimony of Dr. Belgica that AAA was 10 years old at the time he examined her, BBB also testified that AAA was 10 years old at the time of the incident. When BBB was asked by the trial court to bring proof of the age of AAA, she stated that AAA's Certificate of Live Birth was just in their home and that she will bring the same on the next hearing date.[30] She, however, failed to do so. Thereby, aside from the testimonies of the prosecution witnesses, coupled with accused-appellant's absence of denial, no independent substantial evidence was presented to prove the age of AAA. Neither was it shown by the prosecution that the said Certificate of Live Birth had been lost, destroyed, unavailable or were otherwise totally absent.[31] Hence, the trial and appellate courts correctly ruled that the qualifying element of the crime of statutory rape was not established.

Despite the failure of the prosecution to prove the age of the private complainant, accused-appellant who was charged with the crime of statutory rape may still be convicted of simple rape under Article 266-A paragraph 1 (a)[32] of the RPC, as amended, provided that the prosecution was able to establish that the accused-appellant had carnal knowledge of the private complainant with the use of force.

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[29] *People v. Padilla*, supra note 28 at 181; *People v. Dela Cruz*, supra at 310.

[30] TSN, September 24, 2013, p. 4.

[31] *People v. Padilla*, supra at 182.

[32] Article 266-A, Revised Penal Code, as amended, states:

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;

x x x x x x x x x

In statutory rape, proof of force, intimidation or consent is unnecessary as they are not elements thereof. This is because the law presumes that a person under 12 years of age does not possess discernment and is incapable of giving intelligent consent to the sexual act.[33] While in simple rape through force or intimidation, the prosecution must prove that the accused had carnal knowledge of the victim and that said act was accomplished through the use of force or intimidation.[34]

In the present case, despite the failure to prove the age of the victim to enable the court to presume that AAA is incapable of giving consent, the prosecution was able to prove that the element of force was attendant in the commission of the crime. BBB testified that at the time she examined her daughter's body after the latter declared to her that accused-appellant sexually abused her at the banana plantation, she noticed a wound in her inner thigh and blood stains on her back near her anus and at the front in between her legs.[35] In *People v. Durano*,[36] the Court enunciated that physical evidence of bruises or scratches eloquently speaks of the force employed upon the rape victim.[37] If bruises and scratches were considered as proof of force, the Court will all the more consider wounds and blood stains as evidence of the employment of force upon a victim to accomplish such a bestial act.

In every criminal prosecution, the identity of the offender and the crime itself must be established by proof beyond reasonable doubt.[38]

The prosecution, to prove the crime, as well as the identity of the accused-appellant as the perpetrator thereof, offered the

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[33] *People v. Baguion*, supra note 26.

[34] *People v. Caoili*, 815 Phil. 839, 883 (2017).

[35] TSN, September 24, 2013, p. 11.

[36] 548 Phil. 383 (2007).

[37] Id. at 396.

[38] *People v. Espera*, 718 Phil. 680, 694 (2013).

testimony of BBB. She stated that she knew the accused-appellant well as she and her family treat him as a family member, he being a cousin of her husband.[39] Further, BBB narrated that when AAA arrived home that fateful day, the latter told her that accused-appellant sexually abused her at the banana plantation.[40]

The accused-appellant, in his effort to negate the allegations of the prosecution and exonerate himself from any liability, averred that AAA's failure to testify is fatal to the prosecution's case as BBB's testimony is hearsay and thus, inadmissible in evidence.[41] Thereby leaving no sufficient evidence for his conviction.

Direct evidence, such as the testimony of the victim, is not the only means of proving rape beyond reasonable doubt[42] or is not indispensable to criminal prosecutions as a contrary rule would render convictions virtually impossible given that most crimes, by their nature, are purposely committed in seclusion and away from eyewitness.[43] If for some reason the complainant fails or refuses to testify, as in this case, then the court must consider the adequacy of the circumstantial evidence established by the prosecution[44] provided that *(a)* there was more than one circumstance; *(b)* the facts from which the inferences were derived were proved; and *(c)* the combination of all the circumstances was such as to produce a conviction beyond reasonable doubt.[45] It is absolutely necessary, however, that the unbroken chain of the established circumstances led to no other logical conclusion except the appellant's guilt.[46]

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[39] TSN, September 24, 2013, pp. 8-9.

[40] Id. at 9.

[41] CA *rollo*, p. 41.

[42] *People v. Lupac*, 695 Phil. 505, 515 (2012).

[43] *People v. Jaen*, G.R. No. 241946, July 29, 2019.

[44] *People v. Estibal*, 748 Phil. 850, 866 (2014).

[45] *People v. Lupac*, supra note 42 at 515.

[46] Id.

Truly, a witness can testify only on the facts that he or she knows of his own personal knowledge,[47] *i.e.*, those which are derived from his or her own perception.[48] A witness may not testify on what he or she merely learned, read or heard from others because such testimony is considered hearsay and may not be received as proof of the truth of what he or she has learned, read or heard.[49] Hence, as a general rule, hearsay evidence is inadmissible in courts of law. However, the hearsay rule has several exceptions which includes Section 42 of Rule 130 of the Rules of Court which states:

Sec. 42. *Part of the res gestae*. — Statements made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as part of the *res gestae*. So, also, statements accompanying an equivocal act material to the issue, and giving it a legal significance may be received as part of the *res gestae*.

Clearly, a declaration is deemed part of the *res gestae* and is admissible as an exception to the hearsay rule when the following requisites are present: (1) the principal act, the *res gestae*, is a startling occurrence; (2) the statements were made before the declarant had time to contrive or devise; and (3) statements must concern the occurrence in question and its immediately attending circumstances.[50]

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[47] Section 36 of Rule 130 of the Rules of Court —

Sec. 36. *Testimony generally confined to personal knowledge; hearsay excluded*. — A witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception, except as otherwise provided in these rules.

[48] Section 20, Rule 130 of the 1997 Rules of Court.

Sec. 20. *Witnesses; their qualifications*. — Except as provided in the next succeeding section, all persons who can perceive, and perceiving, can make known their perception to others, may be witnesses.

[49] *Mancol v. Development Bank of the Philippines*, 821 Phil. 323, 335-336 (2017).

[50] *People v. Vargas*, G.R. No. 230356, September 18, 2019; *People v. Villarico*, 662 Phil. 399, 418 (2011).

Our jurisprudence is replete of cases where the victim never testified in court but her declaration to a prosecution witness was considered part of the *res gestae* and ultimately resulted to the conviction of the accused based thereon.

In *People v. Villarama*,[51] the accused, uncle of the non-testifying 4-year-old rape victim, was convicted on the basis of what she told her mother. The Court ruled:

> In the case at bar, there is no doubt that the victim was subjected to a startling occurrence when she pointed to appellant as her assailant. It is evident from the records that the statement was spontaneous because the time gap from the sexual assault to the time the victim recounted her harrowing experience in the hands of appellant was very short. Obviously, there was neither capability nor opportunity for the 4-year-old victim to fabricate her statement.[52]

In *People v. Lupac*,[53] the Court convicted the accused based on the 10-year-old victim's denunciation of her uncle to a neighbor whom she met soon after she managed to get away from her uncle after the rape.[54] It was held that:

> x x x The requisites were met herein. AAA went to Tita Terry's house immediately after fleeing from Lupac and spontaneously, unhesitatingly and immediately declared to Tita Terry that Lupac had sexually abused her. Such manner of denunciation of him as her rapist was confirmed by Tita Terry's testimony about AAA's panic-stricken demeanor that rendered it difficult to quickly comprehend what the victim was then saying. Of course, AAA's use of the words *hindot* and *inano ako ni Kuya Ega* said enough about her being raped.[55] (Citations omitted.)

In *People v. Velasquez*,[56] the Court also considered as part of the *res gestae* the declarations of the 2-year-old rape victim

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[51] 445 Phil. 323 (2003).

[52] Id. at 335.

[53] Supra note 42.

[54] *As cited in People v. Estibal*, 748 Phil. 850, 872 (2014).

[55] *People v. Lupac*, supra note 42 at 517-518.

[56] 405 Phil. 74 (2001).

to her mother. The Court found that the victim's statement, as well as her acts, constitutes the *res gestae*, as it was made immediately subsequent to a startling occurrence, uttered shortly thereafter by her with spontaneity, without prior opportunity to contrive the same.[57] Her mother's account of her words and gestures constitutes independently relevant statements distinct from hearsay and likewise admissible not as to the veracity thereof but to the fact that they had been thus uttered.[58]

Here, the declarations of AAA were correctly considered by the trial court as part of the *res gestae* as the same was uttered immediately after the rape, an undoubtedly startling event, committed against her by someone she considered as family. Also, there is no question that AAA had no opportunity to concoct a story different from what actually transpired as when she arrived home and immediately declared what accused-appellant did to her, her mother still found blood stains near her anus and in between her legs. Verily, all the requisites for a declaration to be considered as part of the *res gestae* were present.

In addition, BBB's recollection of AAA's statements, as well as her own observation of AAA during that time, was correctly considered by the appellate court as independently relevant statements, also an exception to the hearsay rule. The appellate court explained that the testimony of BBB established the fact that the declaration was made or the tenor thereof.[59] It does not establish the truth or veracity of AAA's statement since it is merely hearsay, AAA not being present in court to attest to such utterance.[60] Nonetheless, evidence regarding the making of such independently relevant statement is not secondary but primary, because the statement itself may: (1) constitute a fact in issue or (2) be circumstantially relevant as to the existence

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[57] Id. at 99.

[58] Id.

[59] *Rollo*, p. 10.

[60] See *Bayani v. People*, 56 Phil. 737, 746 (2007).

of that fact.[61] Unquestionably, BBB's statements that AAA declared to her that accused-appellant raped her at the banana plantation with the use of force is relevant to: (a) the manner by which the rape was committed and (b) the accused-appellant's culpability for the crime charged.[62]

In any event, accused-appellant's conviction did not rest solely on BBB's testimony. There are other equally important pieces of evidence on record that established his guilt beyond reasonable doubt. For one, the medico-legal report and testimony of Dr. Belgira supported the testimony of BBB on AAA's declaration that she was sexually abused. The lacerations found during the genital examination upon AAA proved the allegation of carnal knowledge. Further, BBB's testimony that, at the time she changed AAA's clothes, she noticed that her daughter had a wound in her inner thigh; her vagina was swollen; and there were blood stains near her anus and in between her legs,[63] is adequate evidence to establish that force was employed upon AAA.

Furthermore, accused-appellant's absence from Basicao Coastal was correctly appreciated by the RTC and the CA as a flight to evade arrest and an indication of guilt. To note, accused-appellant did not satisfactorily explain the reason why he did not return to Basicao Coastal considering that her wife and companion arrived at their barangay on October 29, 2006.[64]

Jurisprudence has time and again declared that flight is an indication of guilt. The flight of an accused, in the absence of a credible explanation, would be a circumstance from which an inference of guilt may be established "for a truly innocent person would normally grasp the first available opportunity to defend himself and to assert his innocence."[65]

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[61] Id.

[62] *Rollo*, p. 10.

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

[64] Id. at 86-87.

[65] *People v. Cruz*, 736 Phil. 564, 573-574 (2014); *People v. Del Mundo*, 418 Phil. 740, 753 (2001).

Although accused-appellant's alibi was corroborated by Alcovendas, the RTC did not find the latter as a credible witness.[66] Repeatedly, this Court generally accords the highest respect to the evaluation of the RTC.[67] In criminal cases, factual findings of the trial court are generally accorded great weight and respect on appeal, especially when such findings are supported by substantial evidence on record.[68] An assessment made by a trial court on the testimony of witnesses deserves respect absent any valid justification that can warrant its outright rejection by an appellate court.[69] The RTC's evaluation of the testimony of a witness is accorded the highest respect, except when such evaluation is tainted with arbitrariness.[70] Here, nothing significant has been shown to convince this Court that the RTC acted with bias or ignored something of substance that could have, in any degree, warranted an acquittal of the accused-appellant.[71]

Finally, accused-appellant's defenses of denial and alibi fail to impress. Alibi, like denial, is an inherently weak defense because it is easy to fabricate and highly unreliable.[72] For the defense of alibi to prosper, the accused must prove that he was somewhere else when the offense was committed and that he was so far away that it was not possible for him to have been physically present at the place of the crime or at its immediate vicinity at the time of its commission.[73] While accused-appellant alleged that he was in Tiaong, Quezon at the time of the commission of the crime, he was not able to support the same with adequate evidence.

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[66] CA *rollo*, p. 141.

[67] *People v. Vaynaco*, 364 Phil. 564, 572 (1999).

[68] *People v. Balute*, 751 Phil. 980, 987 (2015).

[69] *People v. Vaynaco*, supra at 572.

[70] Id. at 572-573.

[71] Id. at 573.

[72] *People v. Pitalla*, 797 Phil. 817, 827 (2016); *People v. Gani*, 710 Phil. 466, 473 (2013).

[73] Id.; *People v. Piosang*, 710 Phil. 519, 527 (2013).

WHEREFORE, the Decision of the Court of Appeals dated July 19, 2017 in CA-G.R. CR-HC No. 08351, which affirmed with modifications the Decision dated May 3, 2016 of the Regional Trial Court of Ligao City in Criminal Case No. 5385 is hereby **AFFIRMED**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 237140. October 5, 2020]

REGINA Q. ALBA, JOINED BY HER HUSBAND, RUDOLFO D. ALBA, *Petitioners*, *v.* **NIDA AROLLADO,[*] JOINED BY HER HUSBAND, PEDRO AROLLADO, JR.,** *Respondents*.

SYLLABUS

1. CIVIL LAW; ORAL CONTRACTS; ACTIONS BASED ON ORAL CONTRACTS; PRESCRIPTIVE PERIOD THEREOF; A CONTRACT THAT IS NOT EVIDENCED BY A WRITTEN AGREEMENT MAY BE ENFORCED WITHIN SIX YEARS; ISSUED CHECKS DO NOT CONVERT THE AGREEMENT INTO A WRITTEN CONTRACT, AS THEY ARE NOT THE KIND OF "WRITING" CONTEMPLATED BY LAW FOR THE 10-YEAR LIMITATION TO APPLY.— It is admitted that the sale of petroleum products on credit is not evidenced by a formal written agreement. Further, Nida issued three checks to settle certain purchases. The checks issued, however, did not convert their agreement into a written contract. In *Manuel v. Rodriguez, et al.*, the Court held that to be a written contract, all its terms must be in writing, and, a contract partly in writing and partly oral is, in legal effect, an oral contract. Also, the three checks are not the kind of "writing" or "written agreement" contemplated by law for the 10-year limitation to apply. . . .

Thus, Regina's right to collect a sum of money against Nida must be enforced within six years under Article 1145 of the Civil Code.

2. ID.; ID.; ID.; ID.; THE SIX-YEAR PRESCRIPTIVE PERIOD STARTS TO RUN FROM THE DATE OF THE BREACH OF CONTRACT FOR NON-PAYMENT, IN THIS CASE, FROM THE DISHONOR OF THE CHECKS.— Article 1150 of the same code provides that the prescriptive period for actions which have no special provision ordaining otherwise shall be

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[*] Nina Arollado in the Petition for Review on *Certiorari*.

counted from the day they may be brought. It is the legal possibility of bringing the action that determines the starting point for the computation of the period of prescription. . . .

. . .

In this case, the check issued to settle the obligation for the July 26, 2000 purchases was dishonored by the drawee bank on August 25, 2000, and the November 12, 2002 and November 27, 2002 checks were both dishonored on April 4, 2003. The dishonor of the three checks resulted in a breach of contract for non-payment. It is at this point that the right to bring an action for collection of a sum of money accrues. Counting six years therefrom, Regina had until August 25, 2006 to collect the amount covered by the July 26, 2000 check and until April 4, 2009 for the November 12 and 27, 2002 checks. Regina filed the complaint on June 4, 2013; hence, the action had already prescribed.

3. ID.; PRESCRIPTION OF ACTIONS; INTERRUPTION OF THE PRESCRIPTIVE PERIOD.— [P]rescription of actions is interrupted when (1) they are filed before the court, (2) when there is a written extrajudicial demand by the creditors, or (3) when there is any written acknowledgment of the debt by the debtor. In this case, however, Regina filed the complaint in court only on June 4, 2013 and issued the demand letter only on May 15, 2013 when the prescriptive period to collect has already set in. Further, we cannot lend credence to Regina's contention that Nida acknowledged her obligation when she made partial payments on November 8, 2012; hence, the prescriptive period should commence on that date. Regina failed to present evidence to corroborate her claim.

4. REMEDIAL LAW; CIVIL PROCEDURE; CAUSE OF ACTION, DEFINED; ELEMENTS FOR A CAUSE OF ACTION TO EXIST.— [C]ause of action . . . is defined as the act or the omission by which a party violates the right of another.

A cause of action exists if the following elements are present, namely: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant violative of the right of the plaintiff or constituting a breach of

the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages. It is only when the last element occurs that a cause of action arises.

5. ID.; ID.; JUDGMENTS; A PARTY WHO DOES NOT FILE A MOTION FOR RECONSIDERATION OR APPEAL CANNOT IMPUGN A JUDGMENT THROUGH A SUBSEQUENT PLEADING.–– Regina did not seek reconsideration of the RTC's Decision limiting Nida's liability to the value of the dishonored checks. It is only in her Appellees' Brief that Regina claimed gross misapprehension of evidence, when the court *a quo* ruled that she failed to prove the existence of the ₱616,169.75, ₱156,662.00, and ₱150,996.00 unpaid amounts. It is well-settled that a party cannot impugn the correctness of a judgment not appealed from by him. He may make counter assignment of errors but he can do only to sustain the judgment on other grounds. Further, he may not seek modification or reversal of the judgment, for in such case, he must appeal. Thus, the trial court's Decision had become final and shall be binding upon Regina.

APPEARANCES OF COUNSEL

Rico and Associates for petitioners.
Berjamin (+) *& Berjamin* for respondents.

R E S O L U T I O N

LOPEZ, *J.*:

The reckoning date of the prescriptive period for actions based upon an oral contract is the core issue in this Petition for Review on *Certiorari*[1] filed under Rule 45 of the Rules of Court seeking to set aside the Decision[2] dated September 8, 2017 and

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[1] *Rollo*, pp. 9-21.

[2] *Id.* at 114-124; penned by Associate Justice Gabriel T. Ingles, with the concurrence of Associate Justices Marilyn B. Lagura-Yap and Geraldine C. Fiel-Macaraig.

Resolution[3] dated January 22, 2018 of the Court of Appeals (CA)-Cebu City in CA-G.R. CEB CV No. 05317 which dismissed the complaint for sum of money filed by Regina Q. Alba (Regina) against Nida Arollado (Nida) on the ground of prescription.

ANTECEDENTS

Regina is the sole proprietor of Libra Fishing engaged in selling crude oil, petroleum products and related merchandise.[4] On various dates beginning 2000,[5] Nida purchased on credit from Libra Fishing crude oil and other petroleum products. As payment for the July 26, 2000, November 12, 2000, and November 27, 2000 purchases, Nida issued three checks[6] which were dishonored by the drawee banks. On May 15, 2013, Regina demanded payment for the outstanding balance[7] but Nida failed

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[3] *Id*. at 131-132.

[4] *Id*. at 77.

[5] See *id*. at 115. Nida purchased petroleum products on the following dates:

Date	Amount
August 22, 2000	P616,169.78
July 26, 2000	P60,000.00
November 12, 2000	P44,092.00
November 27, 2000	P66,168.50
November 29, 2002	P156,662.00
December 21, 2002	P150,996.00

[6] *Id*. Nida issued the following checks:

Bank Name	Check Number	Amount	Date
Chinabank	A0156896	P60,000.00	July 26, 2000
Maybank	0001386418	P44,092.00	November 12, 2002[*]
Maybank	0001386598	P66,168.50	November 27, 2002[**]

[*] *Id*. at 37, 38, 116.

[**] *Id*. at 36, 38, 116.

[7] *Id*. at 38.

to heed the demand. Thus, on June 4, 2013, Regina[8] filed a complaint[9] for sum of money against Nida.[10]

In her answer,[11] Nida admitted that she issued the three dishonored checks but claimed that she already settled the amounts through installment payments. She averred that she religiously paid her obligations to Regina and denied any outstanding liability. Granting there are still unpaid amounts, Regina's right to collect had already prescribed since the transaction took place more than 10 years ago.

On August 18, 2014, the Regional Trial Court (RTC) granted Regina's claim but limited the liability of Nida to the value of the dishonored checks, *viz.*:[12]

> **WHEREFORE**, judgment is rendered in favor of plaintiffs and against defendants ordering the latter to jointly and severally pay plaintiffs ₱170,260.50 representing [the] total amount of the checks issued by defendant(s) to plaintiffs that were dishonored by the drawee banks.
>
> Defendants are further ordered to pay jointly and severally plaintiffs ₱20,000.00 attorney's fees and litigation expenses, and, the costs of this suit.
>
> The counterclaim and all other claims in connection herewith are ordered dismissed.
>
> **SO ORDERED**.[13] (Emphases in the original.)

Feeling aggrieved, Nida appealed to the CA. On September 8, 2017, the CA rendered its Decision[14] finding the action had

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[8] Regina was joined by her husband, Rudolfo D. Alba, as nominal co-plaintiff; *id*. at 27.

[9] *Id*. at 27-32.

[10] Nida's husband, Pedro Arollado, Jr., was impleaded as her co-defendant; *id*. at 27.

[11] *Id*. at 39-46.

[12] *Id*. at 77-85; penned by Judge Delano F. Villarruz.

[13] *Id*. at 85.

[14] *Supra* note 2.

already prescribed. The CA noted that the parties entered into a verbal contract for Regina to sell the petroleum products to Nida on credit. Thus, Regina had six years to recover the amount owed by Nida, computed from the date of dishonor of the checks or at most until April 4, 2009. Since the complaint was filed only on June 4, 2013, Regina's action had already prescribed, thus:

> **WHEREFORE**, the appeal is **GRANTED**. The Decision dated August 18, 2014 of the Regional Trial Court, Branch 16, Roxas City, Capiz in Civil Case No. V-27-13 is hereby **REVERSED** and **SET ASIDE**. The instant complaint for sum of money and damages is **DISMISSED**.
>
> **SO ORDERED**.[15] (Emphases in the original.)

Regina sought reconsideration, but her motion was denied on January 22, 2018.[16] Hence, this petition.

Regina professes that the prescriptive period should be reckoned from the date of last partial payment of the outstanding debt by the debtor, or from the date of extrajudicial demand. Since the complaint was filed on June 4, 2013, or barely seven months after the last payment was made on November 8, 2012, or several days from the extrajudicial demand on May 15, 2013, prescription has not yet set in.

RULING

The petition is bereft of merit.

Prefatorily, Regina did not seek reconsideration of the RTC's Decision limiting Nida's liability to the value of the dishonored checks. It is only in her Appellees' Brief[17] that Regina claimed gross misapprehension of evidence, when the court *a quo* ruled that she failed to prove the existence of the ₱616,169.75, ₱156,662.00, and ₱150,996.00 unpaid amounts. It is well-settled

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[15] *Rollo*, p. 123.

[16] *Supra* note 3.

[17] *Rollo*, pp. 107-113.

that a party cannot impugn the correctness of a judgment not appealed from by him.[18] He may make counter assignment of errors but he can do only to sustain the judgment on other grounds. Further, he may not seek modification or reversal of the judgment, for in such case, he must appeal. Thus, the trial court's Decision had become final and shall be binding upon Regina. This Court shall therefore confine its discussion on the reckoning date of the prescriptive period to collect the ₱170,260.50 covered by the dishonored checks.

It is admitted that the sale of petroleum products on credit is not evidenced by a formal written agreement. Further, Nida issued three checks to settle certain purchases. The checks issued, however, did not convert their agreement into a written contract. In *Manuel v. Rodriguez, et al.*,[19] the Court held that to be a written contract, all its terms must be in writing, and, a contract partly in writing and partly oral is, in legal effect, an oral contract.[20] Also, the three checks are not the kind of "writing" or "written agreement" contemplated by law for the 10-year limitation to apply. We quote with approval the disquisition of the CA, *viz.*:

x x x In *Philippine National Bank v. Francisco Buenaseda*,[21] the Supreme Court thoroughly explained what "writing" purports, thus:

> Under Act 190, the law applicable to the instant case, an action based upon a written contract prescribes in 10 years, whereas one predicated on a contract not in writing must be commenced in 6 years.
>
> It is the contention of appellant that the 21 sales orders and 69 delivery receipts issued in connection with the lumber purchased and received by appellee constitute written contracts. Appellee, naturally, maintains the contrary view.

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[18] *Tangalin v. Court of Appeals*, 422 Phil. 358, 364 (2001), citing *Santos v. Court of Appeals*, 293 Phil. 45, 49 (1993).

[19] 109 Phil. 1 (1960).

[20] *Id*. at 7, citing *Fey v. Loose Wiles Biscuit Co.*, 75 P2d 810; *Peifer v. New Comer, et al.*, 157 NE 240; 12 Am. Jur. 550.

[21] 114 Phil. 1 (1962).

A "writing" for the payment of money sued in an action, within the meaning of the ten-year statute of limitations, is one which contains either an express promise to pay or language from which a promise to pay arises by fair implication. It is sufficient if the words import a promise or an agreement or if this can be inferred from the terms employed. Evidently, while it is not necessary that there be an express promise, the writing, to be within the statute, must on its face contain words or language which would fairly imply such a promise to pay. In other words, it must affirmatively appear that the promise of payment was given by the language of the writing itself. If, as stated in the authorities cited by the trial court, the promise arises only upon proof of extrinsic facts, or as sometimes expressed, upon evidence *aliunde*, the writing is not within the purview of the statute. Stated differently, where the promise or agreement to pay on which the action is based does not appear in express terms or by fair implication in writing, but the cause of action arises out of facts collateral to the instrument, it does not fall within the provision of the statute of limitations. Of course, if the writing upon which the action is based is sufficient to set up a promise or agreement, then the statute applies even though parol evidence is necessary to show a breach of such agreement or the happening of contingencies which would render defendant liable under the agreement.

For the purpose of determining whether the documents upon which the present action is based comply with the strictures of these authorities, we examined the exhibits one by one and found the following:

Of the 69 duly acknowledged delivery receipts, five contain no prices nor term of the transaction. They merely specify the name and address of the person to whom delivery was made, the date of such delivery, and the quantity and kind of lumber delivered. The only words that would indicate to some degree the nature of the transaction are the following, printed at the bottom of the document:

"We certify that the kind or kinds of timber or lumber listed on this invoice are exactly the same as those sold or delivered, or to be delivered to the purchaser.

Received above in good order and condition.
Francisco U. Buenaseda

By:

(Sgd.) A. Legaspi"

There is nothing in the above language used in the receipts which would indicate any promise to pay, how much to pay and when and how to pay for the lumber thus received. Clearly, standing alone, these delivery receipts could not be the writing referred to in the statute of limitations upon which an action can be based.

Sixty-three of the delivery receipts are in the same tenor, except that they contain the prices of the lumber delivered, but like the previous ones, they do not indicate the term of the transactions or the manner by which payment would be made, nor contain a promise by the receiver to pay at all the goods at any time. These receipts do not also correspond to the agreement in writing contemplated in the statute of limitations.[22] [Citations omitted.]

Similarly, nothing in the three (3) dishonored checks indicate any promise to pay. Clearly, no written contract was executed by the parties, instead they verbally agreed for Nida to sell the petroleum products of Regina and in turn, Nida shall be given an amount of P2.00 per liter of the products sold.[23] (Emphasis supplied.)

Thus, Regina's right to collect a sum of money against Nida must be enforced within six years under Article 1145[24] of the Civil Code. Relative thereto, Article 1150[25] of the same code

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[22] *Id*. at 4-6.

[23] *Rollo*, pp. 118-120.

[24] Art. 1145. The following actions must be commenced within six years:
(1) Upon an oral contract;
(2) x x x.

[25] Art. 1150. The time for prescription for all kinds of actions, when there is no special provision which ordains otherwise, shall be counted from the day they may be brought.

provides that the prescriptive period for actions which have no special provision ordaining otherwise shall be counted from the day they may be brought. It is the legal possibility of bringing the action that determines the starting point for the computation of the period of prescription.[26] This accrual refers to the cause of action, which is defined as the act or the omission by which a party violates the right of another.[27]

A cause of action exists if the following elements are present, namely: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant violative of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages.[28] It is only when the last element occurs that a cause of action arises.

In this case, the check issued to settle the obligation for the July 26, 2000 purchases was dishonored by the drawee bank on August 25, 2000,[29] and the November 12, 2002 and November 27, 2002 checks were both dishonored on April 4, 2003.[30] The dishonor of the three checks resulted in a breach of contract for non-payment. It is at this point that the right to bring an

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[26] *Multi-Realty Development Corp. v. The Makati Tuscany Condominium Corp.*, 524 Phil. 318, 337-338 (2006); *Khe Hong Cheng v. Court of Appeals*, 407 Phil. 1058, 1067 (2001); *Tolentino v. Court of Appeals*, 245 Phil. 40, 46 (1988); and *Español v. The Chairman & Members of the Board of Administrators PVA*, 221 Phil. 667, 669-670 (1985).

[27] RULES OF COURT, Rule 2, Sec. 2.

[28] *Pilipinas Shell Petroleum Corp. v. John Bordman Ltd. of Iloilo, Inc.*, 509 Phil. 728, 745 (2005), citing *China Banking Corp. v. Court of Appeals*, 499 Phil. 770, 775 (2005); *Swagman Hotels and Travel, Inc. v. Court of Appeals*, 495 Phil. 161, 169 (2005); *Nabus v. Court of Appeals*, 271 Phil. 768, 787 (1991); *Cole, et al. v. Gregorio, Vda. de Gregorio, et al.*, 202 Phil. 226, 236 (1982).

[29] *Rollo*, p. 35.

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

action for collection of a sum of money accrues. Counting six years therefrom, Regina had until August 25, 2006 to collect the amount covered by the July 26, 2000 check and until April 4, 2009 for the November 12 and 27, 2002 checks. Regina filed the complaint on June 4, 2013; hence, the action had already prescribed.

To be sure, prescription of actions is interrupted when (1) they are filed before the court, (2) when there is a written extrajudicial demand by the creditors, or (3) when there is any written acknowledgment of the debt by the debtor.[31] In this case, however, Regina filed the complaint in court only on June 4, 2013 and issued the demand letter only on May 15, 2013 when the prescriptive period to collect has already set in. Further, we cannot lend credence to Regina's contention that Nida acknowledged her obligation when she made partial payments on November 8, 2012; hence, the prescriptive period should commence on that date. Regina failed to present evidence to corroborate her claim.

In *PNB v. Osete, et al.*,[32] we clarified that not all acts of acknowledgment of debt interrupt prescription.

> With respect to the alleged partial payments, it is worthy of notice that, Art. 1973 of the Civil Code of Spain provided:
>
> > "The prescription of actions is interrupted by the commencement of a suit for their enforcement, by an extrajudicial demand by the creditor, and by any act of acknowledgment of the debt by the debtor."
>
> Under this article, a partial payment could, as an "act of acknowledgment of the debt," interrupt the prescriptive period. Said provision was amended, however, by Article 1155 of the Civil Code of the Philippines, to read:

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[31] CIVIL CODE, Art. 1155. The prescription of actions is interrupted when they are filed before the court, when there is a written extrajudicial demand by the creditors, and when there is any written acknowledgment of the debt by the debtor. See also *Ampeloquio, Sr. v. Napiza*, 536 Phil. 1102, 1114 (2006).

[32] 133 Phil. 66 (1968).

> "The prescription of actions is interrupted when they are filed before the court, when there is a written extra-judicial demand by the creditors, and when there is any written acknowledgment of the debt by the debtor."

Under this provision, not all acts of acknowledgment of a debt interrupt prescription. To produce such effect, the acknowledgment must be "written[,"] so that payment, if not coupled with a communication signed by the payor, would not interrupt the running of the period of the prescription.[33] (Emphasis supplied.)

The evidence attached to the records shows that the last receipt issued to Nida for payment of purchases on credit was dated November 21, 2006 for ₱2,000.00.[34] As such, Regina may bring an action to collect any outstanding liability from Nida only until November 21, 2012.

In all, we find no reason to depart from the findings and conclusion of the appellate court.

FOR THESE REASONS, the Petition for Review on *Certiorari* is **DENIED**. The Decision dated September 8, 2017 and Resolution dated January 22, 2018 of the Court of Appeals—Cebu City in CA-G.R. CEB CV No. 05317 are **AFFIRMED**.

SO ORDERED.

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

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[33] *Id.* at 68-69.

[34] *Rollo,* p. 72.

FIRST DIVISION

[G.R. No. 242942. October 5, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **DANTE MAGHUYOP,** *Accused-Appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY; FACTUAL FINDINGS OF TRIAL COURTS; QUESTION OF FACT; THE QUESTION OF WHETHER APPELLANT ACTED IN SELF-DEFENSE IS ESSENTIALLY ONE OF FACT, AND THE FACTUAL FINDINGS OF TRIAL COURTS THEREON, WHEN AFFIRMED BY THE APPELLATE COURT, ARE BINDING UPON THE SUPREME COURT.—** The question of whether appellant acted in self-defense is essentially one of fact. Having admitted the killing, he must prove by convincing evidence the various elements of his chosen defense. On appeal, this burden becomes even more difficult[,] as he must show that the courts below committed reversible error in appreciating the evidence and the facts, for basic is the rule that factual findings of trial courts, when affirmed by the appellate court, are binding upon the Supreme Court, unless the same are not supported by the evidence on record.

2. **ID.; ID.; CREDIBILITY OF WITNESSES; EVIDENCE, TO BE BELIEVED, MUST PROCEED NOT ONLY FROM THE MOUTH OF A CREDIBLE WITNESS, BUT MUST BE CREDIBLE IN ITSELF.—** Both appellant and the prosecution witnesses, Chyrile Claudil and Norman Andresio, told diametrically opposite versions of what transpired during the stabbing incident. Hence, the controversy is reduced to one essentially of credibility, a weighing of the evidence of the prosecution against that of the defense. Other than his own self-serving testimony, appellant did not present any other testimonial or documentary evidence to buttress his claim of self-defense. Moreover, appellant himself testified that there was no animosity between him and the prosecution witnesses, thus negating any ill motive against appellant in their narration of facts. Hence, if the trial court took their testimonies hook, line and sinker, it is only because their respective testimonies

deserved more credence and was more in keeping with human experience. As argued by appellant himself, evidence, to be believed, must proceed not only from the mouth of a credible witness but must be credible in itself as to hurdle the test of conformity with the knowledge and common experience of mankind.

3. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS THEREOF.— Appellant utterly failed to prove the presence of any of the elements of self-defense, *i.e.*, (1) unlawful aggression on the part of the victim, (2) reasonable necessity of the means employed to prevent or repel it, and (3) lack of sufficient provocation on the part of the person defending himself, the first being the most crucial element, and without which, he could not even be entitled to the privileged mitigating circumstance of incomplete self-defense.

4. ID.; ID.; ID.; UNLAWFUL AGGRESSION; TEST AND ELEMENTS THEREOF.—The test for the presence of unlawful aggression is whether the aggression from the victim put in real peril the life or personal safety of the person defending himself; the peril must not be an imagined or imaginary threat. Accordingly, the accused must establish the concurrence of three elements of unlawful aggression, namely: (a) there must be a physical or material attack or assault; (b) the attack or assault must be actual, or, at least, imminent; and (c) the attack or assault must be unlawful.

5. ID.; ID.; ID.; ID.; MERE POSSESSION OF A WEAPON IS NOT TANTAMOUNT TO UNLAWFUL AGGRESSION; A THREAT, EVEN IF MADE WITH A WEAPON, OR THE BELIEF THAT A PERSON WAS ABOUT TO BE ATTACKED, IS NOT SUFFICIENT.— The records reveal that Archie did not perform any actual or imminent attack upon appellant. Even assuming that he had a knife, as appellant claims, mere possession of a weapon is not tantamount to unlawful aggression. Imminent unlawful aggression means an attack that is impending or at the point of happening; it must not consist in a mere threatening or intimidating attitude, nor must it be merely imaginary, but must be offensive, menacing and positively strong, manifestly showing the wrongful intent to cause injury. Even the cocking of a rifle without aiming the firearm at any particular target is not sufficient to conclude that one's

life was in imminent danger. Hence, a threat, even if made with a weapon, or the belief that a person was about to be attacked, is not sufficient. It is necessary that the intent be ostensibly revealed by an act of aggression or by some external acts showing the commencement of actual and material unlawful aggression. Absent unlawful aggression, there is no longer any need to determine the presence of the other elements.

6. ID.; MITIGATING CIRCUMSTANCES; VOLUNTARY SURRENDER; REQUISITES THEREOF; A SURRENDER IS NOT SPONTANEOUS OR VOLUNTARY WHERE THE ACCUSED SUBMITTED HIMSELF A WEEK AFTER THE COMMISSION OF THE CRIME AND ONLY AFTER BEING CONVINCED TO DO SO BY A PERSON IN AUTHORITY.— Neither can the mitigating circumstance of voluntary surrender be appreciated in his favor. For such circumstance to be appreciated, appellant must satisfactorily comply with three (3) requisites: (1) he has not been actually arrested; (2) he surrendered himself to a person in authority or the latter's agent; and (3) the surrender is voluntary. There must be a showing of spontaneity and an intent to surrender unconditionally to the authorities, either because the accused acknowledges his guilt or he wishes to spare them the trouble and expense concomitant to his capture.

It is undisputed that appellant fled to Dungangon, Carmen, Cotabato after the commission of the crime and only surrendered a week later after being convinced to do so by the *Barangay* Captain of Dungangon. When asked on direct examination whether he voluntarily submitted himself to the authorities in Carmen, Cotabato, he merely replied that they approached him in the place where he was resting. This hardly inspires any belief that his surrender was spontaneous or voluntary.

7. ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; STABBING THE VICTIM IN HIS RIGHT ABDOMEN WHERE VITAL ORGANS RESIDE IS TREACHEROUS.— [T]reachery has nothing to do with the number of times that an assailant stabs a victim. That appellant stabbed the victim only once does not mean that the act was done at the spur of the moment. In determining the presence of treachery, it is not necessary that the mode of attack insure the consummation of the offense. The treacherous character of the means employed in the aggression does not depend upon the result thereof but

upon the means itself, in connection with the aggressor's purpose in employing it. Otherwise, the crime of attempted or frustrated murder would not be punishable. For this reason, the law does not require that the treacherous means insure the execution of the aggression, without risk to the person of the aggressor arising from the defense which the offended party might make, it being sufficient that it tends to this end. Granting that one stab on its own may not be as fatal as multiple stabs, the fact that appellant chose to stab the victim in his right abdomen where vital organs reside shows that he consciously and deliberately adopted a mode of attack intended to ensure the killing.

8. ID.; ID.; ID.; SUDDEN ATTACK ON A VICTIM IN A SEATED POSITION IS TREACHEROUS; CASE AT BAR.— That the prosecution witnesses were not able to stop or prevent the stabbing, even if they were merely a few meters away from appellant and the victim, bolsters the fact that the attack upon the latter was executed so suddenly and swiftly. Further, the victim was in a seated position when he was stabbed, thereby greatly reducing the opportunity to evade or defend himself against the attack of appellant who stabbed him from a standing position. The victim did not have any idea that he was vulnerable to an attack, considering that he was merely enjoying a drinking session with friends, oblivious to the sinister intent of appellant. The prosecution thus sufficiently proved the presence of treachery.

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.*:

Before us is an appeal from the Decision[1] of the Court of Appeals (*CA*) dated August 1, 2018 in CA-G.R. CR HC No.

[1] Penned by Associate Justice Walter S. Ong, with Associate Justices Edgardo A. Camello and Perpetua T. Atal-Paño, concurring; *rollo*, pp. 3-24.

01667-MIN, affirming the Judgment[2] dated November 10, 2016 of the Regional Trial Court, 12th Judicial Region, Branch 24, Midsayap, Cotabato, finding appellant Dante Maghuyop guilty beyond reasonable doubt of Murder and sentencing him to suffer the penalty of *reclusion perpetua*.

Appellant was charged in an Information dated March 13, 2008, to wit:

> The undersigned accuses DANTE MAGHUYOP of the crime of MURDER, committed as follows:
>
> > That on or about July 4, 2007, in the Municipality of Alamada, Province of Cotabato, Philippines and within the jurisdiction of this Honorable Court, the said accused, with intent to kill, armed with knife, did then and there, willfully, unlawfully, feloniously and with treachery and evident premeditation, attack, assault and stab the person of ARCHIE AMAJADO, thereby hitting and inflicting upon the latter multiple stab wounds on the different parts of his body, which caused his death thereafter.
>
> CONTRARY TO LAW.[3]

A warrant for his arrest was issued by the trial court on July 22, 2008. However, appellant had previously submitted an affidavit stating that he surrendered himself voluntarily to the protective custody of the Philippine National Police (PNP) of Alamada, Cotabato. On November 18, 2008, he was arraigned and pleaded *not guilty* to the charge.

The prosecution's version of the case is as follows:

Sometime on July 4, 2007 at about 7:30 in the evening, Chyrile Claudil (*Chyrile*) visited Norman Andresio (*Norman*) at the latter's house at *Barangay* Bao, Alamada, Cotabato. When he arrived, Norman, Bobong Maghuyop, Archie Amajado (*Archie*) and appellant were having their dinner. The victim and appellant were seated beside each other at a distance of about 1 to 1½

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[2] Penned by Presiding Judge Lily Lydia A. Laquindanum, CA *rollo*, pp. 48-56.

[3] *Id*. at 48.

meters, while Chyrile was in front of them. While they were conversing, all of a sudden, appellant stood up, grabbed a knife at the altar just above his head, walked towards Archie, and stabbed the victim hitting the latter's right side once, with the use of a double-bladed knife, then fled. Norman corroborated Chyrile's account of the stabbing incident.

Both witnesses testified that appellant, without provocation, stood up, went near the victim who was sitting around 1½ meters away from appellant, and suddenly stabbed the victim at his right side. There was no altercation nor was there an argument that took place between Archie and appellant before the stabbing incident took place. Both the victim and appellant were close friends since they were kids, so they could not find any reason why appellant had to stab Archie, except for the fact that during that day of the incident, they observed that appellant had been acting strangely and was not his usual self. The victim was brought to the hospital in Cotabato City.

On July 5, 2007, Nolly Maghuyop, the brother of appellant, informed the victim's father, Dioscoro Amajado, that the latter's son, Archie, had been stabbed. Dioscoro proceeded to the regional hospital on July 6, 2007 and found his son in a very serious condition. While being treated thereat, Archie died.

The defense's version of the case is as follows:

On July 4, 2007, appellant was at the house of his sister, Daisy Maghuyop Andresio, located at *Brgy*. Bao, Alamada, Cotabato. Norman, his brother-in-law and Chyrile were also there. Later, Archie arrived and since Norman had a longneck Tanduay, the two had a drinking spree. Archie offered him a drink, but he refused, so that after several attempts, Archie poured the contents of the glass over his forehead, then boxed him, causing the two of them to engage in a fistfight, while Norman and Chyrile just remained seated. Appellant and Archie were wrestling when the former saw that the latter had a knife, so he pulled his knife and stabbed the victim, then fled. A week later, he surrendered to the authorities in Carmen, Cotabato after being convinced by the barangay captain of Dungangon, Carmen, Cotabato.

The trial court found appellant guilty beyond reasonable doubt of Murder and sentenced him to suffer the penalty of *reclusion perpetua* and to pay the heirs of Archie the amounts of ₱75,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱30,000.00 as exemplary damages, and ₱25,000.00 as temperate damages. On appeal, the Court of Appeals affirmed his conviction, but modified the award of moral, exemplary, and temperate damages to ₱75,000.00, ₱75,000.00, and ₱50,000.00, respectively, pursuant to our ruling in *People v. Jugueta*.[4]

Appellant assigned the following errors in his Appellant's Brief:

I

THE TRIAL COURT ERRED IN FAILING TO APPRECIATE THE JUSTIFYING CIRCUMSTANCE OF SELF-DEFENSE DESPITE CLEAR AND CONVINCING EVIDENCE SHOWING THE ELEMENTS OF SELF-DEFENSE.

II

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT TREACHERY ATTENDED THE KILLING OF THE VICTIM.

III

EVEN FOR THE SAKE OF ARGUMENT THAT ACCUSED IS GUILTY, THE COURT ERRED IN FINDING ACCUSED GUILTY OF THE CRIME OF MURDER, NOT FOR HOMICIDE ONLY, AND LIKEWISE ERRED IN NOT APPRECIATING THE MITIGATING CIRCUMSTANCES OF VOLUNTARY SURRENDER AND INCOMPLETE SELF-DEFENSE.[5]

The question of whether appellant acted in self-defense is essentially one of fact. Having admitted the killing, he must prove by convincing evidence the various elements of his chosen defense. On appeal, this burden becomes even more difficult as he must show that the courts below committed reversible error in appreciating the evidence and the facts, for basic is the

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[4] 783 Phil. 806 (2016).

[5] CA *rollo*, pp. 30-31.

rule that factual findings of trial courts, when affirmed by the appellate court, are binding upon the Supreme Court,[6] unless the same are not supported by the evidence on record.[7]

Both appellant and the prosecution witnesses, Chyrile Claudil and Norman Andresio, told diametrically opposite versions of what transpired during the stabbing incident. Hence, the controversy is reduced to one essentially of credibility, a weighing of the evidence of the prosecution against that of the defense. Other than his own self-serving testimony, appellant did not present any other testimonial or documentary evidence to buttress his claim of self-defense. Moreover, appellant himself testified that there was no animosity between him and the prosecution witnesses, thus negating any ill motive against appellant in their narration of facts. Hence, if the trial court took their testimonies hook, line and sinker, it is only because their respective testimonies deserved more credence and was more in keeping with human experience. As argued by appellant himself, evidence, to be believed, must proceed not only from the mouth of a credible witness but must be credible in itself as to hurdle the test of conformity with the knowledge and common experience of mankind.[8]

Appellant utterly failed to prove the presence of any of the elements of self-defense, *i.e.*, (1) unlawful aggression on the part of the victim, (2) reasonable necessity of the means employed to prevent or repel it, and (3) lack of sufficient provocation on the part of the person defending himself, the first being the most crucial element, and without which, he could not even be entitled to the privileged mitigating circumstance of incomplete self-defense. The test for the presence of unlawful aggression is whether the aggression from the victim put in real peril the life or personal safety of the person defending himself; the peril

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[6] *Jacobo v. Court of Appeals*, 337 Phil. 7, 9 (1997).

[7] *Gatan v. Vinarao*, G.R. No. 205912, October 18, 2017, 842 SCRA 602, 618.

[8] *People v. De Guzman*, 690 Phil. 701, 713 (2012).

must not be an imagined or imaginary threat. Accordingly, the accused must establish the concurrence of three elements of unlawful aggression, namely: (a) there must be a physical or material attack or assault; (b) the attack or assault must be actual, or, at least, imminent; and (c) the attack or assault must be unlawful.[9]

The records reveal that Archie did not perform any actual or imminent attack upon appellant. Even assuming that he had a knife, as appellant claims, mere possession of a weapon is not tantamount to unlawful aggression. Imminent unlawful aggression means an attack that is impending or at the point of happening; it must not consist in a mere threatening or intimidating attitude, nor must it be merely imaginary, but must be offensive, menacing and positively strong, manifestly showing the wrongful intent to cause injury.[10] Even the cocking of a rifle without aiming the firearm at any particular target is not sufficient to conclude that one's life was in imminent danger. Hence, a threat, even if made with a weapon, or the belief that a person was about to be attacked, is not sufficient. It is necessary that the intent be ostensibly revealed by an act of aggression or by some external acts showing the commencement of actual and material unlawful aggression.[11] Absent unlawful aggression, there is no longer any need to determine the presence of the other elements.

Neither can the mitigating circumstance of voluntary surrender be appreciated in his favor. For such circumstance to be appreciated, appellant must satisfactorily comply with three (3) requisites: (1) he has not been actually arrested; (2) he surrendered himself to a person in authority or the latter's agent; and (3) the surrender is voluntary. There must be a showing of spontaneity and an intent to surrender unconditionally to the authorities, either because the accused acknowledges his guilt

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[9] *People v. Nugas*, 677 Phil. 168, 177 (2011).

[10] *People v. Dulin*, 762 Phil. 24, 37 (2015).

[11] *People v. Rubiso*, 447 Phil. 374, 381 (2003).

or he wishes to spare them the trouble and expense concomitant to his capture.

It is undisputed that appellant fled to Dungangon, Carmen, Cotabato after the commission of the crime and only surrendered a week later after being convinced to do so by the *Barangay* Captain of Dungangon.[12] When asked on direct examination whether he voluntarily submitted himself to the authorities in Carmen, Cotabato, he merely replied that they approached him in the place where he was resting.[13] This hardly inspires any belief that his surrender was spontaneous or voluntary.

In *People v. Mutya*,[14] we held that there could have been no voluntary surrender in view of the fact that therein accused went into hiding after having committed the crimes and refused to surrender to the proper authorities without having first conferred with a councilor. In *Bondario v. The Court of Appeals*,[15] we ruled that there was no voluntary surrender on the part of the accused who fled the scene of the crime and only decided to have the police fetch him *four days* after the incident for fear that the victim's relatives might avenge the latter's death.

In arguing that no treachery attended the commission of the crime, appellant states that the victim only sustained one (1) stab wound and that the stabbing was "*a spur of the moment*." He claims that if he intended to treacherously kill the victim, he would have stabbed him more than once to insure his demise, and that the victim was already forewarned of the attack when appellant stood up, took a knife, and went back to stab him. He also contends that the prosecution witnesses were only looking at appellant when he stabbed the victim and that they neither stopped him from doing so nor prevented his flight. However, Chyrile's clear and coherent testimony, as corroborated by that

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[12] Records, p. 221.

[13] *Id*. at 215-216.

[14] G.R. Nos. L-11255-11256, September 30, 1959, 106 Phil. 1161 Unrep.

[15] G.R. No. 114917, January 29, 2001.

of Norman, negates appellant's contention that the victim was forewarned or expected the attack, to wit:

COURT:

x x x x x x x x x

Q You said this Dante Maghuyop suddenly stabbed Archie Amajado?
A Yes, Your Honor.

Q While they were still eating?
A While eating.

Q What was the reason behind why Dante Maghuyop suddenly stabbed Archie Amajado while they were still eating?
A The stabbing was so sudden, I do not know any reason.

Q Was there any altercation between them while they were eating that prompted Dante Maghuyop to stab Archie Amajado?
A No altercation, Your Honor.

Q They were not talking with each other?
A They were conversing but it was not an altercation, no arguments.

Q While they were in that situation this Dante Maghuyop just stabbed Archie Amajado?
A Yes, your honor.

Q How far was Dante Maghuyop from Archie Amajado at that time when he stabbed Archie Amajado?
A From the edge of the witness table up to the edge of the lawyer's table.

Q Around 1½ meters?
A Yes, Your Honor.

Q With that distance of 1½ meters how did Dante Maghuyop stab Archie Amajado because he was not within arm's length away of Dante Maghuyop?
A Dante Maghuyop stood up and walked going to Archie Amajado's place then he stabbed him and fled.

Q What you mean is that Dante Maghuyop stood up and walked towards Archie Amajado, stabbed him and walked away?
A Yes, Your Honor.

Q While Archie Amajado [was] still sitting and eating?
A After eating already.

Q What was Archie Amajado doing at that time when Dante Maghuyop went near him and stabbed him?
A He was just sitting.

Q He was sitting in the place where he was eating?
A Yes, Your Honor.

Q Was he aware that Dante Maghuyop will stab him?
A No, Your Honor.

Q When Dante Maghuyop stood up, did you see that he was bringing with him a knife?
A He had already a knife when he stood up.

Q Where did he get the knife?
A The knife was placed on top of the altar.

Q Where is that altar located in relation to where Dante Maghuyop and Archie Amajado at that time?
A The altar was above the place where Dante Maghuyop was sitting.

Q You said it is above him, how far from him?
A The altar is above him even if he is standing.

Q And the knife could be seen?
A The knife could not be seen but when Dante Maghuyop placed his hand and reached something on the altar, he was able to grab a knife.

Q Who owns that knife?
A Dante's knife.

Q How did you know that it is the knife of Dante Maghuyop?
A I always saw that knife with him.[16]

Further, treachery has nothing to do with the number of times that an assailant stabs a victim. That appellant stabbed the victim only once does not mean that the act was done at the spur of the moment. In determining the presence of treachery, it is not necessary that the mode of attack insure the consummation of the offense. The treacherous character of the means employed

[16] TSN, January 13, 2010, pp. 11-14.

in the aggression does not depend upon the result thereof but upon the means itself, in connection with the aggressor's purpose in employing it. Otherwise, the crime of attempted or frustrated murder would not be punishable. For this reason, the law does not require that the treacherous means insure the execution of the aggression, without risk to the person of the aggressor arising from the defense which the offended party might make, it being sufficient that it tends to this end.[17] Granting that one stab on its own may not be as fatal as multiple stabs, the fact that appellant chose to stab the victim in his right abdomen where vital organs reside shows that he consciously and deliberately adopted a mode of attack intended to ensure the killing.

That the prosecution witnesses were not able to stop or prevent the stabbing, even if they were merely a few meters away from appellant and the victim, bolsters the fact that the attack upon the latter was executed so suddenly and swiftly. Further, the victim was in a seated position when he was stabbed, thereby greatly reducing the opportunity to evade or defend himself against the attack of appellant who stabbed him from a standing position. The victim did not have any idea that he was vulnerable to an attack, considering that he was merely enjoying a drinking session with friends, oblivious to the sinister intent of appellant. The prosecution thus sufficiently proved the presence of treachery.

WHEREFORE, premises considered, the Decision of the Court of Appeals dated August 1, 2018 in CA-G.R. CR HC No. 01667-MIN is hereby **AFFIRMED**. Accused-appellant Dante Maghuyop is found guilty beyond reasonable doubt of Murder and is sentenced to suffer the penalty of *reclusion perpetua*, with all the accessory penalties provided by law, and **ORDERED** to **PAY** the heirs of Archie Amajado (i) ₱75,000.00 as civil indemnity, (ii) ₱75,000.00 as moral damages, (iii) ₱75,000.00 as exemplary damages, and (iv) ₱50,000.00 as temperate damages. All monetary awards for damages shall

[17] *People v. Parana*, 64 Phil. 331, 336 (1937).

earn interest at the legal rate of six percent (6%) *per annum* from the date of finality of this Decision until fully paid.

SO ORDERED.

Caguioa, Lazaro-Javier, Lopez, and *Gaerlan,*[*] *JJ.*, concur.

[*] Designated additional member per Special Order No. 2788 dated September 16, 2020.

SECOND DIVISION

[G.R. No. 243049. October 5, 2020]

XXX,[1] *Petitioner, v.* **PEOPLE OF THE PHILIPPINES,** *Respondent.*

SYLLABUS

1. CRIMINAL LAW; SECTION 5(i) OF REPUBLIC ACT 9262 (ANTI-VIOLENCE AGAINST WOMEN AND THEIR CHILDREN ACT OF 2004); PSYCHOLOGICAL VIOLENCE; DEFINED; ELEMENTS; PRESENT.— Section 5(i) of RA 9262 penalizes some forms of psychological violence that are inflicted on victims who are women and children. Section 3(c) of RA 9262 defined psychological violence as: c. "Psychological violence" refers to acts or omissions causing or likely to cause mental or emotional suffering of the victim such as but not limited to intimidation, harassment, stalking, damage to property, public ridicule or humiliation, repeated verbal abuse and marital infidelity. It includes causing or allowing the victim to witness the physical, sexual or psychological abuse of a member of the family to which the victim belongs, or to witness pornography in any form or to witness abusive injury to pets or to unlawful or unwanted deprivation of the right to custody and/or visitation of common children. In *AAA v. People*, the Court, citing *Dinamling v. People*, enumerated the elements that must be present for the conviction of an accused of psychological violence: (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

[1] In accordance with Amended Administrative Circular No. 83-2015, the identities of the parties, records, and court proceedings are kept confidential by replacing their names and other personal circumstances with fictitious initials, and by blotting out the specific geographical location that may disclose the identities of the victims. To note, the unmodified Decision of the CA Decision was not attached to the records to verify the real name of the victim.

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. In the case at bar, it is clear that the first two elements of the crime are undoubtedly present.

2. ID.; ID.; ID.; PSYCHOLOGICAL VIOLENCE IS THE MEANS EMPLOYED BY THE PERPETRATOR, WHILE MENTAL OR EMOTIONAL ANGUISH IS THE EFFECT CAUSED TO OR THE DAMAGE SUSTAINED BY THE OFFENDED PARTY; TO ESTABLISH PSYCHOLOGICAL VIOLENCE AS AN ELEMENT OF THE CRIME, IT IS NECESSARY TO SHOW PROOF OF COMMISSION OF ANY OF THE ACTS ENUMERATED IN SECTION 5(i) OF RA 9262 OR SIMILAR SUCH ACTS; TO ESTABLISH MENTAL OR EMOTIONAL ANGUISH, IT IS NECESSARY TO PRESENT THE TESTIMONY OF THE VICTIM AS SUCH EXPERIENCES ARE PERSONAL TO THIS PARTY; MENTAL AND EMOTIONAL SUFFERING OF THE VICTIM DUE TO PETITIONER'S INFIDELITY, ESTABLISHED.— [T]he law defined psychological violence as acts or omissions causing or likely to cause mental or emotional suffering to the victim. In *Dinamling*, the Court discussed psychological violence thoroughly: Psychological violence is the means employed by the perpetrator, while mental or emotional anguish is the effect caused to or the damage sustained by the offended party. **To establish psychological violence as an element of the crime, it is necessary to show proof of commission of any of the acts enumerated in Section 5(i) or similar such acts. And to establish mental or emotional anguish, it is necessary to present the testimony of the victim as such experiences are personal to this party.** The Court agrees with the RTC and the CA when they found this element present, as supported by AAA's testimony and demeanor in open court. The prosecution was able to prove AAA's mental and emotional anguish upon learning XXX's infidelity when she appeared to testify. It was duly put on record that AAA looked mad at XXX when she testified and cried when she

was recounting her experience with XXX. Her testimony was also corroborated by her brother who was present when AAA confronted XXX. These testimonial evidence presented by the prosecution unequivocally established the elements of the crime of psychological violence as defined and penalized in Sections 5(i) and 6(f) of RA 9262.

3. REMEDIAL LAW; CRIMINAL PROCEDURE; RIGHTS OF THE ACCUSED; PRESUMPTION OF INNOCENCE; THE PRESUMPTION THAT THE ACCUSED IS INNOCENT UNLESS HIS GUILT IS PROVEN BEYOND REASONABLE DOUBT CAN BE OVERTHROWN IF ALL THE ELEMENTS OF THE CRIME CHARGED ARE DEEMED PRESENT.— In *People v. Rodriguez*, the Court discussed: It is a basic rule that the conviction of the accused must rest not on the weakness of the defense but on the strength of the prosecution. This is premised on the constitutional presumption that the accused is innocent unless his guilt is proven beyond reasonable doubt. This 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 he is charged with. In the case at bar, XXX also claims that he has the right to be presumed innocent. However, such presumption can be overthrown if all the elements of the crime charged are deemed present. Surely, Article III, Section 14 of the 1987 Constitution guarantees that in all criminal prosecutions, the accused shall be presumed innocent until the contrary is proven. To overcome this presumption, proof beyond reasonable doubt is needed. Proof beyond reasonable doubt does not mean such degree of proof as to exclude the possibility of error and produce absolute certainty. Only moral certainty is required or that degree of proof which produces conviction in an unprejudiced mind. All the elements of the crime are deemed present in this case; thus, the presumption of innocence is overcome.

4. CRIMINAL LAW; SECTION 5(i) OF REPUBLIC ACT 9262 (ANTI-VIOLENCE AGAINST WOMEN AND THEIR CHILDREN ACT OF 2004); PSYCHOLOGICAL VIOLENCE; CONVICTION OF PETITIONER FOR VIOLATION OF SECTION 5(i) OF REPUBLIC ACT 9262, AFFIRMED; THE PERPETRATOR MUST BE REQUIRED TO UNDERGO PSYCHOLOGICAL COUNSELING

OR PSYCHIATRIC TREATMENT, IN ADDITION TO IMPRISONMENT AND FINE.— [T]he Court agrees with the RTC and the CA in finding the petitioner guilty of violating Sec. 5(i) of RA 9262. However, the Court noted that both the RTC and the CA failed to require XXX to undergo psychological counseling or psychiatric treatment. These are additional penalties that are set by Sec. 6 of RA 9262 in addition to imprisonment and fine, thus: SEC. 6. *Penalties*. — The crime of violence against women and their children, under Section 5 hereof shall be punished according to the following rules: x x x (f) Acts falling under Section 5(h) and Section 5(i) shall be punished by *prision mayor*. x x x In addition to imprisonment, the perpetrator shall (a) pay a fine in the amount of not less than One hundred thousand pesos (₱100,000.00) but not more than three hundred thousand pesos (₱300,000.00); (b) undergo mandatory psychological counseling or psychiatric treatment and shall report compliance to the court.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

DELOS SANTOS, *J.*:

This is a Petition for Review on *Certiorari*[2] under Rule 45 of the Rules of Court filed by XXX assailing both the Decision[3] dated January 24, 2018 and the Resolution[4] dated October 29, 2018 of the Court of Appeals (CA) in CA-G.R. CR No. 39608,

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[2] *Rollo*, pp. 11-24.

[3] Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Amy C. Lazaro-Javier (now a Member of the Court) and Ma. Luisa C. Quijano-Padilla, concurring; id. at 29-44.

[4] Penned by Associate Justice Amy C. Lazaro-Javier (now a Member of the Court), with Presiding Justice Romeo F. Barza and Associate Justice Ma. Luisa C. Quijano-Padilla, concurring; id. at 46.

dismissing XXX's appeal and denying his subsequent Motion for Reconsideration,[5] respectively. The CA affirmed the Decision[6] of the Regional Trial Court (RTC) of [redacted], Branch 39, finding XXX guilty of violation of Section 5 (i) in relation to Section 6 (f) of Republic Act No. (RA) 9262, otherwise known as the Anti-Violence Against Women and Their Children Act of 2004.

Facts

XXX was charged in an Information with violation of Section 5 (i) in relation to Section 6 (f) of RA 9262.

Version of the Prosecution

Private complainant, AAA, testified that she and XXX were married for 17 years. They were married on April 1, 1996, and the early parts of their marriage were harmonious. They also had two children, a girl and a boy. Eventually, however, their union turned sour due to XXX's extra-marital affair with another woman. AAA alleged that sometime in February 2013, she overheard a conversation in which her husband was telling his cousin that he had been giving ₱1,000.00 allowance on a weekly basis to a certain Jessiree Yana and that he had also paid ₱37,000.00 for the operation of a certain Rona Matchimura (Matchimura).

When AAA confronted XXX and asked about him having an affair and siring a child with another woman, the latter denied her accusations which led to a heated argument between the two. As she was hysterical at that time, AAA asseverated that she called her brother, BBB, to bring XXX out of their house. Since that fateful night, AAA pointed out that she and XXX never lived under the same roof again. She averred that this infidelity has spawned a series of fights between her and XXX which left her emotionally wounded.

On June 6, 2013, AAA received a text message from XXX telling her "*tama ayaw ko [makipag]-away sau gay sira na*

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[5] Id. at 93-96.

[6] Penned by Judge Manuel C. Luna, Jr.; id. at 65-71.

buhay ko wag mo pilitin idamay ko kau wala akong takot sira na ulo ko baka di ko makontrol kung ano magawa ko sa inyo."

Fearing for her life and the safety of her minor children, AAA immediately reported to the police and filed a criminal case against XXX. She likewise applied for issuance of a protection order against him, which eventually became permanent.

Version of the Defense

The defense presented XXX as the sole witness. He admitted that his marriage with AAA had its blissful moments but turned sour because of an unfounded rumor that he had an illicit relationship with another woman which he vehemently denied. XXX also averred that he was forced to leave their conjugal home in 2013 and since then lived at a friend's house. He further testified that when the instant case was filed, their eldest child had a nervous breakdown. This caused AAA to execute an Affidavit of Desistance stating her disinterest in pursuing the instant case for the sake of their daughter.

RTC Ruling

The RTC in its Decision[7] dated February 24, 2016 found XXX guilty beyond reasonable doubt of the offense charged, and imposed upon him the penalty of imprisonment ranging from six (6) months and one (1) day of *prision correccional*, as minimum, to six (6) years and one (1) day of *prision mayor*, as maximum, and ordered him to pay the fine of ₱100,000.00.

The RTC declared that the prosecution successfully proved XXX's guilt beyond reasonable doubt. The prosecution was able to show that XXX was indeed guilty of causing or likely to cause mental or emotional suffering of the victim AAA because of his marital infidelity. Moreover, the testimonies of AAA and BBB proved that despite being married for about 17 years, XXX had been romantically involved with another woman, Matchimura, and even had a child with her. This infidelity had

[7] Id. at 65-71.

left not only AAA to be emotionally and psychologically abused and wounded, but also caused the nervous breakdown of their daughter. The threat to AAA's life and her children prompted her to file criminal charges against XXX which resulted in the granting of a protection order in her favor through the Decision dated October 21, 2013 of the Metropolitan Trial Court in Cities (MTCC).

The RTC also noted that despite XXX's denial of the alleged infidelity during his direct examination, nonetheless, he admitted on cross-examination that he had committed acts of infidelity in the past. This admission alone proves that he committed acts of infidelity which caused psychological and emotional violence against AAA.

Aggrieved, XXX filed an appeal before the CA.

CA Ruling

In a Decision[8] dated January 24, 2018, the CA dismissed the appeal and affirmed the Decision of the RTC.

The CA did not find any compelling reason to reverse or modify the factual findings of the trial court which served as basis of XXX's conviction. Well-settled is the rule that factual findings of the trial court as regards its assessment of the witnesses' credibility are entitled to great weight and respect and will not be disturbed absent any showing that the trial court overlooked certain facts and circumstances which could substantially affect the outcome of the case.[9]

Moreover, the CA ruled that the trial court did not err in finding that the prosecution duly established the fact of infidelity as psychological abuse inflicted upon AAA, as well as mental and emotional anguish that resulted from the same. AAA and BBB were straightforward and consistent in narrating how AAA suffered mental and emotional anguish because of XXX's infidelity.

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[8] Id. at 29-44.

[9] *People v. Salahuddin*, 778 Phil. 529, 544-545 (2016).

Furthermore, while the CA agreed that both AAA and BBB failed to show that they have personal knowledge regarding the veracity of the illicit affair between XXX and Matchimura, it still sustained the finding that XXX's infidelity was established in the instant case when he admitted during his cross-examination that he committed acts of infidelity. A judicial admission conclusively binds the party making it and he cannot thereafter take a position contradictory to or inconsistent with his pleadings.[10]

Aggrieved, XXX filed a Motion for Reconsideration[11] on February 15, 2018, which was denied in a Resolution[12] dated October 29, 2018.

On November 28, 2018, XXX filed a Motion for Extension of Time to File Petition for Review on *Certiorari*[13] before Us, seeking a 30-day extension from November 28, 2018, or until December 28, 2018, within which to file the petition.

XXX filed a Petition for Review on *Certiorari* under Rule 45 with the Court within the extended period.

Our Ruling

The petition has no merit.

The Information charges XXX with violation of Section 5 (i) in relation to Section 6 (f) of RA 9262, which states:

SEC. 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:

x x x x x x x x x

(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

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[10] *Ocampo v. Ocampo, Sr.*, 813 Phil. 390, 402 (2017).

[11] *Rollo*, pp. 93-96.

[12] Id. at 46.

[13] Id. at 3-6.

of financial support or custody of minor children or denial of access to the woman's child/children.

Psychological Violence, Defined

Section 5 (i) of RA 9262 penalizes some forms of psychological violence that are inflicted on victims who are women and children. Section 3 (c) of RA 9262 defined psychological violence as:

> c. "Psychological violence" refers to acts or omissions causing or likely to cause mental or emotional suffering of the victim such as but not limited to intimidation, harassment, stalking, damage to property, public ridicule or humiliation, repeated verbal abuse and marital infidelity. It includes causing or allowing the victim to witness the physical, sexual or psychological abuse of a member of the family to which the victim belongs, or to witness pornography in any form or to witness abusive injury to pets or to unlawful or unwanted deprivation of the right to custody and/or visitation of common children.

In *AAA v. People*,[14] the Court, citing *Dinamling v. People*,[15] enumerated the elements that must be present for the conviction of an accused of psychological violence:

(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.[16]

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[14] G.R. No. 229762, November 28, 2018.

[15] 761 Phil. 356 (2015).

[16] Id. at 373.

In the case at bar, it is clear that the first two elements of the crime are undoubtedly present. What remains to be done by the Court is the establishment of the last two elements.

To emphasize, the law defined psychological violence as acts or omissions causing or likely to cause mental or emotional suffering to the victim. In *Dinamling*, the Court discussed psychological violence thoroughly:

> Psychological violence is the means employed by the perpetrator, while mental or emotional anguish is the effect caused to or the damage sustained by the offended party. **To establish psychological violence as an element of the crime, it is necessary to show proof of commission of any of the acts enumerated in Section 5(i) or similar such acts. And to establish mental or emotional anguish, it is necessary to present the testimony of the victim as such experiences are personal to this party**.[17] (Emphasis supplied)

The Court agrees with the RTC and the CA when they found this element present, as supported by AAA's testimony and demeanor in open court. The prosecution was able to prove AAA's mental and emotional anguish upon learning XXX's infidelity when she appeared to testify. It was duly put on record that AAA looked mad at XXX when she testified and cried when she was recounting her experience with XXX. Her testimony was also corroborated by her brother who was present when AAA confronted XXX. These testimonial evidence presented by the prosecution unequivocally established the elements of the crime of psychological violence as defined and penalized in Sections 5 (i) and 6 (f) of RA 9262.

Right of the accused to be presumed innocent, overthrown

In *People v. Rodriguez*,[18] the Court discussed:

> It is a basic rule that the conviction of the accused must rest not on the weakness of the defense but on the strength of the prosecution. This is premised on the constitutional presumption that the accused

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[17] Supra note 15, at 376.

[18] 818 Phil. 625 (2017).

is innocent unless his guilt is proven beyond reasonable doubt. This 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 he is charged with.[19]

In the case at bar, XXX also claims that he has the right to be presumed innocent. However, such presumption can be overthrown if all the elements of the crime charged are deemed present. Surely, Article III, Section 14 of the 1987 Constitution guarantees that in all criminal prosecutions, the accused shall be presumed innocent until the contrary is proven. To overcome this presumption, proof beyond reasonable doubt is needed. Proof beyond reasonable doubt does not mean such degree of proof as to exclude the possibility of error and produce absolute certainty. Only moral certainty is required or that degree of proof which produces conviction in an unprejudiced mind.[20] All the elements of the crime are deemed present in this case; thus, the presumption of innocence is overcome.

In fine, the Court agrees with the RTC and the CA in finding the petitioner guilty of violating Sec. 5 (i) of RA 9262. However, the Court noted that both the RTC and the CA failed to require XXX to undergo psychological counseling or psychiatric treatment. These are additional penalties that are set by Sec. 6 of RA 9262 in addition to imprisonment and fine, thus:

SEC. 6. *Penalties*. — The crime of violence against women and their children, under Section 5 hereof shall be punished according to the following rules:

x x x x x x x x x

(f) Acts falling under Section 5(h) and Section 5(i) shall be punished by *prision mayor*.

x x x x x x x x x

In addition to imprisonment, the perpetrator shall (a) pay a fine in the amount of not less than One hundred thousand pesos

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[19] Id. at 634.

[20] *People v. Manson*, 801 Phil. 130, 139 (2016).

(₱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. (Underscoring supplied)

WHEREFORE, premises considered, the Petition is **DENIED**. The Decision dated January 24, 2018 and the Resolution dated October 29, 2018 of the Court of Appeals in CA-G.R. CR No. 39608 are **AFFIRMED with MODIFICATION**. Petitioner XXX is hereby sentenced to suffer an indeterminate sentence of imprisonment ranging from six (6) months and one (1) day of *prision correccional*, as minimum, to six (6) years and one (1) day of *prision mayor*, as maximum. He is also ordered to: (a) pay a fine in the amount of ₱100,000.00; (b) undergo mandatory psychological counseling or psychiatric treatment; and (c) report to the Court his compliance therewith.

SO ORDERED.

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

Baltazar-Padilla, J., on leave.

SECOND DIVISION

[G.R. No. 243390. October 5, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **ALEX BALUYOT *y* BIRANDA,** *Accused-Appellant*.

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); SALE OF ILLEGAL DRUGS; ELEMENTS; ESTABLISHED; IN A BUY-BUST OPERATION, THE RECEIPT BY THE POSEUR-BUYER OF THE DANGEROUS DRUG AND THE CORRESPONDING RECEIPT BY THE SELLER OF THE MARKED MONEY CONSUMMATE THE ILLEGAL SALE OF DANGEROUS DRUGS.— To successfully prosecute the offense of Sale of Illegal Drugs under Section 5, Article II of RA 9165, the following elements must be present: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and the payment therefor. In a buy-bust operation, the receipt by the poseur-buyer of the dangerous drug and the corresponding receipt by the seller of the marked money consummate the illegal sale of dangerous drugs. What matters is the proof that the sale actually took place, coupled with the presentation in court of the prohibited drug, the *corpus delicti*, as evidence.

In this case, the testimonies of the witnesses, and the pieces of documentary and object evidence presented in the trial established the consummation of the sale. These showed that Alex indeed delivered *shabu* to IO1 Molina, who in turn gave a marked ₱500 bill as payment. The confiscated item was also presented during the trial to prove the *corpus delicti* of the crime.

Alex also did not allege and show that the PDEA officers who composed the buy-bust team were prompted by ill motives in conducting the operation. Hence, there was no color of illegality in the conduct of the operation.

2. ID.; ID.; SECTION 21, ARTICLE II OF RA 9165 AND ITS IMPLEMENTING RULES AND REGULATIONS; CHAIN

OF CUSTODY RULE; EXCEPTIONS; THREE-WITNESS REQUIREMENT; IN ORDER TO PRESERVE THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED DANGEROUS DRUGS TO FULLY REMOVE DOUBTS AS TO ITS IDENTITY, THE MARKING, PHOTOGRAPHING, AND INVENTORY OF THE SEIZED ITEMS MUST BE DONE IMMEDIATELY AFTER SEIZURE AND CONFISCATION OF THE ITEMS IN THE PRESENCE OF THREE WITNESSES—A REPRESENTATIVE FROM THE MEDIA, THE DEPARTMENT OF JUSTICE (DOJ), AND ANY ELECTED OFFICIAL; FAILURE TO OBSERVE THE THREE-WITNESS REQUIREMENT DURING THE MARKING OF THE SEIZED ITEMS WARRANTS THE ACQUITTAL OF THE ACCUSED-APPELLANT.— The prosecution's setback in this case lies in the failure of the drug enforcement officers to observe the chain of custody rule, specifically in proving the identity of the object of the sale, *i.e.*, the dangerous drugs. The Court agrees with Alex that the chain of custody rule was not properly observed during the operation.

Related to establishing the identity of the object of the illegal sale is the observance of the chain of custody rule. The chain of custody rule in Section 21, Article II of RA 9165 has been amended on July 15, 2014 by RA 10640 to the extent that the witness requirement during the marking of the seized items has been relaxed. But the applicable rule for this case is Section 21, Article II of RA 9165 prior to its amendment as the transaction happened on March 5, 2013. . . .

. . .

Section 21 of the Implementing Rules and Regulations of RA 9165 (**IRR of RA 9165**) also provides for the same requirements. . .

. . .

The . . . provisions provide that the marking, photographing, and inventory of the seized items must be done immediately after seizure and confiscation of the items in the presence of three witnesses—a representative from the media, the Department of Justice (*DOJ*), and any elected official. The purpose of this rule is to preserve the integrity and evidentiary value of the

seized dangerous drugs in order to fully remove doubts as to its identity.

The provisions allow exceptions to the chain of custody rule. The case of *Belmonte v. People* mentions that under varied field conditions, the strict compliance with the requirements of Section 21, Article II of RA 9165 may not be always possible as long as the integrity and evidentiary value of the seized items are preserved. The IRR of RA 9165 likewise provides that the marking, photographing, and inventory of the seized items may be done "at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures."

In his testimony, IO1 Molina stated that he marked the seized items only in the PDEA National Headquarters in Quezon City. They opted to leave the buy-bust site as soon as possible because of possible danger to their safety and because it was already night time. The RTC ruled, as affirmed by the CA, that the failure to immediately mark the seized items at the place of arrest was not fatal to the prosecution. This Court agrees with the RTC and the CA in this regard.

However, the Court notes that the PDEA officers failed to observe the three-witness requirement during the marking of the seized items. This lapse in procedure warrants the acquittal of Alex.

3. ID.; ID.; ID.; ID.; NON-COMPLIANCE WITH THE THREE-WITNESS REQUIREMENT, WHEN JUSTIFIED.— . . . [U]nder Section 21, Article II of RA 9165 prior to its amendment, three (3) witnesses are required to be present during the marking, photographing, and inventory of the seized items—a representative from the media, the DOJ, and any elected official. It goes without saying that the accused or his representative or counsel should also be present. . . .

. . .

This requirement seeks to avoid frame ups or wrongful arrests of persons suspected to be violators of the law. The presence of the three witnesses assures that the officers conducting the operation do not plant evidence on the person or effects of the accused. The prosecution must allege and prove that at the time

of the marking, photographing, and inventory of the evidence, the three witnesses were present.

Indubitably, this strict requirement is subject to exceptions as well. The case of *People v. Lim* holds that in the event of absence of one or more of the witnesses, the prosecution must allege and prove that their presence during the inventory of the seized items was not obtained due to reasons such as:

> (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) **earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove[d] futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention;** or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.

4. ID.; ID.; ID.; ID.; ID.; THE PROSECUTION MUST SHOW THAT THE APPREHENDING OFFICERS EMPLOYED EARNEST EFFORTS IN PROCURING THE ATTENDANCE OF WITNESSES FOR THE INVENTORY OF THE ITEMS SEIZED DURING THE BUY-BUST OPERATION, AS MERE STATEMENTS OF UNAVAILABILITY OF THE WITNESSES GIVEN BY THE APPREHENDING OFFICERS ARE NOT JUSTIFIABLE REASONS FOR NON-COMPLIANCE WITH THE REQUIREMENT.—The prosecution must show that the apprehending officers employed earnest efforts in procuring the attendance of witnesses for the inventory of the items seized during the buy-bust operation. Mere statements of unavailability of the witnesses given by the apprehending officers are not justifiable reasons for non-compliance with the requirement.

This is because the apprehending officers usually have sufficient time, from the moment they received information about the alleged illegal activities until the time of the arrest, to prepare for the buy-bust operation that necessarily includes the procurement of three (3) witnesses. If one of the individuals invited refuses to participate as witness, the apprehending officers can still invite another individual to become a witness.

In this case, only two (2) witnesses were present during the marking of the seized items. *Kagawad* Jose Ruiz of *Barangay* Pinyahan, Quezon City was the elected public official; Mr. Jimmy Mendoza was the representative from the media. There was no representative from the DOJ. The records did not show that the prosecution explained or justified the absence of said representative from the DOJ during the marking, photographing, and inventory of the seized items. In fact, IO1 Molina, when asked during his cross examination, admitted that there were only two (2) witnesses present during the inventory of the seized items. Neither did IO1 Molina nor IO1 Pinto provide any explanation to justify the absence of a representative from the DOJ.

Furthermore, the PDEA officers had sufficient time to procure a third witness. The records show that the operation was scheduled, and was in fact conducted late in the afternoon of March 5, 2013 with the actual buy-bust conducted at night. They had the whole day to procure the third witness after they were informed of the alleged illegal activities in the morning of the same day; yet, they have failed to do so.

5. ID.; ID.; ID.; ID.; THE FAILURE OF THE DRUG ENFORCEMENT OFFICERS TO COMPLY WITH THE THREE-WITNESS REQUIREMENT PRODUCES A GAP IN THE CHAIN OF CUSTODY THAT SERIOUSLY COMPROMISED THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS, AND CASTED REASONABLE DOUBT ON THE GUILT OF THE ACCUSED-APPELLANT.—The failure to comply with the three-witness requirement produces a gap in the chain of custody of the seized items that adversely affects the integrity and evidentiary value of the seized items. This raises doubts that the integrity of the seized items may have been compromised.

The prosecution also cannot just rely on the saving clause provided in Section 21 of the IRR of RA 9165. The clause requires showing of justifiable grounds for non-compliance and that the integrity and evidentiary value of the seized items were preserved. In this case, however, the prosecution failed to offer evidence to show justifiable grounds for non-compliance. It also failed to prove that the integrity and evidentiary value of the seized items were preserved despite this lapse in the procedure.

It is a well-settled rule that in criminal cases, the accused's guilt must be proven beyond reasonable doubt. This burden lies with the prosecution. In this case, the prosecution was not able to prove Alex's guilt beyond reasonable doubt. The failure of the drug enforcement officers to observe the three-witness rule seriously compromised the integrity of the seized items and ultimately casted reasonable doubt on Alex's guilt.

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

HERNANDO, *J.*:

On appeal is the October 5, 2017 Decision[1] of the Court of Appeals (**CA**) in CA-G.R. CR-HC No. 07736, which denied accused-appellant Alex Baluyot *y* Biranda's (**Alex**) appeal from the August 27, 2015 Consolidated Decision[2] of the Regional Trial Court, Branch 127, Caloocan City (**RTC**). The Consolidated Decision of the trial court found Alex guilty in Criminal Case No. 89534 for violation of Section 5, Article II of Republic

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[1] CA *rollo*, pp. 143-154. Penned by Associate Justice Victoria Isabel A. Paredes and concurred in by Associate Justices Jose C. Reyes, Jr. (now retired Member of this Court) and Renato C. Francisco.

[2] *Records*, pp. 161-182. Penned by Judge Victoriano B. Cabanos.

Act No. (**RA**) 9165[3] or the Comprehensive Dangerous Drugs Act of 2002.

The Antecedents

The facts, as alleged by the prosecution, are as follows:

On March 5, 2013, a confidential informant (**CI**) of the Philippine Drug Enforcement Agency (**PDEA**) informed the team of Intelligence Officer 1 Froilan Bitong (**IO1 Bitong**) about the drug activity of a certain Alex in Caloocan City.[4] IO1 Bitong's team is based in Camp Olivas, Pampanga. The team was able to procure the necessary authority[5] in order to conduct a buy-bust operation outside of its jurisdiction. Intelligence Officer 1 Ronnel Molina (**IO1 Molina**) was assigned as the poseur-buyer for the operation while Intelligence Officer 1 Regie Pinto (**IO1 Pinto**) was designated as the arresting officer.[6] There were three to four other members of the team.[7] Two five-hundred peso (₱500.00) bills were given to IO1 Molina to serve as buy-bust money.[8] He then placed his initials, "REM," on the left portion of the bills.[9] The team agreed that after the sale, IO1 Molina will ring up the cellphone of IO1 Pinto to signal that the latter may proceed to make the arrest.[10]

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[3] An Act Instituting the Comprehensive Dangerous Drugs Act of 2002, Repealing Republic Act No. 6425, Otherwise Known as the Dangerous Drugs Act of 1972, as Amended, Providing Funds Therefor, and for Other Purposes.

[4] TSN, September 20, 2013, pp. 5-7.

[5] Authority to Operate Outside Jurisdiction dated March 4, 2013, Certificate of Coordination dated March 5, 2013, Authority to Operate Outside Own Jurisdiction dated March 5, 2013, Authority to Operate dated March 5, 2013, and Pre-Operation Report dated March 5, 2013, as Exhibits "S" to "W," folder of exhibits, pp. 18-22.

[6] TSN, September 20, 2013, pp. 10-12.

[7] Id.

[8] Id. at 12-13; TSN, September 11, 2014, pp. 11-12.

[9] Id.

[10] TSN, September 20, 2013, p. 15.

The CI then called Alex to inform him that IO1 Molina is a possible buyer of *shabu*.[11] The cellphone was passed to IO1 Molina and he asked if Alex had one thousand pesos worth of *shabu* on hand.[12] Alex answered in the affirmative.[13] Hence, the team proceeded to the target area in Caloocan City.

At around 9:00 p.m. of the same day, IO1 Molina and the CI walked to the house of Alex while the other team members proceeded to their positions.[14] The CI introduced IO1 Molina to Alex as the buyer.[15] Alex showed them only one plastic sachet of *shabu* and said that he only has five hundred pesos (₱500.00) worth of *shabu*.[16] IO1 Molina said that one plastic sachet is enough.[17] The sale took place. Alex handed the sachet to IO1 Molina.[18] In turn, IO1 Molina gave the marked five-hundred peso bill to Alex as payment.[19] Shortly thereafter, IO1 Molina called up the cellphone of IO1 Pinto, giving the signal for the arrest to proceed.[20]

IO1 Pinto and the other team members rushed to the scene and arrested Alex.[21] IO1 Pinto recovered the marked five-hundred peso (₱500.00) bill from Alex and handed it to IO1 Molina.[22] Another medium-sized plastic sachet containing two smaller plastic sachets of *shabu* was recovered from Alex's black sling

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[11] Id. at 15-19.

[12] Id.

[13] Id.

[14] Id. at 22-24.

[15] Id.

[16] Id.

[17] Id.

[18] Id. at 24-25.

[19] Id.

[20] Id. at 24-26; TSN, September 11, 2014, pp. 8-10.

[21] TSN, September 20, 2013, p. 26; TSN, September 11, 2014, p. 10.

[22] TSN, September 11, 2014, pp. 11-12.

bag.[23] However, IO1 Pinto stated in his testimony that he was not able to see the contents of the black sling bag at the time of the operation until IO1 Molina subsequently opened it.[24] IO1 Molina marked the plastic sachet subject of the illegal sale as "EXH A REM 3/5/2013," and the medium plastic sachet as "EXH B-2a REM 3/5/2013" when they were already in the PDEA National Headquarters in Quezon City, as they opted to leave the site because of the possible danger.[25] He did not mark the two smaller plastic sachets inside the medium plastic sachet.[26] He then executed an inventory receipt.[27] He also prepared the requests for laboratory examination of the seized items and drug test on Alex, which were signed by IO1 Bitong.[28] Chemist Elaine Erno (**Chemist Erno**) received the requests for laboratory examination and drug test, and the specimen of two plastic sachets.[29]

Chemist Erno found that the specimens in the plastic sachets given to her are positive for the presence of methamphetamine hydrochloride.[30] Also, the drug test that she conducted on Alex also yielded positive results as to the use of dangerous drugs.[31]

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[23] TSN, September 20, 2013, p. 26.

[24] TSN, September 11, 2014, p. 13.

[25] TSN, September 20, 2013, pp. 31-33, 38-39.

[26] Id. at 48.

[27] Id. at 47; Inventory Receipt March 5, 2013 as Exhibit "L", folder of exhibits, p. 7.

[28] Request for Drug Test dated March 6, 2013, and Request for Physical/Medical Examination dated March 6, 2013, as Exhibits "H" and "J", folder of exhibits, pp. 3, 5.

[29] TSN, August 1, 2013, p. 6.

[30] Chemistry Report No. PDEA-DD013-061 dated March 6, 2013 as Exhibit "B", folder of exhibits, p. 2.

[31] Chemistry Report No. PDEA-DT013-085 dated March 6, 2013 as Exhibit "I", folder of exhibits, p. 4.

On March 7, 2013, an Information[32] was filed against Alex for violation of Section 5, Article II of RA 9165 or Illegal Sale of Dangerous Drugs in the RTC of Caloocan City. It alleges:

> That on or about the 5th day of March, 2013 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and feloniously sell and deliver to IO1 RONNEL E. MOLINA, who posed as buyer, One (1) small heat-sealed transparent plastic sachet with markings "EXH A REM 03/5/ 2013" containing METHAMPHETAMINE HYDROCHLORIDE (Shabu) weighing 0.0372 gram which when subjected for laboratory examination gave POSITIVE result to the tests for Methamphetamine Hydrochloride, a dangerous drug, and knowing the same to be such.
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> Contrary to Law.[33]

On the same date, a second Information[34] was filed against Alex for violation of Section 11, Article II of RA 9165 or Illegal Possession of Dangerous Drugs under Criminal Case No. 89535 in the same RTC. It alleges:

> That on or about the 5th day of March, 2013 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there wilfully, unlawfully and feloniously have in his possession, custody and control Two (2) heat-sealed transparent plastic sachets each containing METHAMPHETAMINE HYDROCHLORIDE (Shabu) weighing 4.6000 grams & 3.3021 grams, which when subjected for laboratory examination gave POSITIVE result to the tests for Methamphetamine Hydrochloride, a dangerous drug, in gross violation of the above-cited law.
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> Contrary to Law.[35]

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[32] Records, p. 2; docketed as Criminal Case No. 89534.

[33] Id.

[34] Id. at 30; docketed as Criminal Case No. 89535.

[35] Id.

On April 5, 2013, Alex was arraigned and he pleaded not guilty to both charges.[36] On August 1, 2013, pre-trial was held.[37] Trial followed.

Alex presented the defense of denial. He testified that at around 8:30 p.m. of March 5, 2013, he was alone in his house in Bagong Silang, Caloocan City waiting for his two children to come home.[38] Then, six PDEA officers came to his house to arrest him.[39] They made Alex lie on the ground and then poked a gun at him.[40] The PDEA officers asked him to identify himself and he said that his name is Alex Baluyot.[41] They then brought him to the PDEA Office in Quezon City where he was subjected to a drug test and interrogation.[42] The PDEA officers also showed him a plastic sachet allegedly containing the subject dangerous drug.[43] Alex denied that he sold *shabu* to IO1 Molina.[44] He claimed that the law enforcers lied on the witness stand about having bought illegal drugs from him.[45] Despite this, Alex did not file charges against them because he did not have the means to do so.[46]

Ruling of the Regional Trial Court

On August 27, 2015 the RTC rendered its Decision on the case.

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[36] Certificate of Arraignment and Order, both dated April 5, 2013.

[37] Pre-Trial Order dated August 1, 2013.

[38] TSN, December 5, 2014, p. 3.

[39] Id. at 4.

[40] Id.

[41] Id. at 4-5.

[42] Id. at 5.

[43] Id.

[44] Id. at 5-6.

[45] Id. at 8.

[46] Id.

In Criminal Case No. 89534, the RTC found Alex guilty of violation of Section 5, Article II of RA 9165 or Illegal Sale of Dangerous Drugs. He was sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00. The trial court ruled that the prosecution was able to establish beyond reasonable doubt the elements of Illegal Sale of Dangerous Drugs.[47]

On the other hand, in Criminal Case No. 89535, the RTC found Alex not guilty of violation of Section 11, Article II of RA 9165 or Illegal Possession of Dangerous Drugs. The trial court ruled that the prosecution failed to establish with certainty the identity of the subject specimens.[48]

The dispositive portion of the Consolidated Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

In **Criminal Case No. 89534**, the Court finds Accused ALEX BALUYOT y BIRANDA guilty of the offense of [v]iolation of Section 5, Article II, RA 9165, and is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay the Fine of Five Hundred Thousand Pesos (Php500,000.00).

In **Criminal Case No. 89535**, the Court finds Accused ALEX BALUYOT y BIRANDA not guilty of the offense of [v]iolation of Section 11, Article II, RA 9165 for failure of the prosecution to prove his guilt beyond reasonable doubt of the said offense.

The Jail Warden of Caloocan City is hereby directed to transfer the custody of the said accused to National Bilibid Prison, Bureau of Corrections, Muntinlupa City, for the service of his sentence in Criminal Case No. 89534, and for said Jail Warden to forthwith submit a written report of his compliance, or reason for non-compliance herewith.

The drugs subject matter of these cases are hereby ordered confiscated in favor of the government. In this regard, the Branch Clerk of Court of this Sala is hereby directed to turn over said specimen

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[47] *Records*, pp. 161-182.

[48] Id.

to the Philippine Drug Enforcement Agency (PDEA) for their immediate destruction in accordance with law.

SO ORDERED.[49]

Alex elevated his case to the CA by filing a notice of appeal[50] in Criminal Case No. 89534 before the RTC.

Ruling of the Court of Appeals

On October 5, 2017, the CA rendered its assailed Decision denying the appeal and modifying the RTC ruling in Criminal Case No. 89534 to the extent that Alex shall be ineligible for parole.[51]

The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the appeal is **DENIED**. The assailed *Consolidated Decision* dated August 27, 2015 of the Regional Trial Court, Branch 127, Caloocan City, in Criminal Case No. 89534, is **MODIFIED** in that appellant Alex Baluyot y Biranda shall be **INELIGIBLE** for parole. Except as modified herein, the *Consolidated Decision* in Criminal Case No. 89534, **STANDS**.

SO ORDERED.[52]

Aggrieved, Alex elevated his case before this Court.[53] The parties opted not to file supplemental briefs with this Court and instead adopted their discussions in their briefs filed with the CA.[54]

Alex contends that: (1) the identity of the allegedly seized plastic sachets of *shabu* was not established because the chain

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[49] Id. at 181-182.

[50] Id. at 186; Notice of Appeal dated September 4, 2015.

[51] CA *rollo*, pp. 143-154.

[52] Id. at 153.

[53] Id. at 176-179; Notice of Appeal dated October 26, 2017.

[54] *Rollo*, pp. 24-33; Manifestation of Plaintiff-Appellee dated May 27, 2019 and Manifestation of Accused-Appellant dated May 30, 2019.

of custody rule was not followed by the PDEA officers when the subject drugs were not immediately marked after seizure, and there were only two witnesses during the marking; (2) the RTC (and the CA) erred in giving credence to the inconsistent testimonies of the PDEA officers; and (3) the RTC (and the CA) erred in not giving credence to Alex's denial.[55]

Conversely, the People, through the Office of the Solicitor General, maintains that: (1) the prosecution had sufficiently preserved the integrity of the seized illegal drugs and the chain of custody thereof; (2) the RTC (and the CA) correctly gave full faith and credence to the testimonies of the prosecution witnesses; (3) the elements of the crime charged were sufficiently established by the prosecution; and (4) the RTC (and the CA) correctly disregarded Alex's unsupported and self-serving defense of denial.[56]

Issue

Whether or not Alex is guilty of Illegal Sale of Dangerous Drugs.

The Court's Ruling

There is merit in the appeal.

Alex was charged with and convicted of violation of Section 5, Article II of RA 9165, which reads:

Section 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including

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[55] CA *rollo*, pp. 57-76; Brief for the Accused-Appellant dated March 29, 2016.

[56] Id. at 118-134; Brief for the Appellee dated July 29, 2016.

any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

To successfully prosecute the offense of Sale of Illegal Drugs under Section 5, Article II of RA 9165, the following elements must be present: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and the payment therefor.[57] In a buy-bust operation, the receipt by the poseur-buyer of the dangerous drug and the corresponding receipt by the seller of the marked money consummate the illegal sale of dangerous drugs.[58] What matters is the proof that the sale actually took place, coupled with the presentation in court of the prohibited drug, the *corpus delicti*, as evidence.[59]

In this case, the testimonies of the witnesses, and the pieces of documentary and object evidence presented in the trial established the consummation of the sale. These showed that Alex indeed delivered *shabu* to IO1 Molina, who in turn gave a marked ₱500 bill as payment. The confiscated item was also presented during the trial to prove the *corpus delicti* of the crime.

Alex also did not allege and show that the PDEA officers who composed the buy-bust team were prompted by ill motives in conducting the operation. Hence, there was no color of illegality in the conduct of the operation.

The prosecution's setback in this case lies in the failure of the drug enforcement officers to observe the chain of custody rule, specifically in proving the identity of the object of the

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[57] *People v. Magalong*, G.R. No. 231838, March 4, 2019 citing *People v. Sic-Open*, 795 Phil. 859, 869-870 (2016); *People v. Eda*, 793 Phil. 885, 896 (2016); *People v. Amaro*, 786 Phil. 139, 146-147 (2016); and *People v. Ros*, 758 Phil. 142, 159 (2015).

[58] *People v. Addin*, G.R. No. 223682, October 9, 2019 citing *People v. Magalong, supra*.

[59] *People v. Magalong, supra*.

sale, *i.e.*, the dangerous drugs. The Court agrees with Alex that the chain of custody rule was not properly observed during the operation.

Related to establishing the identity of the object of the illegal sale is the observance of the chain of custody rule. The chain of custody rule in Section 21, Article II of RA 9165 has been amended on July 15, 2014 by RA 10640[60] to the extent that the witness requirement during the marking of the seized items has been relaxed. But the applicable rule for this case is Section 21, Article II of RA 9165 prior to its amendment as the transaction happened on March 5, 2013. The relevant portion of Section 21 reads:

> **Section 21.** *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment*. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

Section 21 of the Implementing Rules and Regulations of RA 9165 (**IRR of RA 9165**) also provides for the same requirements, the pertinent portion of which reads:

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[60] Republic Act No. 10640, 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," Section 1 (2014).

Section 21. *Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

> (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items;[61]

The foregoing provisions provide that the marking, photographing, and inventory of the seized items must be done immediately after seizure and confiscation of the items in the presence of three witnesses — a representative from the media, the Department of Justice (**DOJ**), and any elected official.[62] The purpose of this rule is to preserve the integrity and evidentiary

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[61] Implementing Rules and Regulations of Republic Act No. 9165, Otherwise Known as the "Comprehensive Dangerous Drugs Act of 2002," Sec. 21, Art. II (2002).

[62] *See People v. Addin, supra* note 58.

value of the seized dangerous drugs in order to fully remove doubts as to its identity.[63]

The provisions allow exceptions to the chain of custody rule. The case of *Belmonte v. People*[64] mentions that under varied field conditions, the strict compliance with the requirements of Section 21, Article II of RA 9165 may not be always possible as long as the integrity and evidentiary value of the seized items are preserved.[65] The IRR of RA 9165 likewise provides that the marking, photographing, and inventory of the seized items may be done "at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures."[66]

In his testimony, IO1 Molina stated that he marked the seized items only in the PDEA National Headquarters in Quezon City.[67] They opted to leave the buy-bust site as soon as possible because of possible danger to their safety and because it was already night time.[68] The RTC ruled, as affirmed by the CA, that the failure to immediately mark the seized items at the place of arrest was not fatal to the prosecution.[69] This Court agrees with the RTC and the CA in this regard.

However, the Court notes that the PDEA officers failed to observe the three-witness requirement during the marking of the seized items. This lapse in procedure warrants the acquittal of Alex.

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[63] *See People v. Caramat*, G.R. No. 231366, December 11, 2019, citing *People v. Alboka*, G.R. No. 212195, February 21, 2018.

[64] 811 Phil. 844 (2017).

[65] Id. at 859, citing *People v. Pavia*, 750 Phil. 871 (2015).

[66] Implementing Rules and Regulations of Republic Act No. 9165, Otherwise Known as the "Comprehensive Dangerous Drugs Act of 2002," Sec. 21, Art. II (2002).

[67] TSN, September 20, 2013, pp. 31-33, 38-39.

[68] Id.

[69] CA *rollo*, p. 152; records, p. 174.

To reiterate, under Section 21, Article II of RA 9165 prior to its amendment, three (3) witnesses are required to be present during the marking, photographing, and inventory of the seized items—a representative from the media, the DOJ, and any elected official. It goes without saying that the accused or his representative or counsel should also be present. The case of *People v. Reyes*[70] discusses the requirement of three (3) witnesses and its importance, to wit:

> Under the original provision of Section 21, after seizure and confiscation of the drugs, the apprehending team was required to immediately conduct a physical inventory and to photograph the same in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) a representative from the media **and** (3) the DOJ, **and** (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. It is assumed that the presence of these three persons **will guarantee "against planting of evidence and frame up,"** i.e., they are "necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity." (Emphases supplied)

In addition, the case of *People v. Mendoza*[71] mentions:

> The consequences of the failure of the arresting lawmen to comply with the requirements of Section 21 (1), *supra*, were dire as far as the Prosecution was concerned. Without the insulating presence of the representative from the media or the Department of Justice, or any elected public official during the seizure and marking of the sachets of shabu, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA No. 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the sachets of shabu that were evidence herein of the corpus delicti, and thus adversely affected the trustworthiness of the incrimination of the accused. Indeed, the insulating presence

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[70] G.R. No. 219953, April 23, 2018, citing *People v. Sagana*, 815 Phil. 356 (2017).

[71] 736 Phil. 749 (2014).

of such witnesses would have preserved an unbroken chain of custody.[72]

This requirement seeks to avoid frame ups or wrongful arrests of persons suspected to be violators of the law. The presence of the three witnesses assures that the officers conducting the operation do not plant evidence on the person or effects of the accused. The prosecution must allege and prove that at the time of the marking, photographing, and inventory of the evidence, the three witnesses were present.

Indubitably, this strict requirement is subject to exceptions as well. The case of *People v. Lim*[73] holds that in the event of absence of one or more of the witnesses, the prosecution must allege and prove that their presence during the inventory of the seized items was not obtained due to reasons such as:

> (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) **earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove[d] futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention;** or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.[74] (Emphasis supplied)

The prosecution must show that the apprehending officers employed earnest efforts in procuring the attendance of witnesses for the inventory of the items seized during the buy-bust

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[72] Id. at 764.

[73] G.R. No. 231989, September 4, 2018.

[74] Id. citing *People v. Sipin*, G.R. No. 224290, June 11, 2018.

operation.[75] Mere statements of unavailability of the witnesses given by the apprehending officers are not justifiable reasons for non-compliance with the requirement.[76] This is because the apprehending officers usually have sufficient time, from the moment they received information about the alleged illegal activities until the time of the arrest, to prepare for the buy-bust operation that necessarily includes the procurement of three (3) witnesses.[77] If one of the individuals invited refuses to participate as witness, the apprehending officers can still invite another individual to become a witness.

In this case, only two (2) witnesses were present during the marking of the seized items. *Kagawad* Jose Ruiz of *Barangay* Pinyahan, Quezon City was the elected public official; Mr. Jimmy Mendoza was the representative from the media.[78] There was no representative from the DOJ. The records did not show that the prosecution explained or justified the absence of said representative from the DOJ during the marking, photographing, and inventory of the seized items. In fact, IO1 Molina, when asked during his cross examination, admitted that there were only two (2) witnesses present during the inventory of the seized items.[79] Neither did IO1 Molina nor IO1 Pinto provide any explanation to justify the absence of a representative from the DOJ.

Furthermore, the PDEA officers had sufficient time to procure a third witness. The records show that the operation was scheduled, and was in fact conducted late in the afternoon of March 5, 2013 with the actual buy-bust conducted at night.

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[75] *People v. Ramos*, G.R. No. 233744, February 28, 2018.

[76] Id.

[77] Id.

[78] Pictures During Inventory as Exhibits "P-1" and "P-2", folder of exhibits, pp. 12-13; Joint Affidavit of Poseur Buyer and Arresting Officer dated March 6, 2013 as Exhibit "R", folder of exhibits, pp. 15-17; TSN, September 20, 2013, pp. 51-52.

[79] TSN, September 20, 2013, p. 68.

They had the whole day to procure the third witness after they were informed of the alleged illegal activities in the morning of the same day; yet, they have failed to do so.

The failure to comply with the three-witness requirement produces a gap in the chain of custody of the seized items that adversely affects the integrity and evidentiary value of the seized items.[80] This raises doubts that the integrity of the seized items may have been compromised.[81]

The prosecution also cannot just rely on the saving clause[82] provided in Section 21 of the IRR of RA 9165. The clause requires showing of justifiable grounds for non-compliance and that the integrity and evidentiary value of the seized items were preserved. In this case, however, the prosecution failed to offer evidence to show justifiable grounds for non-compliance. It also failed to prove that the integrity and evidentiary value of the seized items were preserved despite this lapse in the procedure.

It is a well-settled rule that in criminal cases, the accused's guilt must be proven beyond reasonable doubt.[83] This burden lies with the prosecution. In this case, the prosecution was not able to prove Alex's guilt beyond reasonable doubt. The failure of the drug enforcement officers to observe the three-witness rule seriously compromised the integrity of the seized items and ultimately casted reasonable doubt on Alex's guilt.

WHEREFORE, the appeal is hereby **GRANTED**. The assailed October 5, 2017 Decision rendered by the Court of Appeals in CA-G.R. CR-HC No. 07736 is **REVERSED** and

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[80] *People v. Addin,* supra note 58.

[81] Id.

[82] "Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items."

[83] RULES OF COURT, Rule 133, Section 2.

SET ASIDE. Accused-appellant Alex Baluyot *y* Biranda is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is confined for any other lawful cause.

Let a copy of this Decision be furnished the Director General, Bureau of Corrections, Muntinlupa City, for immediate implementation. Furthermore, the Director General of the Bureau of Corrections is **DIRECTED** to report to this Court the action he has taken within five (5) days from receipt of this Decision.

Let entry of judgment be issued immediately.

SO ORDERED.

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

Baltazar-Padilla, J., on leave.

THIRD DIVISION

[G.R. No. 245921. October 5, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **ABDILLAH PANGCATAN *y* DIMAO,** *Accused-Appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; AS AN APPEAL IN CRIMINAL CASES OPENS THE ENTIRE CASE FOR REVIEW, THE COURT MAY REVIEW THE LEGALITY OF THE ACCUSED'S ARREST AND THE SUBSEQUENT SEARCH.— [I]n criminal cases, "an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law." Accordingly, at this stage of the proceedings, the Court is not divested of its authority to resolve issues on purported irregularities in the arrest and subsequent search on Pangcatan.

Here, Pangcatan raised the validity of his arrest and the seizure of weapons in his possession in his Motion to Quash and to Suppress Evidence timely filed prior to his arraignment. He repeatedly raised these arguments when he filed a petition for *certiorari* in the CA docketed as CA-G.R. SP No. 06846-MIN assailing the resolution of the RTC denying his motion. Considering that this is an automatic review, the Court may still review the validity of Pangcatan's arrest and the admissibility of the evidence seized against him at this stage of the proceedings.

2. ID.; ID.; WARRANTLESS ARREST; SEARCH INCIDENT TO AN UNLAWFUL ARREST; THE FACT THAT ILLEGAL ARTICLES WERE SEIZED RESULTING FROM THE SEARCH CANNOT RECTIFY THE DEFECT OF THE ILLEGAL ARREST PRECEDING THE SEARCH.

— [A]t the time Pangcatan was invited to the police station two days after the incident, he was not committing any crime nor was it shown that he was about to do so or that he had just done so in the presence of the police officers. Thus, the warrantless arrest of Pangcatan cannot be justified under the *in flagrante delicto* exception in paragraph (a), Section 5, Rule 113 of the Rules.

The fact that the search incident to Pangcatan's unlawful arrest resulted in the seizure of firearm, ammunition, and a hand grenade he was allegedly not authorized to carry cannot rectify the defect of the illegal arrest preceding the search. The apprehending officers would not have seen these items had Pangcatan not been subjected to a body search following his illegal arrest. Due to the absence of an overt physical act of Pangcatan showing that he had committed a crime, was committing a crime or was going to commit a crime, there could not have been an *in flagrante delicto* arrest preceding the search.

3. ID.; ID.; ID.; HOT PURSUIT ARREST; ELEMENTS THEREOF; THE TEST OF IMMEDIACY; WHERE THERE IS SUFFICIENT TIME TO SECURE A WARRANT, AN ARREST CANNOT BE VALIDATED AS HOT PURSUIT ARREST; THE UNLAWFUL ARREST NOTWITHSTANDING, ESTOPPEL MAY PRECLUDE AN ACCUSED FROM ASSAILING THE COURT'S JURISDICTION OVER HIS OR HER PERSON.— Pangcatan's arrest also cannot be validated under the hot pursuit arrest exception in paragraph (b), Section 5, Rule 113 of the Rules.

The elements of a hot pursuit arrest are: (1) an offense has just been committed; and (2) the arresting officer has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it. Moreover, there must be no appreciable lapse of time between the arrest and the commission of the crime. Otherwise, a warrant of arrest must be secured. . . .

The test of immediacy is not a mere mathematical computation of the lapse of time between the commission of the crime and the arrest. It is evaluated based on the circumstances surrounding each case.

. . .

. . . Here, it took two days for the police officers to arrest him, a lapse of time which is inconsistent with the immediacy requirement in hot pursuit arrests. Since Renante positively identified Pangcatan from the photos shown to him on January 9, 2015, the police officers had sufficient time to secure a warrant. Instead of applying for a warrant, the police officers lured Pangcatan into placing him into their custody under the guise of an invitation. Consequently, Pangcatan's arrest was unlawful.

Nevertheless, the subsequent filing of charges against Pangcatan, his plea of not guilty, and his active participation during trial now preclude him from assailing the court's jurisdiction over him.

4. ID.; ID.; ID.; SEARCH INCIDENT TO A LAWFUL ARREST; THE PIECES OF EVIDENCE OBTAINED FROM AN ILLEGAL WARRANTLESS ARREST AND SEARCH ARE INADMISSIBLE.— The search incident to Pangcatan's arrest is also unlawful. . . .

To constitute a valid warrantless search under this provision [Section 13, Rule 126 of the Rules], the arrest must be lawfully made on the basis of probable cause under Section 5, Rule 113 of the Rules. It requires that there be first a lawful arrest before a search can be made and this process cannot be reversed. Absent the requisite lawful arrest that must precede the search, it cannot be considered legal. Since the search on the person of Pangcatan cannot be considered a search incident to a lawful arrest as contemplated in Section 13, Rule 126 of the Rules, the pieces of evidence obtained from this search are inadmissible.

5. CRIMINAL LAW; REPUBLIC ACT NO. 9516 *VIS-À-VIS* R.A. NO. 10591; ILLEGAL POSSESSION OF EXPLOSIVES AND ILLEGAL POSSESSION OF FIREARMS AND AMMUNITION; ELEMENTS THEREOF; AN ACCUSED CANNOT BE HELD LIABLE FOR THE SAID CRIMES WHEN THE CONFISCATED FIREARM AND AMMUNITION ARE HELD INADMISSIBLE IN EVIDENCE.— To secure a conviction for Illegal Possession of Explosives and Illegal Possession of Firearms and Ammunition, the elements for the offenses are as follows: (*a*) the existence of the firearm, ammunition or explosive; (b)

ownership or possession of the firearm, ammunition or explosive; and (c) lack of license to own or possess.

Despite Pangcatan's own admission that he brought the confiscated firearm and ammunition for self-defense purposes, he cannot be held liable for violation of Section 1, R.A. No. 9516 and violation of Section 28 (e) 1 in relation to Section 28 (a) of Article V of R.A. No. 10591. Due to the inadmissibility of the hand grenade, firearm, and ammunition confiscated during the warrantless search made on Pangcatan, the *corpus delicti* of both crimes were not established.

6. ID.; MURDER; ELEMENTS THEREOF, PROVEN BEYOND REASONABLE DOUBT IN THIS CASE.— [T]he elements of murder are: (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Art. 248; and 4) that the killing is not parricide or infanticide.

In the present case, the prosecution was able to establish all the elements of the crime: 1) Richelle was killed on January 9, 2015; 2) Renante positively identified Pangcatan as the assailant; 3) the killing was attended by abuse of superior strength and evident premeditation; and 4) the killing is not parricide or infanticide.

7. REMEDIAL LAW; EVIDENCE; OUT-OF-COURT IDENTIFICATION OF THE ACCUSED; IN THE ABSENCE OF PROOF THAT THE WITNESS WAS INFLUENCED OR PRESSURED BY THE POLICE OFFICERS, THE IDENTIFICATION OF THE ACCUSED CANNOT BE SAID TO BE SUGGESTIVE.— The identification of Pangcatan during trial was dispensed with by the RTC considering that his identity and correct name were already admitted in the Pre-Trial Order the RTC issued. Moreover, We find that there was sufficient compliance with the totality of circumstances to give weight to Renante's out-of-court identification of Pangcatan as Richelle's assailant.

. . .

In the present case, the police observed the guidelines stated above and belie the claim of Pangcatan that the out-of-court identification was suggestive. Renante first identified Pangcatan as the assailant when he was asked to scour through two albums

containing approximately 20 uniformly sized photos per album of criminals or suspected criminals of the police on the same day the incident occurred. According to PO1 Carillo, of the approximately 40 photos shown to Renante, he identified Pangcatan in the middle of the second album. Pangcatan's photo was allegedly supplied by his ex-wife, Yoshira Pangcatan. PO1 Carillo of the Intelligence Section explained that Pangcatan's photo appears on the gallery they kept because he was previously reported on four instances for violation of R.A. 9262 between September 25, 2014 and October 22, 2014. To Our mind, Renante's identification of Pangacatan is not suggestive because there is nothing in the records that would suggest that he was influenced or pressured by the police officers.

8. ID.; ID.; ID.; POLICE LINEUP OR INVESTIGATION; THERE IS NO LAW REQUIRING A POLICE INVESTIGATION OR A POLICE LINEUP AS A CONDITION *SINE QUA NON* FOR THE IDENTIFICATION OF AN ACCUSED.— Even if the subsequent police lineup conducted may appear to be suggestive due to the prior information Renante obtained about Pangcatan when he first identified him through the photo album shown to him, this does not make the identification Renante made unreliable. It must be emphasized that there is no law requiring a police investigation or a police lineup as a condition *sine qua non* for the proper identification of an accused.

9. ID.; ID.; ID.; ALIBI; DENIAL; ALIBI AND DENIAL CANNOT BE GIVEN GREATER EVIDENTIARY WEIGHT THAN THE POSITIVE DECLARATION OF A CREDIBLE WITNESS.— Pangcatan's uncorroborated alibi that he was in the hinterlands of Compostella Valley at the time of the shooting to conduct intelligence work deserves scant consideration. For Pangcatan's defense of alibi to prosper, he must establish that: (1) he was present at another place at the time of the perpetration of the crime; and (2) that it was physically impossible for him to be at the scene of the crime during its commission.

Here, Pangcatan failed to present any proof that he was in Compostella Valley at the time of the shooting. Even Lt. Col. Odal denied giving him any mission order to conduct intelligence work in the area and guaranteed that no other officer of the Philippine Army could have bypassed him in giving orders to

Pangcatan. His bare denial and alibi constitutes self-serving negative evidence which cannot be accorded greater evidentiary weight than the positive declaration of a credible witness.

10. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; ABUSE OF SUPERIOR STRENGTH; AN ATTACK BY ONE WITH A DEADLY WEAPON AND WHOSE HEIGHT AND BUILT ARE SUPERIOR TO THOSE OF THE VICTIM CONSTITUTES ABUSE OF SUPERIOR STRENGTH.— It is settled that an attack made by a man with a deadly weapon upon an unarmed and defenseless woman constitutes abuse of superior strength due to his sex and the weapon used in the act. Here, the lower courts correctly held that there was inequality of forces between Pangcatan and Richelle because his height and built were superior to hers. He was armed with a gun during the incident while Richelle was defenseless. Richelle could not have put up any effective resistance when she was dragged by the hair from the tricycle and suddenly shot. Thus, the qualifying circumstance of abuse of superior strength was properly considered.

11. ID.; ID.; EVIDENT PREMEDITATION; REQUISITES THEREOF; A SHOOTING THAT OCCURS IN THE HEAT OF AN ARGUMENT CANNOT BE SAID TO BE ATTENDED BY EVIDENT PREMEDITATION.— With regard to the allegation of evident premeditation, this circumstance was not established.

In proving evident premeditation, the following requisites must concur: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the culprit has clung to his or her determination; and (3) a sufficient lapse of time between the determination and execution to allow him or her to reflect upon the consequences of his or her act and to allow conscience to overcome the resolution of his or her will.

In this case, the prosecution failed to show that Pangcatan plotted to kill Richelle. Though the prosecution presented an audio recording from the cellphone recovered from Richelle tending to imply that they had an argument prior to the date of the incident, the prosecution failed to correlate the audio recording with the shooting incident. The prosecution was not able to identify any external or outward act that reveals Pangcatan's intent to kill her. There could not have been any

lapse of time as contemplated by the RPC because the shooting occurred while they were in the heat of an argument. Thus, there was no opportunity for Pangcatan to coolly deliberate on the consequences of his actions.

12. ID.; MURDER; PENALTY AND CIVIL LIABILITY.— Under Article 248 of the RPC, as amended, the penalty for the crime of murder qualified by abuse of superior strength is *reclusion perpetua* to death. Since there were no aggravating or mitigating circumstances that attended the commission of the crime, the penalty of *reclusion perpetua* imposed on Pangcatan is in accordance with Article 63, paragraph 2 of the same Code. Therefore, We affirm the penalty imposed by the CA in Criminal Case No. 20346.

Prevailing jurisprudence sets civil indemnity, moral damages, and exemplary damages in the amount of ₱75,000.00 each. Legal interest of six percent (6%) *per annum* is imposed on all damages awarded from the date of finality of this Decision until fully paid. As such, We find the monetary award imposed by the CA consistent with the Court's ruling in *People v. Jugueta*.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Wealthyneil C. Yap for accused-appellant.

D E C I S I O N

CARANDANG, *J.*:

This is an appeal[1] from the Decision[2] dated June 21, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01562-MIN finding accused-appellant Abdillah Pangcatan *y* Dimao (Pangcatan) guilty beyond reasonable doubt of the following criminal offenses: (1) violation of Section 1, Republic Act No.

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[1] *Rollo*, pp. 24-25.

[2] Penned by Associate Justice Perpetua T. Atal-Pano, with the concurrence of Associate Justices Edgardo A. Camello and Walter S. Ong, id. at 5-22.

(R.A.) 9516;[3] (2) violation of Section 28 (e) (1) in relation to Section 28 (a) of R.A. 10591;[4] and (3) murder under Article 248 of the Revised Penal Code (RPC).

Antecedents

The three (3) separate Information against accused-appellant Pangcatan respectively state:

Criminal Case No. 20344

Illegal Possession of Explosives in Violation of Section 1, R.A. No. 9516

That on or about January 11, 2015, in the City of Tagum, Province of Davao del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without lawful permit, license or authority, did then and there willfully, unlawfully and knowingly possess one (1) pc. of hand grenade.

CONTRARY TO LAW.[5]

Criminal Case No. 20345

Illegal Possession of Firearm and Ammunitions in Violation of Section 28 (e) 1 in relation to Section 28 (a) of Article V of R.A. No. 10591

That on or about January 11, 2015, in the City of Tagum, Province of Davao del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without lawful permit, license, or authority, did then and there willfully, unlawfully and knowingly possess one (1) unit cal. 45 Norinco pistol with serial no. BA02493 with magazine loaded with 7 rounds of ammunition contained

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[3] An Act Further Amending the Provisions of Presidential Decree No. 1866, As Amended, entitled "Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing In, Acquisition or Disposition of Firearms, Ammunition or Explosives or Instruments Used in the Manufacture of Firearms, Ammunition or Explosives, and Imposing Stiffer Penalties for Certain Violations Thereof, and for Relevant Purposes."

[4] Otherwise known as the "Comprehensive Firearms and Ammunition Regulation Act."

[5] Records (Criminal Case No. 20344), p. 2.

inside a leather magazine pouch belt and another olive green sling bag containing four (4) pcs of magazine each loaded with five (5) pcs of ammunitions.

CONTRARY TO LAW.[6]

Criminal Case No. 20346

Murder under Article 248 of the Revised Penal Code (RPC)

That on or about January 9, 2015, in the City of Tagum, Province of Davao del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with evident premeditation abuse of superior strength and with intent to kill, armed with a gun, using a black Rouser motorcycle to facilitate his escape in the commission of the crime, did then and there willfully, unlawfully and feloniously attack, assault, and shoot Richelle Anne Marabe, thereby inflicting upon her mortal wounds which caused her death, and further causing actual, moral and compensatory damages to the heirs of the victim.

CONTRARY TO LAW.[7]

On February 27, 2015, Pangcatan filed a Motion to Quash and to Suppress Evidence[8] before the Regional Trial Court (RTC) alleging that: (1) his warrantless arrest on January 11, 2015 was illegal;[9] (2) the body search conducted on him was likewise illegal, making all items recovered from him inadmissible in evidence;[10] and (3) the court did not acquire jurisdiction over him as his arrest was illegal.[11]

In a Resolution[12] dated April 24, 2015, the RTC denied Pangcatan's Motion to Quash. The RTC ruled that the Tagum

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[6] Records (Criminal Case No. 20345), p. 1.

[7] Records (Criminal Case No. 20346), p. 1.

[8] Records (Criminal Case No. 20344), pp. 23-39.

[9] Id. at 25-32.

[10] Id. at 32-36.

[11] Id. at 37-38.

[12] Penned by Presiding Judge Ma. Susana T. Baua; *id.* at 47-51.

City Police had probable cause to arrest Pangcatan without a warrant because: (1) he was identified by an alleged eyewitness from photographs shown to the latter; (2) an invitation for Pangcatan to appear at the station was sent to him on the very same day of the subject incident; (3) although Pangcatan arrived at the police station two days later, he was positively identified by the eyewitness from a police lineup; and (4) Pangcatan was arrested not only as a suspect in the murder of the victim but also because he was found in possession of a firearm, ammunition, and a hand grenade without authority therefor. The RTC also held that, though it is unclear whether the frisk done on the person of Pangcatan was done before or after he was identified from the police lineup, it devolves upon Pangcatan to rebut its regularity in a full-blown trial.[13]

Pangcatan's Motion for Reconsideration[14] was likewise denied in an Order[15] dated June 1, 2015.

During his arraignment on June 8, 2015, Pangcatan entered a plea of not guilty to the three charges.[16]

During trial, the prosecution presented the following witnesses, namely: (1) Police Officer 3 Crisanto Quibrar[17] (PO3 Quibrar); (2) PO3 Melven Parcon[18] (PO3 Parcon); (3) Renante Cruz[19] (Renante); (4) Lieutenant Colonel Allan Odal[20] (Lt. Col. Odal); (5) PO1 Kimberly Carillo[21] (PO1 Carillo); (6) PO3 Lino Warren

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[13] Id. at 50-51.

[14] Id. at 52-65.

[15] Penned by Presiding Judge Ma. Susana T. Baua; id. at 74.

[16] Id. at 80-81.

[17] TSN dated October 19, 2015, pp. 2-24.

[18] TSN dated October 22, 2015, pp. 3-11.

[19] Id. at 15-42.

[20] TSN dated February 1, 2016, pp. 12-18.

[21] TSN dated November 4, 2015, pp. 2-12.

Almonia[22] (PO3 Almonia); (7) SPO2 Romeo M. Obrero[23] (SPO2 Obrero); and (8) Nercita Marabe Evangelista (Nercita).[24]

According to the prosecution, on January 9, 2015, Renante was weeding grass near the Sto. Niño Chapel which was across Boarders Inn, approximately 30 meters away and separated by a highway.[25] He saw two persons onboard a motorcycle, a male and a female, about to enter Boarder's Inn. As the motorcycle stopped at the gate of Boarder's Inn, he observed that the two were fighting. He heard the female passenger, who was later identified as the victim Richelle Ann Marabe Austero (Richelle), shouting "No, I will not!" Richelle went out of Boarder's Inn and crossed the highway toward the chapel.[26] The driver of the motorcycle, who was later identified as Pangcatan, was wearing a black jacket, shorts and had a bandage on his left knee. Renante was able to describe the man's hair cut as a "flat top" as he was not wearing any helmet.[27] When Richelle hailed a tricycle, Pangcatan blocked it and pointed his gun at the tricycle driver. Renante allegedly saw Pangcatan order Richelle to step out of the tricycle.[28] When Richelle refused, Pangcatan allegedly pointed his gun at her stomach and shot her twice, hitting her stomach and her jaw.[29] After the assailant fled the scene, Renante ran towards Richelle and checked her pulse. Ten minutes after, the police arrived.[30] Renante was taken to the police station where he narrated what he saw and identified Pangcatan from two

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[22] TSN dated November 5, 2015, pp. 2-19; TSN dated November 18, 2015, pp. 2-9.

[23] TSN dated December 2, 2015, pp. 3-16.

[24] TSN dated February 1, 2016, pp. 3-12.

[25] TSN dated October 22, 2015, pp. 17-19.

[26] Id. at 20-21.

[27] Id. at 22-23.

[28] Id. at 25-26.

[29] Id. at 26-27.

[30] Id. at 27-28.

photograph albums of various persons shown to him. He then learned that Pangcatan is an official of the Philippine Army and that his photo was included in the album after he was reported several times in the Women's Desk for complaints for violation of R.A. No. 9262.[31]

On January 11, 2015, Renante was invited back to the police station where he was shown three individuals standing side by side and was asked to identify the assailant. Renante identified the person standing in the middle, Pangcatan, as the person who shot Richelle.[32]

After being identified, PO3 Quibrar arrested him and read his constitutional rights. PO3 Parcon then conducted a body search on Pangcatan and confiscated the following: one (1) leather magazine pouch with belt; one (1) black plastic pistol holster; one (1) caliber. 45 Norinco pistol with Serial No. BA02493 loaded with magazine containing 7 rounds; one (1) olive green sling bag containing four (4) other spare magazines each containing five (5) rounds; one (1) grenade wrapped in black pouch; one (1) Mardee's tactical magazine holster; one (1) small brown envelope containing white cottons and white bandage; one (1) small vial containing liquid wrapped with paper tape; one (1) red disposable lighter, and one (1) leather wallet.[33]

When asked for permit or license to carry the firearm, magazine, and grenade seized from him, Pangcatan failed to present any.[34]

Lt. Col. Odal confirmed that two days before the date of the incident, Pangcatan asked him to be excused from duty because of his knee injury.[35]

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[31] Id. at 32-33.

[32] Id. at 34-35.

[33] Records (Criminal Case No. 20344), p. 4.

[34] Id.

[35] TSN dated February 1, 2016, pp. 15-16.

Upon the request of the prosecution, the Firearms and Explosives Office of the Philippine National Police (PNP) issued a certification[36] stating that:

> THIS IS TO CERTIFY that **ABDILLAH D. PANGCATAN** of Blk. 12, Lot 20, Villa Cacacho, Mankilam, Tagum City, is not a licensed/registered firearm holder of any kind and caliber particularly one (1) **Pistol, Caliber .45, Norinco with Serial Number BA02493** per verification from records of this office as of this date.
>
> However, upon verification based on Firearms Information Management System, we have on record, **Pistol, Caliber .45, Norinco with Serial Number BA02493** is licensed/registered to **FLORANTE GORDOLAN y OLIPAS** of Blk 4, Lot 14, Anjelica Homes, Tagum City, Davao del Norte, issued/approved on October 12, 2006 with expiry date December 16, 2008.[37] (Emphasis in the original)

The Certificate of Death[38] of Richelle confirmed that the immediate cause of her death were multiple gunshot wounds to the head and trunk.[39]

Pangcatan was the sole witness for the defense. He denied the allegations against him. He claimed that on January 9, 2015, he was in the hinterlands of Compostela Valley Province to conduct intelligence work.[40] He maintained that on January 11, 2015, he was invited by PSI Anjanette Tirador (PSI Tirador) to the police station.[41] Upon arrival, Pangcatan claimed that PSI Tirador asked him to remove the caliber .45 Norinco pistol from his waist to which he complied. He removed the caliber .45 with magazine and placed it inside his sling bag which he put down just beside his feet.[42] Pangcatan narrated that he was

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[36] Records (Criminal Case No. 20344), p. 262.

[37] Id.

[38] Records (Criminal Case No. 20346), p. 130.

[39] Id.

[40] Records (Criminal Case No. 20345), pp. 123-124.

[41] Id. at 121.

[42] Id. at 121-122.

then asked to join a line-up together with two other persons. Thereafter, the two persons were asked to go out and PO3 Quibrar arrested him after having been identified by a witness as the suspect in killing Richelle.[43] He denied receiving any invitation from the police prior to January 11, 2015.[44]

Ruling of the Regional Trial Court

On August 13, 2016, the RTC rendered its Joint Decision,[45] the dispositive portion of which reads:

> **WHEREFORE**, premises considered, there being proof of his guilt beyond reasonable doubt, the accused **ABDILLAH PANGCATAN Y DIMAO** is hereby found **GUILTY** of all the three (3) criminal offenses subject of these cases and is hereby sentenced:
>
> 1) In **Crim. Case No. 20344** for the illegal possession of a hand grenade, to suffer the penalty of ***reclusion perpetua***, as provided for by Section 3 of Rep. Act No. 9516;
>
> 2) In **Crim. Case No. 20345** and applying the Indeterminate Sentence Law, to suffer imprisonment for a period of ***ten (10) years of prision mayor*** in accordance with Section 28 (e), par. 1 of Rep. Act No. 10591.
>
> The hand grenade, .45 caliber Norinco pistol and the ammunition confiscated from Pangcatan are forfeited in favor of the State.
>
> 3) In **Crim. Case No. 20346**, to suffer the penalty of ***reclusion perpetua*** and to pay the heirs of the late Richelle Anne Marabe Austero the sum of ₱75,000.00 as civil indemnity; the sum of ₱50,000.00 as exemplary damages and the sum of ₱50,000.00 as moral damages.
>
> SO ORDERED.[46] (Emphasis and italics in the original)

In Criminal Case Nos. 20344 and 20345, the RTC ruled that the prosecution overwhelmingly discharged its burden of

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[43] Id. at 122.

[44] Id. at 123.

[45] Penned by Presiding Judge Ma. Susana T. Baua; CA *rollo*, pp. 49-60.

[46] Id. at 60.

establishing the guilt of Pangcatan for illegal possession of the caliber .45 Norinco pistol, multiple pieces of ammunition, and the hand grenade. The Certification from the Firearms and Explosives Division (FED) stated that Pangcatan is not a licensed holder of a caliber .45 Norinco pistol and that the said firearm is registered to one Florante Gordolan *y* Olipas.[47] The acknowledgment receipt that Pangcatan showed, the original or certified true copy of which was never presented in court, does not contain the signature of his immediate superior, Lt. Col. Odal. Moreover, it indicated that the firearm and grenade were the "property accountability" of another person, 1Lt. Allan M. Bonhoc. The RTC also found that Pangcatan was unable to present competent proof that, as an intelligence officer of the Philippine Army, he was authorized to carry and possess the weapons. The RTC ruled that self-defense is no excuse to carry the weapons.[48]

In Criminal Case No. 20346, the RTC held that Pangcatan failed to substantiate his alibi that he was in the hinterlands of Compostela Valley at the time of the incident. The RTC was convinced with Renante's identification of Pangcatan as the person who shot Richelle.[49] The RTC did not consider the qualifying circumstance of evident premeditation because the audio tapes presented by the prosecution was not a clear proof that Pangcatan was the man talking and that he had an intent to kill Richelle.[50] On the other hand, the qualifying circumstance of abuse of superior strength was considered because Pangcatan was described as "a man of height greater than Richelle" and "with a build *[sic]* superior to hers." The RTC concluded that he took physical advantage over Richelle who was slim and he was armed with a gun. Richelle could not have put up any effective resistance when she was dragged by the hair from the tricycle.[51]

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[47] Id. at 54-55.

[48] Id. at 57.

[49] Id. at 58.

[50] Id. at 58-59.

[51] Id.

Ruling of the Court of Appeals

On June 21, 2018, the CA issued its Decision,[52] the dispositive portion of which reads:

> **WHEREFORE**, the appeal is **DENIED**. The Joint Decision dated August 13, 2016 of the Regional Trial Court, Branch 2, Tagum City, in Criminal Case Nos. 20344, 20345 and 20346 is hereby **AFFIRMED** with **MODIFICATION**, as follows:
>
> 1. In Criminal Case No. 20345, appellant shall suffer the penalty of imprisonment for a period of ten (10) years and one (1) day of *prision mayor* as minimum to eleven (11) years and four (4) months of *prision mayor* as maximum; and,
>
> 2. In Criminal Case No. 20346, appellant is ordered to pay the heirs of the late Richelle Anne Marabe Austero (a) ₱75,000.00 as civil indemnity; (b) ₱75,000.00 as exemplary damages; (c) ₱75,000.00 as moral damages; and (d) interest of six percent (6%) *per annum* on all damages awarded from the date of finality of this judgment until fully paid.
>
> SO ORDERED.[53]

The CA held that the order of the RTC denying Pangcatan's Motion to Quash and to Suppress Evidence is not the proper subject of an appeal because it is an interlocutory order. The CA noted that Pangcatan had already filed a petition for *certiorari* in the CA (docketed as CA-G.R. SP No. 06846) to assail the interlocutory order and the issue concerning the validity of his arrest and the admissibility of the evidence against him had already been put to rest.[54]

In affirming the conviction of Pangcatan for murder, the CA ruled that the elements of the crime were proven beyond reasonable doubt. The CA gave credence to the clear and categorical testimony of Renante, who positively identified him.[55]

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[52] Supra note 2.

[53] *Rollo*, p. 22.

[54] Id. at 15-16.

[55] Id. at 16-17.

The CA agreed with the finding of the RTC that abuse of superior strength attended the killing of Richelle because Pangcatan was armed with a gun and was described as "a man of height greater than Richelle Anne's and with a build *[sic]* superior to hers."[56] The CA was also convinced with the out-of-court identification made by Renante at the Tagum Police Station. The CA ruled that there is no need to identify Pangcatan in open court since his identity was already stipulated and admitted during the pre-trial.[57]

The CA rectified the penalty imposed in Criminal Case No. 20345 as the RTC failed to provide minimum and maximum terms for Pangcatan's penalty of imprisonment as required by the Indeterminate Sentence Law.[58]

In a Resolution[59] dated October 24, 2018, the CA denied the Motion for Reconsideration Pangcatan filed.[60]

In Pangcatan's Supplemental Appellant's Brief,[61] he raised the following arguments: (1) the CA committed error in ruling that the denial of a Motion to Quash is not appealable;[62] (2) the weapons recovered from him were preceded by an invalid and unlawful warrantless arrest;[63] (3) the photographs in the album the police showed Renante prior to the line-up was not presented in court;[64] (4) the alleged initial photographic identification and subsequent line-up identification made by Renante were

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[56] Id. at 17-18.

[57] Id. at 18-19.

[58] Id. at 20-22.

[59] Penned by Associate Justice Perpetua T. Atal-Pano, with the concurrence of Associate Justices Edgardo A. Camillo and Walter S. Ong; CA *rollo*, pp. 175-176.

[60] Id.

[61] *Rollo*, pp. 39-70.

[62] Id. at 45-51.

[63] Id. at 53-55.

[64] Id. at 56-57.

highly suggestive and influenced by the police officers, making Renante's out-of-court identification unreliable;[65] and (5) pre-trial identification is not sufficient and the failure of the prosecution witness to positively identify the assailant in court is fatal to its cause.[66]

The Court notified the Office of the Solicitor General (OSG) to file its supplemental brief. However, the OSG manifested that it will no longer file a supplemental brief since Pangcatan did not raise any new matter and to expedite the resolution of the case.[67]

Issues

The issues to be resolved are:

1. Whether the issue of Pangcatan's alleged illegal arrest on January 11, 2015 and the admissibility of the evidence recovered from him is a proper subject matter in an automatic review;
2. Whether Pangcatan is guilty of illegal possession of explosives;
3. Whether Pangcatan is guilty of illegal possession of firearm and ammunitions; and
4. Whether Pangcatan is guilty of murder.

Ruling of the Court

The appeal is partially meritorious.

The alleged illegal arrest of Pangcatan on January 11, 2015 is a proper subject matter in an automatic review.

It is settled that any objection to the arrest or acquisition of jurisdiction over the person of the accused must be made before

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[65] Id. at 57-66.

[66] Id. at 68-69.

[67] Id. at 31-32.

he enters his plea, otherwise the objection is deemed waived.[68] An accused submits to the jurisdiction of the trial court upon entering a plea and participating actively in the trial and this precludes him from invoking any irregularity that may have attended his arrest.[69] He is deemed to have waived his objections when he entered a plea and participated actively in the trial.

Nonetheless, in criminal cases, "an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."[70] Accordingly, at this stage of the proceedings, the Court is not divested of its authority to resolve issues on purported irregularities in the arrest and subsequent search on Pangcatan.

Here, Pangcatan raised the validity of his arrest and the seizure of weapons in his possession in his Motion to Quash and to Suppress Evidence timely filed prior to his arraignment. He repeatedly raised these arguments when he filed a petition for *certiorari* in the CA docketed as CA-G.R. SP No. 06846-MIN assailing the resolution of the RTC denying his motion. Considering that this is an automatic review, the Court may still review the validity of Pangcatan's arrest and the admissibility of the evidence seized against him at this stage of the proceedings.

Pangcatan was not validly arrested. However, he is now estopped from assailing the court's jurisdiction over his person.

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[68] RULES OF COURT, Rule 117, Section 9.

[69] *People v. Lara*, 692 Phil. 469, 483 (2012).

[70] *People v. Alejandro*, 807 Phil. 221, 229 (2017), citing *People v. Comboy*, 782 Phil. 187, 196 (2016).

As a rule, no peace officer has the power or authority to arrest a person without a warrant except in instances authorized by Section 5, Rule 113 of the Rules of Court (Rules) which include:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

Pangcatan was arrested two days after the incident while he was at the police station following an invitation from PSI Tirador. Upon arrival at the police station, he was made to participate in a police lineup with two other persons and was positively identified by Renante.[71] After he was identified during the police lineup, he was arrested for killing Richelle and the body search yielded the following confiscated items: one (1) piece of hand grenade; one (1) unit caliber .45 Norinco pistol with serial no. BA02493, its magazine loaded with 7 rounds of ammunition contained inside a leather magazine pouch belt; and an olive green sling bag containing four (4) pieces of magazine each loaded with five (5) pieces of ammunitions.

Noticeably, at the time Pangcatan was invited to the police station two days after the incident, he was not committing any crime nor was it shown that he was about to do so or that he had just done so in the presence of the police officers. Thus, the warrantless arrest of Pangcatan cannot be justified under the *in flagrante delicto* exception in paragraph (a), Section 5, Rule 113 of the Rules.

The fact that the search incident to Pangcatan's unlawful arrest resulted in the seizure of firearm, ammunition, and a hand

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[71] Records (Criminal Case No. 20346), p. 18.

grenade he was allegedly not authorized to carry cannot rectify the defect of the illegal arrest preceding the search. The apprehending officers would not have seen these items had Pangcatan not been subjected to a body search following his illegal arrest. Due to the absence of an overt physical act of Pangcatan showing that he had committed a crime, was committing a crime or was going to commit a crime, there could not have been an *in flagrante delicto* arrest preceding the search.

Pangcatan's arrest also cannot be validated under the hot pursuit arrest exception in paragraph (b), Section 5, Rule 113 of the Rules.

The elements of a hot pursuit arrest are: (1) an offense has just been committed; and (2) the arresting officer has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it.[72] Moreover, there must be no appreciable lapse of time between the arrest and the commission of the crime. Otherwise, a warrant of arrest must be secured.[73] In *Pestilos v. Generoso*,[74] the Court explained the reason for the element of immediacy as follows:

> x x x [A]s the time gap from the commission of the crime to the arrest widens, the pieces of information gathered are prone to become contaminated and subjected to external factors, interpretations and hearsay. On the other hand, with the element of immediacy imposed under Section 5 (b), Rule 113 of the Revised Rules of Criminal Procedure, the police officer's determination of probable cause would necessarily be limited to **raw** or **uncontaminated** facts or circumstances, gathered as they were within a very limited period of time. The same provision adds another safeguard with the requirement of probable cause as the standard for evaluating these facts of circumstances before the police officer could effect a valid warrantless arrest.[75] (Emphasis in the original)

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[72] *Pestilos v. Generoso,* 746 Phil. 301, 315 (2014).

[73] Id., citing *People v. Del Rosario,* 365 Phil. 292, 312 (1999).

[74] Supra note 72, p. 331.

[75] Id.

The test of immediacy is not a mere mathematical computation of the lapse of time between the commission of the crime and the arrest. It is evaluated based on the circumstances surrounding each case.

It is worthy to point out that in *People v. Del Rosario*,[76] the Court found that the arrest of the accused failed to comply with the immediacy requirement because he was arrested a day after the commission of the crime and not immediately thereafter. The Court also noted that the arresting officers were not present and were not actual eyewitnesses to the crime. Thus, they had no personal knowledge of facts indicating that the person to be arrested had committed the offense.[77] In *People v. Cendana*,[78] the Court declared unlawful an arrest made one day after the killing of the victim and only on the basis of information obtained from unnamed sources. The unlawful arrest was held invalid.[79]

Although the factual setting in the present case is different from *Del Rosario*[80] and *Cendana*,[81] the rulings of the Court remain relevant in emphasizing the significance of the immediacy requirement in hot pursuit arrests. Here, it took two days for the police officers to arrest him, a lapse of time which is inconsistent with the immediacy requirement in hot pursuit arrests. Since Renante positively identified Pangcatan from the photos shown to him on January 9, 2015, the police officers had sufficient time to secure a warrant. Instead of applying for a warrant, the police officers lured Pangcatan into placing him into their custody under the guise of an invitation. Consequently, Pangcatan's arrest was unlawful.

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[76] 746 Phil. 301 (2014).

[77] Id.

[78] 268 Phil. 571 (1990).

[79] Id.

[80] Supra note 76.

[81] Supra note 78.

Nevertheless, the subsequent filing of charges against Pangcatan, his plea of not guilty, and his active participation during trial now preclude him from assailing the court's jurisdiction over him.

The search made on Pangcatan cannot be considered a lawful warrantless search. The pieces of evidence obtained from him during his unlawful arrest are inadmissible.

The search incident to Pangcatan's arrest is also unlawful. Section 13, Rule 126 of the Rules states:

> Section 13. *Search Incident to Lawful Arrest.* — A person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant.

To constitute a valid warrantless search under this provision, the arrest must be lawfully made on the basis of probable cause under Section 5, Rule 113 of the Rules. It requires that there be first a lawful arrest before a search can be made and this process cannot be reversed.[82] Absent the requisite lawful arrest that must precede the search, it cannot be considered legal. Since the search on the person of Pangcatan cannot be considered a search incident to a lawful arrest as contemplated in Section 13, Rule 126 of the Rules, the pieces of evidence obtained from this search are inadmissible.

In Criminal Case Nos. 20344 and 20345, the crimes of Illegal Possession of Explosives and Illegal Possession of Firearms and Ammunition were not proven beyond reasonable doubt.

To secure a conviction for Illegal Possession of Explosives and Illegal Possession of Firearms and Ammunition, the elements

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[82] *Peralta v. People*, 817 Phil. 554, 564-565 (2017).

for the offenses are as follows: (a) the existence of the firearm, ammunition or explosive; (b) ownership or possession of the firearm, ammunition or explosive; and (c) lack of license to own or possess.[83]

Despite Pangcatan's own admission that he brought the confiscated firearm and ammunition for self-defense purposes,[84] he cannot be held liable for violation of Section 1, R.A. No. 9516 and violation of Section 28 (e) 1 in relation to Section 28 (a) of Article V of R.A. No. 10591. Due to the inadmissibility of the hand grenade, firearm, and ammunition confiscated during the warrantless search made on Pangcatan, the *corpus delicti* of both crimes were not established.

The elements of Murder were proven beyond reasonable doubt.

Murder is defined and penalized under Article 248 of the RPC which states:

> Article. 248. *Murder*. — Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death if committed with any of the following attendant circumstances:
>
> 1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity;
>
> 2. In consideration of a price, reward, or promise;
>
> 3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin;
>
> 4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or other public calamity;
>
> 5. With evident premeditation;

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[83] *Saluday v. People*, 829 Phil. 65, 78 (2018).

[84] TSN dated March 17, 2016, p. 12.

6. With cruelty, by deliberately and inhumanely augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.[85]

Accordingly, the elements of murder are: (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Art. 248; and 4) that the killing is not parricide or infanticide.

In the present case, the prosecution was able to establish all the elements of the crime: 1) Richelle was killed on January 9, 2015; 2) Renante positively identified Pangcatan as the assailant; 3) the killing was attended by abuse of superior strength and evident premeditation; and 4) the killing is not parricide or infanticide.

The out-of-court identification made by Renante deserves credence.

Pangcatan maintains that the alleged initial photographic identification, which was not presented during trial, and the subsequent police lineup identification Renante made were highly suggestive and influenced by the police officers, making it unreliable.[86] We do not agree.

The identification of Pangcatan during trial was dispensed with by the RTC considering that his identity and correct name were already admitted in the Pre-Trial Order the RTC issued.[87] Moreover, We find that there was sufficient compliance with the totality of circumstances to give weight to Renante's out-of-court identification of Pangcatan as Richelle's assailant.

In *People v. Teehankee, Jr.*,[88] the Court explained the concept of out-of-court identification and the factors to consider in determining its admissibility and reliability, thus:

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[85] REVISED PENAL CODE, Article 248.

[86] Rollo, pp. 57-66.

[87] Records (Criminal Case No. 203406), p. 98; TSN dated October 22, 2015, p. 36.

[88] 319 Phil. 128 (1995).

Out-of-court identification is conducted by the police in various ways. It is done thru **show-ups** where the suspect alone is brought face to face with the witness for identification. It is done thru **mug shots** where photographs are shown to the witness to identify the suspect. It is also done thru **line-ups** where a witness identifies the suspect from a group of persons lined up for the purpose. Since corruption of **out-of-court** identification contaminates the integrity of **in-court** identification during the trial of the case, courts have fashioned out rules to assure its fairness and its compliance with the requirements of constitutional due process. In resolving the admissibility of and relying on out-of-court identification of suspects, courts have adopted the **totality of circumstances test** where they consider the following factors, *viz.*: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and, (6) the suggestiveness of the identification procedure.[89] (Citation omitted and emphasis in the original)

In *People v. Llamera*,[90] the Court laid down the guidelines to sustain the validity of an out-of-court identification through photographs:

x x x [**F**]**irst**, a series of photographs must be shown and not merely that of the suspect; and **second**, when a witness is shown a group of pictures, their arrangement and display should in no way suggest which one of the pictures pertains to the suspect. In addition, photographic identification should be free from any impermissible suggestions that would single out a person to the attention of the witness making the identification.[91] (Emphasis in the original)

In the present case, the police observed the guidelines stated above and belie the claim of Pangcatan that the out-of-court identification was suggestive. Renante first identified Pangcatan as the assailant when he was asked to scour through two albums

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[89] Id.

[90] 830 Phil. 607, 614-615 (2018).

[91] Id. at 180.

containing approximately 20 uniformly sized photos per album of criminals or suspected criminals of the police[92] on the same day the incident occurred. According to PO1 Carillo, of the approximately 40 photos shown to Renante, he identified Pangcatan in the middle of the second album.[93] Pangcatan's photo was allegedly supplied by his ex-wife, Yoshira Pangcatan. PO1 Carillo of the Intelligence Section explained that Pangcatan's photo appears on the gallery they kept because he was previously reported on four instances for violation of R.A. 9262 between September 25, 2014 and October 22, 2014.[94] To Our mind, Renante's identification of Pangcatan is not suggestive because there is nothing in the records that would suggest that he was influenced or pressured by the police officers.

Renante's recollection of the assailant through the photo album shown to him is worthy of belief as it was done immediately after the incident, while the details of Pangcatan was still fresh in his memory. The natural reaction of witness of violence is to strive to see the appearance of their assailants and observe the manner the crime was committed. In *People v. Esoy*,[95] the Court held:

> It is known that the most natural reaction of a witness to a crime is to strive to look at the appearance of the perpetrator and to observe the manner in which the offense is perpetrated. Most often the face of the assailant and body movements thereof, create a lasting impression which cannot be easily erased from a witness's memory. Experience dictates that precisely because of the unusual acts of violence committed right before their eyes, eyewitnesses can remember with a high degree of reliability the identity of criminals at any given time.[96] (Citations omitted)

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[92] TSN dated November 4, 2015, pp. 8-9.

[93] Id. at 10.

[94] TSN dated November 4, 2015, pp. 6-7; RTC records (Criminal Case No. 20346), pp. 193-196.

[95] 631 Phil. 547 (2010).

[96] Id. at 555-556.

While the actual shooting happened in less than one minute, Pangcatan and Richelle already caught Renante's attention before she was shot. He was already observing the assailant and Richelle as they appeared to be fighting moments before the shooting. He had an unobstructed view of them as he was approximately 30 meters away from where they stood.

In this case, though Renante failed to describe any facial feature of the assailant in his Affidavit dated January 9, 2015, the same day Richelle was shot, he described the assailant as follows:

> x x x [H]er companion, the one driving the said motorcycle (**a heavy-built man who was wearing a black jacket and black shorts with a white bandage wrapped on his knee**), chased the female across the highway and positioned himself three meters away from where the female was waiting for a tricycle[.][97] (Emphasis in the original)

Noticeably, in his Supplemental Affidavit[98] dated January 12, 2015, Renante only declared that he identified Pangcatan as Richelle's assailant during a lineup conducted the previous day. Nonetheless, the same information about the assailant proved critical in identifying the assailant. Apart from describing the size of the assailant relative to the victim, his clothes, and his motorcycle, Renante reiterated during his testimony that the assailant had a bandage on his left knee[99] which is consistent with the claim of Lt. Col. Odal that Pangcatan had a wound on his knee at the time of the incident. Lt. Col. Odal testified that two days prior to the incident, Pangcatan told him that he cannot work as command duty officer as he needed to get his knee wound treated.[100] This wound is a distinguishing mark that bolsters the credibility of Renante's identification of the assailant. Renante could not have known this information prior to the alleged suggestive police lineup if he really did not witness

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[97] Records (Criminal Case No. 20346), p. 10.

[98] Id. at 11.

[99] TSN dated October 22, 2015, p. 22.

[100] TSN dated February 1, 2016, pp. 15-16.

the shooting incident. Therefore, Renante's identification of Pangcatan passed the totality of circumstances test.

In *Kummer v. People*,[101] it was held that:

> x x x [A]ffidavits are usually abbreviated and inaccurate. Oftentimes, **an affidavit is incomplete, resulting in its seeming contradiction with the declarant's testimony in court**. Generally, **the affiant is asked standard questions, coupled with ready suggestions intended to elicit answers, that later turn out not to be wholly descriptive of the series of events as the affiant knows them**. Worse, the process of affidavit-taking may sometimes amount to putting words into the of affiant's mouth, thus allowing the whole statement to be taken out of context.
>
> The court is not unmindful of these on-the-ground realities. In fact, we have ruled that the discrepancies between the statements of the affiant in his affidavit and those made by him on the witness stand do not necessarily discredit him since ex parte affidavits are generally incomplete. As between the joint affidavit and the testimony given in open court, the latter prevails because affidavits taken ex parte are generally considered to be inferior to the testimony given in Court.[102]

We cannot simply disregard his initial statements for being incomplete and discredit his credibility. The veracity and weight of Renante's testimony in court is not affected because his earlier statements complement and furnish supporting details to elaborate on his initial statements. The perceived incompleteness of Renante's affidavits cannot entirely be attributed to him since the police officers also had a hand in the preparation of the documents. The information Renante later supplied during his testimony in court did not contradict his earlier statements.

Even if the subsequent police lineup conducted may appear to be suggestive due to the prior information Renante obtained about Pangcatan when he first identified him through the photo album shown to him, this does not make the identification Renante made unreliable. It must be emphasized that there is no law

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[101] 717 Phil. 670 (2013).

[102] Id. at 679.

requiring a police investigation or a police lineup as a condition *sine qua non* for the proper identification of an accused.[103]

Furthermore, Pangcatan's uncorroborated alibi that he was in the hinterlands of Compostela Valley at the time of the shooting to conduct intelligence work deserves scant consideration. For Pangcatan's defense of alibi to prosper, he must establish that: (1) he was present at another place at the time of the perpetration of the crime; and (2) that it was physically impossible for him to be at the scene of the crime during its commission.[104]

Here, Pangcatan failed to present any proof that he was in Compostela Valley at the time of the shooting. Even Lt. Col. Odal denied giving him any mission order to conduct intelligence work in the area and guaranteed that no other officer of the Philippine Army could have bypassed him in giving orders to Pangcatan. His bare denial and alibi constitute self-serving negative evidence which cannot be accorded greater evidentiary weight than the positive declaration of a credible witness.[105]

The qualifying circumstance of abuse of superior strength was properly considered in qualifying the shooting to murder. However, evident premeditation was not established.

It is settled that an attack made by a man with a deadly weapon upon an unarmed and defenseless woman constitutes abuse of superior strength due to his sex and the weapon used in the act.[106] Here, the lower courts correctly held that there was inequality of forces between Pangcatan and Richelle because his height and built were superior to hers. He was armed with a gun during the incident while Richelle was defenseless. Richelle

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[103] *People v. Dela Cruz*, 452 Phil. 1080, 1094 (2003).

[104] *People v. Ramos*, 715 Phil. 193, 206 (2013).

[105] *People v. Vergara*, 724 Phil. 702, 712 (2014).

[106] Revised Penal Code Book II, Luis B. Reyes, p. 41; *People v. Roxas*, 457 Phil. 577 (2003).

could not have put up any effective resistance when she was dragged by the hair from the tricycle and suddenly shot.[107] Thus, the qualifying circumstance of abuse of superior strength was properly considered.

With regard to the allegation of evident premeditation, this circumstance was not established.

In proving evident premeditation, the following requisites must concur: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the culprit has clung to his or her determination; and (3) a sufficient lapse of time between the determination and execution to allow him or her to reflect upon the consequences of his or her act and to allow conscience to overcome the resolution of his or her will.[108]

In this case, the prosecution failed to show that Pangcatan plotted to kill Richelle. Though the prosecution presented an audio recording from the cellphone recovered from Richelle tending to imply that they had an argument prior to the date of the incident, the prosecution failed to correlate the audio recording with the shooting incident. The prosecution was not able to identify any external or outward act that reveals Pangcatan's intent to kill her. There could not have been any lapse of time as contemplated by the RPC because the shooting occurred while they were in the heat of an argument. Thus, there was no opportunity for Pangcatan to coolly deliberate on the consequences of his actions.

Penalty

Under Article 248 of the RPC, as amended, the penalty for the crime of murder qualified by abuse of superior strength is *reclusion perpetua* to death. Since there were no aggravating or mitigating circumstances that attended the commission of the crime, the penalty of *reclusion perpetua* imposed on Pangcatan is in accordance with Article 63, paragraph 2 of the

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[107] *Rollo*, p. 59.

[108] Revised Penal Code Book II, Luis B. Reyes, p. 392.

same Code. Therefore, We affirm the penalty imposed by the CA in Criminal Case No. 20346.

Prevailing jurisprudence[109] sets civil indemnity, moral damages, and exemplary damages in the amount of ₱75,000.00 each. Legal interest of six percent (6%) *per annum* is imposed on all damages awarded from the date of finality of this Decision until fully paid. As such, We find the monetary award imposed by the CA consistent with the Court's ruling in *People v. Jugueta*.[110]

WHEREFORE, premises considered, the assailed Decision dated June 21, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 01562-MIN is **SET ASIDE**.

In Criminal Case No. 20346, We find accused-appellant Abdillah Pangcatan *y* Dimao **GUILTY** beyond reasonable doubt of Murder under Article 248 of the Revised Penal Code. Accused-appellant Abdillah Pangcatan *y* Dimao is sentenced to suffer the penalty of *reclusion perpetua*. He is **ORDERED** to pay the heirs of the late Richelle Anne Marabe Austero: (a) ₱75,000.00 as civil indemnity; (b) ₱75,000.00 as exemplary damages; (c) ₱75,000.00 as moral damages; and (d) interest of six percent (6%) *per annum* on all damages awarded from the date of finality of this judgment until fully paid.

Accused-appellant Abdillah Pangcatan *y* Dimao is **ACQUITTED** in Criminal Case Nos. 20344 and 20345, for failure to prove his guilt beyond reasonable doubt.

SO ORDERED.

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

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[109] *People v. Jugueta*, 783 Phil. 806 (2016).

[110] Id.

EN BANC

[A.C. No. 8522. October 6, 2020]

TEODORO L. CANSINO and EMILIO L. CANSINO, JR., *Complainants, v.* **ATTY. VICTOR D. SEDERIOSA,** *Respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; SUSPENSION; THE REGISTRY RECEIPT CONSTITUTES A *PRIMA FACIE* PROOF THAT THE SUSPENSION ORDER HAD BEEN DELIVERED TO AND RECEIVED BY THE RESPONDENT; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY, UPHELD.— In an attempt to evade any liability, Atty. Sederiosa lamentably resorted to lies when he denied receipt of the Court's December 7, 2015 Resolution suspending him from the law practice, revoking his notarial commission and disqualifying him from being commissioned as such.

Registry Return Receipt No. 3956 clearly shows that a certain Deo Zuniga (Zuniga), in behalf of Atty. Sederiosa, duly received a copy of Our December 7, 2015 Resolution on January 29, 2016. Interestingly, Atty. Sederiosa failed to show proof that Zuniga was incompetent to receive the same as he was neither a clerk or a person in charge of his office nor a person of sufficient age and discretion then residing in his place of residence. He simply denied receipt of the suspension order and did not assail the authority of Zuniga to receive the same. Verily, the registry receipt constitutes a *prima facie* proof that the suspension order had been delivered to and received by Atty. Sederiosa. The presumption of regularity in the performance of official duty is upheld.

2. ID.; ID.; ID.; A LAWYER WHO HAS BEEN SUSPENDED FROM THE PRACTICE OF LAW BY THE COURT MUST REFRAIN FROM PERFORMING ALL FUNCTIONS WHICH WOULD REQUIRE THE APPLICATION OF HIS LEGAL KNOWLEDGE WITHIN THE PERIOD OF SUSPENSION; A LAWYER, DURING THE PERIOD OF

HIS/HER SUSPENSION, IS BARRED FROM ENGAGING IN NOTARIAL PRACTICE AS HE/SHE IS DEEMED NOT A MEMBER OF THE PHILIPPINE BAR IN GOOD STANDING, WHICH IS ONE OF THE ESSENTIAL REQUISITES TO BE ELIGIBLE AS A NOTARY PUBLIC.— The regulation of the practice of law falls upon the exclusive jurisdiction of the High Court. As such, a lawyer who has been suspended from the practice of law by the Court must refrain from performing all functions which would require the application of his legal knowledge within the period of suspension. The practice of law includes any activity, in or out of court, which requires the application of law, legal procedure, knowledge, training, and experience. It comprises the performance of acts which are characteristic of the legal profession, or rendering any kind of service which requires the use in any degree of legal knowledge or skill.

Guided by the foregoing on what constitutes a practice of law, it is beyond cavil that notarizing of documents constitutes a practice of law. In fact, one of the requirements to be a duly commissioned notary public is that he/she must be a member of the Philippine Bar in good standing. Pertinently, Section 1, Rule III of the 2004 Rules on Notarial Practice provides:

> SECTION 1. Qualifications.— . . .
>
> To be eligible for commissioning as notary public, the petitioner: . . .
>
> **(4) must be a member of the Philippine Bar in good standing with clearances from the Office of the Bar Confidant of the Supreme Court and the Integrated Bar of the Philippines;** . . .

In other words, a lawyer, during the period of his/her suspension, is barred from engaging in notarial practice as he/she is deemed not a member of the Philippine Bar in good standing, which is one of the essential requisites to be eligible as a notary public.

3. ID.; ID.; ID.; ID.; RESPONDENT IS ADMINISTRATIVELY LIABLE FOR ENGAGING IN LAW PRACTICE DURING HIS SUSPENSION AND FOR PERFORMING HIS DUTIES

AS A NOTARY PUBLIC DESPITE REVOCATION OF HIS NOTARIAL COMMISSION.— There is more than enough evidence that shows that Atty. Sederiosa has continuously been practicing his legal profession despite the suspension order against him. He remained to be a duly commissioned notary public from January 8, 2016 to December 31, 2017 as attested by the Certification from the RTC-Davao City, the Commission for Notary Public dated January 8, 2016, and the Affidavit of Loss dated August 8, 2016 which he duly notarized. In short, he had never served his suspension.

It must be stressed that at the time he notarized the Affidavit of Loss on August 8, 2016, Atty. Sederiosa was already cognizant of the Court's December 7, 2015 Resolution as early as January 29, 2016. As such, he was already aware that the Court had imposed the following penalties upon him: (a) immediate revocation of his notarial commission; (b) disqualification from being commissioned as a notary public for a period of two years; and (c) suspension for one year from the practice of law. Consequently, Atty. Sederiosa should have refrained from performing the duties of a notary public and engaging in law practice. Yet, he continued to notarize documents in clear defiance of the Court's orders. By doing so, he continued to practice law.

All told, Atty. Sederiosa is administratively liable for engaging in law practice during his suspension and for performing his duties as a notary public despite revocation of his commission.

4. ID.; ID.; ID.; ID.; WILLFUL DISOBEDIENCE TO A LAWFUL ORDER OF THE COURT CONSTITUTES A BREACH OF THE LAWYER'S OATH WHICH MANDATES EVERY LAWYER TO "OBEY THE LAWS AS WELL AS THE LEGAL ORDERS OF THE DULY CONSTITUTED AUTHORITIES THEREIN," AND TO CONDUCT HIMSELF AS A LAWYER ACCORDING TO THE BEST OF HIS KNOWLEDGE AND DISCRETION WITH ALL GOOD FIDELITY AS WELL TO THE COURTS AS TO HIS CLIENTS.— Section 27, Rule 138 of the Rules of Court provides:

> Sec. 27. Disbarment or suspension of attorneys by Supreme Court; grounds therefor. — A member

> of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or **for a willful disobedience of any lawful order of a superior court** or for corruptly or willfully appearing as an attorney for a party to a case without authority to do so. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.

Atty. Sederiosa's willful disobedience to a lawful order of this Court constitutes a breach of the Lawyer's Oath which mandates every lawyer to "obey the laws as well as the legal orders of the duly constituted authorities therein", and to conduct himself as a lawyer according to the best of his knowledge and discretion with all good fidelity as well to the courts as to his clients.

5. ID.; ID.; ID.; ID.; ENGAGING IN LAW PRACTICE DURING ONE'S SUSPENSION AND NOTARIZING DOCUMENTS DESPITE REVOCATION OF NOTARIAL COMMISSION, CONSTITUTE GROSS DECEIT AND MALPRACTICE, OR GROSS MISCONDUCT IN VIOLATION OF THE CODE OF PROFESSIONAL RESPONSIBILITY; ENGAGING IN NOTARIAL PRACTICE DESPITE REVOCATION OF COMMISSION IS CONTEMPTUOUS.— Atty. Sederiosa likewise trampled upon the ethical standards embodied in the Code of Professional Responsibility. His actuations amounted to gross deceit and malpractice, or gross misconduct in violation of the following particular provisions in the Code:

> Rule 1.01 — A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.
>
> CANON 7 — A LAWYER SHALL AT ALL TIMES UPHOLD THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION AND SUPPORT THE ACTIVITIES OF THE INTEGRATED BAR.

> Rule 7.03 —A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor should he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.
>
> CANON 9 — A LAWYER SHALL NOT, DIRECTLY OR INDIRECTLY, ASSIST IN THE UNAUTHORIZED PRACTICE OF LAW.
>
> CANON 10 — A LAWYER OWES CANDOR, FAIRNESS AND GOOD FAITH TO THE COURT.
>
> CANON 15 — A LAWYER SHALL OBSERVE CANDOR, FAIRNESS AND LOYALTY IN ALL HIS DEALINGS AND TRANSACTIONS WITH HIS CLIENT.

Furthermore, the fact that Atty. Sederiosa actively engaged in notarial practice despite revocation of his commission is indisputably contemptuous.

6. ID.; ID.; ID.; PENALTY OF SUSPENSION FROM THE PRACTICE OF LAW FOR TWO (2) YEARS WITH REVOCATION OF HIS CURRENT NOTARIAL COMMISSION, AND PERMANENT DISQUALIFICATION FROM ACTING AS NOTARY PUBLIC, IMPOSED UPON THE RESPONDENT; THE POWER TO DISBAR MUST BE EXERCISED WITH GREAT CAUTION, AND MUST BE IMPOSED ONLY FOR SERIOUS REASONS AND IN CLEAR CASES OF MISCONDUCT AFFECTING THE STANDING AND MORAL CHARACTER OF THE LAWYER AS AN OFFICER OF THE COURT AND MEMBER OF THE BAR. — . . . [W]e find the penalty of suspension from the practice of law for two (2) years as commensurate to the infractions he committed, on top of the suspension for one (1) year previously imposed upon him which he has yet to serve, with revocation of his current notarial commission, if any, and permanent disqualification from acting as notary public. Disbarment is the most severe form of disciplinary sanction hence it must be exercised with great caution. It must therefore be imposed only for serious reasons and in clear cases of misconduct affecting the standing and moral character of the lawyer as an officer of the court and

member of the bar. As We have emphasized in *Alitagtag v. Atty. Garcia, viz.*:

> Indeed, the power to disbar must be exercised with great caution, and may be imposed only in a clear case of misconduct that seriously affects the standing and the character of the lawyer as an officer of the Court and as a member of the bar. Disbarment should never be decreed where any lesser penalty could accomplish the end desired. Without doubt, a violation of the high moral standards of the legal profession justifies the imposition of the appropriate penalty, including suspension and disbarment. However, the said penalties are imposed with great caution, because they are the most severe forms of disciplinary action and their consequences are beyond repair.

7. ID.; ID.; ID.; ENGAGING IN THE PRACTICE OF LAW DURING ONE'S SUSPENSION IS A CLEAR DISRESPECT TO THE ORDER OF THE COURT, WHICH PUT AT STAKE THE FAITH AND CONFIDENCE WHICH THE PUBLIC HAS REPOSED UPON THE JUDICIAL SYSTEM, AS IT GIVES THE IMPRESSION THAT A COURT'S ORDER IS NOTHING BUT A MERE SCRAP OF PAPER WITH NO TEETH TO BIND THE PARTIES AND THE WHOLE WORLD; THE PRACTICE OF THE LEGAL PROFESSION IS ALWAYS A PRIVILEGE THAT THE COURT EXTENDS ONLY TO THE DESERVING, AND THE COURT MAY WITHDRAW OR DENY THE PRIVILEGE TO HIM WHO FAILS TO OBSERVE AND RESPECT THE LAWYER'S OATH AND THE CANONS OF ETHICAL CONDUCT IN HIS PROFESSIONAL AND PRIVATE CAPACITY.— The transgression committed by Atty. Sederiosa is a mockery on the High Court's power to discipline erring lawyers. Engaging in the practice of law during one's suspension is a clear disrespect to the order of the Court. In doing so, the faith and confidence which the public has reposed upon the judicial system has been put at stake as it gives the impression that a court's order is nothing but a mere scrap of paper with no teeth to bind the parties and the whole world. Moreover, Atty. Sederiosa's unauthorized legal practice is a clear violation of his duty to observe the law and rules.

. . . [T]he Court, once again, reminds the lawyers that the practice of law is a privilege burdened with conditions. As vanguards of our legal system, they are expected to uphold not only legal proficiency but also a high standard of morality, honesty, integrity and fair dealing. This We have put emphasis on in *Atty. Embido v. Atty. Pe, Jr.:*

> No lawyer should ever lose sight of the verity that the practice of the legal profession is always a privilege that the Court extends only to the deserving, and that the Court may withdraw or deny the privilege to him who fails to observe and respect the Lawyer's Oath and the canons of ethical conduct in his professional and private capacities. He may be disbarred or suspended from the practice of law not only for acts and omissions of malpractice and for dishonesty in his professional dealings, but also for gross misconduct not directly connected with his professional duties that reveal his unfitness for the office and his unworthiness of the principles that the privilege to practice law confers upon him. Verily, no lawyer is immune from the disciplinary authority of the Court whose duty and obligation are to investigate and punish lawyer misconduct committed either in a professional or private capacity. The test is whether the conduct shows the lawyer to be wanting in moral character, honesty, probity, and good demeanor, and whether the conduct renders the lawyer unworthy to continue as an officer of the Court.

APPEARANCES OF COUNSEL

Emilio L. Cansino III for complainants.

D E C I S I O N

HERNANDO, *J.*:

This administrative case arose from a Joint Affidavit-Complaint[1] for disbarment filed by Teodoro L. Cansino and Emilio L. Cansino, Jr. (complainants) against Atty. Victor D. Sederiosa (Atty. Sederiosa) for conspiring in the execution and notarization of fictitious and simulated documents.

The Factual Antecedents

Complainants alleged that Atty. Sederiosa was a friend and law school classmate of their brother Paulino Cansino (Paulino). They claimed that Atty. Sederiosa notarized the following spurious documents despite the death of their parents and/or the non-personal appearance of the affiants therein:

(a) an Extrajudicial Settlement of Estate[2] dated January 3, 1995 which was purportedly executed by their father Emilio Cansino, Sr. (Emilio Sr.) (already deceased since August 1, 1991),[3] and their mother Victoria L. Cansino (Victoria). The Extrajudicial Settlement stated that Emilio Sr. and Victoria adjudicated and partitioned between themselves the properties of their deceased daughter, Belen L. Cansino (Belen), which consisted of the following: (a) a 600 square meters parcel of land known as Lot No. 72 situated in Mintal, Davao City; (b) a 300 square meters land in GSIS Heights Matina, Davao City; and (c) accounts receivables due from Emilio L. Cansino (Emilio, Jr.) in the amount of ₱247,000.00;

(b) a Deed of Sale of Hereditary Rights[4] dated January 3, 1995 allegedly executed by Victoria and their brother Paulino. The Deed of Sale stated that Victoria sold and conveyed the subject properties of the Extrajudicial Settlement to Paulino in the amount of ₱200,000.00;

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

[2] Id. at 584-586.

[3] Id. at 583.

[4] Id. at 587-589.

(c) a Deed of Sale of Hereditary and Conjugal Property Rights[5] dated January 13, 1995, stating that Victoria sold, transferred and conveyed her conjugal share with Emilio Sr. on the subject properties to Paulino;

(d) a Secretary Certificate dated April 30, 2008 which was signed by a certain Carlo C. Lagman, corporate secretary of the Integrated Project Corporation (IPC), authorizing Felicitas Cortel to sell, transfer and convey a vehicle with plate number LAB 874. The said vehicle was assigned to Emilio Sr. during his employment with the IPC; and

(e) a Deed of Sale dated April 30, 2008 transferring the said vehicle to Paulino.

In a Report and Recommendation[6] dated February 20, 2014, the Investigating Commissioner[7] found Atty. Sederiosa liable for the acts complained of and recommended his suspension from the practice of law for a period of one year and the revocation of his notarial commission during the period thereof.

On October 11, 2014, the IBP Board of Governors passed Resolution No. XXI-2014-783[8] adopting the findings of the Investigating Commissioner but modifying the recommended penalties in this wise:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, with modification, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", and for violation of the 2004 Rules of Notarial Practice and the Code of Professional Responsibility, Atty. Victor D. Sederiosa's notarial commission if presently commissioned is immediately REVOKED. Further, he is DISQUALIFIED from being commissioned as Notary Public for two (2) years and SUSPENDED from the practice of law for one (1) year.[9]

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[5] Id. at 590-592.

[6] Id. at 742-751.

[7] Commissioner Hector B. Almeyda.

[8] Id. at 740.

[9] Id.

In a Resolution[10] dated December 7, 2015, this Court resolved to adopt and approve the findings and recommendation of the IBP Board of Governors (BOG), to wit:

> (1) respondent Atty. Victor D. Sederiosa is hereby SUSPENDED from the practice of law for one (1) year effective from notice; and
>
> (2) respondent Atty. Victor D. Sederiosa's notarial commission, if presently commissioned, is IMMEDIATELY REVOKED for violation of the 2004 Rules of Notarial Practice and the Code of Professional Responsibility, and he is further DISQUALIFIED from being commissioned as Notary Public for two (2) years.[11]

On February 9, 2016, Atty. Sederiosa filed a Motion for Reconsideration[12] before the IBP BOG. He averred that he received a copy of the IBP's October 11, 2014 Resolution only on January 29, 2016. Also, he sought for the reexamination of its findings and the reduction of the penalty imposed upon him.

Meanwhile, complainant Emilio, Jr. filed before this Court a Manifestation and Motion with Notice of Change of Address of Counsel[13] informing this High Court that despite the Court's December 7, 2015 Resolution suspending Atty. Sederiosa from the practice of law, the revocation of his notarial practice and disqualification from being commissioned as notary public, he has continuously engaged in the practice of law and has remained to be a duly commissioned notary public. In support of his claim, Emilio, Jr. presented as evidence the following: (a) July 14, 2016 Certification[14] issued by the Regional Trial Court, Davao City – Office of the Clerk of Court stating that Atty. Sederiosa was a duly commissioned notary public in Davao City for the

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[10] Id. at 752-753.

[11] Id. at 752.

[12] Id. at 756-764.

[13] Id. at 876-880.

[14] Id. at 882.

years 2016-2017; (b) Atty. Sederiosa's Commission for Notary Public[15] and his Oath dated January 8, 2016; (c) a photograph[16] of Atty. Sederiosa's law firm's signboard; and (d) an Affidavit of Loss[17] duly notarized by Atty. Sederiosa on August 8, 2016.

Atty. Sederiosa, in turn, submitted a Manifestation[18] stressing that he did not violate the suspension order of the High Court. He claimed that he did not officially receive a copy of this Court's December 7, 2015 Resolution and that he only learned about it when Atty. Emilio P. Cansino III, complainants' counsel, filed a Manifestation on September 6, 2016 before this Court.

Atty. Sederiosa also stressed that the only copy of a resolution that he received was the October 11, 2014 Resolution of the IBP to which he timely filed a motion for reconsideration which remained unresolved.

In a February 19, 2018 Resolution,[19] this Court referred Atty. Sederiosa's Motion for Reconsideration to the Office of the Bar Confidant (OBC) for report and recommendation.

Report and Recommendation of the OBC

In its July 3, 2019 Report and Recommendation,[20] the OBC found Atty. Sederiosa's Motion for Reconsideration without merit. It noted that contrary to his claim, Atty. Sederiosa duly received the Court's December 7, 2015 Resolution on January 29, 2016 as shown in the Registry Return Receipt. Hence, the OBC recommended that Atty. Sederiosa be further suspended from the practice of law for a period of one year and be permanently disqualified from reappointment as a notary public.

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[15] Id. at 883.

[16] Id. at 884.

[17] Id. at 885.

[18] Id. at 896-899.

[19] Id. at 1003-1004.

[20] Id. at 1005-1006.

Issue

The sole issue for resolution is whether Atty. Sederiosa is administratively liable for engaging in the practice of law during his suspension, and for notarizing documents despite the revocation of his notarial commission, and for being commissioned as notary public notwithstanding his disqualification.

Our Ruling

After a careful examination of the records of the case, We resolve to adopt the findings of the OBC but with modification as regards the recommended penalty.

In an attempt to evade any liability, Atty. Sederiosa lamentably resorted to lies when he denied receipt of the Court's December 7, 2015 Resolution suspending him from the law practice, revoking his notarial commission and disqualifying him from being commissioned as such.

Registry Return Receipt No. 3956[21] clearly shows that a certain Deo Zuniga (Zuniga), in behalf of Atty. Sederiosa, duly received a copy of Our December 7, 2015 Resolution on January 29, 2016. Interestingly, Atty. Sederiosa failed to show proof that Zuniga was incompetent to receive the same as he was neither a clerk or a person in charge of his office nor a person of sufficient age and discretion then residing in his place of residence.[22] He simply denied receipt of the suspension order and did not assail the authority of Zuniga to receive the same. Verily, the registry

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[21] Dorsal side of Records, p. 752.

[22] Section 6, Rule 13 of the Rules on Civil Procedure.

Section 6. Personal service. — Service of the papers may be made by delivering personally a copy to the party or his counsel, or by leaving it in his office with his clerk or with a person having charge thereof. If no person is found in his office, or his office is not known, or he has no office, then by leaving the copy, between the hours of eight in the morning and six in the evening, at the party's or counsel's residence, if known, with a person of sufficient age and discretion then residing therein.

receipt constitutes a *prima facie* proof that the suspension order had been delivered to and received by Atty. Sederiosa. The presumption of regularity in the performance of official duty is upheld.[23]

We now resolve the issue whether Atty. Sederiosa engaged in the practice of law during the period of his suspension. The Court rules in the affirmative.

The regulation of the practice of law falls upon the exclusive jurisdiction of the High Court. As such, a lawyer who has been suspended from the practice of law by the Court must refrain from performing all functions which would require the application of his legal knowledge within the period of suspension.[24] The practice of law includes any activity, in or out of court, which requires the application of law, legal procedure, knowledge, training, and experience.[25] It comprises the performance of acts which are characteristic of the legal profession, or rendering any kind of service which requires the use in any degree of legal knowledge or skill.[26]

Guided by the foregoing on what constitutes a practice of law, it is beyond cavil that notarizing of documents constitutes a practice of law. In fact, one of the requirements to be a duly commissioned notary public is that he/she must be a member of the Philippine Bar in good standing. Pertinently, Section 1, Rule III of the 2004 Rules on Notarial Practice[27] provides:

SECTION 1. Qualifications. — A notarial commission may be issued by an Executive Judge to any qualified person who submits a petition in accordance with these Rules.

To be eligible for commissioning as notary public, the petitioner:

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[23] *Scenarios, Inc. v. Vinluan*, 587 Phil. 351, 359 (2008).

[24] *Atty. Eustaquio v. Atty. Navales*, 786 Phil. 484, 490 (2016).

[25] Id.

[26] Id.

[27] A.M. No. 02-8-13-SC.

(1) must be a citizen of the Philippines;

(2) must be over twenty-one (21) years of age;

(3) must be a resident in the Philippines for at least one (1) year and maintains a regular place of work or business in the city or province where the commission is to be issued;

(4) must be a member of the Philippine Bar in good standing with clearances from the Office of the Bar Confidant of the Supreme Court and the Integrated Bar of the Philippines; and

(5) must not have been convicted in the first instance of any crime involving moral turpitude. (Emphasis Supplied.)

In other words, a lawyer, during the period of his/her suspension, is barred from engaging in notarial practice as he/she is deemed not a member of the Philippine Bar in good standing, which is one of the essential requisites to be eligible as a notary public.

There is more than enough evidence that shows that Atty. Sederiosa has continuously been practicing his legal profession despite the suspension order against him. He remained to be a duly commissioned notary public from January 8, 2016 to December 31, 2017 as attested by the Certification from the RTC—Davao City, the Commission for Notary Public dated January 8, 2016, and the Affidavit of Loss dated August 8, 2016 which he duly notarized. In short, he had never served his suspension.

It must be stressed that at the time he notarized the Affidavit of Loss on August 8, 2016, Atty. Sederiosa was already cognizant of the Court's December 7, 2015 Resolution as early as January 29, 2016. As such, he was already aware that the Court had imposed the following penalties upon him: (a) immediate revocation of his notarial commission; (b) disqualification from being commissioned as a notary public for a period of two years; and (c) suspension for one year from the practice of law. Consequently, Atty. Sederiosa should have refrained from performing the duties of a notary public and engaging in law practice. Yet, he continued to notarize documents in clear

defiance of the Court's orders. By doing so, he continued to practice law.

All told, Atty. Sederiosa is administratively liable for engaging in law practice during his suspension and for performing his duties as a notary public despite revocation of his commission. Section 27, Rule 138 of the Rules of Court provides:

> Sec. 27. Disbarment or suspension of attorneys by Supreme Court; grounds therefor. — A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or **for a willful disobedience of any lawful order of a superior court** or for corruptly or willfully appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice. [Emphasis Supplied.]

Atty. Sederiosa's willful disobedience to a lawful order of this Court constitutes a breach of the Lawyer's Oath[28] which mandates every lawyer to "obey the laws as well as the legal orders of the duly constituted authorities therein," and to conduct himself as a lawyer according to the best of his knowledge and discretion with all good fidelity as well to the courts as to his clients.

Atty. Sederiosa likewise trampled upon the ethical standards embodied in the Code of Professional Responsibility. His actuations amounted to gross deceit and malpractice, or gross misconduct in violation of the following particular provisions in the Code:

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[28] The Attorney's Oath under the Rules of Court reads:

FORM 28. — Attorney's Oath.

I, _____, 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

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

CANON 7 — A LAWYER SHALL AT ALL TIMES UPHOLD THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION AND SUPPORT THE ACTIVITIES OF THE INTEGRATED BAR.

Rule 7.03 — A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor should he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

CANON 9 — A LAWYER SHALL NOT, DIRECTLY OR INDIRECTLY, ASSIST IN THE UNAUTHORIZED PRACTICE OF LAW.

CANON 10 — A LAWYER OWES CANDOR, FAIRNESS AND GOOD FAITH TO THE COURT.

CANON 15 — A LAWYER SHALL OBSERVE CANDOR, FAIRNESS AND LOYALTY IN ALL HIS DEALINGS AND TRANSACTIONS WITH HIS CLIENT.

Furthermore, the fact that Atty. Sederiosa actively engaged in notarial practice despite revocation of his commission is indisputably contemptuous.

In *Tan, Jr. v. Atty. Gumba*,[29] Atty. Haide V. Gumba continued to practice law by filing pleadings and appearing as counsel in courts despite her suspension. Thus, the Court suspended her from the practice of law for an additional period of six months from her original six months suspension, with a warning that a repetition of same or similar act will be dealt with more severely.

In *Molina v. Atty. Magat*,[30] we further suspended Atty. Ceferino R. Magat from the practice of law for six months for

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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.

[29] A.C. No. 9000, January 10, 2018.

[30] 687 Phil. 1 (2012).

practicing his profession notwithstanding his suspension. In *Ibana-Andrade v. Atty. Paita-Moya*,[31] we imposed a similar penalty against Atty. Eva Paita-Moya who, despite receipt of the Resolution on her suspension, continued to practice law through filing of pleadings and acting as counsel in courts.

However, in the most recent case of *Zafra III v. Atty. Pagatpatan*,[32] the Court meted the most severe penalty of disbarment against therein respondent who continued to practice law for over 11 years despite the Court's suspension order.

In the instant case, we find the penalty of suspension from the practice of law for two (2) years as commensurate to the infractions he committed, on top of the suspension for one (1) year previously imposed upon him which he has yet to serve, with revocation of his current notarial commission, if any, and permanent disqualification from acting as notary public.

Disbarment is the most severe form of disciplinary sanction hence it must be exercised with great caution.[33] It must therefore be imposed only for serious reasons and in clear cases of misconduct affecting the standing and moral character of the lawyer as an officer of the court and member of the bar.[34] As We have emphasized in *Alitagtag v. Atty. Garcia*,[35] *viz.*:

> Indeed, the power to disbar must be exercised with great caution, and may be imposed only in a clear case of misconduct that seriously affects the standing and the character of the lawyer as an officer of the Court and as a member of the bar. Disbarment should never be decreed where any lesser penalty could accomplish the end desired. Without doubt, a violation of the high moral standards of the legal profession justifies the imposition of the appropriate penalty, including suspension and disbarment. However, the said penalties are imposed

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[31] 763 Phil. 687 (2015).

[32] A.C. No. 12457, April 2, 2019.

[33] *Yagong v. Magno*, A.C. No. 10333, November 6, 2017.

[34] Id.

[35] 451 Phil. 420, 426 (2003).

with great caution, because they are the most severe forms of disciplinary action and their consequences are beyond repair.

The transgression committed by Atty. Sederiosa is a mockery on the High Court's power to discipline erring lawyers. Engaging in the practice of law during one's suspension is a clear disrespect to the orders of the Court. In doing so, the faith and confidence which the public has reposed upon the judicial system has been put at stake as it gives the impression that a court's order is nothing but a mere scrap of paper with no teeth to bind the parties and the whole world. Moreover, Atty. Sederiosa's unauthorized legal practice is a clear violation of his duty to observe the law and rules.

On a final note, the Court, once again, reminds the lawyers that the practice of law is a privilege burdened with conditions. As vanguards of our legal system, they are expected to uphold not only legal proficiency but also a high standard of morality, honesty, integrity and fair dealing.[36] This We have put emphasis on in *Atty. Embido v. Atty. Pe, Jr.*:[37]

> No lawyer should ever lose sight of the verity that the practice of the legal profession is always a privilege that the Court extends only to the deserving, and that the Court may withdraw or deny the privilege to him who fails to observe and respect the Lawyer's Oath and the canons of ethical conduct in his professional and private capacities. He may be disbarred or suspended from the practice of law not only for acts and omissions of malpractice and for dishonesty in his professional dealings, but also for gross misconduct not directly connected with his professional duties that reveal his unfitness for the office and his unworthiness of the principles that the privilege to practice law confers upon him. Verily, no lawyer is immune from the disciplinary authority of the Court whose duty and obligation are to investigate and punish lawyer misconduct committed either in a professional or private capacity. The test is whether the conduct shows the lawyer to be wanting in moral character, honesty, probity, and good demeanor, and whether the conduct renders the lawyer unworthy to continue as an officer of the Court.

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[36] *Yu v. Atty. Palaña*, 580 Phil. 19, 24 (2008).

[37] 720 Phil. 1, 10-11 (2013).

WHEREFORE, respondent Atty. Victor D. Sederiosa is hereby **SUSPENDED** from the practice of law for **TWO (2) YEARS**, on top of the **ONE (1) YEAR SUSPENSION** previously imposed upon him. His current notarial commission, if any, is **REVOKED**. Atty. Sederiosa is **PERMANENTLY DISQUALIFIED** from acting as notary public.

The suspension from the practice of law, revocation of notarial commission, and disqualification from being commissioned as a notary public shall take effect immediately upon receipt of this Decision by Atty. Sederiosa. 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 a copy of this Decision be entered in the personal records of respondent as a member of the Bar, and copies be furnished to the Office of the Bar Confidant, the Integrated Bar of the Philippines, and the Office of the Court Administrator for circulation to all courts in the country.

SO ORDERED.

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

Baltazar-Padilla, J., on leave.

EN BANC

[A.C. No. 9114. October 6, 2020]

JOSE R. REYES, JR., *Complainant, v.* **ATTY. SOCRATES R. RIVERA,** *Respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; RULE 1.01, CANON 1 THEREOF VIOLATED WHEN RESPONDENT COMMITTED A SERIES OF FRAUDULENT ACTS AGAINST THE COMPLAINANT AND THE COURTS.— After a careful review of the records, the Court finds Atty. Rivera guilty of violating Rule 1.01, Canon 1 of the Code of Professional Responsibility (CPR). The Court approves the recommendations of the IBP and the OBC to disbar Atty. Rivera.

The CPR pertinently provides:

> CANON 1 – A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCESSES.
>
> RULE 1.01. – A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

Rule 1.01 of the CPR commands that "as officers of the court, lawyers are bound to maintain not only a high standard of legal proficiency, but also of morality, honesty, integrity, and fair dealing." In this case, Atty. Rivera undoubtedly fell short of such standard when he committed a series of fraudulent acts not only against the complainant, but against the courts as well.

2. ID.; ID.; ID.; ID.; PENALTY OF DISBARMENT, PROPER WHEN A LAWYER (A) MISREPRESENTED THAT A PETITION FOR DECLARATION OF NULLITY OF MARRIAGE WAS FILED BEFORE THE REGIONAL TRIAL COURT WHEN NONE WAS IN FACT FILED, AND (B) FURNISHED THE COMPLAINANT WITH A FAKE COURT DECISION.— Atty. Rivera misrepresented to the complainant that a Petition for Declaration of Nullity of Marriage

was filed before Branch 215 of the RTC of Muntinlupa City when none was in fact filed. He even simulated the stamp of the Office of the Clerk of Court of the RTC to make it appear that it received the petition. In truth, Branch 215 of the RTC of Muntinlupa City does not exist. To make matters worse, Atty. Rivera blatantly furnished complainant with a fake court decision purportedly penned by the Presiding Judge of Branch 206 of the RTC of Muntinlupa City which granted complainant's petition. These acts are disrespectful, disgraceful, and dishonorable to the legal profession and clearly displayed Atty. Rivera's disgusting moral unfitness to practice law and his ineptitude to discharge the duties of a member of the bar. His disbarment is thus in order.

3. ID.; ID.; ID.; RETURN OF LEGAL FEES WITH INTEREST.— . . . The Court likewise agrees with the OBC that Atty. Rivera received ₱100,000.00 from the complainant, and not just the ₱30,000.00 that he acknowledged. In the face of the positive and categorical assertion by the complainant that he paid Atty. Rivera the total amount of ₱100,000.00, the bare denial and self-serving statements of the latter crumble. Thus, Atty. Rivera is further ordered to return to complainant, the legal fees he received in the total amount of ₱100,000.00. Finally, interest at the rate of six percent (6%) per *annum* is imposed on the said amount, which shall accrue from the time of Atty. Rivera's receipt of this Decision until full payment.

D E C I S I O N

PER CURIAM:

This administrative case arose from a verified Complaint[1] filed by Jose R. Reyes, Jr. (complainant) against the respondent, Atty. Socrates R. Rivera (Atty. Rivera), before the Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP), for allegedly falsely representing that a Petition for Declaration of Nullity of Marriage was filed before the Regional Trial Court (RTC) of Muntinlupa City when in reality none was filed, and for drafting a fake court decision.

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

The Facts

Sometime in 2003, complainant sought the assistance of Atty. Rivera in filing a case for dissolution of marriage. Atty. Rivera agreed to handle the case for a fee of ₱150,000.00 to be paid on installment basis.[2] Atty. Rivera demanded ₱20,000.00 as acceptance fee and thereafter, ₱10,000.00 to cover the filing fees and other related expenses.

After receipt of ₱30,000.00, Atty. Rivera prepared the Petition for Declaration of Nullity of Marriage[3] and asked complainant to sign the verification portion. Thereafter, complainant was furnished a copy of the said Petition, which appeared to have been filed before Branch 215 of the RTC of Muntinlupa City.[4]

On various occasions thereafter, Atty. Rivera demanded for additional money. At one point, complainant gave Atty. Rivera the additional amount of ₱70,000.00.[5]

Sometime in 2004, Atty. Rivera instructed the complainant to prepare the remaining balance of ₱50,000.00 to be paid upon complainant's receipt of the Decision of the case.

During the last quarter of 2004, Atty. Rivera furnished complainant with an August 9, 2004 Decision purportedly rendered by the Presiding Judge of Branch 206 of the RTC of Muntinlupa City, Hon. Patria A. Manalastas-De Leon, which purportedly granted complainant's Petition for Declaration of Nullity of Marriage.

However, complainant had doubts regarding the authenticity of the said Decision since he never attended a single hearing of the case. Moreover, complainant was suspicious since the petition was supposedly filed before Branch 215 of the RTC

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[2] Id. at 2.

[3] Id. at 10-14.

[4] Id. at 4.

[5] Id.

of Muntinlupa City, while the Decision furnished by Atty. Rivera was rendered by Branch 206 of the said RTC. This prompted complainant to withhold payment of the remaining balance and decided to verify the genuineness of the August 9, 2004 Decision.

Much to his surprise, complainant later learned that no Civil Case No. 04-SPL-05677 was filed before Branch 215 of the RTC of Muntinlupa City. Worse, complainant was shocked when he discovered that Branch 215 does not in fact exist. Further, no such case was filed with Branch 206 as certified by the Office of the Clerk of Court of Muntinlupa City.[6]

In his Answer,[7] Atty. Rivera argued that it was his former driver who assured him that the Petition had already been filed before the RTC of Muntinlupa.[8] Atty. Rivera further stated that he had no intention of deceiving the complainant since he had already instructed Jesma Uesa (Jesma), a common friend of both parties, to inform the complainant that the decision he received was spurious.[9] He claimed that he lost complainant's contact number and that his only means of communicating with him was through Jesma.

Atty. Rivera denied having accepted the case for a fee of ₱150,000.00. He, however, admitted that he received ₱30,000.00 from complainant and that he is willing to return the said amount.[10] Atty. Rivera proposed to re-file the complainant's case at his own expense. He asked for understanding for his infractions but insisted that he was also a victim in this case.

Report and Recommendation of the Integrated Bar of the Philippines

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[6] Id. at 18.

[7] Id. at 23-27.

[8] Id. at 24.

[9] Id. at 25.

[10] Id.

The administrative case was scheduled for Mandatory Conference and Hearing before Commissioner Dennis A. B. Funa (Commissioner Funa) on May 23, 2005 and June 15, 2005. On both instances, Atty. Rivera failed to appear despite due notice.

In his Report and Recommendation[11] dated January 26, 2006, Commissioner Funa found Atty. Rivera guilty of Gross Misconduct and breach of lawyer-client relations. Commissioner Funa recommended that Atty. Rivera be suspended indefinitely from the practice of law due to the gravity of his offense.

In Resolution No. XVII-2006-453[12] dated September 8, 2006, the IBP Board of Governors (BOG) found Atty. Rivera guilty of Gross Misconduct and approved the recommendation of Commissioner Funa that Atty. Rivera be indefinitely suspended from the practice of law. He was also ordered to immediately return the amount of ₱30,000.00 to the complainant.

Thereafter, Atty. Rivera filed a Motion for Reconsideration.[13]

In Resolution No. XIX-2011-163[14] dated May 13, 2011, the BOG of the IBP denied Atty. Rivera's Motion for Reconsideration and affirmed with modification its previous resolution. The BOG resolved that the appropriate penalty to be imposed was disbarment. Atty. Rivera was also ordered to immediately return the amount of ₱30,000.00 to the complainant.

In a Resolution[15] dated August 23, 2011, the Court resolved to refer this case to the Office of the Bar Confidant (OBC) for evaluation, report, and recommendation.

Report and Recommendation of the Office of the Bar Confidant

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[11] Id. at 68-75.

[12] Id. at 67.

[13] Id. at 76.

[14] Id. at 86.

[15] Id. at 96.

In its June 26, 2012 Report,[16] the OBC recommended that Atty. Rivera be disbarred from the practice of law and that his name be ordered stricken off from the Roll of Attorneys. Further, the OBC recommended that Atty. Rivera be ordered to immediately deliver the amount of ₱100,000.00 instead of ₱30,000.00.

Our Ruling

After a careful review of the records, the Court finds Atty. Rivera guilty of violating Rule 1.01, Canon 1 of the Code of Professional Responsibility (CPR). The Court approves the recommendations of the IBP and the OBC to disbar Atty. Rivera.

The CPR pertinently provides:

CANON 1 – A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCESSES.

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

Rule 1.01 of the CPR commands that "as officers of the court, lawyers are bound to maintain not only a high standard of legal proficiency, but also of morality, honesty, integrity, and fair dealing."[17] In this case, Atty. Rivera undoubtedly fell short of such standard when he committed a series of fraudulent acts not only against the complainant, but against the courts as well.

Atty. Rivera misrepresented to the complainant that a Petition for Declaration of Nullity of Marriage was filed before Branch 215 of the RTC of Muntinlupa City when none was in fact filed. He even simulated the stamp of the Office of the Clerk of Court of the RTC to make it appear that it received the petition.[18] In truth, Branch 215 of the RTC of Muntinlupa City

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[16] Id. at 100-104.

[17] *Spouses Lopez v. Limos*, 780 Phil. 113, 122 (2016).

[18] Report and Recommendation of the Office of the Bar Confidant, *rollo*, p. 104.

does not exist. To make matters worse, Atty. Rivera blatantly furnished complainant with a fake court decision purportedly penned by the Presiding Judge of Branch 206 of the RTC of Muntinlupa City which granted complainant's petition. These acts are disrespectful, disgraceful, and dishonorable to the legal profession and clearly displayed Atty. Rivera's disgusting moral unfitness to practice law and his ineptitude to discharge the duties of a member of the bar. His disbarment is thus in order.

In *Taday v. Apoya, Jr.*,[19] the Court similarly disbarred a lawyer for drafting a fake court decision in connection with his client's annulment case. The Court found that, the lawyer "committed unlawful, dishonest, immoral, and deceitful conduct, and lessened the confidence of the public in the legal system. Instead of being an advocate of justice, he became a perpetrator of injustice. His reprehensible acts do not merit him to remain in the rolls of the legal profession. Thus, the ultimate penalty of disbarment must be imposed upon him."

Similarly, in *Billanes v. Latido*,[20] the Court found the lawyer guilty of violating Rule 1.01, Canon 1 of the CPR when he procured a spurious court decision granting the petition for annulment. The Court disbarred the lawyer and ordered his name stricken off from the Roll of Attorneys.

In view of the foregoing, the Court upholds the recommendation of the IBP and the OBC that Atty. Rivera be disbarred. The Court likewise agrees with the OBC that Atty. Rivera received ₱100,000.00 from the complainant, and not just the ₱30,000.00 that he acknowledged. In the face of the positive and categorical assertion by the complainant that he paid Atty. Rivera the total amount of ₱100,000.00, the bare denial and self-serving statements of the latter crumble. Thus, Atty. Rivera is further ordered to return to complainant, the legal fees he received in the total amount of ₱100,000.00. Finally, interest at the rate of six percent (6%) per *annum* is imposed

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[19] A.C. No. 11981, July 3, 2018.

[20] A.C. No. 12066, August 28, 2018.

on the said amount, which shall accrue from the time of Atty. Rivera's receipt of this Decision until full payment.[21]

WHEREFORE, Atty. Socrates R. Rivera is found **GUILTY** of violating Rule 1.01, Canon 1 of the Code of Professional Responsibility. Accordingly, he is hereby **DISBARRED** from the practice of law and his name is ordered stricken off from the Roll of Attorneys, effective immediately.

Further, Atty. Socrates R. Rivera is **ORDERED** to return to complainant Jose R. Reyes, Jr. within ten (10) days from receipt of this Decision the legal fees he received from the latter in the amount of ₱100,000.00, which shall earn legal interest at the rate of six percent (6%) *per annum* from his receipt of this Decision until full payment.

Let a copy of this Decision be furnished to the Office of the Bar Confidant to be entered into Atty. Socrates R. Rivera's records. Copies of this Decision shall likewise be furnished the Integrated Bar of the Philippines and the Office of the Court Administrator for circulation to all courts throughout the country for their information and guidance.

SO ORDERED.

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

Baltazar-Padilla, J., on leave.

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[21] *San Gabriel v. Sempio*, A.C. No. 12423, March 26, 2019.

EN BANC

[A.C. No. 10699. October 6, 2020]
(Formerly CBD Case No. 15-4793)

WILFREDO C. CABALLERO, *Complainant, v.* **ATTY. GLICERIO A. SAMPANA,** *Respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; LAWYERS MUST CONDUCT THEMSELVES BEYOND REPROACH AT ALL TIMES, WHETHER THEY ARE DEALING WITH THEIR CLIENTS OR THE PUBLIC AT LARGE.— Rule 1.01 of the Code of Professional Responsibility states that "[a] lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct." As such, membership in the legal profession is a privilege that is bestowed upon individuals who are not only learned in law, but are also known to possess good moral character. 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.

2. ID.; ID.; ID.; ANY TRANSGRESSION INDICATING UNFITNESS FOR THE PROFESSION JUSTIFIES DISCIPLINARY ACTION.—[W]hile the Court has emphasized that the power to disbar is always exercised with great caution and only for the most imperative reasons or cases of clear misconduct affecting the standing and moral character of the lawyer as an officer of the court and member of the Bar, it has, likewise, underscored the fact that any transgression, whether professional or non-professional, indicating unfitness for the profession justifies disciplinary action, as in the case of the respondent.

3. ID.; ID.; GROSS MISCONDUCT, DEFINED; A MEMBER OF THE BAR MAY BE DISBARRED OR SUSPENDED FROM HIS OFFICE FOR ANY DECEIT, MALPRACTICE,

OR OTHER GROSS MISCONDUCT IN SUCH OFFICE.— Section 27, Rule 138 of the Rules of Court provides that a member of the Bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office. Gross misconduct has been defined as any inexcusable, shameful or flagrantly unlawful conduct on the part of the person involved in the administration of justice, conduct that is prejudicial to the rights of the parties, or to the right determination of the cause.

4. ID.; ID.; ID.; WILLFUL AND OBSTINATE REFUSAL TO FULFILL THE OBLIGATIONS WHICH A LAWYER VOLUNTARILY ASSUMED WHILE BENEFITTING FROM THE SUBJECT PROPERTY CONSTITUTES GROSS MISCONDUCT.— In the present case, respondent and complainant entered into a Deed of Transfer of Right over complainant's house and lot wherein he obligated himself to assume the remaining financial obligations of the complainant to the GSIS. Notwithstanding their agreement, and in spite of complainant's repeated reminders and requests, respondent reneged on his obligation and failed to settle the remaining programmed installments in favor of GSIS, eventually leading to the rescission of the Deed of Transfer of Right and massive financial liabilities on the part of the complainant.

In his attempts to evade liability, respondent offered the defense of general denial as to the factual nature of his agreement with complainant. . . .

. . .

The bare denials and self-serving statements of respondent crumble in the face of the evidence presented by the complainant. The records support the observation of Commissioner Cabrera that respondent has been benefitting from the property by leasing the same and collecting rent from the tenants, at the expense of the complainant. Thus, the Court finds that respondent committed gross misconduct for his willful and obstinate refusal to fulfill the obligations which he voluntarily assumed when he entered into the Deed of Transfer of Right with complainant.

5. ID.; ID.; ID.; GROSS MISCONDUCT THAT IS INDICATIVE OF A LAWYER'S PROPENSITY TO COMMIT UNETHICAL AND IMPROPER ACTS WARRANTS THE

PENALTY OF DISBARMENT.— This is not respondent's first infraction as a member of the Bar. In *Lising v. Sampana*, respondent was found to have committed an unethical and illegal act relative to his double sale of a parcel of land, in violation of Canon 1 of the *Code of Professional Responsibility*. He was suspended from the practice of law for one (1) year, with a warning that a repetition of a similar act shall be dealt with more severely.

Less than a year later, in *Nery v. Sampana*, respondent was again penalized by the Court when he, despite having received a "one package fee" from a client for an annulment case and an adoption case, was found to have failed to file the petition for adoption and misinformed his client about the status of the petition. He even kept the money given him, in violation of the mandate of the Code of Professional Responsibility to deliver the client's funds upon demand. He was then suspended from the practice of law for three (3) years, with a stern warning that a repetition of a similar act shall be dealt with more severely.

Considering his previous infractions, respondent should have adhered to the tenets of his profession with exceptional vigilance. He did not. On the contrary, his recent transgression is indicative of his propensity to commit unethical and improper acts that diminish the public's trust and confidence in lawyers in general. Respondent proved himself undeserving of membership in the Philippine Bar. His disbarment is consequently warranted.

APPEARANCES OF COUNSEL

Celerina Caballero-Pineda for complainant.

D E C I S I O N

***PER CURIAM*:**

This administrative case stemmed from a Complaint[1] dated November 3, 2014 filed by Wilfredo C. Caballero *(complainant)* against Atty. Glicerio A. Sampana *(respondent)*, for allegedly

[1] *Rollo*, pp. 1-5.

unlawfully arrogating onto himself the ownership and possession of real property belonging to the former.

The facts are as follows:

Complainant, an employee of the National Food Authority, alleged that on January 31, 1995, he was awarded by the Government Service Insurance System *(GSIS)* a low-cost housing unit located at Lot 31, Block 15-A, Menzyland Subdivision, Mojon, Malolos, Bulacan. To pay for the said property, he was granted by the GSIS a real estate loan in the amount of ₱216,000.00, with a monthly amortization of ₱2,584.44 for a period of 25 years.

On January 27, 1997, owing to financial constraints, complainant transferred his right over the housing unit to respondent in consideration of the amount of ₱60,000.00, upon the condition that the latter would assume the obligation of paying the remaining monthly amortizations. Complainant and respondent entered into a document denominated as Deed of Transfer of Rights[2] which reads:

> WHEREAS, the TRANSFEROR is the vendee/awardee in a Deed of Conditional Sale executed by the GOVERNMENT SERVICE INSURANCE SYSTEM in favor of the TRANSFEROR involving one (1) parcel of land, together with the house and all the existing improvements thereon, more particularly known as:
>
> TRANSFER CERTIFICATE OF TITLE
> No. T-59916
>
> x x x x x x x x x
>
> WHEREAS, the TRANSFEREE, hereby agree to assume the obligation of the TRANSFEROR under the terms and conditions embodied in the Deed of Conditional Sale executed by the GOVERNMENT SERVICE INSURANCE SYSTEM in favor of the TRANSFEROR and the latter has consented and agreed to Transfer all their rights and interest over the subject property to the TRANSFEREE.

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

On August 31, 2004, complainant received a letter from the GSIS, through its Housing Finance Administration Department, informing him that his ₱216,000.00 loan had increased to ₱609,004.68, with arrearages amounting to ₱415,181.09.[3]

Hoping to discuss the matter with respondent, complainant went to the latter's house in September 2004 and gave him a copy of the letter from the GSIS. Complainant informed the respondent that if no payment was made by respondent to the GSIS, complainant would have no option but to surrender the house and lot and all its improvements to the GSIS. Respondent then promised that he would pay and handle the transfer of the account to his name.

On August 27, 2009, five years after he met with respondent in September 2004, complainant again received a letter[4] from the GSIS, through its Billing and Collection Department, informing him that the amount of his loan had increased from ₱609,004.68 to ₱1,166,017.57, revealing that respondent reneged on his promise to settle the said account with the GSIS.

In a letter[5] dated October 7, 2009, complainant informed the GSIS of his decision to voluntarily surrender the property and all its improvements to the GSIS in order to resolve his outstanding accounts. Respondent was furnished a copy of the said letter.

On December 7, 2009, complainant received a letter-reply[6] from the GSIS instructing him to submit a Notarized Affidavit of Surrender to the Business Development and Accounts Recovery Office of the GSIS, to facilitate the necessary tagging of his account. He was also ordered to ensure that the unit was vacated and that the keys to the same were surrendered to the GSIS. Complainant, however, was unable to surrender the unit

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[3] *Id*. at 11.

[4] *Id*. at 13.

[5] *Id*. at 18.

[6] *Id*. at 20.

as the same was still being occupied by respondent's tenant, who refused to vacate the property.

On June 23, 2010, complainant, accompanied by his wife, and respondent went to the main office of the GSIS in Pasay City to discuss their available options. As part of the arrangement with the GSIS, complainant was made to sign a waiver so as to cancel his account for eventual inclusion as Real and Other Properties Owned or Acquired. The parties also agreed that respondent would purchase the property by making a down payment amounting to ten percent (10%) of its assessed value, with the remaining balance to be paid on installments.

On July 6, 2010, the GSIS, through its Accounts Recovery and Acquired Assets Department, notified the complainant of the cancellation of the Deed of Conditional Sale issued in his favor for failure to settle the housing loan arrearages.[7] The GSIS demanded that complainant vacate and turn over the property to the GSIS.

On August 31, 2010, the GSIS issued a Statement of Account indicating the arrearages of the complainant in the amount of ₱1,497,331.50.[8]

On January 28, 2011, complainant executed an Affidavit of Waiver[9] through which he relinquished his rights over the subject house and lot in favor of respondent.

On September 6, 2014, the GSIS issued a Reconciliation Notice[10] requesting complainant to settle his arrears amounting to ₱1,497,331.50 to avoid further accumulation of interests and surcharges. The GSIS informed complainant that his last payment of record was on November 30, 1999, in the amount of ₱5,168.72.

On November 3, 2014, the GSIS issued its Final Demand to the complainant, informing the latter that as of August 31, 2014,

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[7] *Id*. at 23.

[8] *Id*. at 26.

[9] *Id*. at 24.

[10] *Id*. at 25.

his unpaid obligation had reached the amount of the ₱2,980,183.80 due to his failure to pay his housing arrearages, and requiring him to immediately pay or restructure his account through the GSIS Housing Loan Restructuring and Remedial Program.

Hence, this administrative complaint alleging that due to respondent's empty promises, misrepresentations, maneuverings, and deceitful offers to assume complainant's financial obligation to GSIS and buy the property, complainant's loan ballooned to its current total, jeopardizing his retirement benefits.

In a Resolution[11] dated February 9, 2015, the Court directed respondent to file his Comment on the Affidavit-Complaint within ten (10) days from notice.

In his Comment[12] dated March 30, 2015, respondent denied having been unprofessional and less than honest with complainant in relation to the transfer of the rights and interests over the subject housing unit.

Respondent claimed that complainant asked for his assistance in handling a case filed against the latter and his live-in partner by complainant's former wife, who was allegedly harassing complainant at the subject property. He maintained that complainant asked for his help in finding another house where his former wife could not bother him, and that in his genuine desire to help, he accepted the offer, but with the understanding that complainant would still continue to pay the ₱2,584.44 monthly amortization. Respondent further claimed that in 2004, complainant belatedly informed him of the arrearages on his loan amortization with the GSIS and asked for his help to settle his obligation. He denied having received any notice either from the GSIS or the complainant regarding the said loan account or the request to vacate and surrender the property.

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[11] *Id.* at 35.

[12] *Id.* at 37-39.

In a Resolution[13] dated August 12, 2015, the Court referred the case to the Integrated Bar of the Philippines *(IBP)* for investigation, report, and recommendation.

In his Report and Recommendation, Commissioner Eduardo R. Robles of the IBP Commission on Bar Discipline found respondent's conduct in its entirety violative of Rule 1.01[14] of the Code of Professional Responsibility and recommended that he be reprimanded.

In a Resolution[15] dated November 28, 2017, the IBP Board of Governors adopted the findings of fact and recommendation of Commissioner Robles, with modification to increase the recommended penalty of reprimand to suspension from the practice of law for six (6) months. It also directed the IBP Commission on Bar Discipline to prepare an extended resolution explaining the Board of Governor's action.

In an Extended Resolution[16] dated September 7, 2018, Commissioner Jose Villanueva Cabrera expounded on the increase of penalty from reprimand to suspension from the practice of law for six (6) months sought by the IBP Board of Governors. He found the penalty of reprimand as recommended by the Investigating Commissioner too light, given that respondent's dishonesty in his private dealings with complainant had been clearly proven. Commissioner Cabrera maintained that the denial by respondent of the Deed of Transfer of Rights by claiming that he was merely assisting the complainant in the case filed by the latter's former wife clearly shows respondent had deceitfully evaded his civil obligations in assuming complainant's obligations with the GSIS. Commissioner Cabrera observed that respondent had been profiting from the property of complainant by leasing the same and collecting the fruits

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[13] *Id.* at 40.

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

[15] *Rollo*, p. 191.

[16] *Id.* at 177-190.

thereof while at the same time willfully refusing to comply with the obligations he voluntarily assumed when he and complainant executed the Deed of Transfer of Rights. As such, respondent violated the basic tenets of honesty and good faith and violated his oath as a lawyer to do justice to every man.

After a thorough review of the records, the Court adopts with modifications the findings and recommendations of the IBP Board of Governors with respect to respondent's violation of Rule 1.01 of the Code of Professional Responsibility. The Court, however, finds the recommended penalty of six-month suspension from the practice of law too lenient. Given the circumstances, respondent Atty. Glicerio A. Sampana deserves the ultimate penalty of disbarment.

Rule 1.01 of the Code of Professional Responsibility states that "[a] lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct." As such, membership in the legal profession is a privilege that is bestowed upon individuals who are not only learned in law, but are also known to possess good moral character.[17] 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.[18] Thus, while the Court has emphasized that the power to disbar is always exercised with great caution and only for the most imperative reasons or cases of clear misconduct affecting the standing and moral character of the lawyer as an officer of the court and member of the Bar, it has, likewise, underscored the fact that any transgression, whether professional or non-professional, indicating unfitness for the profession justifies disciplinary action, as in the case of the respondent.

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[17] *Franco B. Gonzales v. Atty. Danilo B. Bañares*, A.C. No. 11396, June 20, 2018.

[18] *Manuel Valin, et al. v. Atty. Rolando T. Ruiz*, A.C. No. 10564, November 7, 2017.

Section 27, Rule 138 of the Rules of Court provides that a member of the Bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office. Gross misconduct has been defined as any inexcusable, shameful or flagrantly unlawful conduct on the part of the person involved in the administration of justice, conduct that is prejudicial to the rights of the parties, or to the right determination of the cause.[19]

In the present case, respondent and complainant entered into a Deed of Transfer of Right over complainant's house and lot wherein he obligated himself to assume the remaining financial obligations of the complainant to the GSIS. Notwithstanding their agreement, and in spite of complainant's repeated reminders and requests, respondent reneged on his obligation and failed to settle the remaining programmed installments in favor of GSIS, eventually leading to the rescission of the Deed of Transfer of Right and massive financial liabilities on the part of the complainant.

In his attempts to evade liability, respondent offered the defense of general denial as to the factual nature of his agreement with complainant. Respondent averred that he accepted complainant's offer to transfer the rights of the housing unit to him in his desire to help the latter, who was in need of money and was looking for another house to move in, but with the understanding that it was complainant himself who would still continue to pay the ₱2,584.44 monthly amortization on the property. The Court finds this claim completely absurd, as complainant chose to transfer his rights over the property for the exact reason that he was experiencing financial difficulties. Had complainant been capable of paying the scheduled monthly amortizations, there would have been no reason for him to transfer the rights over the property to the respondent.

Respondent likewise maintained that his alleged failure to pay the monthly amortizations were due to honest inadvertence

[19] *Buehs v. Atty. Bacatan,* 609 Phil. 1, 12 (2009).

and unintentional oversight. He denied having received any notice from the GSIS or complainant as regards the GSIS loan account he assumed and blamed the complainant for not having sent the notices of non-payment and surrender of the subject property to his alleged residence address. Worst, respondent even had the audacity to ask why it took complainant another six years to file the instant administrative complaint when, according to him, all that he could have done was simply surrender the housing unit to the complainant or to the GSIS.

The bare denials and self-serving statements of respondent crumble in the face of the evidence presented by the complainant. The records support the observation of Commissioner Cabrera that respondent has been benefitting from the property by leasing the same and collecting rent from the tenants, at the expense of the complainant. Thus, the Court finds that respondent committed gross misconduct for his willful and obstinate refusal to fulfill the obligations which he voluntarily assumed when he entered into the Deed of Transfer of Right with complainant.

This is not respondent's first infraction as a member of the Bar. In *Lising v. Sampana*,[20] respondent was found to have committed an unethical and illegal act relative to his double sale of a parcel of land, in violation of Canon 1 of the *Code of Professional Responsibility*. He was suspended from the practice of law for one (1) year, with a warning that a repetition of a similar act shall be dealt with more severely.

Less than a year later, in *Nery v. Sampana*,[21] respondent was again penalized by the Court when he, despite having received a "one package fee" from a client for an annulment case and an adoption case, was found to have failed to file the petition for adoption and misinformed his client about the status of the petition. He even kept the money given him, in violation of the mandate of the Code of Professional Responsibility to deliver the client's funds upon demand. He was then suspended from

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[20] A.C. No. 7958, March 3, 2014 (Minute Resolution).

[21] 742 Phil. 531 (2014).

the practice of law for three (3) years, with a stern warning that a repetition of a similar act shall be dealt with more severely.

Considering his previous infractions, respondent should have adhered to the tenets of his profession with exceptional vigilance. He did not. On the contrary, his recent transgression is indicative of his propensity to commit unethical and improper acts that diminish the public's trust and confidence in lawyers in general. Respondent proved himself undeserving of membership in the Philippine Bar. His disbarment is consequently warranted.

WHEREFORE, respondent Glicerio A. Sampana is found **GUILTY** of gross misconduct and is hereby **DISBARRED** from the practice of law. Let respondent's name be stricken off from the Roll of Attorneys immediately. Furnish the Bar Confidant, the Integrated Bar of the Philippines and all courts throughout the country with copies of this Decision.

SO ORDERED.

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

Baltazar-Padilla, J., on leave.

EN BANC

[A.M. No. 15-02-02-SCC. October 6, 2020]

ALLEGED EXAMINATION IRREGULARITY COMMITTED BY COURT STENOGRAPHER I NORHATA A. ABUBACAR, SHARI'A CIRCUIT COURT, LUMBATAN, LANAO DEL SUR.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; DISHONESTY; IMPERSONATION; FALSIFICATION OF CIVIL SERVICE EXAMINATION RESULTS; MAKING AN UNTRUTHFUL STATEMENT IN THE PERSONAL DATA SHEET; PENALTY, DISMISSAL FROM SERVICE.— . . . Allowing another person to take civil service examination on one's behalf has been ruled to be an act of dishonesty. First-time offenders found guilty of grave dishonesty involving falsification of their civil service examination results merit the penalty of dismissal from service. On the other hand, making an untruthful statement in the PDS likewise amounts to dishonesty, as well as falsification of official document, which warrant dismissal from service upon commission of the first offense.

Abubacar committed dishonesty when she declared in her PDS that she took the Civil Service Sub Professional Examination on 07 November 1999 in Cagayan de Oro City, for which she received a rating of 85.07%.This necessitates the imposition of the ultimate penalty of dismissal on Abubacar.

2. ID.; ID.; ID.; ID.; EVERYONE INVOLVED IN THE ADMINISTRATION OF JUSTICE, FROM THE LOWLIEST EMPLOYEE TO THE HIGHEST OFFICIAL, IS EXPECTED TO LIVE UP TO THE STRICTEST STANDARD OF HONESTY, INTEGRITY, AND UPRIGHTNESS.— No other office in the government service exacts a greater demand for moral righteousness and uprightness from an employee than in the Judiciary. Everyone involved in the administration of justice, from the lowliest employee to the highest official, is expected to live up to the strictest standard of honesty, integrity, and uprightness.

By her act of dishonesty, Abubacar failed to meet the stringent standards set for a judicial employee. She does not deserve her position in the judiciary, and, as such, must be dismissed from office.

D E C I S I O N

***PER CURIAM*:**

Before the Court is an administrative case for Dishonesty against Norhata A. Abubacar (Abubacar), Court Stenographer I of the Shari'a Circuit Court of Lumbatan, Lanao del Sur.

Antecedents

In a letter[1] dated 03 November 2014, the Civil Service Commission (CSC)-Regional Office No. 10, referred to this Court a Preliminary Investigation Report (Report)[2] with respect to the civil service eligibility of Abubacar. The Report revealed the following:

1. That a person purporting to be Abubacar applied for and took the 07 November 1999 Career Service (CS) Sub Professional Examination in Cagayan de Oro City and obtained a rating of 85.07%;

2. That Abubacar indicated in her 17 January 2000 Personal Data Sheet that she passed the aforementioned examination, with a rating of 85.07%;

3. That on 15 February 2000, a permanent appointment as Court Stenographer I (SG-8) was issued to Abubacar by the Supreme Court, Manila;

4. That [a] comparison of Abubacar's picture attached to her 17 January 2000 Personal Data Sheet and the picture attached to the 07 November 1999 Career Service (CS) Sub Professional examination picture seat plan reveals that another person took the examination on her behalf, considering the

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[1] *Rollo*, pp. 2-5.

[2] *Id.* at 6-8.

> disparity of the facial features of the person depicted in the pictures. Further, the signature appearing on the Personal Data Sheet and that appearing in the Picture Seat Plan shows dissimilarity.[3]

The Office of the Court Administrator (OCA) then required Abubacar to submit her comment on the Report, not only once but twice. Despite receipt of the OCA's directives, however, Abubacar failed to comply.

Thus, on 22 February 2017, the Court directed Abubacar to show cause why she should not be held administratively liable for disobeying the Court's orders.[4] She was further required to submit her comment within five (5) days from notice, otherwise, the Court would decide the case on the basis of the records at hand. Despite the Court's categorical directive, Abubacar still failed to file her comment.[5]

Consequently, in a resolution dated 18 October 2017, the Court deemed Abubacar to have waived the filing of her comment. The case was referred to the OCA for investigation, report, and recommendation.

In its Memorandum[6] dated 19 January 2018, the OCA found Abubacar guilty of dishonesty and insubordination, and recommended that she be dismissed from the service, with forfeiture of all retirement benefits, except accrued leave credits, and with prejudice to reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations.[7]

Abubacar wrote to the Court, in a letter dated 28 January 2018, seeking reconsideration of its 18 October 2017 Resolution.

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[3] *Id.* at 6.

[4] *Id.* at 21.

[5] *Id.* at 34.

[6] *Id.* at 25-29.

[7] *Id.* at 29.

She explained that her non-compliance with the earlier show cause order was due to the crisis in Marawi. She asked the Court for five (5) days within which to submit the required comment. The Court, in the interest of justice, granted Abubacar a non-extendible period of ten (10) days from notice within which to submit her comment.[8]

Findings and Recommendations of the OCA

The OCA submitted its Memorandum[9] dated 25 October 2018, reiterating its earlier recommendation[10] that Abubacar be dismissed from the service for dishonesty based on the following findings:

> A review of respondent's records with the Office of Administrative Services, Office of the Court Administrator shows that her 201 File contains three (3) accomplished Personal Data Sheet (PDS) forms dated 05 June 1998, 11 May 1999 and 10 June 2005. x x x
>
> A comparison of the three PDS forms shows that, except for the varying [hair lengths], the I.D. pictures are similar to the I.D. picture on respondent's PDS form dated 17 January 2000, which was attached to the CSC Investigation Report dated 07 November 2014. Readily, it can be seen that respondent has a mole under her right eyebrow, a prominent mark that is visible in all the I.D. pictures attached to her PDS forms. In contrast, the picture on the Picture Seat Plan of the CSC shows that the person has no mole on her face.
>
> Respondent maintains that the picture attached to the PSP was her high school picture. Notably, by the time of examination in 1999, she was already thirty-one (31) years old. Upon inquiry with CSC Regional Office No. 10, this Office was informed that in the 1990s, the CSC had already adopted a guideline requiring examination applications to submit I.D. pictures taken within six (6) months prior to the filing of their respective applications. This guideline came in the form of announcements posted by the CSC regarding the conduct of career service or sub-professional examinations. Thus, even granting for the sake of argument that respondent truly took the examination,

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[8] *Id.* at 31.

[9] *Id.* at 59-63.

[10] *Id.* at 25-29.

the high school picture she submitted at the time of examination could not have been acceptable to the CSC, as the disparity in years between the age in photo and respondent's age at the time of examination (31 years) clearly exceeded the six (6)-month guideline.

x x x x x x x x x

The procedure practiced by the CSC in ensuring the identity of examinees and the striking disparity of facial features as proven through respondent's own records in her 201 File, lead to no other conclusion other than the fact that another person took the examination on respondent's behalf.

x x x. In this case, respondent claims that her co-employees can attest to her varying penmanship, but she failed to attach any sworn statement from any co-employee corroborating her claim. She also failed to present evidence to refute the picture attached to the [Picture Seat Plan].[11]

Ruling of the Court

The Court adopts the recommendation of the OCA.

This is not a case of first impression. The Court has had several occasions in the past to resolve cases of impersonation in taking the civil service eligibility exam. In *Clavite-Vidal v. Aguam*,[12] a court stenographer was accused of impersonation when a discrepancy was found between the image in the Picture Seat Plan and the picture in her Personal Data Sheet (PDS). The Court brushed aside her defense that she submitted her high school picture. It held:

The fact of impersonation was proven with certainty. Judge Balindong observed upon approaching Aguam during a hearing that she is not the person whose picture was attached to the Picture Seat Plan. This finding debunks Aguam's claim that she attached her high school picture on the Picture Seat Plan. The records also validate Judge Balindong's finding that Aguam's specimen signatures written on a piece of paper are starkly different from Aguam's supposed

[11] *Id.* at 61-62.

[12] A.M. No. SCC-10-13-P, 26 June 2012.

signature on the Picture Seat Plan. Then there is the discernible difference in Aguam's handwriting and signature on the Personal Data Sheet and the impersonator's handwriting and signature on the Picture Seat Plan. Taken together, the evidence leads to no other conclusion than that somebody else took the examination using Aguam's identity.[13]

Dishonesty is defined as the concealment or distortion of truth, which shows lack of integrity or a disposition to defraud, cheat, deceive, or betray, or intent to violate the truth.[14] Allowing another person to take civil service examination on one's behalf has been ruled to be an act of dishonesty.[15] First-time offenders found guilty of grave dishonesty involving falsification of their civil service examination results merit the penalty of dismissal from service.[16] On the other hand, making an untruthful statement in the PDS likewise amounts to dishonesty, as well as falsification of official document, which warrant dismissal from service upon commission of the first offense.[17]

Abubacar committed dishonesty when she declared in her PDS that she took the Civil Service Sub Professional Examination on 07 November 1999 in Cagayan de Oro City, for which she received a rating of 85.07%.[18] This necessitates the imposition of the ultimate penalty of dismissal on Abubacar.

We are aware that under Section 53 of the Revised Uniform Rules on Administrative Cases in the Civil Service,[19] the

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[13] *Id.*

[14] *Fajardo v. Corral,* G.R. No. 212641, 05 July 2017.

[15] *Civil Service Commission v. Dawang,* A.M. No. P-15-3289, 17 February 2015.

[16] *Civil Service Commission v. Andal,* A.M. No. SB-12-19-P, 18 November 2014.

[17] *Civil Service Commission v. Vergel de Dios*, G.R. No. 203536, 04 February 2015.

[18] PDS dated 17 January 2000, *rollo*, pp. 11-12. See also PDS dated 10 June 2005, rollo, pp. 55-58.

[19] CSC Memorandum Circular No. 19, s. 1999, dated 31 August 1999. Respondent's PDS was accomplished on 17 January 2000.

disciplining authority may, in the interest of justice, consider extenuating, mitigating, aggravating and alternative circumstances,[20] in imposing the penalty on the erring employee. In this case, however, respondent did not invoke any mitigating or extenuating circumstance. At any rate, the Court finds the OCA's recommendation in order and finds no reason to impose a lesser penalty than dismissal from the service.

It must be emphasized that respondent's misrepresentation of her civil service eligibility is a material fact that enabled her to secure a permanent appointment as Court Stenographer I. In addition, she committed a deliberate fabrication of the truth. She has not even shown the Court that she feels any remorse or contrition for her actions.

No other office in the government service exacts a greater demand for moral righteousness and uprightness from an employee than in the Judiciary. Everyone involved in the administration of justice, from the lowliest employee to the

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[20] Section 53. *Extenuating, Mitigating, Aggravating, or Alternative Circumstances.* — In the determination of the penalties imposed, mitigating, aggravating and alternative circumstances attendant to the commission of the offense shall be considered.

The following circumstances shall be appreciated:

a. Physical illness
b. Good faith
c. Taking undue advantage of official position
d. Taking undue advantage of subordinate
e. Undue disclosure of confidential information
f. Use of government property in the commission of the offense
g. Habituality
h. Offense is committed during office hours and within the premises of the office or building
i. Employment of fraudulent means to commit or conceal the offense
j. Length of service in the government
k. Education, or
l. Other analogous circumstance

Nevertheless, in the appreciation thereof, the same must be invoked or pleaded by the proper party, otherwise, said circumstances shall not be considered in the imposition of the proper penalty. The Commission, however, in the interest of substantial justice may take and consider these circumstances.

highest official, is expected to live up to the strictest standard of honesty, integrity, and uprightness.[21]

By her act of dishonesty, Abubacar failed to meet the stringent standards set for a judicial employee. She does not deserve her position in the judiciary, and, as such, must be dismissed from office.[22]

WHEREFORE, the Court hereby finds Norhata A. Abubacar, Court Stenographer I, Shari'a Circuit Court, Lumbatan, Lanao del Sur, **GUILTY** of **DISHONESTY**. Accordingly, she is **DISMISSED** from the service, with cancellation of eligibility, forfeiture of all benefits, except accrued leave credits, and disqualification for reemployment in the government service, including in government-owned or controlled corporations, without prejudice to any criminal and/or civil liability in a proper action.

SO ORDERED.

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

Baltazar-Padilla, J., on leave.

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[21] *Baguio v. Arnejo,* A.M. No. P-13-3155, 21 October 2013.

[22] *Anonymous Complaint dated May 3, 2013, Re: Fake Certificates of Civil Service Eligibility of Marivic B. Ragel, Evelyn C. Ragel, Emelyn B. Campos, and Jovilyn B. Dawang,* A.M. No. 14-10-314-RTC, 28 November 2017.

EN BANC

[B.M. No. 3781. October 6, 2020]

RE: CONCEPT PAPER ON PROPOSED BAR EXAMINATION REFORMS

NOTICE

Sirs/Mesdames :

Please take notice that the Court en banc issued a Resolution dated **OCTOBER 6, 2020**, *which reads as follows:*

"**B.M. No. 3781** (Re: Concept Paper on Proposed Bar Examination Reforms). **— WHEREAS**, the Supreme Court is granted the constitutional authority to promulgate rules concerning the admission to the practice of law;[1]

WHEREAS, the Committee on Bar Examinations convenes every year, headed by a Justice of the Supreme Court and composed of bar examiners chosen by the Bar Chairperson;

WHEREAS, the Bar Chairperson, with the approval of the Court *En Banc*, may determine and establish new guidelines on the conduct of the Bar Examinations attune to the objectives of the Court;

WHEREAS, considering the governmental restrictions imposed due to the COVID-19 pandemic, the Court recently announced the postponement of the 2020 Bar Examinations to November 2021;[2]

WHEREAS, as part of the preparations for the 2020/21 Bar Examinations, Bar Chairperson Associate Justice Marvic M.V.F. Leonen submitted a concept paper to the Court *En Banc* proposing several innovations for a more equitable Bar Examinations;

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[1] 1987 CONST., Art. VIII, Sec. 5 (5).

[2] Bar Bulletin No. 11, s. 2020; Bar Bulletin No. 13, s. 2020. https://cdasiaonline.com/jurisprudences/38745?s_params=-LdBKsk9wjPzwpACRe3d

WHEREAS, one of the proposals raised is increasing the number of bar examiners per subject;

WHEREAS, with the postponement of the 2020 Bar Examinations, it is anticipated that the number of bar examinees will increase, taking into account those who will graduate in 2021 and will take the bar in the same year;

WHEREAS, traditionally, only one (1) bar examiner is assigned per subject except in 2009, 2010, and 2019, where the Court appointed two (2) bar examiners per subject;

WHEREAS, with the expected increase in the number of examinees, one of the proposed solutions is the creation of a Committee of Bar Examiners for each bar subject which will maximize the efficiency of preparing the questions as well as the checking of the answers;

WHEREAS, the concept paper further proposed a comprehensive timeline to guide the Court and the Office of the Bar Chairperson to orderly administer the 2020/21 Bar Examinations;

NOW, WHEREFORE, acting on the recommendations of Associate Justice Marvic M.V.F. Leonen, this Court, sitting *en banc* **NOTES** the concept paper on the proposed Bar Examination reforms and **APPROVES** the following:

(a) The proposed timeline of the Office of the Bar Chairperson with respect to the conduct of the 2020/ 21 Bar Examinations; and

(b) The recommendation that the Committee of Bar Examiners be composed of three (3) examiners per bar subject." Baltazar-Padilla, J., on leave. (adv12)

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

Baltazar-Padilla, J., on leave.

EN BANC

[G.R. No. 231854. October 6, 2020]

PEOPLE OF THE PHILIPPINES, *Petitioner*, *v.* **LEILA L. ANG, ROSALINDA DRIZ, JOEY ANG, ANSON ANG, AND VLADIMIR NIETO,** *Respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ADMISSION BY ADVERSE PARTY; REQUEST FOR ADMISSION; A REQUEST FOR ADMISSION MAY BE SERVED ON THE ADVERSE PARTY AT ANY TIME AFTER THE ISSUES ARE JOINED.— Rule 26 of the Rules of Civil Procedure . . . delves on admission by adverse party. . . .

The following inferences can be deduced . . . [therefrom]:

1) A request for admission may be served *only* on the adverse party;

2) A request for admission may only be done *after* the issues have been joined;

3) The adverse party being served with the request for admission may admit: (a) The genuineness of any material and relevant document described in and exhibited with such request; and (b) The truth of any material and relevant matter of fact set forth in such request;

4) Copies of the documents requested from the adverse party for admission should be delivered with the request unless copies have already been furnished to the latter in advance;

5) The time to respond to the request for admission shall be at least fifteen days or at a period fixed by the court on motion;

6) The adverse party on whom the request for admission was served is required to file a sworn

statement *specifically denying* the matters of which an admission is requested or *setting forth in detail* the reasons why he or she cannot truthfully either admit or deny those matters;

7) Failure of the adverse party, on whom the request was served, to respond shall be *deemed as an admission* to the matter sought to be admitted;

8) Objections to any request for admission shall be submitted to the court by the adverse party requested within the period for and prior to the filing of his sworn statement of denial;

9) Compliance of the request for admission by the adverse party requested shall be deferred until the objection is resolved by the court;

10) The resolution of any objection raised by the party on whom the request for admission was served shall be resolved by the court as early as practicable;

11) Any admission made by the adverse party *may only be used in the case where the request for admission was made* and *not* in any *other proceeding*; and

12) A party, except for good cause shown and to prevent a failure of justice, cannot anymore be permitted to present any evidence in support of a material and relevant fact within the personal knowledge of the adverse party which should have been the subject of a request for admission.

Under Rule 26, a request for admission may be served on the adverse party at any time after the issues are joined.

2. ID.; ID.; ID.; JOINDER OF ISSUES IN CIVIL CASES; WHEN ISSUES ARE JOINED.— In civil cases, there is joinder of issues when the answer makes a specific denial of the material allegations in the complaint or asserts affirmative defenses, which would bar recovery by the plaintiff.

3. ID.; CRIMINAL PROCEDURE; JOINDER OF ISSUES IN CRIMINAL CASES; THE ENTRY OF PLEA DURING ARRAIGNMENT SIGNALS JOINDER OF ISSUES IN A CRIMINAL ACTION.— In a criminal case, "there is no need to file a responsive pleading since the accused is, at the onset, presumed innocent, and thus it is the prosecution which has the burden of proving his guilt beyond reasonable doubt." Nonetheless, it is the legal duty of the accused to plead "guilty" or "not guilty" during arraignment, for it is only after his plea had been entered, that the issues are joined and trial can begin. In other words, "**the entry of plea during arraignment x x x signals joinder of issues in a criminal action**."

4. ID.; CIVIL PROCEDURE; PARTIES IN CIVIL CASES.— In civil actions, a party is one who: (a) is a natural or juridical person as well as other "entities" recognized by law to be parties; (b) has a material interest in issue to be affected by the decree or judgment of the case (real party-in-interest); and (c) has the necessary qualifications to appear in the case (legal capacity to sue).

5. ID.; CRIMINAL PROCEDURE; PARTIES IN CRIMINAL CASES.— In criminal actions, . . . the only parties are the **State/People of the Philippines** (as represented by the Office of the Solicitor General or agencies authorized to prosecute like the Office of the Ombudsman and the Department of Justice) and the **accused**.

6. ID.; ID.; ID.; THE STATE IS THE REAL PARTY-IN-INTEREST IN CRIMINAL PROCEEDINGS, BUT BEING A JURIDICAL ENTITY, IT LACKS SENSORY PERCEPTION MAKING IT INCOMPETENT TO MAKE AN ADMISSION OF FACT.— [I]t is imperative to emphasize that the State is the real party-in-interest in criminal proceedings. The private offended party is merely regarded as a witness for the State. It means that the State, being a juridical entity unlike the offended party, cannot be privy to the execution of any document or acquire personal knowledge of past factual events. Unlike natural persons, the State cannot be reasonably thought of as capable of perceiving as well as making known of its perception and, therefore, incapable of being "privy" to the execution of documents or acquiring "personal" knowledge of perceivable facts. Such ability to perceive factual events or to

be privy to executions of documents can be reasonably attributed to a natural person (a party or a witness) who can perceive through his/her senses and make known of such perception drawn from mental recollection. Such lack of sensory perception reasonably operates as an inherent inability and incompetence on the part of the State to make an admission of fact.

7. ID.; CIVIL PROCEDURE; ADMISSION BY ADVERSE PARTY; REQUEST FOR ADMISSION; WITNESSES WHO ARE INCOMPETENT TO GIVE ADMISSIONS CANNOT BE SERVED WITH A REQUEST FOR ADMISSION.— [I]t is already settled in jurisprudence that the express mention of one person, thing, or consequence implies the exclusion of all others. Since Section 1, Rule 26 of the Rules of Civil Procedure only mention of parties serving and answering each other's requests for admission, it cannot be reasonably interpreted to include also witnesses who are incompetent to give admissions that bind the parties to their declarations. In other words, witnesses such as the private complainant in criminal proceedings cannot be served with a request for admission and compelled to answer such request. Besides, witnesses in criminal proceedings may be called upon to testify during the trial state and be subjected to the crucible of cross-examination.

8. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHTS OF THE ACCUSED; RIGHT AGAINST SELF-INCRIMINATION; THE USE OF PHYSICAL OR MORAL COMPULSION TO EXTORT COMMUNICATIONS FROM THE ACCUSED IS PROSCRIBED.— The prosecution is strictly bound to observe the parameters laid out in the Constitution on the right of the accused – one of which is the right against self-incrimination. This right proscribes the use of physical or moral compulsion to extort communications from the accused. If she/he chooses to remain silent, he/she suffers no penalty for such silence. Included in the right against self-incrimination are: (1) to be exempt from being a witness against himself; and (2) to testify as witness in his own behalf. It is accorded to every person who gives evidence, whether voluntary or **under compulsion of subpoena**, in any civil, criminal or administrative proceedings.

9. REMEDIAL LAW; CIVIL PROCEDURE; MODES OF DISCOVERY; ADMISSION BY ADVERSE PARTY;

REQUEST FOR ADMISSION; TO ALLOW REQUESTS FOR ADMISSION IN CRIMINAL PROCEEDINGS IS TANTAMOUNT TO COMPELLING THE ACCUSED TO TESTIFY AGAINST HIMSELF OR HERSELF.— If requests for admission are allowed to be utilized in criminal proceedings, "any material and relevant matter of fact" requested by the prosecution from the accused for admission is tantamount to compelling the latter to testify against himself. This is because failure to answer a request for admission will be deemed as an admission of the fact requested to be admitted. More so, Section 2, Rule 26 of the Rules of Civil Procedure requires the party requested to file a sworn statement thereby exposing him/her to the additional peril of being held liable for perjury. Such requirements unduly pressure the accused in making an admission or denial, which is in itself a form of compulsion. Moreover, the refusal of the accused to answer to a request for admission may later be taken against him under Section 3(e), Rule 131 of the Rules on Evidence.

10. ID.; ID.; ID.; ID.; ID.; ANY COMPULSION ON THE PART OF THE ACCUSED TO ANSWER ALL MATTERS IN A REQUEST FOR ADMISSION VIOLATES HIS/HER RIGHT AGAINST SELF-INCRIMINATION.— [I]t should be noted that the constitutional privilege against self-incrimination applies to evidence that is *communicative* in essence taken under duress; not where the evidence sought to be excluded is part of object evidence. Obviously, a response to any query is communicative in nature. Being communicative, any compulsion on the part of the accused to answer all the matters in a request for admission clearly violates his or her right against self-incrimination. Any compulsory process which requires the accused to act in way which requires the application of intelligence and attention (as opposed to a mechanical act) will necessarily run counter to such constitutional right.

11. ID.; ID.; ID.; ID.; ID.; REQUEST FOR ADMISSION IS NOT APPLICABLE TO CRIMINAL PROCEEDINGS.— [T]he rule on admission as a mode of discovery is intended to expedite the trial and to relieve the parties of the costs of proving facts which will not be disputed on trial and the truth of which can be ascertained by reasonable inquiry. The use of requests for admission is not intended to merely reproduce or reiterate the allegations of the requesting party's pleading but it should

set forth relevant evidentiary matters of fact described in the request, whose purpose is to establish said party's cause of action or defense. In a criminal proceeding, most of the facts are almost always disputed as the prosecution is tasked in proving all the elements of the crime as well as the complicity or participation of the accused beyond reasonable doubt. Factual matters pertaining to the elements of the crime as well as the complicity or participation of the accused are obviously determinative of the outcome of the case.

If requests for admission should be made applicable to criminal proceedings, it is virtually certain that an accused who had already entered a plea of "not guilty" would continue to deny the relevant matters sought by the prosecution to be admitted in order to secure an acquittal. Moreover, matters which tend to establish the guilt or innocence of an accused (*i.e.*, participation, proof of an element of the offense, etc.) are necessarily disputed in nature. . . .

. . .

With the above discussions, it is evident that Leila Ang's Request for Admission filed in Criminal Case No. 2005-1048 should have been denied by the RTC. Consequently, there are no judicial admissions to be adopted in Criminal Case Nos. 2005-1046 and 2005-1047. Request for admission under Rule 26 of the Rules of Civil Procedure is not applicable in criminal proceedings.

12. ID.; ID.; ID.; ID.; ID.; CRIMINAL PROCEDURE; PRE-TRIAL; IT IS DURING THE PRE-TRIAL THAT PARTIES MAY STIPULATE FACTS THEY ARE WILLING TO ADMIT.— Even if the Court were to carve out an exception by permitting only those matters which have no relevant or material relations to the offense to be discoverable through requests for admission, the same discovery facility would serve no practical and useful purpose tending only to delay the proceedings. Therefore, it would be pointless on the part of the prosecution to require an accused to admit to matters not relevant or material to the offense as the same would be vented out during the pre-trial anyway.

Besides, the facilities of a pre-trial—especially that provided for in Section 1(b), Rule 118 of the Rules on Criminal Procedure

regarding stipulation of facts—[will] most likely serve the same purpose without falling into the danger of violating fundamental rights such as the right against self-incrimination. During pre-trial, the accused (and even the prosecution) is free to stipulate the facts that he or she is ***willing*** to admit or place beyond the realm of dispute.

13. ID.; ACTIONS; JUDGMENTS; VOID JUDGMENTS; A JUDGMENT ISSUED WITH GRAVE ABUSE OF DISCRETION IS A VOID JUDGMENT WHICH HAS NO LEGAL OR BINDING EFFECT OR EFFICACY.— Leila Ang argued that the Joint Orders dated February 12, 2015 and July 24, 2015 of the RTC, which declared that the facts stated in her Request for Admission are deemed impliedly admitted, and that such implied admissions are also "judicial admissions" by the People, had become final, executory and immutable, and therefore it cannot be annulled, set aside or varied anymore. The Court disagrees.

The Joint Orders are void having been issued with grave abuse of discretion. A void judgment is no judgment at all in legal contemplation. It has no legal or binding effect or efficacy for any purpose or at any place. It cannot affect, impair or create rights. It is not entitled to enforcement and is, ordinarily, no protection to those who seek to enforce. In other words, a void judgment is regarded as a nullity, and the situation is the same as it would be if there was no judgment.

14. REMEDIAL LAW; CIVIL PROCEDURE; REQUEST FOR ADMISSION; POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT AGAINST SELF-INCRIMINATION; THERE IS NO VIOLATION OF THE RIGHT AGAINST SELF-INCRIMINATION IF IT WAS THE ACCUSED WHO FILED THE REQUEST FOR ADMISSION.— Note should be made that in this case, it was the accused, Leila Ang, who filed for Request for Admission. It was not initiated by the prosecution. Thus, it may be argued that there is no violation of the right [against] self-incrimination as it was the accused who requested for admission.

15. ID.; ID.; ID.; ID.; THE ELEMENTS OF THE CRIME OR THE NON-PARTICIPATION OR NON-COMPLICITY IN THE CRIME ARE MATTERS THAT CANNOT BE THE SUBJECT OF ADMISSION BY THE PROSECUTION.—

All the matters set forth in the Request for Admission are defenses of Leila Ang. Almost all of the paragraphs are worded in the negative, with the end-goal of showing that Leila Ang has no participation or complicity in the crime. These matters cannot be the subject of admission by the prosecution but must be duly proven by Leila Ang as a matter of defense in the trial proceedings.

Similarly, this Request for Admission contains matters that show the elements of the crime which the prosecution has the burden to prove to establish the guilt of the accused beyond reasonable doubt. It includes factual circumstances that should be presented by the prosecution during the trial of the case. Settled is the principle that a criminal action is prosecuted under the direction and control of the prosecutor. It cannot be the other way around. Accused cannot dictate or control the prosecution on how it will prove its case.

PERLAS-BERNABE, ***J., concurring opinion*:**

1. REMEDIAL LAW; CIVIL PROCEDURE; THE SUPPLETORY APPLICATION THEREOF TO A CRIMINAL PROCEEDING PRESUPPOSES THAT THE PROCEDURE TO BE SUPPLETORILY APPLIED DOES NOT GO AGAINST SUBSTANTIVE PRINCIPLES INHERENT TO CRIMINAL PROCEEDINGS.— Because of the essential variances between civil and criminal actions, our Rules of Civil Procedure is treated as a separate and distinct body of procedural rules from our Rules of Criminal Procedure, although it is recognized that the former may suppletorily apply in the absence of a specific rule of criminal procedure stating otherwise. The general provisions of the Rules of Court define a civil action as one by which a party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong, whereas a criminal action is one by which the State prosecutes a person for an act or omission punishable by law.

The suppletory application of the Rules of Civil Procedure to a criminal proceeding, however, presupposes that the procedure to be suppletorily applied does not go against substantive principles inherent to criminal proceedings. This stems from the basic consideration that adjective law only sets

out the procedural framework in which substantive rights and obligations are to be litigated. . . .

Being "implementary" in character, procedural law cannot trump fundamental premises of substantive law. The well-settled rule is that "**a substantive law cannot be amended by a procedural rule**." Moreover, by its common acceptation, the word "suppletory" means "**supplying deficiencies**"; hence, it is not tantamount to modifying or amending a rule.

2. ID.; ID.; MODES OF DISCOVERY; ADMISSION BY ADVERSE PARTY; REQUEST FOR ADMISSION; THE PROVISION ON IMPLIED ADMISSION CANNOT BE MADE TO APPLY TO CRIMINAL PROCEEDINGS.— By their nature, "[t]he various modes or instruments of discovery are meant to serve (1) as a device, along with the pre-trial hearing x x x, to narrow and clarify the basic issues between the parties, and (2) as a device for ascertaining the facts relative to those issues. The evident purpose is x x x to enable the parties, consistent with recognized privileges, to obtain the fullest possible knowledge of the issues and facts before x x x trials and thus prevent that said trials are carried on in the dark."

A request for admission under Rule 26 is a mode of discovery meant to "expedite trial and relieve parties of the costs of proving facts which will not be disputed on trial and the truth of which can be ascertained by reasonable inquiry." Case law, however, states that parties cannot use this tool to reproduce or reiterate allegations in one's pleadings, and should instead tackle new evidentiary matters of fact which will help establish a party's cause of action or defense.

The defining feature of a request for admission is the provision which states that every matter raised in a request for admission that is not specifically denied shall be deemed admitted. . . .

. . . [I]t is glaring that there is no mode of discovery under the Rules of Criminal Procedure that is somewhat similar to **Rule 26 on requests for admission**. In my opinion, this procedural lacuna in the Rules of Criminal Procedure evinces the fact that **this particular mode of discovery is conceptually incompatible with some fundamental premises obtaining in the prosecution of criminal cases**. . . .

3. ID.; ID.; ID.; ID.; ID.; POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT AGAINST SELF-INCRIMINATION; ALLOWING A REQUEST FOR ADMISSION CONTRAVENES THE ACCUSED'S RIGHT AGAINST SELF-INCRIMINATION.— This provision on implied admissions gives "teeth" to the rule, allowing it to be an effective and expeditious mode of discovery. However, right off the bat, it is apparent that this provision cannot be made to apply in criminal proceedings without running afoul of an accused's right against self-incrimination, also known as his right not to be compelled to be a witness against himself.

To be sure, in civil cases, a party may only raise his right against self-incrimination if a particularly incriminatory question is propounded to him. He cannot altogether refuse to testify or disregard a subpoena by claiming that his right against self-incrimination will be violated. It is only when a specific question is addressed to him which may incriminate him for some offense that he may refuse to answer on the strength of the constitutional guaranty. **However, in criminal cases, the accused can refuse to take the stand altogether as he "occupies a different tier of protection from an ordinary witness." He is not even susceptible to a subpoena issued by the court itself**. . . .

By the mere allowance of a request for admission, the accused is effectively forced upon the proverbial "stand" which, by and of itself, contravenes the right against self-incrimination as recognized in criminal cases. Further, on a practical level, since an accused has the right **to altogether refuse to entertain a request for admission**, allowing such request would then just result into a circuitous, if not ceremonial, attempt at futility. This situation negates the inherent expediency purpose of our modes of discovery.

4. ID.; ID.; ID.; ID.; ID.; ID.; ID.; ID.; CRIMINAL PROCEDURE; RIGHT TO CONFRONT THE WITNESSES; A REQUEST FOR ADMISSION EFFECTIVELY DENIES THE ACCUSED THE RIGHT TO CONFRONT THE WITNESSES AGAINST HIM DURING PUBLIC TRIAL.— [A] request for admission effectively denies the accused the right to confront the witnesses against him during public trial. . . . In a request for admission, the accused will be asked to

admit "the genuineness of any material and relevant document described in and exhibited with the request or of the truth of any material and relevant matter of fact set forth in the request." The authentication of documents and any material fact that go into a crime's elements **ought to be established through the witnesses or other evidence presented by the State.** But since these are to be elicited through a mere paper request and not through actual witnesses or evidence presented during trial, the accused has no one to confront; consequently, there is likewise no deportment to be observed by the judge in this respect.

5. ID.; ID.; ID.; ID.; ID.; ID.; ID.; PRESUMPTION OF INNOCENCE; A REQUEST FOR ADMISSION IS PERMISSIBLE IN CIVIL CASES, BUT NOT IN CRIMINAL CASES WHERE THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE AND THE OTHER RIGHTS OF THE ACCUSED APPLY.— [T]he request for admission, as a mode of discovery, contravenes the age-old rule that "**[a] criminal case rises or falls on the strength of the prosecution's case**." Notably, this rule is no simple procedural axiom, but rather one that is founded in the constitutional presumption of innocence. . . .

Needless to state, this presumption only applies to criminal cases and not to civil cases. The non-existence of this presumption in civil cases, as well as the other rights of the accused, . . . therefore renders permissible a request for admission in civil, and not criminal causes.

6. ID.; ID.; ID.; ID.; HEARSAY EVIDENCE; IF AVAILED BY THE ACCUSED, THE REQUEST FOR ADMISSION IS NECESSARILY SERVED UPON THE STATE REPRESENTED BY THE PROSECUTOR, WHOSE STATEMENTS IN ANSWER THERETO ARE HEARSAY FOR NOT BEING BASED ON PERSONAL KNOWLEDGE.— Under Rule 26, a request for admission is served upon another party. Therefore, if the accused avails of this mode of discovery, he or she necessarily would have to serve his or her request upon the State. The State is considered as a juridical person and, insofar as criminal actions are concerned, is represented by the public prosecutor. While it is indeed possible to serve the request upon the public prosecutor, the same mode of discovery intends that the party served with such request be the one to admit "[t]he genuineness of any

material and relevant document described in and exhibited with the request or of the truth of any material and relevant matter of fact set forth in the request." For this purpose, "a request for admission on the adverse party of material and relevant facts at issue x x x **are, or ought to be, within the personal knowledge of the latter** x x x."

. . .

In the case of a public prosecutor, he cannot be considered to have personal knowledge of the facts subject of the request for admission because he is not privy to a document or any factual occurrence subject of said request. Personal knowledge requires first-hand knowledge of the events as they have transpired, and not merely information relayed to him by others as the assigned legal counsel. Knowledge of a handling lawyer is second-hand information coming from parties or witnesses, unless he himself is in some way privy to the document or the occurrence. Thus, should the public prosecutor answer the request for admission, his statements would technically be hearsay.

7. ID.; ID.; ID.; ID.; A PARTY SUBJECT OF THE REQUEST IS REGARDED AS A WITNESS WHOSE PERSONAL KNOWLEDGE OF THE DISPUTED FACT IS REQUIRED.—[A] party subject of a request for admission is basically regarded as a witness because he is in a position to deny or admit the genuineness of a document or the truth or falsity of a fact relevant to the case. According to our jurisprudence, "[t]he personal knowledge of a witness is a substantive prerequisite for accepting testimonial evidence that establishes the truth of a disputed fact. A witness bereft of personal knowledge of the disputed fact cannot be called upon for that purpose because [his or] her testimony derives its value not from the credit accorded to [him or] her as a witness presently testifying but from the veracity and competency of the extrajudicial source of [his or] her information."

8. ID.; ID.; ID.; ID.; THE PROSECUTION'S WITNESSES CANNOT BE THE PROPER SUBJECTS OF THE REQUEST, SINCE THEY ARE NOT PARTIES TO THE CASE.— If at all, it would be the witnesses of the prosecution who possess personal knowledge of the genuineness of the documents or any material fact. However, these witnesses cannot

be the proper subjects of a request for admission because they are not "parties" to the case. At any rate, even if they may be loosely considered as "parties," allowing the accused to subject them to a request for admission would be tantamount to shifting to the accused some form of control over the direction of the prosecution. This would violate the basic principle that criminal actions are prosecuted under the sole direction and control of the public prosecutor.

LEONEN*, J., separate concurring opinion*:

1. REMEDIAL LAW; CIVIL PROCEDURE; ADMISSION BY ADVERSE PARTY; REQUEST FOR ADMISSION; JOINDER OF ISSUES IN CRIMINAL PROCEEDINGS.— Under Rule 26 of the Rules of Civil Procedure, a request for admission may be served on the adverse party *at any time after the issues are joined*.

There is a joinder of issues in criminal proceedings upon the accused's entry of plea during arraignment. The accused's plea controverts, and thus, puts at issue all the allegations in the information.

2. ID.; ID.; ID.; ID.; A REQUEST FOR ADMISSION CANNOT BE SERVED ON EITHER THE ACCUSED OR THE PROSECUTOR, BUT ON THE PRIVATE OFFENDED PARTY'S COUNSEL WITH REGARD TO THE CIVIL ASPECT.— [A] request for admission cannot be served on either the accused, owing to the right against self-incrimination, or on the prosecutor, for lack of personal knowledge. Nonetheless, it may be served on the private offended party's counsel with regard to the civil aspect. . . .

. . .

Yet, the facts that public prosecutors know are those merely brought about by their inquiry or investigation. They file the information in court based on their own study and appreciation of the evidence at hand. They have *no personal knowledge* of the facts material to the actual commission of the crime, and thus, are not competent to answer a request for admission.

3. ID.; ID.; ID.; ID.; RULE ON HEARSAY EVIDENCE; MATTERS FOR ADMISSION MUST BE WITHIN THE

PERSONAL KNOWLEDGE OF THE PERSON ON WHOM THE REQUEST IS SERVED.— Rule 26, Section 1 of the Rules of Civil Procedure provides the scope of matters that a party may request the adverse party to admit, namely: (1) "the *genuineness* of any material and relevant document described in and exhibited with the request"; and (2) "the *truth* of any material and relevant matter of fact set forth in the request." The matters requested for admission must be within the *personal knowledge* of the person on whom the request was served, in accordance with the rule excluding hearsay evidence.

4. ID.; ID.; ID.; ID.; A REQUEST FOR ADMISSION MAY BE SERVED BY THE ACCUSED ON THE PRIVATE OFFENDED PARTY AS REGARDS THE CIVIL ASPECT OF THE CRIME.— [I]n criminal proceedings, the parties are the People of the Philippines, represented by the public prosecutor, and the accused.

. . .

However, with regard to the civil aspect of the criminal case, the private complainant is the real party in interest. *Banal v. Tadeo, Jr.*, explains that the criminal and civil aspects are rooted in the theory that a crime is both an offense against the State whose law was violated and a direct injury to the person offended by the act . . . .

. . .

Thus, a request for admission as regards the civil aspect of the crime may be served by the accused on the private offended party, and the answer thereto may be made by the private offended party's counsel.

5. ID.; ID.; ID.; ID.; POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT AGAINST SELF-INCRIMINATION; SCOPE THEREOF.— [T]he accused's right against compulsory self-incrimination precludes the service of a request for admission on them.

One's right against self-incrimination is enshrined in Article III, Section 17 of the 1987 Constitution, which reads: "No person shall be compelled to be a witness against himself." This Court explained the extent of this right in *Rosete v. Lim*:

> The right against self-incrimination is accorded to every person who gives evidence, whether voluntary or under compulsion of subpoena, in any civil, criminal or administrative proceeding. The right is not to be compelled to be a witness against himself. It secures to a witness, whether he be a party or not, the right to refuse to answer any particular incriminatory question, *i.e.*, one the answer to which has a tendency to incriminate him for some crime. However, the right can be claimed only when the specific question, incriminatory in character, is actually put to the witness. It cannot be claimed at any other time. It does not give a witness the right to disregard a subpoena, decline to appear before the court at the time appointed, or to refuse to testify altogether.

6. ID.; ID.; ID.; ID.; ID.; ID.; ID.; ID.; CRIMINAL PROCEDURE; RIGHT OF THE ACCUSED TO BE EXEMPT FROM BEING COMPELLED TO BE A WITNESS AGAINST HIMSELF; THE RIGHT AGAINST SELF-INCRIMINATION IMPOSES AN ABSOLUTE PROHIBITION AGAINST ANY KIND OF INQUIRY FROM THE ACCUSED AFTER THE INFORMATION IS FILED IN COURT.— Rule 115, Section 1 of the Rules of Criminal Procedure accords the accused in a criminal prosecution the right "[t]o be exempt from being compelled to be a witness against [themselves]." The accused are protected under this Rule from testimonial compulsion or any legal process to extract an admission of guilt against their will. . . .

> After the information is filed in court, the right against self-incrimination imposes an absolute prohibition against any kind of inquiry from the accused. An accused on trial in a criminal case may refuse, not only to answer incriminatory questions, but also to take the witness stand. Neglect or refusal to be a witness will not prejudice or be used against the accused.

> Rule 26 seeks to obtain admissions from the adverse party regarding the genuineness of relevant documents or the truth of facts through requests for admissions. It "contemplates of interrogatories that would *clarify and tend to shed light on the truth or falsity of the allegations* in a pleading. That is its primary function. It does not refer to a mere reiteration of what has already been alleged in the pleadings."

Considering its purpose, a request for admission cannot be served on the accused in a criminal proceeding, owing to the protection accorded by the Constitution and rules against self-incrimination.

INTING, *J., concurring opinion*:

1. REMEDIAL LAW; CIVIL PROCEDURE; MODES OF DISCOVERY; ADMISSION BY ADVERSE PARTY; REQUEST FOR ADMISSION; A REQUEST FOR ADMISSION DOES NOT APPLY TO CRIMINAL PROCEEDINGS, AS THE PARTY TO WHOM IT MAY BE SERVED IS THE PEOPLE WHO IS REPRESENTED BY THE PUBLIC PROSECUTOR, WHO HAS NO PERSONAL KNOWLEDGE OF THE FACTS THEREIN.— Rule 26 does not apply to criminal proceedings. . . .

. . .

In criminal cases, the parties are the State and the accused. The case is prosecuted in the name of the People and not the private complainant who is merely a witness. Thus, if Rule 26 is applied in criminal proceedings, the party to whom the accused may serve his request for admissions is the People who is represented by the public prosecutor. It is the public prosecutor who will be requested to admit the genuineness of any material and relevant document described in and exhibited with the request or the truth of any material and relevant fact set forth in the request. It is the public prosecutor who must execute a sworn statement specifically denying the matters on which an admission is requested or setting forth in detail the reasons as to why he cannot truthfully either admit or deny those matters.

However, . . . a cursory reading of Section 5, Rule 26 presupposes that the party upon whom the request for admission is served has personal knowledge of the matters stated in the request for admission. Undoubtedly, a public prosecutor cannot be considered as either having personal knowledge of the facts in the request for admission or being privy to a document subject of the request. Thus, any statement made by the public prosecutor in the sworn statement either admitting or specifically denying the matters sought to be admitted in the request for admissions would be mere hearsay and thus, lack probative value.

2. ID.; ID.; ID.; ID.; ID.; A REQUEST FOR ADMISSION MAY BE AVAILED OF IN CIVIL PROCEEDINGS TO EXPEDITE THE TRIAL AND TO RELIEVE THE PARTIES OF THE COSTS OF PROVING FACTS.— A request for admission under Rule 26 is a mode of discovery which may be availed of in civil proceedings. . . . [I]t is intended to expedite the trial and to relieve the parties of the costs of proving facts which will not be disputed on trial and the truth of which can be ascertained by reasonable inquiry. This mode of discovery serves to avoid the unnecessary inconvenience to the parties in going through the rigors of proof. Consequently, under Section 1, Rule 26, a party may serve a request for admission on the other party and request the latter to: (a) admit the genuineness of any material and relevant document described in and exhibited with the request; or (b) admit the truth of any material and relevant matter of fact set forth in the request.

Under Section 2, Rule 26, the failure of the other party to either specifically deny the matters of which an admission is requested therein or to set forth in detail the reasons why he cannot truthfully either admit or deny those matters shall result in the deemed or implied admission of the matters stated in the request for admissions.

3. ID.; ID.; ID.; ID.; ID.; TO SERVE A REQUEST FOR ADMISSION ON THE ACCUSED WOULD RUN COUNTER TO THE RIGHT OF THE ACCUSED AGAINST SELF-INCRIMINATION, INCLUDING THE RIGHT TO REFUSE TO TAKE THE WITNESS STAND.— [T]o apply Rule 26 to criminal cases would go against the constitutional right of the accused against self-incrimination. This right is enshrined in Section 17, Article III of the 1987 Constitution which provides that "[n]o person shall be compelled to be a witness against himself." As the Court explained in *Rosete v. Lim*, the right against self-incrimination is accorded to every person who gives evidence, whether voluntary or under compulsion of subpoena in any civil, criminal or administrative proceeding. However, unlike in civil cases, the right against self-incrimination is wider in scope when it comes to the accused in criminal cases . . . .

Thus, in criminal cases, the constitutional right against self-incrimination of the accused is taken to mean the right to be exempt from being a witness against himself. Unlike an ordinary

witness in a criminal case or a party in a civil action who may be compelled to testify by subpoena, having only the right to refuse to answer a particular incriminatory question at the time it is put to him, the accused in a criminal action can refuse to testify altogether or take the witness stand.

Consequently, . . . to serve a request for admission on the accused would in effect require him to take the stand and testify against himself. Such runs counter to the right of the accused against self-incrimination, including the right to refuse to take the witness stand.

4. ID.; ID.; ID.; ID.; ID.; A REQUEST FOR ADMISSION IN CRIMINAL CASES WOULD ONLY BE AN EXERCISE IN FUTILITY AND LEAD TO UNNECESSARY DELAYS.— [T]o apply Rule 26 to criminal proceedings so that the prosecution may serve a request for admission on the accused would only be an exercise in futility and lead to unnecessary delays as the accused may just simply invoke his right against self-incrimination; or he may ignore a request for admission served on him since to do so would not have any prejudicial effect on his defenses.

Besides, Rule 118 of the Rules of Court provides for pre-trial where the admissions of the accused may be taken. This is already a sufficient measure to achieve the objective of simplifying the trial by doing away with matters which are not disputed by the parties. Section 1 of Rule 118 states that the trial court shall order a pre-trial conference to consider plea bargaining, stipulation of facts, and marking for identification of evidence, among others. Further, Sections 2 and 4 provide the manner by which the admissions of the accused during the pre-trial may be used against him as well as the effect of these admissions on the trial . . . .

[G]iven the availability of pre-trial as provided under Rule 118 of the Rules of Court, I find that the request for admission in criminal cases, as in the present case, only invites delays and is unnecessary in the conduct of the proceedings.

ZALAMEDA, *J., separate concurring opinion*:

1. REMEDIAL LAW; CIVIL PROCEDURE; MODES OF DISCOVERY; ADMISSION BY ADVERSE PARTY;

REQUEST FOR ADMISSION; A REQUEST FOR ADMISSION UNDER RULE 26 OF THE RULES OF COURT IS UNSUITED TO CRIMINAL PROCEEDINGS.— It is essential for us to underscore that the procedural rules in our jurisdiction are similarly structured to that of the U.S. There are several available modes of discovery under our Rules of Civil Procedure ranging from depositions, interrogatories, request for admission, production or inspection of documents/things and, physical and mental examination of persons, while analogous provisions are absent in our Rules of Criminal Procedure. Such comparable framework of our procedural rules to American federal rules of procedure suggests a reasonable context from which we derive a **strict and narrow application of modes of discovery in criminal proceedings**.

Considering this and the continuous failure to include requests for admission even on the emerging proposal or measures for expanded discovery in criminal cases in the U.S., I am inclined to believe that requests for admission under Rule 26 are unsuited to our criminal proceedings.

2. ID.; ID.; APPEALS; THE SUPREME COURT HAS AUTHORITY TO REVIEW MATTERS NOT ASSIGNED AS ERRORS ON APPEAL IF THEY ARE CLOSELY RELATED WITH THE ASSIGNED ERRORS.— Especially noteworthy is that the Supreme Court is clothed with ample authority to review matters even when they are not assigned as errors on appeal if it finds their consideration necessary to arrive at a just decision of the case. Further, an unassigned error that is closely related to an error properly assigned, or upon which the determination of the question or error properly assigned is dependent, will be considered despite the failure to raise the same. In the present case, it cannot be denied that the issue of applicability of Rule 26 in criminal cases is an issue considerably intertwined with petitioner's assigned errors.

3. ID.; JUDGMENTS; VOID JUDGMENTS; A VOID JUDGMENT MAY ALSO BE A SUBJECT OF A COLLATERAL ATTACK VIA A PETITION FOR *CERTIORARI*.— Even more relevant, the import of the *ponencia* is to treat the RTC's Joint Orders dated 12 February 2015, 24 July 2015, along with the assailed Joint Orders dated 10 March 2016 and 05 September 2016, as void judgments . . . .

> . . . [V]oid judgments may arise from a tribunal's act adjudged to be tainted with grave abuse of discretion amounting to lack or excess of jurisdiction. Such void judgments may also be subject of a collateral attack, which is done through an action asking for a relief other than the declaration of the nullity of the judgment, but requires such a determination if the issues raised are to be definitively settled.
>
> In this case, the Court may consider the *petition for certiorari* lodged by petitioner before the Sandiganbayan as a collateral attack on the validity of not only the assailed Joint Orders dated 10 March 2016 and 05 September 2016, but also of Joint Orders dated 12 February 2015 and 24 July 2015, so as to arrive at a just decision and to have all issues definitively settled.

CAGUIOA, *J., concurring and dissenting opinion*:

1. REMEDIAL LAW; CIVIL PROCEDURE; ADMISSION BY ADVERSE PARTY; REQUEST FOR ADMISSION; A REQUEST FOR ADMISSION MAY REVEAL UNCONTROVERTED FACTS AND NARROW FACTUAL ISSUES.— At its core, Requests for Admission establish facts. Requests for Admission lead to the narrowing of the factual issues under contention. When a party serves to his adversary a request to admit a relevant matter, it presupposes that he already has knowledge of such fact or has possession of the documents sought to be admitted and "merely wishes that his opponent [admit to such relevant matters of fact] or concede [the] genuineness of the document.

. . .

> A Request for Admission properly served and answered by the parties will reveal other undisputed facts of the case and may further narrow and limit the issues raised in the pleadings. The propositions raised in a request and the adversary's admission or denial thereof will also shed light as to the truth or falsity of the allegations of the pleadings (or, when adopted to criminal litigation, the relevant facts surrounding the accusation) and may "unmask as quickly as may be feasible, and give short shrift to, untenable causes of action or defenses and thus avoid waste of time, effort and money."

The establishment of uncontroverted facts and the abbreviation of litigation are goals not unique to civil litigation. Surely, these are paramount interests that the judicial process should be able to extend to the accused, more so where life and liberty are at stake.

2. ID.; ID.; ID.; PURPOSES OF REQUESTS FOR ADMISSION; ADMISSIONS MADE PURSUANT TO A REQUEST CONSTITUTE ADMISSIONS AND WILL NO LONGER REQUIRE PROOF.— Requests for Admission serve two vital purposes during pre-trial — (1) it limits the controversy or issues of the case; and (2) it facilitates proof thereby reducing trial time and costs. Requests for admission is a tool primarily designed to streamline litigation and narrow issues for trial. It is intended to expedite the trial and to relieve the parties of the cost of proving facts that will not be disputed at trial, the truth of which is known to the parties or can be ascertained by reasonable inquiry. Admissions made pursuant to a request constitute admissions for the purpose of the proceeding and thus will no longer require proof during trial.

3. ID.; ID.; ID.; ID.; A REQUEST FOR ADMISSION COMPLEMENTS AND REINFORCES THE OBJECTIVES OF PRE-TRIAL.— The proposition that criminal litigation can do without Requests for Admission since the functions thereof are already fulfilled by the now strengthened criminal pre-trial process is, to my mind, hardly an argument at all. To be sure, no such argument is being made in its civil counterpart where Rule 26 on Requests for Admission and Rule 18 on Pre-Trial have cumulatively been aiding parties in civil suits. No prejudice is caused to the accused if he is allowed the use of a mechanism, like a Request for Admission, to establish facts surrounding the accusations against him over and above those granted during pre-trial. In fact, as I see it, a Request for Admission complements and reinforces the objectives of pre-trial by providing sanctions against a failure to timely answer a request and an improper denial.

4. ID.; ID.; ID.; EXPANDING PRE-TRIAL DISCOVERY PROCEDURES IN CRIMINAL CASES ADDRESSES THE INHERENT IMBALANCE BETWEEN THE STATE AND THE ACCUSED AS TO PRE-TRIAL INVESTIGATIVE

CAPACITY.— [T]he propositions that Rule 26 is inherently incompatible with criminal litigation and runs the risk of violating the constitutional rights of the accused are a function of the Court's restrictive approach to apply Rule 26, as worded, into criminal cases. At this point, I wish to make it clear that I am not advocating for the stock application of the provisions of Rule 26 into criminal procedure. For the benefits of Rule 26 to breathe meaning and significance into criminal litigation, it must be tailor fit to operate within it.

. . . [T]he Court should not lose sight of the inherent imbalance between the State and the accused with the scales tilted against the latter. It is undeniable that the State has more pre-trial investigative capacity both as a matter of law and practicality than defendants do. An individual accused whose life and liberty are at stake, "is but a speck of dust of particle or molecule *vis-à-vis* the vast and overwhelming powers of government; His only guarantee against oppression and tyranny are his fundamental liberties under the Bill of Rights which shield him in times of need." Expanding pre-trial discovery procedures in criminal cases will allow the accused to "have a better chance to meet on more equal terms what the state, at its leisure and without real concern for expense, gathers to convict them." Request for Admission, as a discovery tool, would bridge the gap and aid the accused to achieve this goal.

5. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHTS OF THE ACCUSED; PRESUMPTION OF INNOCENCE; REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; THE PROSECUTION HAS THE BURDEN TO PROVE EACH AND EVERY ELEMENT OF THE CRIME CHARGED.— The cornerstone of all criminal prosecution is the right of the accused to be presumed innocent. The Constitution guarantees that "[i]n all criminal prosecution, the accused shall be presumed innocent until the contrary is proved." And this presumption of innocence is overturned if and only if the prosecution has discharged its duty — that is, proving the guilt of the accused beyond reasonable doubt. The Constitution places upon the prosecution the heavy burden to prove each and every element of the crime charged in the information as to warrant a finding of guilt for that crime or for any other crime necessarily included therein.

It is worth emphasizing that this burden of proof never shifts. The burden of proof remains at all times upon the prosecution to establish the accused's guilt beyond reasonable doubt. Conversely, as to his innocence, the accused has no burden of proof. The accused does not even need to present a single piece of evidence in his defense if the State has not discharged its onus and can simply rely on his right to be presumed innocent. A criminal case thus rises or falls on the strength of the prosecution's own evidence and never on the weakness or even absence of that of the defense.

6. ID.; ID.; ID.; ID.; RIGHT AGAINST SELF-INCRIMINATION; EXTENT THEREOF.— Intimately related to the constitutional right to presumption of innocence is the right against self-incrimination. Section 17, Article III of the Constitution states that "[n]o person shall be compelled to be a witness against himself." Reinforcing this right in criminal prosecution, Section 1, Rule 115 of the Revised Rules of Criminal Procedures provides that "the accused shall be entitled x x x to be exempt from being compelled to be a witness against himself" and "[h]is silence shall not in any manner prejudice him." The Court, in *People v. Ayson*, explained the extent of the right of the accused against self-incrimination:

> The right of the defendant in a criminal case "to be exempt from being a witness against himself" signifies that **he cannot be compelled to testify or produce evidence in the criminal case in which he is the accused, or one of the accused. He cannot be compelled to do so even by *subpoena* or other process or order of the Court.** *. . . He can refuse to take the witness stand, be sworn,* ***answer any question.*** *And, as the law categorically states,* ***"his neglect or refusal to be a witness shall not in any manner prejudice or be used against him."***

7. REMEDIAL LAW; CIVIL PROCEDURE; ADMISSION BY ADVERSE PARTY; REQUEST FOR ADMISSION; A REQUEST FOR ADMISSION DIRECTLY TRAMPLES UPON THE RIGHT OF THE ACCUSED NOT TO BE COMPELLED TO TESTIFY AGAINST HIMSELF.— A Request for Admission served upon the accused directly tramples upon the right of the accused not to be compelled to testify against himself. Rule 26 mandates the party requested to answer

the request to admit within fifteen (15) days from receipt thereof; otherwise all relevant matters stated in the request shall be deemed admitted. This forces the accused to answer a request to admit served upon him at the expense of giving up his right to remain silent.

Equally obtaining is the necessary conclusion that the accused should not be prejudiced should he or she refuse or fail to answer any such requests. No inference of guilt may be drawn against an accused upon his or her failure to make a statement of any sort. If an accused has the right to decline to testify at trial without having any inference of guilt drawn from his failure to go on the witness stand, then with more reason should the accused not be prejudiced by the rules and effects of a Request for Admission.

8. ID.; ID.; ID.; ID.; TO COMPEL THE ACCUSED TO ANSWER A REQUEST FOR ADMISSION PLACES UPON HIM/HER THE BURDEN OF PROVING HIS/HER INNOCENCE.— [C]ompelling the accused to answer a request to admit would place upon him the burden of proving his innocence rather than the prosecution presenting evidence to prove his guilt. When an accused admits the truth of a relevant matter of fact or the genuineness of a relevant document contained in the request, which may relate to the essential elements of the crime charged, the Rules provide that these are considered as admissions by the accused and will no longer require any proof during trial. The prosecution is then relieved of its duty to present evidence of such admitted fact during trial as the accused has been imposed the "burden" to establish such fact for the prosecution's case. Pushing this scenario further, it would not be farfetched for a conviction to rest solely on the results of a request for admission. This goes against the rule that an accused should be convicted on the strength of the evidence presented by the prosecution.

9. ID.; ID.; ID.; ID.; GRANTING THE ACCUSED THE USE OF REQUEST FOR ADMISSION BENEFITS NOT ONLY THE ACCUSED, BUT ALSO THE PROSECUTION.— [W]hile the utility of Request for Admission is undoubted, its translation into criminal litigation necessitates its modification. The accused should have access to this procedural tool in order

to establish facts and narrow factual issues on trial, which may be essential in the preparation of his defense. In recognition, however, of the accused's right against self-incrimination, Requests for Admission cannot be wielded by the prosecution to elicit admissions from the accused.

It may be argued that a one-sided approach may frustrate the State's interest to prosecute criminals because "allowing the accused to subject [the prosecution or any of its witnesses] to a request for admission would be tantamount to shifting to the accused some form of control over the direction of the prosecution," which "would violate the basic principle that criminal actions are prosecuted under the sole discretion and control of the public prosecutor."

However, as I see it, granting the accused the use of Request for Admission does not in any way lessen its objectives or limit its benefits only to the accused. The refining of issues and establishment of the truthfulness or falsity of the facts surrounding the accusation, achieved through the service of a request to admit, may also benefit the prosecution in the form of a guilty plea or an abbreviated litigation through plea-bargaining.

10. ID.; ID.; ID.; ID.; SCOPE OF REQUEST FOR ADMISSION.— Rule 26 does not give the parties the unbridled discretion to include in their request for admission any matter related to the case. The scope of matters that a party may request the adversary to admit is limited by Section 1 of Rule 26 and has been clarified by relevant jurisprudence. Section 1 of Rule 26 clearly states that a Request for Admission should only pertain to (1) the genuineness of relevant documents or (2) the veracity of a relevant matter of fact. Thus, in *Development Bank of the Philippines v. Court of Appeals*, the Court held that matters of law, conclusions, or opinions cannot be subject of a Request for Admission and are therefore not deemed impliedly admitted under Rule 26.

Moreover, in a catena of cases, the Court has clarified that the very subject matter of the complaint or matters which have already been admitted or denied by a party are not proper subjects of a request for admission. The Court explained that "[a] request for admission is not intended to merely reproduce or reiterate

the allegations of the requesting party's pleading but should set forth relevant evidentiary matters of fact, or documents described in and exhibited with the request, whose purpose is to establish said party's cause of action or defense."

11. ID.; ID.; ID.; ID.; THE ESSENTIAL ELEMENTS OF THE CRIME ALLEGED IN THE INFORMATION ARE NOT PROPER MATTERS OF A REQUEST FOR ADMISSION; CASE AT BAR.— As applied to criminal cases, the essential elements of the crime alleged in the Information are not proper matters of a Request for Admission. An accused's request for admission therefore will not deprive the public prosecutor of the discretion and control on what evidence should be presented during trial because the burden to prove each and every element of the crime charged in the information or any other crime necessarily included therein remains with the prosecution. . . . Request for Admission, as a discovery tool, simply aids the parties in establishing undisputed and uncontroverted facts leading to reduced trial time and costs.

Proceeding from the foregoing, I find that respondent Ang's *Request for Admission* does not fall under Rule 26 of the Rules of Court. As aptly pointed out in the *ponencia* and by some of our Colleagues, some of the matters contained in respondent Ang's *Request* intimately relate to the factual allegations of the Information or the essential elements of the crimes charged which the prosecution is obliged to prove, while other matters are mere conclusions and opinions. These matters are not proper subjects of a Request for Admission and therefore cannot be deemed impliedly admitted pursuant to Rule 26.

APPEARANCES OF COUNSEL

Efren L. Dizon for respondent Leila L. Ang.

Jose Augusto J. Salvacion for respondents Vladimir Nieto & Rosalinda Driz.

Glenn P. Tan for respondents Joey Ang & Anson Ang.

D E C I S I O N

CARANDANG, *J.*:

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assails the Decision[2] dated March 1, 2017 and the Resolution[3] dated May 15, 2017 of the Sandiganbayan (SB), which dismissed the petition for *certiorari*[4] and motion for reconsideration[5] filed by petitioner People of the Philippines (People).

Facts of the Case

On April 4, 2005, a Resolution[6] was issued by the Deputy Ombudsman for Luzon (OMB-Luzon) finding probable cause to indict respondents Leila L. Ang, Rosalinda Driz, Joey Ang, Anson Ang, and Vladimir Nieto as follows:

1. Leila Ang for Falsification of Public Documents (*Criminal Case No. 2005-1046*);

2. Leila Ang, Rosalinda Driz, Joey Ang, Anson Ang, and Vladimir Nieto for Malversation of Public Funds under Article 217 of the Revised Penal Code [RPC] (*Criminal Case No. 2005-1047*); and

3. Leila Ang, Rosalinda Driz, Joey Ang, Anson Ang and Vladimir Nieto for Violation of Section 3(e) of RA 3019 ("Anti-Graft and Corrupt Practices Act") (*Criminal Case No. 2005-1048*).[7]

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[1] *Rollo*, pp. 52-91.

[2] Penned by Associate Justice Rafael L. Lagos, with the concurrence of Associate Justices Reynaldo P. Cruz, Maria Theresa V. Mendoza-Arcega, id. at 14-24.

[3] Id. at 47-50.

[4] Records, pp. 1-56.

[5] *Rollo*, pp. 25-44.

[6] Records, pp. 69-82.

[7] Id. at 80.

Respondents Leila Ang and Rosalinda Driz (officers of Development Bank of the Philippines [DBP]-Lucena City), in conspiracy with respondents Joey Ang, Anson Ang and Vladimir Nieto, were found to have defrauded and swindled the DBP in the total amount of ₱4,840,884.00[8] by: (1) the unlawful practice of crediting cash deposits to the current/savings accounts of JEA Construction and Supplies; Cocoland Concrete Products, and Unico Arte without actually depositing cash or with a lesser amount of cash deposited; and (2) concealing the accumulated cash shortage of ₱4,840,884.00 by passing and/or creating a fictitious journal entry in the Bank's General Ledger Transaction File Report for April 20, 1999 denominated as "Due From Other Banks" when there was no such actual cash deposit made. This was the result of the special-audit and fact-finding investigation conducted by the DBP personnel pursuant to DBP SL Memorandum Order No. 99-007 dated May 3, 1999 to look into the alleged Cash-In-Vault shortage at the DBP-Lucena City Branch.[9]

On November 10, 2005, three separate Informations were filed by the OMB-Luzon before the Regional Trial Court (RTC) of Lucena, Branch 53. Said criminal cases were first handled by the Office of the City Prosecutor of Lucena City (OCP-Lucena).

Respondent Leila Ang was then the Document Analyst of DBP-Lucena Branch and the authorized Branch General Ledger System and Ticketing System User. Rosalinda Driz was a Branch Teller of said bank. Joey Ang, Anson Ang, and Vladimir Nieto are owners of JEA Construction and Supplies, Cocoland Concrete Products, and Unico Arte.[10]

On January 5, 2010, the OCP-Lucena received Leila Ang's Amended Accused's Formal Request for Admission by Plaintiff (Request for Admission)[11] dated December 29, 2009, which Leila Ang filed in relation to Criminal Case No. 2005-1048.[12]

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[8] Id.

[9] Id. at 71-73.

[10] Id. at 71.

[11] Id. at 11-19.

[12] Id.

The OCP-Lucena, thereafter, filed an Amended Motion to Expunge from the Records the Defense's Request for Admission by Plaintiff[13] dated January 27, 2010. It claimed that the matters sought for admission are either proper subjects of stipulation during the pre-trial, or matters of evidence which should undergo judicial scrutiny during the trial on the merits.[14]

In a Resolution[15] dated April 13, 2010, the RTC of Lucena, Branch 53 denied Leila Ang's Request for Admission and ordered that the same be expunged from the records. The RTC ruled that the proposed admission can be tackled and be the proper subject of stipulation during the pre-trial conference of the parties.[16]

Leila Ang moved for partial reconsideration[17] and a motion to inhibit[18] the Presiding Judge. Upon inhibition of Judge Rodolfo D. Obnamia, Jr. of Branch 53, the cases were transferred to RTC of Lucena, Branch 56 presided by Judge Dennis R. Pastrana (Judge Pastrana), who granted Leila Ang's motion for partial reconsideration in the Joint Order dated February 12, 2015.[19] The RTC ruled that the prosecution failed to deny or oppose the Request for Admission within the 15-day period from receipt of the documents; hence, the facts stated in the Request for Admission are deemed impliedly admitted by the People pursuant to Section 2,[20] Rule 26 of the Rules of Court.[21]

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[13] Id. at 91-93.

[14] Id. at 92-93.

[15] Id. at 101-103.

[16] Id. at 103.

[17] Id. at 104-110.

[18] Id. at 111-119.

[19] Id. at 124-130; *rollo*, pp. 140-146.

[20] Section 2. *Implied admission*. — Each of the matters of which an admission is requested shall be deemed admitted unless, within a period designated in the request, which shall not be less than fifteen (15) days after service thereof, or within such further time as the court may allow on motion, the party to whom the request is directed files and serves upon the

The OCP-Lucena filed a Motion for Clarification[22] arguing in the main that the parties to whom the Request for Admission was addressed were not served with copies of the same. It was only served to the prosecutor, which does not constitute sufficient compliance with Section 1, Rule 26 of the Rules of Court.[23]

On July 24, 2015, Judge Pastrana issued a Joint Order[24] denying the Motion for Clarification for being filed out of time. He further declared that the People is represented by the City Prosecutor and it is only through the said public prosecutor that the plaintiff, as a party in the present case, can be served or be deemed served, with the subject Request for Admission. Judge Pastrana further ruled that the implied admissions are also "judicial admissions by the plaintiff under Section 4, Rule 129[25] of the Rules of Court."[26]

Subsequently, respondent Leila Ang filed a Manifestation formally adopting in Criminal Case Nos. 2005-1046 and 2005-1047 the People's implied admissions or judicial admissions in Criminal Case No. 2005-1048. The other respondents filed similar manifestations expressing their intent to adopt the implied

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party requesting the admission a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny those matters.

Objections to any request for admission shall be submitted to the court by the party requested within the period for and prior to the filing of his sworn statement as contemplated in the preceding paragraph and his compliance therewith shall be deferred until such objections are resolved, which resolution shall be made as early as practicable.

[21] Id. at 126.

[22] *Rollo*, pp. 147-150.

[23] Id. at 148.

[24] Id. at 159-164.

[25] Section 4. *Judicial admissions*. — An admission, verbal or written, made by the 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.

[26] *Rollo*, pp. 161-163.

admissions/judicial admissions declared in Criminal Case No. 2005-1048 insofar as they are concerned.[27]

On January 14, 2016, Atty. Michael Vernon De Gorio (Atty. De Gorio) formally entered his appearance as special prosecutor pursuant to the Deputization/Authority to Prosecute.[28]

The People also filed Requests for Admission in the three criminal cases served on Leila Ang, Joey Ang, Anson Ang, Vladimir Nieto, and Rosalinda Driz.[29]

Upon motion[30] of the People, the three criminal cases were consolidated as per Order dated May 16, 2016.

Ruling of the Regional Trial Court

In the Joint Order[31] dated March 10, 2016, the RTC denied the People's Requests for Admission stating that the "judicial admissions (of the People) can no longer be varied or contradicted by a contrary evidence much less by a request for admission directly or indirectly amending such judicial admissions." The RTC took judicial notice of the adoption in Criminal Case Nos. 2005-1046 and 2005-1047 by Leila Ang of the implied admissions declared as judicial admissions in Criminal Case No. 2005-1048.[32]

The People moved for reconsideration alleging that under Section 3, Rule 26 of the Rules of Court, any admission by a party pursuant to such request is for the purpose of the pending action only and shall not constitute admission by him for any other purpose nor may the same be used against him in any other proceeding. Further, there was no judicial admission,

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[27] Records, pp. 157-166.

[28] Id. at 168.

[29] Id. at 11-19.

[30] Id. at 170-174.

[31] *Rollo*, pp. 153-154.

[32] Id.

whether verbal or written, made in the course of Criminal Case No. 2005-1048 as required in Section 4, Rule 129 of the Rules of Court.[33]

In the Joint Order[34] dated September 5, 2016, the RTC maintained its ruling that the court's judicial notice made on the People's judicial admissions in Criminal Case No. 2005-1048 as also the People's judicial admissions in the closely related and interwoven Criminal Case Nos. 2005-1046 and 2005-1047, which had been stated in the previous Joint Order dated March 10, 2016. The RTC further ruled that in consolidated cases, as in this case, the evidence in each case effectively becomes the evidence of both, and there ceased to exist any need for the deciding judge to take judicial notice of the evidence presented in each case.[35]

The People filed a Petition for *Certiorari*[36] (Rule 65) before the SB.

Ruling of the Sandiganbayan

In the Decision[37] dated March 1, 2017, the Sandiganbayan dismissed the petition for lack of merit. The SB ruled that no palpable error was committed by the RTC in declaring that the implied admissions are regarded as judicial admissions in Criminal Case Nos. 2005-1046, 1047, and 1048. While it may be true that Section 3, Rule 26 of the Rules of Court limits the effects of an implied admission only for the purpose of the pending action, the consolidation of these cases extended the effect of such implied admission to the other cases.[38] The SB declared that even assuming that the RTC committed mistakes

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[33] Records, pp. 184-188.

[34] *Rollo*, at 155-158.

[35] Id. at 157-158.

[36] Records, pp. 1-56.

[37] Supra note 2.

[38] *Rollo*, p. 20.

in arriving at the conclusions in the questioned orders, these can be taken only as errors of judgment, and not errors of jurisdiction which are correctible by certiorari. The SB also noted infirmities in the petition itself: (1) lacks proper verification; and (2) questionable authority on the part of Atty. De Gorio to file the instant petition and sign the certificate of non-forum shopping — whether he appeared as a "special prosecutor" of the Ombudsman or as counsel "under the supervision and control" of the Provincial or City Prosecutor of Lucena City.[39]

The People moved for reconsideration but it was denied in the Resolution dated May 15, 2017.[40]

Hence, the People filed this Petition for Review on *Certiorari*[41] under Rule 45 invoking the following grounds in support of the petition, *viz.*:

-I-

THE HONORABLE SANDIGANBAYAN GRAVELY ERRED AND DECIDED A QUESTION OF SUBSTANCE IN A MANNER NOT IN ACCORD WITH LAW AND JURISPRUDENCE WHEN: (A) IT CONCLUDED THAT THE DEPUTIZED COUNSEL IS NOT AUTHORIZED TO REPRESENT THE PETITIONER BEFORE THE SANDIGANBAYAN; (B) IT QUESTIONED THE OSP'S NON-FILING OF ENTRY OF APPEARANCE BEFORE SAID COURT.

-II-

THE HONORABLE SANDIGANBAYAN COMMITTED REVERSIBLE ERROR WHEN IT CONCLUDED THAT THE TRIAL COURT DID NOT COMMIT GRAVE ABUSE OF DISCRETION, DESPITE THE FACT THAT THE TRIAL COURT ACTED WITH INDIFFERENT DISREGARD OF CONTROLLING JURISPRUDENCE AND THE PROCEDURAL RULES INVOLVED, AMOUNTING TO AN EVASION OF A POSITIVE DUTY OR A VIRTUAL REFUSAL TO PERFORM A DUTY ENJOINED BY LAW, OR TO ACT AT ALL IN CONTEMPLATION OF LAW.

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[39] Id. at 21-23.

[40] Id. at 25-44.

[41] Id. at 52-91.

-III-

THE SANDIGANBAYAN COMMITTED REVERSIBLE ERROR WHEN IT CONCLUDED THAT THE TRIAL COURT DID NOT COMMIT GRAVE ABUSE OF DISCRETION, DESPITE THE FACT THAT THE TRIAL COURT IGNORED THE CLEAR AND FUNDAMENTAL PRINCIPLES OF LAW, JURISPRUDENCE, AND THE TENETS OF JUSTICE AND FAIR PLAY, WHICH CONDUCT IS TANTAMOUNT TO A WHIMSICAL OR CAPRICIOUS EXERCISE OF JUDICIAL DISCRETION.[42]

The People's Arguments

The People averred that the SB erred when it agreed with the RTC that the consolidation of the three criminal cases extended the effect of the alleged implied admissions in the graft case to the other cases. The intent of the People in moving for the consolidation of the criminal cases was only for purposes of joint trial under Section 22, Rule 119 of the Rules of Court, and not for "actual consolidation" resulting to a merger of evidence found in Section 1, Rule 31 of the Rules of Court. Actual consolidation of Criminal Case Nos. 2005-1046 to 2005-1048 is not proper because: *first*, the accused in all those cases are not the same;[43] and *second*, actual consolidation was not intended by the parties and the RTC as borne by the records of the cases.[44] Thus, the People argued that it was an error for the RTC to take judicial notice of the so-called "implied admissions" in Criminal Case No. 2005-1048 as supposedly "judicial admissions" and according the same omnibus application in all the three cases, supposedly on the basis of the consolidation of the said criminal cases. Further, it asserted that the so-called implied admissions under Section 3, Rule 26 of the Rules of Court in Criminal Case No. 2005-1048 applies to Criminal Case No. 2005-1048 only and shall not constitute an admission "for any other purpose nor may the same be used against the People

[42] Id. at 72-73.

[43] Id. at 84.

[44] Id.

in any other proceedings."[45] Since the implied admissions obtained under Rule 26 are non-verbal and not written, they cannot be considered as judicial admissions under Rule 129 of the Rules of Court. Also, the parties to whom the Requests for Admission were addressed were not furnished nor served with a copy of the same especially since the matters set forth therein specifically inquire into their "personal knowledge" of certain acts, events or transactions (which are obviously not within the personal knowledge of then handling public prosecutor).[46]

In addition, the People claimed that the SB erred when it concluded that Atty. De Gorio, the deputized counsel, is not authorized to represent the People before the SB. The Deputization/Authority to Prosecute issued by the OMB clearly authorizes Atty. Gorio to represent the prosecution in all proceedings relative to the criminal cases in issue, for as long as the proceedings with the RTC have not been concluded. When Atty. Gorio filed the petition for *certiorari* before the SB challenging the adverse orders of the RTC, he was clothed with authority to do so.[47]

Leila Ang's Comment

Leila Ang moved for the outright dismissal of the present petition for being filed out of time. She claimed that the counting of the 15-day period should start on May 17, 2017 when the Solicitor General received a copy of the Resolution dated May 15, 2017 and not from May 30, 2017 only when the said Resolution was allegedly indorsed by the Solicitor General to the Special Prosecutor. The receipt of the Resolution by the Solicitor General is receipt by the People. Hence, when the Special Prosecutor moved for extension on June 14, 2017, there was no more time to extend.[48] Likewise, Leila Ang posited that

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[45] Id. at 85.

[46] Id. at 85-87.

[47] Id. at 73-76.

[48] Id. at 178-180.

there are technical flaws to the instant petition warranting its dismissal, *i.e.*, Atty. De Gorio is not authorized to represent the People, he did not state his Professional Tax Receipt in the past petition, he violated the deputization given to him when he signed the petition for certiorari on his own and without the approval and signature of the Deputy Ombudsman for Luzon and the Provincial Prosecutor or City Prosecutor, among others.[49]

Further, Leila Ang claimed that the modes of discovery especially the Request for Admission under Rule 26 of the Rules of Court also apply to criminal cases pursuant to Section 3, Rule 1 of the Rules of Court.[50] She pointed out that the subjects of the instant petition are the Joint Orders dated March 10, 2016 and September 5, 2016, and not any other order like the Joint Order dated February 12, 2015 and July 24, 2015, which had become final and executory, declaring the People's implied admissions as judicial admissions in Criminal Case No. 2005-1048.[51] As regards the People's assertion of actual consolidation, Leila Ang did not have actual consolidation in mind but consolidation for purposes of joint trial such that only one trial proceeding will be conducted for the three cases. The three criminal cases will not lose their respective identities and will still be decided individually. In fact, the motion for consolidation filed by the People was opposed by Leila Ang. Now, what the People wants is the avoidance of the logical and legal effect of consolidation by erroneously claiming that the consolidation granted by the RTC is a merger or fusion of the three closely related criminal cases into only one case.[52]

Leila Ang also averred that admissions obtained through requests for admissions are also considered judicial admissions. She maintained that the adoption of the People's implied admissions declared as judicial admissions in Criminal Case

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[49] Id. at 182-185.

[50] Id. at 189.

[51] Id. at 190.

[52] Id. at 208-209.

No. 2005-1048 as also the People's implied admissions and judicial admissions in Criminal Case Nos. 2005-1046 and 2005-1047 is allowed. Such taking of judicial notice by the RTC of the People's judicial admissions in, and for purposes of, Criminal Case Nos. 2005-1046 and 2005-1047, is not prohibited and without legal basis.[53]

Respondents Vladimir Nieto, Rosalinda Driz, and Joey Ang filed a Manifestation that they are adopting *in toto* Leila Ang's Comment on the petition as also their own Comment.[54]

Ruling of the Court

The petition is granted.

Before resolving the issues raised in this petition, the Court should determine, first and foremost, whether a Request for Admission under Rule 26 of the Rules of Civil Procedure is applicable in criminal proceedings.

Applicability of Modes of Discovery in Criminal Proceedings

The rules regarding modes of discovery, along with the effects of non-compliance therewith, are outlined in Rules 23 to 29 of the 1997 Rules of Civil Procedure. While the discovery procedures contained in these provisions have been primarily applied to civil proceedings in order to facilitate speedy resolution of cases, there is no specific and express provision in the Rules regarding their applicability in criminal proceedings. Notwithstanding such observation, there have been past members of the Court who opined that some discovery procedures in the Rules of Civil Procedure may also be applied in criminal proceedings.

In *People v. Webb*,[55] former Chief Justices Hilario G. Davide and Reynato S. Puno were both in agreement in their respective separate opinion and concurring opinion that discovery

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[53] Id. at 210-213.

[54] Id. at 236-240.

[55] 371 Phil. 491 (1999).

procedures in the Rules of Civil Procedure could very well be applied in criminal cases. Former Chief Justice Hilario G. Davide pointed out that provisions of Rule 24 may be applied suppletorily to the taking of depositions of witnesses in criminal cases. On the other hand, Former Chief Justice Reynato S. Puno suggested that since "[t]he liberalization of discovery and deposition rules in civil litigation highly satisfied the objective of enhancing the truth-seeking process"[56] and that there is a "growing realization that disclosure, rather than suppression, of relevant materials ordinarily promotes the proper administration of criminal justice,"[57] an expansive interpretation should be made allowing the utilization of civil discovery procedures in criminal cases. He further pointed out rhetorically that "prosecutors should not treat litigation like a game of poker where surprises can be sprung and where gain by guile is not punished."[58]

Note should be made, however, that in said case of *Webb*, the Court, speaking through Associate Justice Consuelo Ynares-Santiago, denied Webb's request to take the oral depositions of five citizens and residents of the United States before the proper consular officer of the Philippines in Washington D.C. and California, as the case may be. In his Motion before the RTC, Webb claimed that said persons, being residents of the United States, may not therefore be compelled by subpoena to testify since the court had no jurisdiction over them. He further averred that the taking of oral depositions of the aforementioned individuals whose testimonies are allegedly 'material and indispensable' to establish his innocence of the crime charged is sanctioned by Section 4, Rule 24 of the Revised Rules of Court. The RTC denied Webb's motion stating that the same is not allowed by Section 4, Rule 24 and Sections 4 and 5 of Rule 119 of the Revised Rules of Court. Webb elevated the case to the CA which granted his petition for *certiorari* (Rule 65) and allowed the taking of deposition of said witnesses before

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[56] Id. at 518. J. Puno, concurring opinion.

[57] Id. at 520.

[58] Id. at 523.

the proper consular officer. The People assailed the Decision of the CA before the Court *via* Rule 45. In granting the petition, the Court ruled that the depositions proposed to be taken from the U.S. based witnesses would merely be corroborative or cumulative in nature. Further, it is pointed out that the defense has already presented at least 57 witnesses and 464 documentary exhibits, many of them of the exact nature as those to be produced or testified to by the proposed foreign deponents. The evidence on the matter sought to be proved in the United States could not possibly add anything substantial to the defense evidence involved.[59]

In the case of *Cuenco Vda. De Manguerra v. Risos*,[60] the Court, through former Associate Justice Antonio Eduardo B. Nachura explained that, while it is true that the Rules of Civil Procedure suppletorily applies in criminal proceedings, the same type of proceedings are primarily governed by the Revised Rules of Criminal Procedure.[61] For this reason, there was no cogent reason to suppletorily apply Rule 23 (Depositions Pending Action) in criminal proceedings.[62]

The case of *Cuenco Vda. De Manguerra*, likewise, involves a motion for the taking of deposition of Concepcion, due to her weak physical condition and old age which limited her freedom of mobility. The criminal case for *estafa* was pending in the RTC of Cebu City and Concepcion was confined at the Makati Medical Center. The RTC granted the motion and the deposition-taking, after several motions for change of venue, was taken at Concepcion's residence. The CA declared void any deposition that may have been taken. The Court affirmed the CA Decision and held that:

It is true that Section 3, Rule 1 of the Rules of Court provides that the rules of civil procedure apply to all actions, civil or criminal,

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[59] Id. at 518.

[60] 585 Phil. 490 (2008).

[61] Id. at 502.

[62] Id.

and special proceedings. In effect, it says that the rules of civil procedure have suppletory application to criminal cases. However, it is likewise true that criminal proceedings are primarily governed by the Revised Rules of Criminal Procedure. Considering that Rule 119 adequately and squarely covers the situation in the instant case, we find no cogent reason to apply Rule 23 suppletorily or otherwise.

To reiterate, the conditional examination of a prosecution witness for the purpose of taking his deposition should be made before the court, or at least before the judge, where the case is pending. Such is the clear mandate of Section 15, Rule 119 of the *Rules*. We find no necessity to depart from, or to relax, this rule. As correctly held by the CA, if the deposition is made elsewhere, the accused may not be able to attend, as when he is under detention. More importantly, this requirement ensures that the judge would be able to observe the witness' deportment to enable him to properly assess his credibility. This is especially true when the witness' testimony is crucial to the prosecution's case.

While we recognize the prosecution's right to preserve its witness' testimony to prove its case, we cannot disregard rules which are designed mainly for the protection of the accused's constitutional rights. The giving of testimony during trial is the general rule. The conditional examination of a witness outside of the trial is only an exception, and as such, calls for a strict construction of the rules.[63]

Eventually, the ruling in *Cuenco Vda. De Manguerra* was later on expounded and clarified by former Associate Justice Arturo D. Brion in an *En Banc* Decision in the case of *Republic v. Sandiganbayan*,[64] where it was held that "depositions are not meant as substitute for the actual testimony in open court of a party or witness."[65] Generally, the deponent must be presented for oral examination in open court at the trial or hearing. This is a requirement of the rules on evidence under Section 1, Rule 132[66] of the Rules of Court. Even if an "opportunity for

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[63] Id.

[64] 678 Phil. 358 (2011).

[65] Id. at 411.

[66] Section 1. *Examination to be done in open court.* — The examination of witnesses presented in a trial or hearing shall be done in open court, and

cross-examination was afforded during the taking of the deposition,"[67] such examination "must normally be accorded a party at the time that the testimonial evidence is actually presented against him [or her] during the trial or hearing of a case."[68] Thus, any deposition taken by the prosecution will be considered hearsay due to the "adverse party's lack of opportunity to cross-examine the out-of-court declarant."[69] In this case, the Court ruled that the Bane deposition is not admissible under the rules of evidence. By way of deposition upon oral examination, Maurice V. Bane's (Bane) deposition was taken before the Consul General Ernesto Castro of the Philippine Embassy in London, England. The Court saw no reason why the deposition could not have been taken while Bane was still here in the Philippines and held that it "can only express dismay on why the petitioner had to let Bane leave the Philippines before taking his deposition despite having knowledge already of the substance of what he would testify on."[70]

Subsequently, Associate Justice Estela M. Perlas-Bernabe in *Go v. People*[71] echoed the ruling in *Cuenco Vda. De Manguerra*, which refused the application of Rule 23 to criminal proceedings. In this case, the private prosecutor filed a motion to take oral deposition of Li Luen Ping, the private complainant, alleging that he was being treated for lung infection at the Cambodia Charity Hospital in Laos, Cambodia and that, upon doctor's advice, he could not make the long travel to the Philippines by reason of ill health. The MeTC granted the motion. Harry L. Go (Go) filed a petition for *certiorari* before the RTC

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under oath or affirmation. Unless the witness is incapacitated to speak, or the question calls for a different mode of answer, the answers of the witness shall be given orally.

[67] *Republic v. Sandiganbayan*, supra note 64 at 411.

[68] Id.

[69] Id. at 413.

[70] Id. at 424.

[71] 691 Phil. 440 (2012).

which declared null and void the MeTC ruling. The prosecution elevated the case to the CA which allowed the taking of oral depositions in Laos, Cambodia. *Via* Rule 45, Go assailed the Decision of the CA before the Court. In the Decision dated July 18, 2012, the Court disallowed the deposition-taking in Laos, Cambodia explaining that the conditional examination of a prosecution witness must take place at no other place than the court where the case is pending. It upheld the right of the accused to public trial and the right to confrontation of witnesses.[72] The Court further observed that Li Luen Ping had managed to attend the initial trial proceedings before the MeTC of Manila on September 9, 2004. At that time, Li Luen Ping's old age and fragile constitution should have been unmistakably apparent and yet the prosecution failed to act with zeal and foresight in having his deposition or testimony taken before the MeTC pursuant to Section 15, Rule 119 of the Revised Rules of Court.[73]

Recently, in the case of *People v. Sergio*,[74] the Court, speaking through Associate Justice Ramon Paul L. Hernando, allowed the taking of deposition through written interrogatories of Mary Jane Sergio (Mary Jane) before our Consular Office and officials in Indonesia pursuant to the Rules of Court and principles of jurisdiction. Mary Jane was convicted of drug trafficking and sentenced to death by the Indonesian Government and is presently confined in a prison facility in Indonesia. The Philippine Government requested the Indonesian Government to suspend the scheduled execution of Mary Jane. It informed the Indonesian Government that the recruiters and traffickers of Mary Jane were already in police custody, and her testimony is vital in the prosecution of Cristina and Julius, her recruiters who were charged with qualified trafficking in person, illegal recruitment, and *estafa*. The Indonesian President granted Mary Jane an indefinite reprieve, to afford her an opportunity to present her

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[72] Id. at 456-457.

[73] Id.

[74] G.R. No. 240053, October 9, 2019.

case against Cristina, Julius, and a certain "Ike." The State then filed a motion to take the deposition upon written interrogatories of Mary Jane before the RTC of Sto. Domingo, Nueva Ecija, Branch 88, which granted the motion. Julius and Cristina assailed the ruling to the CA *via* a petition for *certiorari*. The CA reversed the Resolution of the RTC ratiocinating, among others that, pursuant to Section 15, Rule 119 of the Rules of Court the taking of deposition of Mary Jane or her conditional examination must be made not in Indonesia but before the court where the case is pending. The State elevated the case to the Court which granted the petition. The Court held that Section 15, Rule 119[75] of the Rules of Court is inapplicable in light of the unusual circumstances surrounding the case. Mary Jane's imprisonment in Indonesia and the conditions attached to her reprieve denied her of any opportunity to decide for herself to voluntarily appear and testify before the trial court in Nueva Ecija. The denial by the CA deprived Mary Jane and the People of their right to due process by presenting their case against the accused. By not allowing Mary Jane to testify through written interrogatories, the CA deprived her of the opportunity to prove her innocence before the Indonesian authorities and for the Philippine Government the chance to comply with the conditions set for the grant of reprieve to Mary Jane. Also, there is no violation of the constitutional right to confrontation of a witness since the terms and conditions laid down by the trial court ensure that Cristina and Julius are given ample opportunity to cross-examine Mary Jane by way of written interrogatories.[76] In

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[75] Section 15. *Examination of witness for the prosecution.* — When it satisfactorily appears that a witness for the prosecution is too sick or infirm to appear at the trial as directed by the order of the court, or has to leave the Philippines with no definite date of returning, he may forthwith be conditionally examined before the court where the case is pending. Such examination, in the presence of the accused, or in his absence after reasonable notice to attend the examination has been served on him, shall be conducted in the same manner as an examination at the trial. Failure or refusal of the accused to attend the examination after notice shall be considered a waiver. The statement taken may be admitted in behalf of or against the accused.

[76] The trial court required Cristina and Julius, through their counsel, to file their comment and may raise objections to the proposed questions in

conclusion, the Court suppletorily applied the provisions of Rule 23 of the Rules of Court considering the extraordinary factual circumstances surrounding the case of Mary Jane. While depositions are recognized under Rule 23 of the Rules of Civil Procedure, the Court held that it may be applied suppletorily in criminal proceedings so long as there is compelling reason — in this case, the conditions[77] of Mary Jane's reprieve and her imprisonment in Indonesia.

Despite the aforementioned rulings and opinions regarding the possibility of suppletorily applying the civil discovery procedures, there have been no express discussions regarding the nature and application of **requests for admission** in criminal proceedings, the pivotal matter in this petition.

Request for Admission under Rule 26 of the Rules of Civil Procedure

Rule 26 of the Rules of Civil Procedure, which delves on admission by adverse party, is reproduced in verbatim as follows:

RULE 26

Admission by Adverse Party

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the written interrogatories submitted by the prosecution. The trial court judge shall promptly rule on the objections. Thereafter, only the final questions would be asked by the Consul of the Philippines in Indonesia or his designated representative. The answers of Mary Jane to the propounded questions must be written verbatim, and a transcribed copy of the same would be given to the counsel of the accused who would, in turn, submit their proposed cross interrogatory questions to the prosecution. Should the prosecution raised any objection thereto, the trial court judge must promptly rule on the same, and the final cross interrogatory questions for the deposition of Mary Jane will then be conducted. Mary Jane's answers in the cross interrogatory shall likewise be taken in verbatim and a transcribed copy thereof shall be given to the prosecution.

[77] The Indonesia Government imposed the following conditions in taking the testimony of Mary Jane:

a) Mary Jane shall remain in detention in Yogyakarta, Indonesia;
b) No cameras shall be allowed;
c) The lawyers of the parties shall not be present; and
d) The questions to be propounded to Mary Jane shall be in writing.

Section 1. *Request for admission*. — At any time after issues have been joined, a party may file and serve upon any other party a written request for the admission by the latter of the genuineness of any material and relevant document described in and exhibited with the request or of the truth of any material and relevant matter of fact set forth in the request. Copies of the documents shall be delivered with the request unless copy have already been furnished.

Section 2. *Implied admission*. — Each of the matters of which an admission is requested shall be deemed admitted unless, within a period designated in the request, which shall not be less than fifteen (15) days after service thereof, or within such further time as the court may allow on motion, the party to whom the request is directed files and serves upon the party requesting the admission a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny those matters.
Objections to any request for admission shall be submitted to the court by the party requested within the period for and prior to the filing of his sworn statement as contemplated in the preceding paragraph and his compliance therewith shall be deferred until such objections are resolved, which resolution shall be made as early as practicable.

Section 3. *Effect of admission*. — Any admission made by a party pursuant to such request is for the purpose of the pending action only and shall not constitute an admission by him for any other purpose nor may the same be used against him in any other proceeding.

Section 4. *Withdrawal*. — The court may allow the party making an admission under the Rule, whether express or implied, to withdraw or amend it upon such terms as may be just.

Section 5. *Effect of failure to file and serve request for admission*. — Unless otherwise allowed by the court for good cause shown and to prevent a failure of justice a party who fails to file and serve a request for admission on the adverse party of material and relevant facts at issue which are, or ought to be, within the personal knowledge of the latter, shall not be permitted to present evidence on such facts.

The following inferences can be deduced from the abovementioned provisions:

1) A request for admission may be served *only* on the adverse party;

2) A request for admission may only be done *after* the issues have been joined;
3) The adverse party being served with the request for admission may admit:
   (a) The genuineness of any material and relevant document described in and exhibited with such request; and
   (b) The truth of any material and relevant matter of fact set forth in such request.
4) Copies of the documents requested from the adverse party for admission should be delivered with the request unless copies have already been furnished to the latter in advance;
5) The time to respond to the request for admission shall be at least fifteen days or at a period fixed by the court on motion;
6) The adverse party on whom the request for admission was served is required to file a sworn statement *specifically denying* the matters of which an admission is requested or *setting forth in detail* the reasons why he or she cannot truthfully either admit or deny those matters;
7) Failure of the adverse party, on whom the request was served, to respond shall be *deemed as an admission* to the matter sought to be admitted;
8) Objections to any request for admission shall be submitted to the court by the adverse party requested within the period for and prior to the filing of his sworn statement of denial;
9) Compliance of the request for admission by the adverse party requested shall be deferred until the objection is resolved by the court;
10) The resolution of any objection raised by the party on whom the request for admission was served shall be resolved by the court as early as practicable;
11) Any admission made by the adverse party *may only be used in the case where the request for admission was made* and *not in any other proceeding*; and

12) A party, except for good cause shown and to prevent a failure of justice, cannot anymore be permitted to present any evidence in support of a material and relevant fact within the personal knowledge of the adverse party which should have been the subject of a request for admission.

Under Rule 26, a request for admission may be served on the adverse party at any time after the issues are joined.

In civil cases, there is joinder of issues when the answer makes a specific denial of the material allegations in the complaint or asserts affirmative defenses, which would bar recovery by the plaintiff.[78]

In a criminal case, "there is no need to file a responsive pleading since the accused is, at the onset, presumed innocent, and thus it is the prosecution which has the burden of proving his guilt beyond reasonable doubt."[79] Nonetheless, it is the legal duty of the accused to plead "guilty" or "not guilty" during arraignment, for it is only after his plea had been entered, that the issues are joined and trial can begin. In other words, "**the entry of plea during arraignment x x x signals joinder of issues in a criminal action**."[80]

In *Corpus, Jr. v. Pamular*,[81] We said:

An arraignment, held under the manner required by the rules, grants the accused an opportunity to know the precise charge against him or her for the first time. It is called for so that he or she is "made fully aware of possible loss of freedom, even of his [or her] life, depending on the nature of the crime imputed to him [or her]. At the very least then, he [or she] must be fully informed of why the prosecuting arm of the state is mobilized against him [or her]." Thereafter, the accused is no longer in the dark and can enter his or her plea knowing its consequences. **It is at this stage that issues**

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[78] *Mongao v. Pryce Properties Corp.*, 504 Phil. 472, 488.

[79] *Enrile v. People*, 766 Phil. 75, 332 (2015).

[80] *Cabaero v. Cantos*, 338 Phil. 105 (1997).

[81] *Corpus, Jr. v. Pamular*, G.R. No. 186403, September 5, 2018.

are joined, and without this, further proceedings cannot be held without being void.[82] (Emphasis supplied)

Further, in *People v. Compendio, Jr.*,[83] the Court, in overruling the trial court's appreciation of the aggravating circumstance of recidivism on account of the accused's failure to object to the prosecution's omission to submit proof, instructed:

> Recidivism is an aggravating circumstance under Article 14(9) of the Revised Penal Code whose effects are governed by Article 64 thereof, and is, therefore, an affirmative allegation whenever alleged in the information. **Since the accused-appellant entered a plea of not guilty to such information, there was a joinder of issues not only as to his guilt or innocence, but also as the presence or absence of the modifying circumstances so alleged. The prosecution was thus burdened to establish the guilt of the accused beyond reasonable doubt and the existence of the modifying circumstances**. It was then grave error for the trial court to appreciate against the accused-appellant the aggravating circumstance of recidivism simply because of his failure to object to the prosecution's omission as mentioned earlier.[84] (Emphasis supplied)

Given the foregoing, can requests for admission be applied in criminal cases?

The Court answers in the negative for the following reasons:

I. A Request for Admission Cannot be Served on the Prosecution Because it is Answerable Only by an Adverse Party to Whom such Request was Served

In civil actions, a party is one who: (a) is a natural or juridical person as well as other "entities" recognized by law to be parties;[85] (b) has a material interest in issue to be affected by the decree or judgment of the case (real party-in-interest);[86] and

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[82] Id.

[83] 327 Phil. 888 (1996).

[84] *People v. Compendio, Jr.*, 327 Phil. 888, 906 (1996).

[85] Section 1, Rule 3 of the Rules of Court.

[86] *Ang v. Pacunio*, 763 Phil. 542, 547-548 (2015).

(c) has the necessary qualifications to appear in the case (legal capacity to sue).[87] In criminal actions, however, the only parties are the **State/People of the Philippines** (as represented by the Office of the Solicitor General or agencies authorized to prosecute like the Office of the Ombudsman and the Department of Justice) and the **accused**.

At this juncture, it is imperative to emphasize that the State is the real party-in-interest in criminal proceedings.[88] The private offended party is merely regarded as a witness for the State.[89] It means that the State, being a juridical entity unlike the offended party, cannot be privy to the execution of any document or acquire personal knowledge of past factual events. Unlike natural persons, the State cannot be reasonably thought of as capable of perceiving as well as making known of its perception and, therefore, incapable of being "privy" to the execution of documents or acquiring "personal" knowledge of perceivable facts.[90] Such ability to perceive factual events or to be privy to executions of documents can be reasonably attributed to a natural person (a party or a witness) who can perceive through his/her senses and make known of such perception drawn from mental recollection. Such lack of sensory perception reasonably operates as an inherent inability and incompetence on the part of the State to make an admission of fact.

Moreover, it is already settled in jurisprudence that the express mention of one person, thing, or consequence implies the exclusion of all others.[91] Since Section 1, Rule 26 of the Rules of Civil Procedure only mention of parties serving and answering each other's requests for admission, it cannot be reasonably interpreted to include also witnesses who are incompetent to give admissions that bind the parties to their declarations. In

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[87] *Recreation and Amusement Association of the Philippines v. City of Manila*, 100 Phil. 950 (1957).

[88] *Bumatay v. Bumatay*, 809 Phil. 302 (2017).

[89] *Heirs of Burgos v. Court of Appeals*, 625 Phil. 603, 610-611 (2010).

[90] REVISED RULES OF EVIDENCE, Rule 120, Section 20.

[91] *De La Salle Araneta University v. Bernardo*, 805 Phil. 580, 601 (2017).

other words, witnesses such as the private complainant in criminal proceedings cannot be served with a request for admission and compelled to answer such request. Besides, witnesses in criminal proceedings may be called upon to testify during the trial state and be subjected to the crucible of cross-examination.

II. Criminal Proceedings Present Inherent Limitations for the Use of Rule 26 as a Mode of Discovery

The prosecution is strictly bound to observe the parameters laid out in the Constitution on the right of the accused — one of which is the right against self-incrimination. This right proscribes the use of physical or moral compulsion to extort communications from the accused.[92] If she/he chooses to remain silent, he/she suffers no penalty for such silence.[93] Included in the right against self-incrimination are: (1) to be exempt from being a witness against himself; and (2) to testify as witness in his own behalf.[94] It is accorded to every person who gives evidence, whether voluntary or **under compulsion of subpoena**, in any civil, criminal or administrative proceedings.[95]

If requests for admission are allowed to be utilized in criminal proceedings, "any material and relevant matter of fact" requested by the prosecution from the accused for admission is tantamount to compelling the latter to testify against himself. This is because failure to answer a request for admission will be deemed as an admission of the fact requested to be admitted. More so, Section 2, Rule 26 of the Rules of Civil Procedure requires the party requested to file a sworn statement thereby exposing him/her to the additional peril of being held liable for perjury. Such requirements unduly pressure the accused in making an admission or denial, which is in itself a form of compulsion. Moreover,

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[92] *Dela Cruz v. People*, 739 Phil. 578 (2014).

[93] *People v. Alegre*, 182 Phil. 477 (1979).

[94] *People v. Judge Ayson*, 256 Phil. 671 (1989).

[95] *Rosete v. Lim*, 523 Phil. 498, 511 (2006).

the refusal of the accused to answer to a request for admission may later be taken against him under Section 3 (e), Rule 131 of the Rules on Evidence.

Furthermore, it should be noted that the constitutional privilege against self-incrimination applies to evidence that is *communicative* in essence taken under duress;[96] not where the evidence sought to be excluded is part of object evidence.[97] Obviously, a response to any query is communicative in nature. Being communicative, any compulsion on the part of the accused to answer all the matters in a request for admission clearly violates his or her right against self-incrimination. Any compulsory process which requires the accused to act in way which requires the application of intelligence and attention (as opposed to a mechanical act) will necessarily run counter to such constitutional right.[98]

Relatedly, the rule on admission as a mode of discovery is intended to expedite the trial and to relieve the parties of the costs of proving facts which will not be disputed on trial and the truth of which can be ascertained by reasonable inquiry.[99] The use of requests for admission is not intended to merely reproduce or reiterate the allegations of the requesting party's pleading but it should set forth relevant evidentiary matters of fact described in the request, whose purpose is to establish said party's cause of action or defense.[100] In a criminal proceeding, most of the facts are almost always disputed as the prosecution is tasked in proving all the elements of the crime as well as the complicity or participation of the accused beyond reasonable doubt.[101] Factual matters pertaining to the elements of the crime

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[96] *Herrera v. Alba*, 499 Phil. 185, 205 (2005).

[97] *People v. Yatar*, 472 Phil. 560, 570 (2004).

[98] *Beltran v. Samson*, 53 Phil. 571 (1929).

[99] *Development Bank of the Philippines v. Court of Appeals*, 507 Phil. 312, 321 (2005).

[100] *Limos v. Spouses Odones*, 642 Phil. 438, 448 (2010).

[101] *People v. Maraorao*, 688 Phil. 458, 466 (2012).

as well as the complicity or participation of the accused are obviously determinative of the outcome of the case.

If requests for admission should be made applicable to criminal proceedings, it is virtually certain that an accused who had already entered a plea of "not guilty" would continue to deny the relevant matters sought by the prosecution to be admitted in order to secure an acquittal. Moreover, matters which tend to establish the guilt or innocence of an accused (*i.e.*, participation, proof of an element of the offense, etc.) are necessarily disputed in nature. Even if the Court were to carve out an exception by permitting only those matters which have no relevant or material relations to the offense to be discoverable through requests for admission, the same discovery facility would serve no practical and useful purpose tending only to delay the proceedings. Therefore, it would be pointless on the part of the prosecution to require an accused to admit to matters not relevant or material to the offense as the same would be vented out during the pre-trial anyway.

Besides, the facilities of a pre-trial — especially that provided for in Section 1 (b), Rule 118 of the Rules on Criminal Procedure regarding stipulation of facts — are most likely serve the same purpose without falling into the danger of violating fundamental rights such as the right against self-incrimination. During pre-trial, the accused (and even the prosecution) is free to stipulate the facts that he or she is ***willing*** to admit or place beyond the realm of dispute.

Application of the Foregoing Principles to the Instant Case

With the above discussions, it is evident that Leila Ang's Request for Admission filed in Criminal Case No. 2005-1048 should have been denied by the RTC. Consequently, there are no judicial admissions to be adopted in Criminal Case Nos. 2005-1046 and 2005-1047. Request for admission under Rule 26 of the Rules of Civil Procedure is not applicable in criminal proceedings. There is, therefore, no need for the Court to dwell on the other issues raised by the People in this petition, *i.e.*,

effect of actual consolidation; service of the request for admission to the parties.

Leila Ang argued that the Joint Orders dated February 12, 2015 and July 24, 2015 of the RTC, which declared that the facts stated in her Request for Admission are deemed impliedly admitted, and that such implied admissions are also "judicial admissions" by the People, had become final, executory and immutable, and therefore it cannot be annulled, set aside or varied anymore. The Court disagrees.

The Joint Orders are void having been issued with grave abuse of discretion. A void judgment is no judgment at all in legal contemplation.[102] It has no legal or binding effect or efficacy for any purpose or at any place. It cannot affect, impair or create rights. It is not entitled to enforcement and is, ordinarily, no protection to those who seek to enforce. In other words, a void judgment is regarded as a nullity, and the situation is the same as it would be if there was no judgment.[103]

In the case of *Air Transportation Office v. Court of Appeals*,[104] the Court explained that grave abuse of discretion exists when the act is: (1) done contrary to the Constitution, the law or jurisprudence; or (2) executed whimsically, capriciously, or arbitrarily out of malice, ill will, or personal bias. Patent violation of the Rules of Court merited a finding that there was grave abuse of discretion.[105] As in this case, it was grave abuse on the part of the RTC to have allowed the Request for Admission under Rule 26 of the Rules of Civil Procedure in criminal proceedings, disregarding the rules and established jurisprudence. Hence, contrary to the arguments of Leila Ang, the Joint Orders did not become final, executory, and immutable.

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[102] *Imperial v. Armes*, 804 Phil. 439 (2017).

[103] Id. See also *Canero v. University of the Philippines*, 481 Phil. 249 (2004).

[104] 353 Phil. 686 (1998).

[105] Id.

The Court explained above that there are inherent limitations in availing Rule 26 as a mode of discovery in criminal proceedings taking into account the constitutional rights of the accused, one of which is the right against self-incrimination. Any material and relevant matter of fact requested by the prosecution from the accused for admission is tantamount to compelling the latter to testify against himself.

Note should be made that in this case, it was the accused, Leila Ang, who filed for Request for Admission. It was not initiated by the prosecution. Thus, it may be argued that there is no violation of the right to self-incrimination as it was the accused who requested for admission.

Pertinent portions of Leila Ang's Request for Admission read:

x x x x

GREETINGS:

ACCUSED LEILA L. ANG, by counsel, respectfully request the plaintiff People of the Philippines (with the attention of complainant Development Bank of the Philippines [DBP], and individuals Abelardo L. Monarquia, Eugenio S. Dela Cruz, Arlene E. Calimlim, Eduardo Z. Rivera, and Norma P. Leonardo as the public officers or DBP personnel who supposedly conducted a special audit or fact-finding investigation pursuant to DBP SL Memorandum Order No. 99-007 dated May 3, 1999 to look into the alleged Cash-in-Vault (CIV) shortage at the DBP-Lucena City Branch in the total amount of ₱19,337,100.94 and executed Joint-Affidavit dated December 27, 1999 [notarized on January 17, 2000] which was submitted by the DBP to the Ombudsman and became the basis for the filing of the instant case at his Honorable Court), to make the following admissions under oath (through or assisted by the City Prosecutor of Lucena City), for purposes of the instant case only, which must be served to the said Accused (Leila L. Ang), through the undersigned counsel, within fifteen (15) days from notice or service hereof pursuant to Rule 26 of the Rules of Court, to wit:

THAT UNLESS THE PLAINTIFF'S INDIVIDUAL DENIALS ARE ACCOMPANIED BY COMPETENT DOCUMENTARY PROOF, THE FOLLOWING STATEMENTS MATERIAL AND RELEVANT TO THE INSTANT CASE ARE ABSOLUTELY TRUE:

1) That none of the DBP personnel (Monarquia, Dela Cruz, Calimlim, Rivera and Leonardo) who as a (*sic*) Special Investigative Team or Fact-Finding Committee conducted an audit or investigation on the alleged Cash-in-Vault shortage of ₱19,337,100.94 was physically present or assigned to work at the Cash Division and Accounting Division of the DBP-Lucena City Branch from April 24, 1997 to April 30, 1999 and not one of them saw, witnessed, heard or observed or had personal knowledge of the transactions (especially deposits, withdrawals, encashments, and recording or accounting thereof) and the behavior or actuations of the various personnel in those two (2) Divisions during the aforesaid period.

x x x x

3) That none of the Chairman/Team Leader and members of the Special Investigative Team or Fact-Finding Committee created under SL Memorandum Order No. 99-007 dated May 3, 1999, whether individually or collectively, had personally and actually conducted an actual audit or examination of the Cash-in-Vault (CIV) account of the DBP-Lucena City Branch as of April 16, 1999, or as of April 17, 1999, neither had the said Team or Committee conducted an audit or examination of the Cash-in-Vault (CIV) account on May 3, 1999 nor on May 4, 1999, nor on any date thereafter.

x x x x

6) That in the supposed special investigation conducted on the Cash-in-Vault account. The Special Investigative Team/Fact-Finding Committee of Monarquia, et al. did not find any documentary evidence showing that Accused Leila Ang had personal transactions, whether directly or indirectly (be they involved cash or personal checks), with the Cashier (Victor Omana) or Acting Assistant Cashier (Edelyn Tarranco) of the DBP-Lucena during the period from April 20, 1997 to April 29, 1999.

7) That the members of the aforesaid Special Investigative Team/ Fact-Finding Committee had not heard or seen, and it has no actual documentary evidence showing, that Accused Leila Ang illegally influenced, induced, and persuaded co-accused Rosalinda Driz to credit cash deposits to the Current/Savings Accounts (CASA) of JEA Construction and Supplies, Cocoland Concrete Products, and Unico Arte. Even if there was no cash equivalent to, or even if the cash deposited is lesser than, what is started in the deposit slip/s.

8) That the Special Investigative Team/Fact-Finding Committee of Monarquia, et al. did not actually see or observe the alleged act of funding and encashment of "inward clearing checks" supposedly issued and transacted by Accused Leila Ang, Joey Ang, Anson Ang and Vladimir Nieto under CASA accounts of JEA Construction and Supplies, Cocoland Concrete Products, and Unico Arte, respectively.

x x x x

10) That that Special Investigative Team/Fact-Finding Committee stated above has no documentary proof of the act that Accused Leila Ang actually manipulated other DBP personnel or other persons in order to commit any illegal transaction.

11) That Accused Leila Ang was not, and had never been an accountable officer of the DBP-Lucena City Branch from April 20, 1997 to April 29, 1999 and therefore she could not have incurred any cash shortage because she had no cash accountability in her name whatsoever.

x x x x

23) That the Special Investigative Team/Fact-Finding Committee concerned did not verify nor had seen nor had found any record or document showing that Accused Leila Ang ever signed or acknowledged the amount of ₱4,840,884.00 as her obligation, accountability, shortage or amount taken or received from co-accused Driz.

x x x x

28) That assuming arguendo that co-accused Rosalinda Driz was imputed a cash shortage in the amount of ₱4,840,884.00 in her cash accountability as DBP Bank Teller, the Special Investigative Team/ Fact-Finding Committee however does not believe that the said amount was taken, appropriated, misappropriated or malversed by Accused Leila Ang since the former (co-accused Driz) never had actual and official custody and control of the said funds of the DBP.

29) That the Special Investigative Team/Fact-Finding Committee does not believe that co-accused Victor Omana did not benefit fully from his ₱19,337,100.94 Cash-in-Vault shortage because the said amount was actually in his (Omana's) official custody and control as DBP Branch Cashier from April 20, 1997 to April 6, 1999 and on certain dates prior or subsequent thereto.

x x x x

32) That the DBP officers primarily accountable and responsible for the Cash-in-Vault account and solely liable for any discrepancy therein are the DBP Branch Cashier (Omana) and his Acting Assistant Cashier (Tarranco) since that is their cash accountability and the said DBP personnel (Omana and Tarranco) were the only ones who had actual access to the bank vault or to the cash, records, and other items kept therein.

x x x x

37) That an erroneous journal entry can be easily corrected by the use of correcting entry, reversing entry, or adjusting entry which was done in the case of the alleged false journal entry involving the account "Due From Other Banks" with an amount of ₱9,550,000.00.

x x x x

47) That co-accused Rosalinda Driz was assigned at the Cash Division during the period from April 16, 1997 to April 20, 1999 and therefore she was not under the administrative supervision of Accused Leila Ang who was assigned at the Accounting Department of DBP-Lucena City Branch and that the latter (Leila Ang) had no legal authority or moral ascendancy over the former and that the Special Investigative Team/Fact-Finding Committee found no competent evidence whatsoever to support the allegation that Accused Leila Ang induced, influenced, or persuaded anyone to commit the crime subject of the instant case.

48) That Audits or investigations conducted by the DBP Internal Audit Group and Regional Management Teams between April 20, 1997 and April 29, 1999 or even those audits performed by the COA resident auditors concerned had reported no cash shortage, nor did their respective report disclose any check from Accused Leila Ang and her relatives (and family & friend) during those cash counts/ audits.

49) That there is no documentary evidence whatsoever that Accused Leila Ang actually receive the amount of ₱4,840,884.00 from co-accused Rosalinda Driz nor any demand letter from anyone to pay such amount.

50) That the Annual Audit Reports (AAR's) of COA for DBP-Lucena City Branch for calendar years 1997, 1998 and 1999 do not show

that Accused Leila Ang had been Involved in any anomaly and that there is no audit finding in those AAR's that a check from her or her relatives and family friend was ever used to cover up the alleged cash shortage of any of the accountable officers (DBP Cashier, Acting Assistant Cashier, and Bank Tellers) of DBP-Lucena City Branch from April 16, 1997 to April 29, 1999.

51) That the Report (including all cash counts sheets) of the Internal Audit Group (IAG) of DBP Head Office that conducted internal audit at DBP-Lucena City Branch last April 19 to 23, 1999 showed or proved that at the time of cash count by the IAG Team during its audit on those dates (April 19 to 23, 1999), Accused Leila Ang had no cash shortage or that no check from her or her relatives as well as family friend was found or discovered to have been used to cover up anyone's cash shortage.

x x x x x

59) That based on the above facts (nos. 1 to 58), there is no sufficient evidence to charge much less to convict Accused Leila Ang and other co-accused in the instant case.

60) That Accused Leila Ang voluntarily surrendered to the court and that she acted in good faith in her work to dispel malice on her part in the instant case both of which facts, among others, must be appreciated as mitigating circumstances in her favor.

x x x x[106]

All the matters set forth in the Request for Admission are defenses of Leila Ang. Almost all of the paragraphs are worded in the negative, with the end-goal of showing that Leila Ang has no participation or complicity in the crime. These matters cannot be the subject of admission by the prosecution but must be duly proven by Leila Ang as a matter of defense in the trial proceedings.

Similarly, this Request for Admission contains matters that show the elements of the crime which the prosecution has the burden to prove to establish the guilt of the accused beyond reasonable doubt. It includes factual circumstances that should

[106] Records, pp. 11-19.

be presented by the prosecution during the trial of the case. Settled is the principle that a criminal action is prosecuted under the direction and control of the prosecutor. It cannot be the other way around. Accused cannot dictate or control the prosecution on how it will prove its case.

Be it noted that the matters stated in Leila Ang's Request for Admission were deemed impliedly admitted by the People because of the latter's failure to deny or oppose the Request of Admission within the 15-day period pursuant to Section 2, Rule 26 of the Civil Procedure. If the Court allows the implied admissions regarded also as judicial admissions by the RTC, then it will have the effect of closing the case for the prosecution. The inescapable conclusion would be the acquittal of the accused, even before the trial begun.

This cannot be done.

Atty. De Gorio has Authority to Represent the People before the Sandiganbayan

In the assailed Decision, the SB ruled that it is not clear whether Atty. De Gorio has authority to file the petition either by himself or as special prosecutor deputized by the Ombudsman, and to sign the attestation in the certificate of non-forum shopping without express authority from the DBP as the aggrieved party. Also, the Deputization/Authority to Prosecute[107] in favor of Atty. De Gorio has a time limit, in that the deputization/authorization shall only be in force and effect during the proceedings in the trial court.

The criminal cases were first handled by the Office of the City Prosecutor of Lucena City. On January 14, 2016, Atty. De Gorio, Regional Lawyer, Regional Marketing Center (RMC), Southern-Tagalog-Lucena City, DBP, was deputized by the OMB to act as special prosecutor in assisting the Provincial Prosecutor's Office of Quezon and/or the City Prosecutor's Office of Lucena City.

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[107] Id. at 151-152.

The Deputization/Authority to Prosecute reads:

x x x x

In view of the technical nature of the case and voluminous records involved, Deputization or Authority is hereby given to **ATTY. MICHAEL VERNON DE GORIO** x x x

x x x x

It shall be understood that Atty. Michael Vernon De Gorio shall be under the direct control and supervision of the Office of the Deputy Ombudsman for Luzon (OMB-Luzon), assisted by the Provincial Prosecution Office of Quezon, or the City prosecution Office of Lucena city, as the case may be.

This deputization/authorization shall continue to be in force and effect until the termination of the proceedings with the trial courts, unless sooner revoked or amended by this Office.

x x x x[108]

It was an error for the SB to rule that Atty. De Gorio's deputization/authorization is limited in the proceedings before the RTC and that the petition for certiorari filed before the SB is beyond the "proceedings with the trial court." The interpretation is too restrictive. A petition for certiorari under Rule 65 assailing the Decision of the RTC is still part of the proceedings of the criminal cases in issue. For as long as the proceedings in the RTC have not been terminated, Atty. De Gorio's deputization/ authorization shall continue to be in force and effect. Hence, when he filed the petition for certiorari before the SB, Atty. De Gorio was duly deputized to act as a special prosecutor pursuant to Section 31 of Republic Act No. 6770, otherwise known as the Ombudsman Act of 1989. He signed the petition on behalf of the People, in his capacity as a deputized special prosecutor of the OMB.

WHEREFORE, premises considered, the Decision dated March 1, 2017 and the Resolution dated May 15, 2017 of the Sandiganbayan are **REVERSED** and **SET ASIDE**. The Joint Orders dated February 12, 2015, July 24, 2015, March 10, 2016,

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[108] Id.

and September 5, 2016 of the Regional Trial Court are declared **VOID**. The Regional Trial Court of Lucena City, Branch 56, is hereby **DIRECTED** to continue the trial proceedings in Criminal Case Nos. 2005-1046, 2005-1047, and 2005-1048 with reasonable dispatch.

SO ORDERED.

Peralta, C.J., Gesmundo, Lazaro-Javier, Lopez, Delos Santos, and *Gaerlan, JJ.*, concur.

Perlas-Bernabe, Leonen, Inting, and *Zalameda, JJ.*, see separate concurring opinions.

Caguioa, *J.*, see concurring and dissenting opinion.

Hernando, *J.*, joins the concurring and dissenting opinion of *J.* Caguioa.

Baltazar-Padilla, J., on leave.

CONCURRING OPINION

PERLAS-BERNABE, *J.*:

I concur with the *ponencia* in setting aside the rulings of the *Sandiganbayan* which, *inter alia*, recognized the validity of the Request for Admission filed by the accused respondent Leila L. Ang. As the *ponencia* eloquently explained, request for admission, as a mode of discovery provided under Rule 26 of the Rules of Civil Procedure, cannot be applied to criminal proceedings, considering its inherent limitations to the nature of said proceedings.[1] Due to the novelty of the issue, I, however, take this opportunity to briefly convey my thoughts on the subject.

Because of the essential variances between civil and criminal actions, our Rules of Civil Procedure is treated as a separate and distinct body of procedural rules from our Rules of Criminal Procedure, although it is recognized that the former may suppletorily apply in the absence of a specific rule of criminal procedure stating otherwise. The general provisions of the Rules of Court define a civil action as one by which a party sues

[1] See *ponencia,* pp. 8-12.

another for the enforcement or protection of a right, or the prevention or redress of a wrong, whereas a criminal action is one by which the State prosecutes a person for an act or omission punishable by law.[2]

The suppletory application of the Rules of Civil Procedure to a criminal proceeding, however, presupposes that the procedure to be suppletorily applied does not go against substantive principles inherent to criminal proceedings. This stems from the basic consideration that adjective law only sets out the procedural framework in which substantive rights and obligations are to be litigated. The distinction between substantive law and adjective law was explained in *Primicias v. Ocampo*,[3] wherein it was also stated that "[r]emedial measures are but implementary in character and they must be appended to the portion of the law to which they belong":[4]

> Substantive law is that part of the law which creates, defines and regulates rights, or which regulates the right and duties which give rise to a cause of action; that part of the law which courts are established to administer; as opposed to adjective or remedial law, which prescribes the method of enforcing rights or obtain [*sic*] redress for their invasions x x x.[5]

Being "implementary" in character, procedural law cannot trump fundamental premises of substantive law. The well-settled rule is that "**a substantive law cannot be amended by a procedural rule**."[6] Moreover, by its common acceptation, the word "suppletory" means "**supplying deficiencies**";[7] hence, it is not tantamount to modifying or amending a rule.

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[2] Rule 1, RULES OF COURT.

[3] 93 Phil. 446 (1953).

[4] Id. at 454.

[5] Id. at 452; citations omitted.

[6] *Boston Equity Resources, Inc. v. Court of Appeals*, 711 Phil. 451, 473 (2013); emphasis supplied.

[7] <https://www.merriam-webster.com/dictionary/suppletory#:~:text=%2D%CB%8Ct%C8%AFr%2D%C4%93%20%5C,Definition%20of%24suppletory,rules%20suppletory%20to%20the%20contract> (last visited July 22, 2020).

The issue at hand is whether Rule 26 on requests for admission to an adverse party may suppletorily apply to criminal proceedings.

At the onset, it must be pointed out that it is no coincidence that Rule 26, as well as the other modes of discovery under Rule 23 (Depositions Pending Appeal) together with its subsets, Rule 24 (Depositions Before Action or Pending Appeal) and Rule 25 (Interrogatories to Parties), and the other modes found in Rule 27 (Production or Inspection of Documents or Things) and Rule 28 (Physical and Mental Examination of Persons), are placed under the Rules of Civil Procedure, **and not under the Rules of Criminal Procedure, which for its part, has its own in-built discovery procedures**.

Specifically, under the Revised Rules of Criminal Procedure, Sections 12, 13, and 15, Rule 119 set out the rules on conditional examination of witnesses (for the defense and the prosecution) before trial which are **similar but not identical** to depositions under Rules 23 to 25. The same observations may be made with Section 10, Rule 116 on the production or inspection of material evidence in possession of prosecution (which is akin to a motion for production or inspection of documents or things under Rule 27), as well as Section 11, Rule 116 on motions to suspend arraignment due to mental examination of the accused (which is comparable to the physical and mental examination of persons under Rule 28).

However, it must be pointed out that despite some *prima facie* similarities to certain modes of discovery in civil procedure, **the actual parameters for the modes of discovery under the Rules of Criminal Procedure still primarily operate**. This primacy was demonstrated in the case of *Go v. People*,[8] wherein the Court held that Rule 23 cannot be made to suppletorily apply in criminal cases since the provisions of Rule 119 adequately covered the situation, and more significantly, the examination of a witness applying Rule 23 violated the rights of the accused to a public trial and to confront his witnesses face to face.[9]

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[8] 691 Phil. 440 (2012).

[9] See id. at 452.

Unlike the foregoing, it is glaring that there is no mode of discovery under the Rules of Criminal Procedure that is somewhat similar to **Rule 26 on requests for admission**. In my opinion, this procedural lacuna in the Rules of Criminal Procedure evinces the fact that **this particular mode of discovery is conceptually incompatible with some fundamental premises obtaining in the prosecution of criminal cases**. Thus, with the preliminary discussions on substantive and adjective law in mind, these modes of discovery cannot apply suppletorily. I further explain.

For reference, Rule 26 reads in full:

RULE 26

Admission by Adverse Party

Section 1. *Request for admission*. — At any time after issues have been joined, a party may file and serve upon any other party a written request for the admission by the latter of the genuineness of any material and relevant document described in and exhibited with the request or of the truth of any material and relevant matter of fact set forth in the request. Copies of the documents shall be delivered with the request unless copies have already been furnished.

Section 2. *Implied admission*. — Each of the matters of which an admission is requested shall be deemed admitted unless, within a period designated in the request, which shall not be less than fifteen (15) days after service thereof, or within such further time as the court may allow on motion, the party to whom the request is directed files and serves upon the party requesting the admission a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny those matters.

Objections to any request for admission shall be submitted to the court by the party requested within the period for and prior to the filing of his sworn statement as contemplated in the preceding paragraph and his compliance therewith shall be deferred until such objections are resolved, which resolution shall be made as early as practicable.

Section 3. *Effect of admission*. — Any admission made by a party pursuant to such request is for the purpose of the pending action only and shall not constitute an admission by him for any other purpose nor may the same be used against him in any other proceeding.

Section 4. *Withdrawal.* — The court may allow the party making an admission under the Rule, whether express or implied, to withdraw or amend it upon such terms as may be just.

Section 5. *Effect of failure to file and serve request for admission.* — Unless otherwise allowed by the court for good cause shown and to prevent a failure of justice a party who fails to file and serve a request for admission on the adverse party of material and relevant facts at issue which are, or ought to be, within the personal knowledge of the latter, shall not be permitted to present evidence on such facts.

By their nature, "[t]he various modes or instruments of discovery are meant to serve (1) as a device, along with the pre-trial hearing x x x, to narrow and clarify the basic issues between the parties, and (2) as a device for ascertaining the facts relative to those issues. The evident purpose is x x x to enable the parties, consistent with recognized privileges, to obtain the fullest possible knowledge of the issues and facts before x x x trials and thus prevent that said trials are carried on in the dark."[10]

A request for admission under Rule 26 is a mode of discovery meant to "expedite trial and relieve parties of the costs of proving facts which will not be disputed on trial and the truth of which can be ascertained by reasonable inquiry."[11] Case law, however, states that parties cannot use this tool to reproduce or reiterate allegations in one's pleadings, and should instead tackle new evidentiary matters of fact which will help establish a party's cause of action or defense.[12]

The defining feature of a request for admission is the provision which states that every matter raised in a request for admission that is not specifically denied shall be deemed admitted:

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[10] See *Malonzo v. Sucere Foods Corp.*, G.R. No. 240773, February 5, 2020.

[11] *Lañada v. Court of Appeals* and *Nestle Phils. v. Court of Appeals*, 426 Phil. 249, 261 (2002), citing *Concrete Aggregates Corporation v. Court of Appeals*, 334 Phil. 77 (1997).

[12] See *Limos v. Spouses Odones*, 642 Phil. 438, 448 (2010).

Section 2. *Implied admission*. — Each of the matters of which an admission is requested **shall be deemed admitted** unless, within a period designated in the request, which shall not be less than fifteen (15) days after service thereof, or within such further time as the court may allow on motion, the party to whom the request is directed files and serves upon the party requesting the admission a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny those matters.

Objections to any request for admission shall be submitted to the court by the party requested within the period for and prior to the filing of his sworn statement as contemplated in the preceding paragraph and his compliance therewith shall be deferred until such objections are resolved, which resolution shall be made as early as practicable. (Emphasis supplied)

This provision on implied admissions gives "teeth" to the rule, allowing it to be an effective and expeditious mode of discovery. However, right off the bat, it is apparent that this provision cannot be made to apply in criminal proceedings without running afoul of an accused's right against self-incrimination, also known as his right not to be compelled to be a witness against himself.

To be sure, in civil cases, a party may only raise his right against self-incrimination if a particularly incriminatory question is propounded to him. He cannot altogether refuse to testify or disregard a subpoena by claiming that his right against self-incrimination will be violated. It is only when a specific question is addressed to him which may incriminate him for some offense that he may refuse to answer on the strength of the constitutional guaranty.[13] **However, in criminal cases, the accused can refuse to take the stand altogether as he "occupies a different tier of protection from an ordinary witness."**[14] **He is not even susceptible to a subpoena issued by the court itself**. As discussed in *People v. Ayson*:[15]

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[13] *People v. Ayson*, 256 Phil. 671 (1989).

[14] Id. at 685; emphasis supplied.

[15] Id.

An accused "occupies a different tier of protection from an ordinary witness." Under the Rules of Court, in all criminal prosecutions the defendant is entitled among others —

1) to be exempt from being a witness against himself, and

2) to testify as witness in his own behalf; but if he offers himself as a witness he may be cross-examined as any other witness; however, his neglect or refusal to be a witness shall not in any manner prejudice or be used against him.

The right of the defendant in a criminal case "to be exempt from being a witness against himself" signifies that he cannot be compelled to testify or produce evidence in the criminal case in which he is the accused, or one of the accused. He cannot be compelled to do so even by subpoena or other process or order of the Court. He cannot be required to be a witness either for the prosecution, or for a co-accused, or even for himself. In other words — unlike an ordinary witness (or a party in a civil action) who may be compelled to testify by subpoena, having only the right to refuse to answer a particular incriminatory question at the time it is put to him — the defendant in a criminal action can refuse to testify altogether. **He can refuse to take the witness stand, be sworn, answer any question.** x x x[16] (Emphasis and underscoring supplied.)

By the mere allowance of a request for admission, the accused is effectively forced upon the proverbial "stand" which, by and of itself, contravenes the right against self-incrimination as recognized in criminal cases. Further, on a practical level, since an accused has the right **to altogether refuse to entertain a request for admission**, allowing such request would then just result into a circuitous, if not ceremonial, attempt at futility. This situation negates the inherent expediency purpose of our modes of discovery.

In addition, a request for admission effectively denies the accused the right to confront the witnesses against him during public trial. As case law states, the right of confrontation is held to apply specifically to criminal proceedings and has a "twofold purpose: (1) to afford the accused an opportunity to

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[16] Id. at 685-686.

test the testimony of witnesses by cross-examination, and (2) to allow the judge to observe the deportment of witnesses."[17] In a request for admission, the accused will be asked to admit "the genuineness of any material and relevant document described in and exhibited with the request or of the truth of any material and relevant matter of fact set forth in the request."[18] The authentication of documents and any material fact that go into a crime's elements **ought to be established through the witnesses or other evidence presented by the State**. But since these are to be elicited through a mere paper request and not through actual witnesses or evidence presented during trial, the accused has no one to confront; consequently, there is likewise no deportment to be observed by the judge in this respect.

Overall, the request for admission, as a mode of discovery, contravenes the age-old rule that "**[a] criminal case rises or falls on the strength of the prosecution's case**."[19] Notably, this rule is no simple procedural axiom, but rather one that is founded in the constitutional presumption of innocence. In *People v. Rodrigo*:[20]

> This principle, a right of the accused, is enshrined no less in our Constitution. It embodies as well a duty on the part of the court to ascertain that no person is made to answer for a crime unless his guilt is proven beyond reasonable doubt. Its primary consequence in our criminal justice system is the basic rule that the prosecution carries the burden of overcoming the presumption through proof of guilt of the accused beyond reasonable doubt. **Thus, a criminal case rises or falls on the strength of the prosecution's case, not on the weakness of the defense**. Once the prosecution overcomes the presumption of innocence by proving the elements of the crime and the identity of the accused as perpetrator beyond reasonable doubt, the burden of evidence then shifts to the defense which shall then test the strength of the prosecution's case either by showing that no

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[17] *Go v. People*, supra note 8, at 454.

[18] RULES OF CIVIL PROCEDURE, Rule 26, Section 1.

[19] Supplement Opinion of retired Associate Justice Arturo D. Brion in *Lejano v. People*, 652 Phil. 512, 707 (2010); emphasis supplied.

[20] 586 Phil. 515 (2008).

crime was in fact committed or that the accused could not have committed or did not commit the imputed crime, or at the very least, by casting doubt on the guilt of the accused. We point all these out as they are the principles and dynamics that shall guide and structure the review of this case.[21] (Emphasis supplied)

Needless to state, this presumption only applies to criminal cases and not to civil cases. The non-existence of this presumption in civil cases, as well as the other rights of the accused as above-mentioned, therefore renders permissible a request for admission in civil, and not criminal, cases.

Further, not only do the parameters of a request for admission go against the substantive rights of the accused, it is also incompatible with certain substantive precepts of criminal prosecution wherein the State is the one which receives the admission request.

It is hornbook doctrine that "[i]n criminal cases, **the offended party is the State**, and 'the purpose of the criminal action is to determine the penal liability of the accused for having outraged the State with his crime. . . . In this sense, the parties to the action are the People of the Philippines and the accused. The offended party is regarded merely as a witness for the state.' As such, **the Rules dictate that criminal actions are to be prosecuted under the direction and control of the public prosecutor**."[22]

Under Rule 26, a request for admission is served upon another party. Therefore, if the accused avails of this mode of discovery, he or she necessarily would have to serve his or her request upon the State. The State is considered as a juridical person and, insofar as criminal actions are concerned, is represented by the public prosecutor. While it is indeed possible to serve the request upon the public prosecutor, the same mode of discovery intends that the party served with such request be

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[21] Id. at 527.

[22] See *Montelibano v. Yap*, December 6, 2017, G.R. No. 197475; emphases supplied.

the one to admit "[t]he genuineness of any material and relevant document described in and exhibited with the request or of the truth of any material and relevant matter of fact set forth in the request."[23] For this purpose, "a request for admission on the adverse party of material and relevant facts at issue x x x **are, or ought to be, within the personal knowledge of the latter** x x x."[24]

In this regard, it must be pointed out that a party subject of a request for admission is basically regarded as a witness because he is in a position to deny or admit the genuineness of a document or the truth or falsity of a fact relevant to the case. According to our jurisprudence, "[t]he personal knowledge of a witness is a substantive prerequisite for accepting testimonial evidence that establishes the truth of a disputed fact. A witness bereft of personal knowledge of the disputed fact cannot be called upon for that purpose because [his or] her testimony derives its value not from the credit accorded to [him or] her as a witness presently testifying but from the veracity and competency of the extrajudicial source of [his or] her information."[25]

In the case of a public prosecutor, he cannot be considered to have personal knowledge of the facts subject of the request for admission because he is not privy to a document or any factual occurrence subject of said request. Personal knowledge requires first-hand knowledge of the events as they have transpired, and not merely information relayed to him by others as the assigned legal counsel. Knowledge of a handling lawyer is second-hand information coming from parties or witnesses, unless he himself is in some way privy to the document or the occurrence. Thus, should the public prosecutor answer the request for admission, his statements would technically be hearsay.

If at all, it would be the witnesses of the prosecution who possess personal knowledge of the genuineness of the documents

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[23] Rule 26, Section 1.

[24] Rule 26, Section 5; emphasis supplied.

[25] *Patula v. People*, 685 Phil. 376 (2012).

or any material fact. However, these witnesses cannot be the proper subjects of a request for admission because they are not "parties" to the case. At any rate, even if they may be loosely considered as "parties," allowing the accused to subject them to a request for admission would be tantamount to shifting to the accused some form of control over the direction of the prosecution. This would violate the basic principle that criminal actions are prosecuted under the sole direction and control of the public prosecutor.

This shifting of control to the accused can be easily seen in this case wherein an **expansive** request for admission was made to the State.[26] As aptly pointed out by the *ponencia*, "[a]ll the matters set forth in the Request for Admission are defenses of Leila Ang. Almost all paragraphs are worded in the negative, with the end-goal of showing that Leila Ang has no participation or complicity in the crime. x x x. Similarly, [the request] contains matters that show the elements of the crime which the prosecution has the burden to prove to establish the guilt of the accused beyond reasonable doubt. It includes factual circumstances that should be presented by the prosecution during the trial of the case."[27] While it has been suggested that certain matters be stricken out due to their impropriety, this process of nit-picking which is or which is not the proper subject of a request for admission appears to create further complications that defeat the expediency purpose of this mode of discovery. A party may question the judge's order allowing or disallowing a particular matter in a request and hence, entail prolonged litigation.

In fine, as herein explained, the essential parameters of Rule 26 as a mode of discovery on requests for admission, are simply incompatible with the core substantive premises in criminal cases. This incompatibility exists not only on the side of the accused but also on the side of the State. As I have discussed in the beginning, adjective law must not contravene substantive law which it only seeks to implement. Neither should the concept

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[26] See *ponencia*, pp. 18-22.

[27] Id. at 23.

of suppletory application amount to a substantive modification or amendment of our prevailing modes of discovery and their intended placement.

Accordingly, I join the *ponencia* and vote to **GRANT** the petition.

SEPARATE CONCURRING OPINION

LEONEN, *J.*:

I concur with the *ponencia*. However, I write this separate opinion to emphasize a few points.

Under Rule 26 of the Rules of Civil Procedure, a request for admission may be served on the adverse party *at any time after the issues are joined.*

There is a joinder of issues in criminal proceedings upon the accused's entry of plea during arraignment.[1] The accused's plea controverts, and thus, puts at issue all the allegations in the information.[2]

However, a request for admission cannot be served on either the accused, owing to the right against self-incrimination, or on the prosecutor, for lack of personal knowledge. Nonetheless, it may be served on the private offended party's counsel with regard to the civil aspect.

Criminal actions are commenced either by filing a complaint or information in the name of the People of the Philippines.[3]

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[1] *Corpus, Jr. v. Pamular*, G.R. No. 186403, September 5, 2018, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64644> [Per J. Leonen, Third Division].

[2] Id.

[3] *Pili, Jr. v. Resurreccion*, G.R. No. 222798, June 19, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65289> [Per J. Caguioa, Second Division]; *Ha Datu Tawahig v. Lapinid*, G.R. No. 221139, March 20, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65145> [Per J. Leonen, Third Division].

This is because a crime is an offense against the State, and not only against the directly injured party.[4] Rule 110, Section 5 of the Rules of Criminal Procedure provides that "[a]ll criminal actions commenced by a complaint or information shall be prosecuted under the direction and control of the prosecutor."

Thus, in criminal proceedings, the parties are the People of the Philippines, represented by the public prosecutor, and the accused.

Rule 26, Section 1 of the Rules of Civil Procedure provides the scope of matters that a party may request the adverse party to admit, namely: (1) "the *genuineness* of any material and relevant document described in and exhibited with the request"; and (2) "the *truth* of any material and relevant matter of fact set forth in the request." The matters requested for admission must be within the *personal knowledge* of the person on whom the request was served, in accordance with the rule excluding hearsay evidence.

Hearsay evidence has been defined in *Miro v. Vda. de Erederos*,[5] which provides:

> It is a basic rule in evidence that a witness can testify only on the facts that he knows of his own personal knowledge, *i.e.*, those which are derived from his own perception. *A witness may not testify on what he merely learned, read or heard from others because such testimony is considered hearsay and may not be received as proof of the truth of what he has learned, read or heard*. Hearsay evidence is evidence, not of what the witness knows himself but, of what he has heard from others; it is not only limited to oral testimony or statements but likewise applies to written statements, such as affidavits.[6] (Emphasis supplied, citations omitted)

It falls on the public prosecutor, as the State's counsel, to ensure that the People's rights are protected during trial. This

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[4] *Guy v. Tulfo*, G.R. No. 213023, April 10, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65234> [Per J. Leonen, Third Division].

[5] 721 Phil. 772 (2013) [Per J. Brion, First Division].

[6] Id. at 790.

includes the legal obligation to protect the offended party's interest, at least insofar as the criminal aspect is concerned.[7] A public prosecutor has the full discretion in prosecuting criminal cases, including whether, what, and whom to charge, along with what evidence to present.[8] This discretion likewise extends to plea bargaining, stipulation of facts, and other matters enumerated in Section 2 of Republic Act No. 8493.[9]

Yet, the facts that public prosecutors know are those merely brought about by their inquiry or investigation. They file the information in court based on their own study and appreciation of the evidence at hand.[10] They have *no personal knowledge* of the facts material to the actual commission of the crime, and thus, are not competent to answer a request for admission.

However, with regard to the civil aspect of the criminal case, the private complainant is the real party in interest. *Banal v. Tadeo, Jr.*,[11] explains that the criminal and civil aspects are rooted in the theory that a crime is both an offense against the State whose law was violated and a direct injury to the person offended by the act:

> Generally, the basis of civil liability arising from crime is the fundamental postulate of our law that "Every man criminally liable is also civilly liable." Underlying this legal principle is the traditional theory that when a person commits a crime he offends two entities

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[7] *Merciales v. Court of Appeals*, 429 Phil. 70, 79 (2002) [Per J. Ynares-Santiago, En Banc].

[8] *Gonzales v. Hongkong & Shanghai Banking Corp.*, 562 Phil. 841, 855 (2007) [Per J. Chico-Nazario, Third Division] citing *Webb v. De Leon*, 317 Phil. 758 (1995) [Per J. Puno, Second Division]; *Potot v. People*, 432 Phil. 1028 (2002) [Per J. Sandoval-Gutierrez, Third Division].

[9] *People v. Judge Tac-an*, 446 Phil. 496, 505 (2003) [Per J. Callejo, Sr., Second Division].

[10] *Securities and Exchange Commission v. Price Richardson Corp.*, 814 Phil. 589, 608 (2017) [Per J. Leonen, Second Division]; *Pilapil v. Sandiganbayan*, 293 Phil. 368, 378 (1993) [Per J. Nocon, En Banc].

[11] *Banal v. Tadeo, Jr.*, 240 Phil. 327 (1987) [Per J. Gutierrez, Jr., Third Division].

namely (1) the society in which he lives in or the political entity called the State whose law he had violated; and (2) the individual member of that society whose person, right, honor, chastity or property was actually or directly injured or damaged by the same punishable act or omission. . . . While an act or omission is felonious because it is punishable by law, it gives rise to civil liability not so much because it is a crime but because it caused damage to another. Viewing things pragmatically, we can readily see that what gives rise to the civil liability is really the obligation and the moral duty of everyone to repair or make whole the damage caused to another by reason of his own act or omission, done intentionally or negligently, whether or not the same be punishable by law. In other words, criminal liability will give rise to civil liability only if the same felonious act or omission results in damage or injury to another and is the direct and proximate cause thereof. Damage or injury to another is evidently the foundation of the civil action. Such is not the case in criminal actions for, to be criminally liable, it is enough that the act or omission complained of is punishable, regardless of whether or not it also causes material damage to another.[12] (Citations omitted)

Thus, a request for admission as regards the civil aspect of the crime may be served by the accused on the private offended party,[13] and the answer thereto may be made by the private offended party's counsel.[14]

On the other hand, the accused's right against compulsory self-incrimination precludes the service of a request for admission on them.[15]

One's right against self-incrimination is enshrined in Article III, Section 17 of the 1987 Constitution, which reads: "No person shall be compelled to be a witness against himself." This Court explained the extent of this right in *Rosete v. Lim*:[16]

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[12] Id. at 331.

[13] See *Briboneria v. Court of Appeals*, 290-A Phil. 396, 406-408 (1992) [Per J. Padilla, First Division]. See also *Duque v. Court of Appeals*, 433 Phil. 33 (2002) [Per J. Austria-Martinez, First Division].

[14] See *PSCFC Financial Corp. v. Court of Appeals*, 290-A Phil. 636 (1992) (Resolution) [Per J. Bellosillo, First Division].

[15] Ponencia, pp. 16-17.

[16] 523 Phil. 498 (2006) [Per J. Chico-Nazario, First Division].

The right against self-incrimination is accorded to every person who gives evidence, whether voluntary or under compulsion of subpoena, in any civil, criminal or administrative proceeding. The right is not to be compelled to be a witness against himself. It secures to a witness, whether he be a party or not, the right to refuse to answer any particular incriminatory question, *i.e.*, one the answer to which has a tendency to incriminate him for some crime. However, the right can be claimed only when the specific question, incriminatory in character, is actually put to the witness. It cannot be claimed at any other time. It does not give a witness the right to disregard a subpoena, decline to appear before the court at the time appointed, or to refuse to testify altogether. The witness receiving a subpoena must obey it, appear as required, take the stand, be sworn and answer questions. It is only when a particular question is addressed to which may incriminate himself for some offense that he may refuse to answer on the strength of the constitutional guaranty.[17] (Citation omitted)

However, Rule 115, Section 1 of the Rules of Criminal Procedure accords the accused in a criminal prosecution the right "[t]o be exempt from being compelled to be a witness against [themselves]." The accused are protected under this Rule from testimonial compulsion or any legal process to extract an admission of guilt against their will. As this Court explained in *People v. Ayson*:[18]

An accused "occupies a different tier of protection from an ordinary witness." Under the Rules of Court, in all criminal prosecutions the defendant is entitled among others —

1) to be exempt from being a witness against himself, and

2) to testify as witness in his own behalf; but if he offers himself as a witness he may be cross-examined as any other witness; however, his neglect or refusal to be a witness shall not in any manner prejudice or be used against him.

The right of the defendant in a criminal case "to be exempt from being a witness against himself" signifies that he cannot be compelled to testify or produce evidence in the criminal case in which he is the

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[17] Id. at 511.

[18] 256 Phil. 671 (1989) [Per J. Narvasa, First Division].

accused, or one of the accused. He cannot be compelled to do so even by *subpoena* or other process or order of the Court. He cannot be required to be a witness either for the prosecution, or for a co-accused, or even for himself. In other words — unlike an ordinary witness (or a party in a civil action) who may be compelled to testify by *subpoena*, having only the right to refuse to answer a particular incriminatory question at the time it is put to him — the defendant in a criminal action can refuse to testify altogether. He can refuse to take the witness stand, be sworn, answer any question. And, as the law categorically states, "his neglect or refusal to be a witness shall not in any manner prejudice or be used against him."[19] (Citations omitted)

After the information is filed in court, the right against self-incrimination imposes an absolute prohibition against any kind of inquiry from the accused. An accused on trial in a criminal case may refuse, not only to answer incriminatory questions, but also to take the witness stand. Neglect or refusal to be a witness will not prejudice or be used against the accused.

Rule 26 seeks to obtain admissions from the adverse party regarding the genuineness of relevant documents or the truth of facts through requests for admissions. It "contemplates of interrogatories that would *clarify and tend to shed light on the truth or falsity of the allegations* in a pleading. That is its primary function. It does not refer to a mere reiteration of what has already been alleged in the pleadings."[20]

Considering its purpose, a request for admission cannot be served on the accused in a criminal proceeding, owing to the protection accorded by the Constitution and rules against self-incrimination.

ACCORDINGLY, I vote to **GRANT** the Petition.

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[19] Id. at 685-686.

[20] *Concrete Aggregates Corp. v. Court of Appeals*, 334 Phil. 77, 80 (1997) [Per J. Bellosillo, First Division].

CONCURRING OPINION

INTING, *J.*:

I concur with the *ponencia* in ruling that a request for admission under Rule 26 of the Rules of Court is inapplicable to criminal cases; and consequently, declaring as null and void not only the Joint Orders dated March 10, 2016 and September 5, 2016 of Branch 56, Regional Trial Court (RTC), Lucena City, Quezon in Criminal Case Nos. 2005-1046, 2005-1047 and 2005-1048, but also the Joint Orders dated February 12, 2015 and July 24, 2015.

I reiterate in part the *ponencia's* narration of the proceedings in the three criminal cases from which the present petition originated.

Prior to the Joint Orders dated March 10, 2016 and September 5, 2016, Judge Dennis R. Pastrana (Judge Pastrana) of Branch 56, RTC, Lucena City, Quezon rendered the **Joint Order dated February 12, 2015** which granted, among others, Leila Ang's (Ang) motion for partial reconsideration from the denial of her *Amended Accused's Request for Admission by Plaintiff* (Request for Admission) filed in relation to Criminal Case No. 2005-1048. In this Joint Order, Judge Pastrana allowed Ang's Request for Admission and deemed the facts stated therein as impliedly admitted by the People pursuant to Section 2, Rule 26 of the Rules of Court. This was due to the latter's failure to deny or oppose the matters stated in the request within the 15-day period from receipt of documents as required in the Rule.[1]

The Office of the City Prosecutor of Lucena City filed a motion for clarification, but this was denied by Judge Pastrana in the **Joint Order dated July 24, 2015** for being filed out of time. Judge Pastrana also declared that the People was represented by the City Prosecutor and it was only through the public prosecutor that the plaintiff, as party in the present case, can

[1] See *ponencia*, p. 3.

be served or deemed served, with the Request for Admission. Judge Pastrana ruled that the implied admissions are also "judicial admissions by the plaintiff under Section 4, Rule 129 of the Rules of Court."[2]

Thereafter, Ang filed a Manifestation formally adopting in Criminal Case Nos. 2005-1046 and 2005-1047 the People's implied admissions or judicial admissions in Criminal Case No. 2005-1048.[3]

The People also filed Requests for Admission in the three criminal cases, *i.e.*, Criminal Case Nos. 2005-1046, 2005-1047 and 2005-1048, which were served upon Ang and the other accused.[4]

Upon motion of the People, the three criminal cases were consolidated per Order dated May 16, 2016.[5]

In the **Joint Order dated March 10, 2016**, the RTC denied the Requests for Admission filed by the People in the three criminal cases. The RTC reasoned that the judicial admissions of the People can no longer be varied or contradicted by contrary evidence much less by a request for admission directly or indirectly amending such judicial admissions. The RTC took judicial notice of the adoption in Criminal Case Nos. 2005-1046 and 2005-1047 by Ang of the implied admissions declared as judicial admissions in Criminal Case No. 2005-1048.[6]

The People moved for reconsideration but was denied by the RTC in its **Joint Order dated September 5, 2016**. The RTC maintained its ruling that the court's judicial notice made on the People's judicial admissions in Criminal Case No. 2005-1048 were also the People's judicial admissions in the closely

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[2] *Id.* at 3-4.

[3] *Id.* at 4.

[4] *Id.*

[5] *Id.*

[6] *Id.*

related and interwoven Criminal Case Nos. 2005-1046 and 2005-1047, as previously stated in the Joint Order dated March 10, 2016. The RTC further ruled that in consolidated cases, such as the one at bar, the evidence in each case effectively becomes the evidence of both; thus, there ceased to exist any need for the deciding judge to take judicial notice of the evidence presented in each case.[7]

The People filed a petition for *certiorari* under Rule 65 before the Sandiganbayan assailing the Joint Orders dated March 10, 2016 and September 5, 2016. In the Resolution dated March 1, 2017, the Sandiganbayan affirmed the two Joint Orders. The subsequent Motion for Reconsideration was denied by the Sandiganbayan in the Resolution dated May 15, 2017.[8]

Hence, the People filed a petition for review on *certiorari* before the Court assailing the Sandiganbayan Resolutions.[9]

The *ponencia* resolved to reverse and set aside the assailed Sandiganbayan Resolutions, and declare as void not only the RTC Joint Orders dated March 10, 2016 and September 5, 2016, but also the Joint Orders dated February 12, 2015 and July 24, 2015. The *ponencia* then directed the RTC to resume the proceedings in Criminal Case Nos. 2005-1046, 2005-1047 and 2005-1048 with reasonable dispatch.[10]

In brief, the *ponencia* cited the following reasons: (1) a request for admission may only be done after the issues are joined which applies only in ordinary civil actions; (2) a request for admission cannot be served on the prosecution because it is answerable only by an adverse party to whom such request was served; and (3) criminal proceedings present inherent limitations for the use of Rule 26 as a mode of discovery, *i.e.*, that the prosecution is strictly bound to observe the parameters laid out in the

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[7] *Id.* at 4-5.

[8] *Id.* at 5.

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

[10] *Id.* at 25.

Constitution on the right of the accused — one of which is the right against self-incrimination.[11]

I concur with the disposition of the case as well as the grounds relied upon by the *ponencia*.

Notably, while the People assailed the Joint Orders dated March 10, 2016 and September 5, 2016, it is undisputable that the substance of these two orders are heavily intertwined with the earlier Joint Orders dated February 12, 2015 and July 24, 2015. To recall, in the Joint Order dated March 10, 2016, the RTC denied the People's Request for Admission as it sought to amend the implied admissions which resulted from the People's failure to deny or oppose Ang's Request for Admission within the given period. However, the validity of the Joint Orders dated March 10, 2016 and September 5, 2016 hinges on whether the RTC, through its Joint Orders dated February 12, 2015 and July 24, 2015, was correct in ruling the following: (1) allowing Ang's Request for Admission; (2) considering as deemed admitted the matters requested therein for failure of the prosecution to deny or oppose within the 15-day period from receipt of documents; and (3) in effect, ruling that request for admission under Rule 26 of the 1997 Rules of Civil Procedure applies to criminal cases.

Thus, in the event of a finding that a request for admission under Rule 26 does not apply to criminal cases, the Court will necessarily declare the Joint Orders dated February 12, 2015 and July 24, 2015 as null and void for being rendered with grave abuse of discretion. This is what the *ponencia* did. Further, while what the People assailed are the Joint Orders dated March 10, 2016 and September 5, 2016, the Court is not precluded from nullifying the Joint Orders dated February 12, 2015 and July 24, 2015 because void judgments do not attain finality and may be collaterally attacked.[12]

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[11] *Id.* at 15-18.

[12] *Imperial v. Armes*, 804 Phil. 439 (2017). The Court in *Imperial v. Armes* defined collateral attack as one which is "done through an action which asks for a relief other than the declaration of the nullity of the judgment

I agree with the *ponencia* that Rule 26 does not apply to criminal proceedings.

The entire Rule 26 provides:

RULE 26
Admission by Adverse Party

Section 1. *Request for admission*. — At any time after issues have been joined, a party may file and serve upon any other party a written request for the admission by the latter of the genuineness of any material and relevant document described in and exhibited with the request or of the truth of any material and relevant matter of fact set forth in the request. Copies of the documents shall be delivered with the request unless copies have already been furnished. (1a)

Section 2. *Implied admission*. — Each of the matters of which an admission is requested shall be deemed admitted unless, within a period designated in the request, which shall not be less than fifteen (15) days after service thereof, or within such further time as the court may allow on motion, the party to whom the request is directed files and serves upon the party requesting the admission a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny those matters.

Objections to any request for admission shall be submitted to the court by the party requested within the period for and prior to the filing of his sworn statement as contemplated in the preceding paragraph and his compliance therewith shall be deferred until such objections are resolved, which resolution shall be made as early as practicable. (2a)

Section 3. *Effect of admission*. — Any admission made by a party pursuant to such request is for the purpose of the pending action only and shall not constitute an admission by him for any other purpose nor may the same be used against him in any other proceeding. (3)

Section 4. *Withdrawal*. — The court may allow the party making an admission under the Rule, whether express or implied, to withdraw or amend it upon such terms as may be just. (4)

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but requires such a determination if the issues raised are to be definitively settled."

Section 5. *Effect of failure to file and serve request for admission*. — Unless otherwise allowed by the court for good cause shown and to prevent a failure of justice a party who fails to file and serve a request for admission on the adverse party of material and relevant facts at issue which are, or ought to be, within the personal knowledge of the latter, shall not be permitted to present evidence on such facts. (n)

A request for admission under Rule 26 is a mode of discovery which may be availed of in civil proceedings. As explained by the *ponencia*, it is intended to expedite the trial and to relieve the parties of the costs of proving facts which will not be disputed on trial and the truth of which can be ascertained by reasonable inquiry.[13] This mode of discovery serves to avoid the unnecessary inconvenience to the parties in going through the rigors of proof.[14] Consequently, under Section 1, Rule 26, a party may serve a request for admission on the other party and request the latter to: (a) admit the genuineness of any material and relevant document described in and exhibited with the request; or (b) admit the truth of any material and relevant matter of fact set forth in the request.[15]

Under Section 2, Rule 26, the failure of the other party to either specifically deny the matters of which an admission is requested therein or to set forth in detail the reasons why he cannot truthfully either admit or deny those matters shall result in the deemed or implied admission of the matters stated in the request for admissions.

The applicability of Rule 26 in the present case must be examined in the light of the nature of criminal cases and the rights of the accused particularly the right against self-incrimination.

In criminal cases, the parties are the State and the accused. The case is prosecuted in the name of the People and not the

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[13] See *ponencia*, p. 17, citing *Development Bank of the Philippines v. Court of Appeals*, 507 Phil. 312 (2005).

[14] Riano, Civil Procedure Vol. I, p. 470 (2011).

[15] *Id.*

private complainant who is merely a witness.[16] Thus, if Rule 26 is applied in criminal proceedings, the party to whom the accused may serve his request for admissions is the People who is represented by the public prosecutor. It is the public prosecutor who will be requested to admit the genuineness of any material and relevant document described in and exhibited with the request or the truth of any material and relevant fact set forth in the request. It is the public prosecutor who must execute a sworn statement specifically denying the matters on which an admission is requested or setting forth in detail the reasons as to why he cannot truthfully either admit or deny those matters.

However, as aptly pointed out by Associate Justice Estela M. Perlas-Bernabe in her Concurring Opinion, a cursory reading of Section 5, Rule 26 presupposes that the party upon whom the request for admission is served has personal knowledge of the matters stated in the request for admission.[17] Undoubtedly, a public prosecutor cannot be considered as either having personal knowledge of the facts in the request for admission or being privy to a document subject of the request. Thus, any statement made by the public prosecutor in the sworn statement either admitting or specifically denying the matters sought to be admitted in the request for admissions would be mere hearsay and thus, lack probative value.

Further, to apply Rule 26 to criminal cases would go against the constitutional right of the accused against self-incrimination. This right is enshrined in Section 17, Article III of the 1987 Constitution which provides that "[n]o person shall be compelled to be a witness against himself." As the Court explained in *Rosete v. Lim*,[18] the right against self-incrimination is accorded to every person who gives evidence, whether voluntary or under compulsion of subpoena in any civil, criminal or administrative

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[16] *Montelibano v. Yap*, G.R. No. 197475, December 6, 2017.

[17] See Concurring Opinion of Associate Justice Estela M. Perlas-Bernabe, p. 7.

[18] 523 Phil. 498 (2006).

proceeding. However, unlike in civil cases, the right against self-incrimination is wider in scope when it comes to the accused in criminal cases. The Court explained:

> x x x The right is not to be compelled to be a witness against himself. It secures to a witness, whether he be a party or not, the right to refuse to answer any particular incriminatory question, *i.e.*, one the answer to which has a tendency to incriminate him for some crime. However, the right can be claimed only when the specific question, incriminatory in character, is actually put to the witness. It cannot be claimed at any other time. It does not give a witness the right to disregard a subpoena, decline to appear before the court at the time appointed, or to refuse to testify altogether. The witness receiving a subpoena must obey it, appear as required, take the stand, be sworn and answer questions. It is only when a particular question is addressed to which may incriminate himself for some offense that he may refuse to answer on the strength of the constitutional guaranty.

As to an accused in a criminal case, it is settled that he can refuse outright to take the stand as a witness. In *People v. Ayson*, this Court clarified the rights of an accused in the matter of giving testimony or refusing to do so. We said:

> An accused "occupies a different tier of protection from an ordinary witness." Under the Rules of Court, in all criminal prosecutions the defendant is entitled among others —
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> 1) to be exempt from being a witness against himself, and
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> 2) to testify as witness in his own behalf; but if he offers himself as a witness he may be cross-examined as any other witness; however, his neglect or refusal to be a witness shall not in any manner prejudice or be used against him.
>
> The right of the defendant in a criminal case "to be exempt from being a witness against himself" signifies that he cannot be compelled to testify or produce evidence in the criminal case in which he is the accused, or one of the accused. He cannot he compelled to do so even by *subpoena* or other process or order of the Court. He cannot be required to be a witness either for the prosecution, or for a co-accused, or even for himself. In other words — unlike an ordinary witness (or a party in a civil action) who may be compelled to testify by *subpoena*, having only the right to refuse to answer a particular incriminatory

> question at the time it is put to him — the defendant in a criminal action can refuse to testify altogether. He can refuse to take the witness stand, be sworn, answer any question. . . . (Underscoring supplied.)

It is clear, therefore, that only an accused in a criminal case can refuse to take the witness stand. The right to refuse to take the stand does not generally apply to parties in administrative cases or proceedings. The parties thereto can only refuse to answer if incriminating questions are propounded. This Court applied the exception — a party who is not an accused in a criminal case is allowed not to take the witness stand — in administrative cases/ proceedings that partook of the nature of a criminal proceeding or analogous to a criminal proceeding. It is likewise the opinion of the Court that said exception applies to parties in civil actions which are criminal in nature. As long as the suit is criminal in nature, the party thereto can altogether decline to take the witness stand. It is not the character of the suit involved but the nature of the proceedings that controls.[19]

Thus, in criminal cases, the constitutional right against self-incrimination of the accused is taken to mean the right to be exempt from being a witness against himself. Unlike an ordinary witness in a criminal case or a party in a civil action who may be compelled to testify by subpoena, having only the right to refuse to answer a particular incriminatory question at the time it is put to him, the accused in a criminal action can refuse to testify altogether or take the witness stand.

Consequently, as aptly pointed out by the *ponencia* and Associate Justice Estela M. Perlas-Bernabe, to serve a request for admission on the accused would in effect require him to take the stand and testify against himself.[20] Such runs counter to the right of the accused against self-incrimination, including the right to refuse to take the witness stand.

Equally important, as similarly espoused by Associate Justice Estela M. Perlas-Bernabe, I find that to apply Rule 26 to criminal

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[19] *Id.* at 511-513.

[20] See *ponencia*, p. 16 and Concurring Opinion of Associate Justice Estela M. Perlas-Bernabe, p. 5.

proceedings so that the prosecution may serve a request for admission on the accused would only be an exercise in futility and lead to unnecessary delays as the accused may just simply invoke his right against self-incrimination; or he may ignore a request for admission served on him since to do so would not have any prejudicial effect on his defenses.[21]

Besides, Rule 118 of the Rules of Court provides for pre-trial where the admissions of the accused may be taken. This is already a sufficient measure to achieve the objective of simplifying the trial by doing away with matters which are not disputed by the parties. Section 1 of Rule 118 states that the trial court shall order a pre-trial conference to consider plea bargaining, stipulation of facts, and marking for identification of evidence, among others. Further, Sections 2 and 4 provide the manner by which the admissions of the accused during the pre-trial may be used against him as well as the effect of these admissions on the trial. The pertinent Sections of Rule 118 of the Rules of Court read, as follows:

> Section 1. *Pre-trial; mandatory in criminal cases.* — In all criminal cases cognizable by the Sandiganbayan, Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court and Municipal Circuit Trial Court, the court shall after arraignment and within thirty (30) days from the date the court acquires jurisdiction over the person of the accused, unless a shorter period is provided for in special laws or circulars of the Supreme Court, order a pre-trial conference to consider the following:
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> (a) plea bargaining;
>
> (b) stipulation of facts;
>
> (c) marking for identification of evidence of the parties;
>
> (d) waiver of objections to admissibility of evidence;
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> (e) modification of the order of trial if the accused admits the charge but interposes a lawful defense; and
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> (f) such other matters as will promote a fair and expeditious trial of the criminal and civil aspects of the case. (secs. 2 and 3, cir. 38-98)

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[21] Concurring Opinion of Associate Justice Estela M. Perlas-Bernabe, p. 5.

Section 2. *Pre-trial agreement*. — **All agreements or admissions made or entered during the pre-trial conference shall be reduced in writing and signed by the accused and counsel, otherwise, they cannot be used against the accused.** The agreements covering the matters referred to in section 1 of this Rule shall be approved by the court.

x x x x

Section 4. *Pre-trial order*. — After the pre-trial conference, the court shall issue an order reciting the actions taken, the facts stipulated, and evidence marked. **Such order shall bind the parties, limit the trial to matters not disposed of, and control the course of the action during the trial, unless modified by the court to prevent manifest injustice.** (Emphasis supplied.)

This view is consistent with American jurisprudence. While American jurisprudence is merely persuasive in our jurisdiction, it must be noted that, as pointed out by Associate Justice Rodil V. Zalameda in his Separate Concurring Opinion, the definition and purpose of a request for admission in our jurisprudence can be traced or quoted from American sources.[22] Hence, reference to American rules, laws, and policies may serve as proper guides in resolving the present case.

Thus, the Court can rely on the ruling of the Supreme Court of Indiana in *State ex rel. Grammer v. Tippecanoe Circuit Court*[23] which is instructive.

In the case, the defendant wanted to use written interrogatories and requests for admission to prepare for his second-degree murder case. However, the trial court denied the request for admission as it was not applicable to criminal cases. It also issued the state a protective order. Subsequently, the defendant

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[22] See Separate Concurring Opinion of Associate Justice Rodil V. Zalameda, p. 1, citing *Briboneria v. Court of Appeals*, 290-A Phil. 396 (1992); *Po v. Court of Appeals*, 247 Phil. 637 (1988); *Uy Chao v. De la Rama Steamship Co., Inc.*, 116 Phil. 392 (1962).

[23] *State ex rel. Grammer v. Tippecanoe Circuit Court*, 268 Ind. 650, 377 N.E.2d 1359 (1978).

filed an action for a writ of prohibition and writ of mandate concerning criminal discovery techniques.

The Supreme Court of Indiana denied the defendant's action for a writ of prohibition and writ of mandate. As to the applicability of requests for admission in criminal cases, the Supreme Court of Indiana ruled that the requests were unnecessary because the Indiana Code provided the vehicle for admissions through an omnibus hearing and pre-trial. The Supreme Court of Indiana ruled:

> The second error alleged by the defendant is the denial of his Request for Admissions. **The request for admissions is used in civil cases as a device to get uncontested facts out of the way. It is unnecessary to use this device in criminal cases as there is already a mechanism established for this purpose.** Ind. Code § 35-4.1-3-1 (Burns 1975) provides for an omnibus hearing and pretrial conference. At the time of this hearing, the statute provides:
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> > **"[T]he court, upon motion of any party or upon its own motion, may order one or more conferences** x x x **to consider any matters related to the disposition of the proceeding including the simplification of the issues to be tried at trial and the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof."**
>
> Ind. Code § 35-4.1-3-1(b).
>
> Furthermore, the prosecutor is under the constitutional duty to disclose any exculpatory evidence to the defense. United States v. Agurs, (1976) 427 U.S. 97, 96 S.Ct. 2392, 49 L.Ed.2d 342; Brady v. Maryland, (1963) 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215. There was no abuse of discretion in the denial of the request for admissions.[24]

Similarly, given the availability of pre-trial as provided under Rule 118 of the Rules of Court, I find that the request for admission in criminal cases, as in the present case, only invites delays and is unnecessary in the conduct of the proceedings.

ACCORDINGLY, I vote to **GRANT** the petition and declare as null and void not only the Joint Orders dated March 10,

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[24] *Id.*

2016 and September 5, 2016, but also the Joint Orders dated February 12, 2015 and July 24, 2015 of Branch 56, Regional Trial Court, Lucena City, Quezon.

SEPARATE CONCURRING OPINION

ZALAMEDA, *J.*:

I agree with the core of the *ponencia's* exposition on the inherent limitations effected by the Constitution and other pertinent rules for the use of Rule 26 as a mode of discovery in criminal cases. Notwithstanding, I submit the following additional grounds for the inapplicability of Rule 26 in criminal cases.

In our jurisprudence, the definition and purpose of a request for admission can be traced to or were derived from American sources.[1] Hence, reference to American rules, laws, and policies may serve as proper guides in resolving the present case.

In American states, discovery under civil proceedings is supported by a liberal policy requiring almost total, mutual disclosure of each party's evidence prior to trial. Accordingly, a litigant may use several modes of discovery, as allowed under the U.S. Federal Rules of Civil Procedure, such as the use of depositions,[2] interrogatories,[3] request for production,[4] physical and mental examinations,[5] and request for admission.[6]

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[1] See *Briboneria v. Court of Appeals*, G.R. No. 101682, 290-A Phil. 396 (1992); *Po v. Court of Appeals*, G.R. No. L-34341, 247 Phil. 637 (1988); *Uy Chao v. De la Rama Steamship Co., Inc.*, G.R. No. L-14495, 116 Phil. 392 (1962).

[2] Rule 27-31, U.S. Federal Rules of Civil Procedure.

[3] Rule 33, U.S. Federal Rules of Civil Procedure.

[4] Rule 34, U.S. Federal Rules of Civil Procedure (Producing Documents, Electronically Stored Information, and Tangible Things, or Entering onto Land, for Inspection and Other Purposes).

[5] Rule 35, U.S. Federal Rules of Civil Procedure.

[6] Rule 36, U.S. Federal Rules of Civil Procedure.

This broad disclosure is intended to "take the sporting element out of litigation," to fully reveal the nature and limits of the case, to simplify the issues involved, and to provide all parties with the information necessary to fully prepare for trial. The objective is to eliminate needless and time-consuming legal maneuvering in civil trials.[7] In fact, restrictions on civil discovery are directed chiefly on utilization rather than procurement of information.[8]

In contrast, discovery provisions under the U.S. Federal Rules of Criminal Procedure are restricted and narrow. Prosecutorial discovery, which aims to either gather additional evidence or gain an idea of the structure of the defense's case, is limited due to possible infringement of a defendant's Fourth[9] and Fifth[10] Amendment rights. Similarly, discovery by the criminal defendant is restricted to avoid unfettered discovery of the prosecutor's case, which would give the defendant an immense advantage such as would make securing convictions almost impossible.[11] This policy was explained by the New Jersey Supreme Court in *State v. Tune*,[12] to wit:

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[7] Mitchell, Robert B. *Comment: Federal Discovery in Concurrent Criminal and Civil Proceedings*, 52 Tul. L. Rev. 769 (1978).

[8] *Amand v. Pennsylvania R.R.*, 17 F.R.D. 290, 294 (D.N.J. 1955).

[9] Amendment IV, U.S. Constitution. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

[10] Amendment V, U.S. Constitution. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

[11] Mitchell, Robert B. Comment: Federal Discovery in Concurrent Criminal and Civil Proceedings, 52 Tul. L. Rev. 769 (1978).

[12] 13 N.J. 203 98 A.2d 881 (1953).

x x x In criminal proceedings long experience has taught the courts that often discovery will lead not to honest fact-finding, but on the contrary to perjury and the suppression of evidence. Thus the criminal who is aware of the whole case against him will often procure perjured testimony in order to set up a false defense, State v. Rhoads, 81 Ohio St. 397, 423-4, 91 N.E. 186, 192, 27 L.R.A., N.S. 558 (Sup. Ct. 1910); Commonwealth v. Mead, 12 Gray 167, 170 (Mass. 1858). Another result of full discovery would be that the criminal defendant who is informed of the names of all of the State's witnesses may take steps to bribe or frighten them into giving perjured testimony or into absenting themselves so that they are unavailable to testify. Moreover, many witnesses, if they know that the defendant will have knowledge of their names prior to trial, will be reluctant to come forward with information during the investigation of the crime, People v. Di Carlo, 161 Misc. 484, 485-6, 292 N.Y.S. 252, 254 (Sup. Ct. 1936). All these dangers are more inherent in criminal proceedings where the defendant has much more at stake, often his own life, than in civil proceedings.

The continuing struggle to establish the limits of discovery in criminal proceedings stems from the need to protect the interests of opposing sides. The primary concern of the prosecution is the enforcement of the law and the conviction of those guilty of committing a crime, while the defendant's concern is to avoid punishment or prove his innocence. The opposing pull of these interests has led to a narrower system of discovery than that provided for in civil cases, as embodied by the limited provisions of discovery in the U.S. Federal Rules of Criminal Procedure wherein only depositions[13] and, discovery (disclosures) and inspection,[14] are specifically outlined.[15]

The current narrow scope of criminal discovery in the U.S. was borne from the prevailing notion that civil and criminal wrongs inherently require different procedural treatment.

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[13] Rule 15, U.S. Federal Rules of Criminal Procedure.

[14] Rule 16, U.S. Federal Rules of Criminal Procedure.

[15] Mitchell, Robert B. Comment; Federal Discovery in Concurrent Criminal and Civil Proceedings, 52 Tul. L. Rev. 769 (1978).

Initially, the first draft of the Federal Rules of Criminal Procedure in 1941 contemplated the integration of the then-new rules of civil procedure in order to reform criminal procedure. At that time, civil reform had introduced a new robust discovery phase and changed the deep structure of litigation from pleading and trial into pleading, **discovery**, and trial. Yet, the attempt to have a unified procedural code was defeated by the recognition that policies animating criminal and civil law were too different to share the same procedural backbone, thereby resulting to a more traditional take on discovery in criminal cases.[16]

To recall, there are two (2) modes of discovery in the U.S. Federal Rules of Criminal Procedure: (1) Depositions under Rule 15; and (2) Discovery and Inspection under Rule 16.

Under Rule 15, the court may, under exceptional circumstances and in the interest of justice, grant a motion to have a prospective witness be deposed in order to preserve his or her testimony for trial.[17] This includes the taking of depositions outside the U.S., without the defendant's presence, after the court makes certain case-specific findings.[18]

Meanwhile, under Rule 16, a defendant may, under specific conditions, make a request for government disclosure of any of the following: (a) substance of any relevant oral statement made by the defendant, before or after arrest, in response to interrogation; (b) relevant written or recorded statement within the government's custody; (c) prior criminal record that is within the government's possession; (d) any material document or object within the government's possession to be inspected or copied by defendant; (e) any material report of physical or mental examination or any scientific test or experiment within the government's possession; and (f) a written summary of an expert witness' testimony. If a defendant requires government disclosure

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[16] Ion Meyn, *Why Civil and Criminal Procedure Are So Different: A Forgotten History*, 86 Fordham L. Rev. 697 (2017).

[17] Rule 15 (a) (1), U.S. Federal Rules of Criminal Procedure.

[18] Rule 15 (c) (3), U.S. Federal Rules of Criminal Procedure.

and the government complies, then he or she has the reciprocal obligation to permit the government, upon request, to allow such disclosure. Failing to respond to a request for disclosure may result in the exclusion of the requested information from being disclosed during trial. There are certain materials, however, that are not subject to disclosure, such as reports made in connection with investigating or prosecuting the case, or statements made by prospective witnesses.[19]

As can be gleaned from the foregoing, information or materials subject to disclosures are evidence that the parties intend to use during trial. The origin for this rule lies in the well-known 1963 U.S. Supreme Court decision of *Brady v. Maryland*,[20] which held that under the Fifth and Fourteenth amendments, the prosecutor has a duty to disclose favorable evidence to defendants upon request, if the evidence is "material" to either guilt or punishment.[21] The subject of this kind of discovery clearly differs from the subject of a request for admission since the latter centers on: (a) facts, the application of law to fact, or opinions about either; and (b) the genuineness of any described documents.

There have been calls and measures to expand the scope of discovery proceedings in criminal cases in the U.S. One such proposition is for open-file discovery, wherein the defense and prosecution freely exchange each and every information and evidence to allow all sides to adequately prepare for the prospect of trial and to help the defendant in deciding how to plead. The call for expanded discovery in criminal cases stems from the belief that discovery provides a crucial procedural safeguard. Not only does it protect against wrongful imprisonment, it likewise makes the legal system more transparent by increasing

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[19] Rule 16, U.S. Federal Rules of Criminal Procedure.

[20] 373 U.S. 83 (1963).

[21] https://www.hg.org/legal-articles/federal-discovery-and-inspection-procedures-27302.

pre-trial disclosure, and it ensures a fair procedure by allowing each side in a trial to adequately prepare their case.[22]

For instance, in 1996, North Carolina passed a law granting death row inmates full access to police and prosecution files during appeal. Due to its success, the North Carolina General Assembly passed legislation in 2004 instituting open-file discovery, which grants the defense pre-trial access to the prosecution's files, including police reports and witness statements. Meanwhile, the state of Florida adopted broad rules regulating discovery in criminal cases, specifically on depositions. Similarly, Colorado statutes require a continuing mandatory obligation to disclose evidence it secures, including witness lists, police reports, expert statements, any electronic surveillance of conversations involving accused, relevant statements, as well as any and all mitigating or exculpatory evidence. Such mandatory discovery laws make it obligatory for the state to produce materials without the need for the defense to file discovery motions. Comparably, prosecutors in New Jersey are required to disclose the names, not only of witnesses, but of all people with relevant information relating to the crime. Likewise, Arizona mandates automatic discovery of all reports from law enforcement already available during arraignment,[23] recognizing the need to provide the defense resources to mount an adequate defense at the earliest stage of the proceedings.

Notably, the call for expanded discovery in criminal procedure centers on the **disclosure of evidence** within the possession of either the prosecution or the defense. In fact, the model bill for expanded discovery in criminal cases proposed by the American Bar Association focuses on open-file discovery of materials, information, files, or any other matter of evidence.[24] This supports

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[22] The Justice Project, *Expanded Discovery in Criminal Cases: A Policy Review;*https://www.pewtrusts.org/~/media/legacy/uploadedfiles/wwwpewtrustsorg/reports/death_penalty_reform/expanded 20discovery20policy20briefpdf.pdf

[23] *Id*.

[24] *Id*.

the theory that requests for admission cannot be used in criminal procedure since it was not even suggested as an added method for expanded discovery in criminal cases.

It is essential for us to underscore that the procedural rules in our jurisdiction are similarly structured to that of the U.S. There are several available modes of discovery under our Rules of Civil Procedure ranging from depositions,[25] interrogatories,[26] request for admission,[27] production or inspection of documents/ things[28] and, physical and mental examination of persons,[29] while analogous provisions are absent in our Rules of Criminal Procedure. Such comparable framework of our procedural rules to American federal rules of procedure suggests a reasonable context from which we derive a **strict and narrow application of modes of discovery in criminal proceedings**.

Considering this and the continuous failure to include requests for admission even on the emerging proposal or measures for expanded discovery in criminal cases in the U.S., I am inclined to believe that requests for admission under Rule 26 are unsuited to our criminal proceedings.

Especially noteworthy is that the Supreme Court is clothed with ample authority to review matters even when they are not assigned as errors on appeal if it finds their consideration necessary to arrive at a just decision of the case. Further, an unassigned error that is closely related to an error properly assigned, or upon which the determination of the question or error properly assigned is dependent, will be considered despite the failure to raise the same.[30] In the present case, it cannot be

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[25] Rules 23-24, Rules of Civil Procedure.

[26] Rule 25, Rules of Civil Procedure.

[27] Rule 26, Rules of Civil Procedure.

[28] Rule 27, Rules of Civil Procedure.

[29] Rule 28, Rules of Civil Procedure.

[30] *Heirs of Doronio v. Heirs of Doronio*, G.R. No. 169454, 27 December 2007, 565 Phil. 766 (2007).

denied that the issue of applicability of Rule 26 in criminal cases is an issue considerably intertwined with petitioner's assigned errors.

Even more relevant, the import of the *ponencia* is to treat the RTC's Joint Orders dated 12 February 2015, 24 July 2015, along with the assailed Joint Orders dated 10 March 2016 and 05 September 2016, as void judgments. In *Imperial v. Armes*,[31] the Court explained that void judgments are:

> x x x not entitled to the respect accorded to a valid judgment, but may be entirely disregarded or declared inoperative by any tribunal in which effect is sought to be given to it. It has no legal or binding effect or efficacy for any purpose or at any place. It cannot affect, impair or create rights. It is not entitled to enforcement and is, ordinarily, no protection to those who seek to enforce. In other words, a void judgment is regarded as a nullity, and the situation is the same as it would be if there was no judgment.

To recall, void judgments may arise from a tribunal's act adjudged to be tainted with grave abuse of discretion amounting to lack or excess of jurisdiction. Such void judgments may also be subject of a collateral attack, which is done through an action asking for a relief other than the declaration of the nullity of the judgment, but requires such a determination if the issues raised are to be definitively settled.[32]

In this case, the Court may consider the *petition for certiorari* lodged by petitioner before the Sandiganbayan as a collateral attack on the validity of not only the assailed Joint Orders dated 10 March 2016 and 05 September 2016, but also of Joint Orders dated 12 February 2015 and 24 July 2015, so as to arrive at a just decision and to have all issues definitively settled.

Besides, the Court is currently in the process of revising the rules of criminal procedure and the case at bar presents an excellent opportunity to resolve this matter, which may be

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[31] G.R. Nos. 178842 & 195509, 30 January 2017, 804 Phil. 439 (2017).

[32] *Id.* at 110.

reflected in the revised rules. In any case, to avoid further confusion, and considering that similar issues will necessarily be decided in the future, we should correspondingly exercise our duty to educate the Bench, the Bar, and the public on the reasons why Rule 26 may or may not be applied in criminal procedure.

For the aforementioned reasons, I concur with the *ponencia's* reversal of the Decision dated 01 March 2017 and Resolution dated 15 May 2017 of the Sandiganbayan, and declaration of the Orders dated 12 February 2015, 24 July 2015, 10 March 2016 and 05 September 2016 of the RTC as void.

CONCURRING AND DISSENTING OPINION

CAGUIOA, *J.*:

I concur in the result. The present petition should be granted but only because the matters contained in respondent Leila L. Ang's (respondent Ang) *Request for Admission* are not proper subjects of a Request for Admission under Rule 26 of the Rules of Court.

I disagree, however, to the majority's ruling that Rule 26 does not apply to criminal proceedings. I am of the considered opinion that Requests for Admission should be made available in criminal litigation, but only to the accused. This availability is premised on the inherent imbalance between the State's resources in prosecuting the accused on the one hand, and the accused's severely limited access to pre-trial information on the other. Circumscribed by the accused's right against self-incrimination and to remain silent, Requests for Admission, while available to the accused, cannot be made to extend for the use of the prosecution.

The Court should have granted the parties the opportunity to be heard on the issue of whether or not Rule 26 applies to criminal proceedings.

Preliminarily, I find that the majority should have first allowed the parties to comment on the issue of whether or not Rule 26 is available to criminal proceedings because this issue was never raised and argued by the parties before the trial court, the Sandiganbayan and this Court. Basic tenets of fairness and due process demand that the parties be given the opportunity to be heard before the Court may render a judgment on said issue.

For proper context, a restatement of the facts is in order.

Respondent Ang filed a *Request for Admission* in Criminal Case No. 2005-1048 addressed to the People and was served to the Office of the City Prosecutor of Lucena City.[1]

The People moved to expunge respondent Ang's *Request for Admission* arguing that "[t]he matters sought for admission in the defense's pleading are either proper subjects of stipulation during pre-trial, or matters of evidence which should undergo judicial scrutiny during trial on the merits. They need confirmation from witnesses who should be placed under oath, since there is no summary trial in criminal cases, except those covered by the summary proceedings under the Rules."[2]

In a Resolution dated April 13, 2010, Acting Presiding Judge Rodolfo D. Obnamia (Judge Obnamia) of the Regional Trial Court, Lucena City (RTC-Lucena) Branch 53, denied respondent Ang's *Request for Admission* and ordered that the same be expunged from the records of the case.[3] According to the court, "the proposed admission can be tackled and be the proper subject of stipulation during the pre-trial conference of the parties held mandatory by law aimed towards early disposition of cases."[4]

Respondent Ang moved for reconsideration and filed a motion to inhibit Judge Obnamia.[5] Upon inhibition of Judge Obnamia,

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[1] *Rollo*, pp. 16-17.

[2] Id. at 67-68; underscoring omitted.

[3] Id. at 68.

[4] Id.

[5] Id. at 17.

the three cases filed against respondents were transferred to RTC-Lucena, Branch 56, presided by Judge Dennis R. Pastrana (Judge Pastrana).[6]

In the Joint Order[7] dated February 12, 2015, Judge Pastrana granted respondent Ang's Motion for Partial Reconsideration and ruled that since the prosecution failed to deny or oppose the *Request for Admission* within the 15-day period from receipt of the documents, the facts stated therein are deemed impliedly admitted by the People pursuant to Section 2, Rule 26 of the Rules of Court.[8]

The People filed a *Motion for Clarification*[9] claiming that copies of the *Request for Admission* were to the public prosecutor only and not to the parties to whom it was addressed.[10]

However, in the Joint Order[11] dated July 24, 2015, Judge Pastrana denied the People's *Motion for Clarification* for being filed out of time.[12] In the same Joint Order, Judge Pastrana ruled the facts stated in respondent Ang's *Request for Admission* are final as such implied admission by the People under Rule 26 of the Rules of Court and are consequently retained in the court records as judicial admissions under Section 4, Rule 129 of the Rules of Court.[13]

Thereafter, respondents filed their separate *Manifestations* adopting in Criminal Case Nos. 2005-1046 and 2005-1047 the implied admissions declared as judicial admissions in Criminal Case No. 2005-1048.[14]

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[6] Id.

[7] Id. at 140-146.

[8] Id. at 142.

[9] Id. at 147-150.

[10] Id. at 70.

[11] Id. at 159-164.

[12] Id. at 161.

[13] Id. at 164.

[14] Id. at 17.

Meanwhile, the People also filed its *Requests for Admissions* in the three criminal cases, which were served on respondents.[15] The People also moved for the consolidation of the three cases for purpose of trial, to which respondent Ang opposed.[16]

In the Joint Order[17] dated March 10, 2016, Judge Pastrana denied the People's *Request for Admission* stating that the judicial admissions of the People can no longer be varied or contradicted by contrary evidence much less by a request for admission directly or indirectly amending such judicial admission. In the same Order, the RTC-Lucena, Branch 56 took judicial notice of the adoption in the other two criminal cases of the implied admissions declared as judicial admissions in Criminal Case No. 2005-1048.

The People filed a motion for reconsideration (MR) based on the following grounds: (1) under Section 3, Rule 26 of the Rules of Court, any admission by a party pursuant to such request is only for the purpose of the pending action and shall not constitute admission by him for any other proceeding; (2) there was no judicial admission, whether verbal or written, made in Criminal Case No. 2005-1048 as Section 4, Rule 139 of the Rules of Court requires; and (3) the *Manifestations* filed by respondents were not set for hearing.[18]

Meanwhile, in the Order dated May 16, 2016, the RTC-Lucena, Branch 56 granted the People's motion to consolidate.[19]

However, in the Joint Order[20] dated September 5, 2016, the RTC-Lucena, Branch 56 denied the People's MR and maintained that the court can take judicial notice of the People's admissions in Criminal Case No. 2005-1048 as also the People's admissions

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[15] Id.

[16] Id. at 71.

[17] Id. at 153-154.

[18] Id. at 71.

[19] Id.

[20] Id. at 155-158.

in the other closely related and interwoven cases. It also ruled that in consolidated cases, as in this case, the evidence in each case effectively becomes the evidence of both.[21]

When the People elevated the case before the Sandiganbayan, through a petition for *certiorari* under Rule 65, what the People assailed and sought to remedy were the RTC's Joint Orders dated March 10, 2016 and September 5, 2016[22] (assailed Joint Orders) — Orders that pertain to the adoption in the other two criminal cases of the People's implied admissions declared as judicial admissions in Criminal Case No. 2005-1048. Consequently, the assigned errors and arguments raised by the People in their petition were limited to the following:

1. The public respondent committed a grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed orders and taking judicial notice in Criminal Case Nos. 2005-1046 and 2005-1047 of the "implied admissions declared as judicial admissions" in Criminal Case No. 2005-1048 despite the express prohibition in Section 3, Rule 26 of the Rules of Court.

2. The public respondent committed a grave abuse of discretion amounting to lack or excess of jurisdiction x x x in issuing the assailed orders and taking judicial notice in Criminal Case Nos. 2005-1046 and 2005-1047 of the "implied admissions declared as judicial admissions" in Criminal Case No. 2005-1048 despite the clear provision of Section 4, Rule 129 of the Rules of Court.

3. The public respondent committed a grave abuse of discretion amounting to lack or excess of jurisdiction x x x in issuing the assailed orders and taking judicial notice in Criminal Case Nos. 2005-1046 and 2005-1047 of the "implied admissions declared as judicial admissions" in Criminal Case No. 2005-1048 without a hearing.

4. The public respondent committed a grave abuse of discretion amounting to lack or excess of jurisdiction x x x in issuing

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[21] Id. at 157.

[22] Id. at 14.

> the assailed orders and taking judicial notice in Criminal Case Nos. 2005-1046 and 2005-1047 of the "implied admissions declared as judicial admissions" in Criminal Case No. 2005-1048 on the ground that all three cases are considered as only one proceeding.[23]

In the assailed Decision, the Sandiganbayan dismissed the People's petition, confining itself to the issue of whether or not Judge Pastrana had committed grave abuse of discretion in issuing the assailed Joint Orders. The Sandiganbayan held that there was no such grave abuse of discretion because the Joint Orders were issued after the RTC had considered the facts and jurisprudence attendant in the case.[24] The Sandiganbayan further held that while it may be true that Section 3, Rule 26 of the Rules of Court limits the application of an admission made pursuant to a *Request for Admission* only for the purpose of the pending action (*i.e.*, Criminal Case No. 2005-1048), the consolidation of the three cases extended the effect of such admission to the other cases.[25]

Upon denial of the People's MR in the assailed Sandiganbayan Resolution, the People filed the present petition where it claims that the Sandiganbayan gravely erred when it agreed with the RTC-Lucena, Branch 56 that the People's implied admission obtained under Rule 26 are equivalent to judicial admissions under Rule 129 and that the consolidation of the three criminal cases extended the effect of the alleged implied admissions in Criminal Case No. 2005-1048 to the other criminal cases filed against respondents.[26] The People insist that the implied admissions declared as judicial admissions should only apply to Criminal Case No. 2005-1048.[27] The People likewise assert that the subject *Requests for Admission* were not served to the

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[23] Id. at 15.

[24] Id. at 18-20.

[25] Id. at 20.

[26] Id. at 86.

[27] Id.

proper parties and the matters set forth therein are not proper subjects of a request.[28]

Thus, the People prayed of this Court that (1) the assailed Sandiganbayan Decision and Resolution be reversed and set aside; (2) the assailed Joint Orders of the RTC-Lucena, Branch 56 declaring the matters made subject of the *Request for Admission* filed by respondents as implied admissions, and taking judicial notice thereof as judicial admissions in the three criminal cases filed against respondents be nullified; (3) an Order be issued directing the RTC-Lucena, Branch 56 to hear and decide the three criminal cases with utmost dispatch.[29]

It is thus quite clear that the issue on whether or not a *Request for Admission* is available to criminal proceedings is **not** the actual issue of the instant petition.

When the People filed a petition before the Sandiganbayan and thereafter to this Court, the issue brought for resolution was whether the RTC-Lucena, Branch 56 gravely abused its discretion in taking judicial notice in Criminal Cases Nos. 2005-1046 and 2005-1047 of the People's admissions in Criminal Case No. 2005-1048. The Joint Orders dated February 12, 2015 and July 24, 2015, wherein Judge Pastrana admitted respondent Ang's *Request for Admission* and declared that the facts contained therein are deemed impliedly admitted by the People and are also considered as judicial admissions, were never assailed by the People before the Sandiganbayan and this Court.

More importantly, this issue on the suppletory application of Rule 26 to criminal cases was never raised and argued by the parties in their pleadings filed before the courts.

From the time respondent Ang filed her *Request for Admission* with the RTC-Lucena, Branch 53, until the filing of the instant petition before this Court, the issues and arguments raised by the parties were confined to the following: (1) the proper service of respondent Ang's *Request for Admission*; (2) the propriety

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[28] Id. at 87-89.

[29] Id. at 89.

of the matters set forth in said *Request*; (3) the declaration that the matters contained in said *Request* being deemed impliedly admitted and also considered as judicial admissions by the People; and (4) the adoption of the implied admissions declared as judicial admissions in the other two criminal cases against respondents.

While the Court is indeed clothed with the ample authority to review issues or errors not raised by the parties on appeal,[30] such power should not be exercised at the expense of elementary rules on due process. In its bare minimum, the standard of due process in judicial proceedings require that the parties be given notice and opportunity to be heard before a judgment is rendered.[31] Thus, to my mind, it would be offensive to due process for the Court to *motu proprio* resolve issues, *albeit* closely related or dependent to an error properly raised, and deprive the parties of the opportunity to be heard on the matter. Indeed, this Court has previously declared that:

> x x x "[C]ourts of justice have no jurisdiction or power to decide a question not in issue" and that a judgment going outside the issues and purporting to adjudicate something upon which the parties were not heard is not merely irregular, but extrajudicial and invalid. The rule is based on the fundamental tenets of fair play x x x.[32]

Thus, prudence dictates that the Court should have first heard the parties' arguments on the issue of whether Rule 26 applies to criminal cases, before rendering a full-blown decision on the present petition. To be sure, this practice of directing the parties to comment on an issue which the Court finds relevant and necessary for the resolution of the case, is not new. There have been cases filed before the Court where parties were directed to file a comment on certain issues not raised in their pleadings but were found necessary for a just resolution of their cases.

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[30] *Vda. de Javellana v. Court of Appeals*, G.R. No. 60129, July 29, 1983, 123 SCRA 799, 805.

[31] *Mabaylan v. NLRC*, G.R. No. 73992, November 14, 1991, 203 SCRA 570, 575.

[32] *Bernas v. Court of Appeals*, G.R. No. 85041, August 5, 1993, 225 SCRA 119, 129.

On the merits, prudence should have likewise dictated the adoption of a framework both mindful of the peculiarities of criminal proceedings and the proven utility provided by modes of discovery in uncovering the truth and delivering swift justice. The wholesale rejection of the application of Requests for Admission in criminal proceedings is an unfortunate missed opportunity towards achieving the aims of our criminal justice system.

Rule 26 should be made available to the accused only.

I approach the question of whether Rule 26, as a mode of civil discovery that can be applied in criminal cases, with an analysis of the inherent differences between civil and criminal proceedings.

Procedural laws enacted to litigate claims and the discovery procedures available in civil and criminal proceedings traversed markedly different paths. That being said, however, the means to gather and compel evidence were traditionally enforced through the trial process.[33] Under common law, the written pleading was generally the only pre-trial source for information.[34] Means of gathering evidence before trial were minimal both at common and statutory law until the mid-twentieth century[35] with the introduction of the American Federal Rules of Civil Procedure in 1938 and, with it, the procedures allowing parties to gather and compel evidence before trial.[36] The Federal Rules of Criminal Procedure were adopted in 1946,[37] almost a decade after its civil counterpart, but it contained none of the discovery devices formally adopted by the civil rules. Since its inception,

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[33] See generally John H. Langbein, *The Disappearance of Civil Trial in the United States*, 122 Yale L.J. 522 (2012).

[34] George Ragland, Jr., *Discovery Before Trial*, Chicago: Callaghan and Company (1932).

[35] John H. Langbein, supra note 33, at 542-548.

[36] Id. at 543.

[37] First iterations of the Federal Rules of Criminal Procedure were adopted by order of the Supreme Court of the United States on December 26, 1944

the federal rules have expanded modestly but has not reached the same level of scope as in civil discovery.

As a general proposition, it has become widely recognized that the scope of civil discovery is broader than the scope of criminal discovery.[38] Specifically, Requests for Admission has not made it across criminal litigation and there appears to be no statutory basis or jurisprudential precedent in common law applying the same in criminal litigation.[39]

The foregoing, however, is not an argument against restricting the accused's access to discovery and, by extension, to Requests for Admission. If anything, it suggests only an all too common reluctance towards extending civil discovery procedures to criminal litigation due to the belief that an expansive discovery stood as a threat to the adversarial process.[40] This, in turn, is rooted in the old age belief that a purely adversarial proceeding is the only proven tool in finding out the truth of conflicting claims. Times have changed, however, and the common law roots of the adversarial process with its elements of game and surprise is a thing of the past.

If the Court approaches the question with the belief that criminal prosecution is an adversarial process between two relatively equal litigants, then it is almost inevitable that the scales will tip towards refusing to apply civil discovery

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for procedures up to verdict, and on February 8, 1946 for post-verdict procedures. The complete rules took effect on March 21, 1946.

[38] *Dominguez v. Hartford Fin. Serv's Group, Inc.*, 530 F. Supp. 2d 902, 905 (S.D. Tex. 2008): "The scope of criminal discovery is significantly narrower than the scope of civil discovery," p. 907.

[39] See *State ex rel. Grammer v. Tippecanoe Circuit Court*, 377 N.E.2d 1359 (1978) (where the Supreme Court of Indiana refused the application of the rules on requests for admission in a criminal suit). See also Separate Concurring Opinion of Justice Zalameda, p. 4 and Concurring Opinion of Justice Inting, pp. 10-11.

[40] See Stephen N. Subrin, *Fishing Expeditions Allowed: the Historical Background of the 1938 Federal Rules*, 39 B.C. L. Rev., 691 (1998).

procedures to criminal prosecution[41] even if the former is altered to suit the contours of the latter.

However, if the Court views criminal prosecution as a quest for truth,[42] recognizes an affirmative duty upon the State to guarantee fair trial, and approaches the issue cognizant of the unequal footing between the State, with its immense investigatory resources,[43] and the accused who, most often than not, does not have access to the same, then it should be difficult to conceive an argument against ensuring the accused access to all possible fact-finding mechanisms — Requests for Admissions being one of them.

I submit that the Court should adopt a framework firmly rooted on this second view.

Detached from its origins in civil litigation[44] and focusing instead on how this mode of discovery operates, there is little debate as to the functions and office of Requests for Admissions. At its core, Requests for Admission establish facts.[45] Requests for Admission lead to the narrowing of the factual issues under contention.[46] When a party serves to his adversary a request to admit a relevant matter, it presupposes that he already has knowledge of such fact or has possession of the documents

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[41] See Bruce E. Gaynor, *Defendant's Right of Discovery in Criminal Cases*, 20 Clev. St. L. Rev. 31 (1971) at 33-34, accessed at <https://engagedscholarship.csuohio.edu/clevstlrev/vol20/iss1/57> (Based upon the premise that the adversary system elicits justice, current limited discovery practice is predicated upon the legal fiction that all counsel are equally competent).

[42] Id. at 34.

[43] Id. at 33 (Advocates of liberal discovery practices in criminal causes rely on the premise that the balance of advantage in any criminal trial rests with the prosecution, which usually has extensive financial and manpower resources at its disposal.)

[44] Origins include Equity Rule 58 of the English Rules under the Judicature Act as stated in Fed. R. Civ. P. 36 Advisory Committee Note of April 1937, p. 89.

[45] Id. at 88.

[46] See generally, Fed. R. Civ. P. 36 Advisory Committee Note of June 1946, pp. 54-55.

sought to be admitted and merely wishes that his opponent [admit to such relevant matters of fact] or concede [the] genuineness of the document.[47]

Requests for Admission serve two vital purposes during pre-trial — (1) it limits the controversy or issues of the case; and (2) it facilitates proof thereby reducing trial time and costs.[48] Requests for admission is a tool primarily designed to streamline litigation and narrow issues for trial.[49] It is intended to expedite the trial and to relieve the parties of the cost of proving facts that will not be disputed at trial, the truth of which is known to the parties or can be ascertained by reasonable inquiry.[50] Admissions made pursuant to a request constitute admissions for the purpose of the proceeding and thus will no longer require proof during trial.[51]

A Request for Admission properly served and answered by the parties will reveal other undisputed facts of the case and may further narrow and limit the issues raised in the pleadings. The propositions raised in a request and the adversary's admission or denial thereof will also shed light as to the truth or falsity of the allegations of the pleadings[52] (or, when adopted to criminal litigation, the relevant facts surrounding the accusation) and may "unmask as quickly as may be feasible, and give short

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[47] See Jeffrey S. Kinsler, *Requests for Admission in Wisconsin Procedure: Civil Litigation's Double Edged Sword*, 78 Marq. L. Rev. 625 (1995) 631, citing *Report on Practice under Rule 36: Requests for Admission*, 53 ALB. L. Rev. 35.

[48] Id. at 633, citing Ted Finman, *The Request for Admission in Federal Criminal Procedure*, The Yale Law Journal, Volume 71, Number 3 (1962) 375.

[49] Id. at 638.

[50] *Uy Chao v. De la Rama Steamship Co., Inc.*, G.R. No. L-14495, September 29, 1962, 6 SCRA 69, 73.

[51] Bar Matter No. 411, Revised Rules on Evidence (Rules 128-134), Rule 129, Sec. 4, July 1, 1989.

[52] *Concrete Aggregates Corporation v. Court of Appeals*, G.R. No. 117574, January 2, 1997, 266 SCRA 88, 93.

shrift to, untenable causes of action or defenses and thus avoid waste of time, effort and money."[53]

The establishment of uncontroverted facts and the abbreviation of litigation are goals not unique to civil litigation. Surely, these are paramount interests that the judicial process should be able to extend to the accused, more so where life and liberty are at stake.

It becomes clear then that the objections raised against the availability of Requests for Admission in criminal litigation are not on an absence of utility nor on a perceived inherent vice in its operation.

Instead, opposition gravitates among three propositions: *first*, that the office of Requests for Admission is performed by the criminal pre-trial process;[54] *second*, that the operation of Rule 26 is inherently incompatible with criminal litigation;[55] and *third*, the constitutional rights of the accused are in danger of being infringed.[56] These are hurdles, true, but none are so insurmountable as to absolutely bar any translation of Requests for Admission into the realm of criminal litigation.

The proposition that criminal litigation can do without Requests for Admission since the functions thereof are already fulfilled by the now strengthened criminal pre-trial process is, to my mind, hardly an argument at all. To be sure, no such argument is being made in its civil counterpart where Rule 26 on Requests for Admission and Rule 18 on Pre-Trial have cumulatively been aiding parties in civil suits. No prejudice is caused to the accused if he is allowed the use of a mechanism, like a Request for Admission, to establish facts surrounding the accusations against him over and above those granted during

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[53] *Diman v. Alumbres*, G.R. No. 131466, November 27, 1998, 299 SCRA 459, 464-465.

[54] See *ponencia*, p. 18; Concurring Opinion of Justice Inting, p. 10.

[55] See Concurring Opinion of Justice Perlas-Bernabe, p. 8.

[56] See *ponencia*, pp. 16-19; Concurring Opinion of Justice Perlas-Bernabe, pp. 5-7; Concurring Opinion of Justice Inting, pp. 7-10.

pre-trial. In fact, as I see it, a Request for Admission complements and reinforces the objectives of pre-trial by providing sanctions against a failure to timely answer a request and an improper denial.[57]

Also, the propositions that Rule 26 is inherently incompatible with criminal litigation and runs the risk of violating the constitutional rights of the accused are a function of the Court's restrictive approach to apply Rule 26, as worded, into criminal cases. At this point, I wish to make it clear that I am not advocating for the stock application of the provisions of Rule 26 into criminal procedure. For the benefits of Rule 26 to breathe meaning and significance into criminal litigation, it must be tailor fit to operate within it.

As I earlier emphasized, the Court should not lose sight of the inherent imbalance between the State and the accused with the scales tilted against the latter. It is undeniable that the State has more pre-trial investigative capacity both as a matter of law and practicality than defendants do. An individual accused whose life and liberty are at stake, "is but a speck of dust of particle or molecule *vis-à-vis* the vast and overwhelming powers of government; His only guarantee against oppression and tyranny are his fundamental liberties under the Bill of Rights which shield him in times of need."[58] Expanding pre-trial discovery procedures in criminal cases will allow the accused to "have a better chance to meet on more equal terms what the state, at its leisure and without real concern for expense, gathers to convict them."[59] Request for Admission, as a discovery tool, would bridge the gap and aid the accused to achieve this goal.

The foregoing considerations that support Requests for Admissions to be available to the accused are the same

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[57] See 1997 Revised Rules on Civil Procedure as amended, Rule 26, Secs. 2, 3 and Rule 29, Sec. 4.

[58] *Secretary of Justice v. Lantion*, G.R. No. 139465, January 18, 2000, 322 SCRA 160, 169.

[59] William J. Brennan Jr., *The Criminal Prosecution: Sporting Event or Quest for Truth?*, 1963 WASH. U. L. Q. 279, 286 (1963) accessed at <https://openscholarship.wustl.edu/law_lawreview/vol1963/iss3/1>.

considerations that should deny the prosecution access to the procedural tool. Not only is the prosecution already at an advantage in gathering facts and building its case, it cannot pursue a Request for Admission without violating the accused's constitutional right to presumption of innocence, the right against self-incrimination and the right to be silent.

The cornerstone of all criminal prosecution is the right of the accused to be presumed innocent.[60] The Constitution guarantees that "[i]n all criminal prosecution, the accused shall be presumed innocent until the contrary is proved."[61] And this presumption of innocence is overturned if and only if the prosecution has discharged its duty — that is, proving the guilt of the accused beyond reasonable doubt. The Constitution places upon the prosecution the heavy burden to prove each and every element of the crime charged in the information as to warrant a finding of guilt for that crime or for any other crime necessarily included therein.[62]

It is worth emphasizing that this burden of proof never shifts.[63] The burden of proof remains at all times upon the prosecution to establish the accused's guilt beyond reasonable doubt.[64] Conversely, as to his innocence, the accused has no burden of proof.[65] The accused does not even need to present a single piece of evidence in his defense if the State has not discharged its onus and can simply rely on his right to be presumed innocent.[66] A criminal case thus rises or falls on the strength

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[60] *People v. Luna*, G.R. No. 219164, March 21, 2018, 860 SCRA 1, 32.

[61] CONSTITUTION, Art. III, Sec. 14, par. (2).

[62] *People v. Luna,* supra note 60.

[63] *People v. Ordiz*, G.R. No. 206767, September 11, 2019, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65741>.

[64] *People v. Mariano*, G.R. No. 134309, November 17, 2000, 345 SCRA 1, 10.

[65] *People v. Catalan*, G.R. No. 189330, November 28, 2012, 686 SCRA 631, 646.

[66] *People v. Ordiz,* supra note 63.

of the prosecution's own evidence and never on the weakness or even absence of that of the defense.[67]

Intimately related to the constitutional right to presumption of innocence is the right against self-incrimination. Section 17, Article III of the Constitution states that "[n]o person shall be compelled to be a witness against himself." Reinforcing this right in criminal prosecution, Section 1, Rule 115 of the Revised Rules of Criminal Procedures provides that "the accused shall be entitled x x x to be exempt from being compelled to be a witness against himself" and "[h]is silence shall not in any manner prejudice him." The Court, in *People v. Ayson*,[68] explained the extent of the right of the accused against self-incrimination:

> The right of the defendant in a criminal case "to be exempt from being a witness against himself" signifies that **he cannot be compelled to testify or produce evidence in the criminal case in which he is the accused, or one of the accused. He cannot be compelled to do so even by *subpoena* or other process or order of the Court.** He cannot be required to be a witness either for the prosecution, or for a co-accused, or even for himself. In other words — unlike an ordinary witness (or a party in a civil action) who may be compelled to testify by *subpoena*, having only the right to refuse to answer a particular incriminatory question at the time it is put to him — the defendant in a criminal action can refuse to testify altogether. *He can refuse to take the witness stand, be sworn, **answer any question**. And, as the law categorically states, **"his neglect or refusal to be a witness shall not in any manner prejudice or be used against him."***[69] (Emphasis, underscoring and italics supplied)

A Request for Admission served upon the accused directly tramples upon the right of the accused not to be compelled to testify against himself. Rule 26 mandates the party requested to answer the request to admit within fifteen (15) days from receipt thereof; otherwise all relevant matters stated in the request

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[67] *King v. People*, G.R. No. 131540, December 2, 1999, 319 SCRA 654, 670.

[68] G.R. No. 85215, July 7, 1989, 175 SCRA 216.

[69] Id. at 233.

shall be deemed admitted. This forces the accused to answer a request to admit served upon him at the expense of giving up his right to remain silent.

Equally obtaining is the necessary conclusion that the accused should not be prejudiced should he or she refuse or fail to answer any such requests. No inference of guilt may be drawn against an accused upon his or her failure to make a statement of any sort.[70] If an accused has the right to decline to testify at trial without having any inference of guilt drawn from his failure to go on the witness stand,[71] then with more reason should the accused not be prejudiced by the rules and effects of a Request for Admission.

Furthermore, compelling the accused to answer a request to admit would place upon him the burden of proving his innocence rather than the prosecution presenting evidence to prove his guilt. When an accused admits the truth of a relevant matter of fact or the genuineness of a relevant document contained in the request, which may relate to the essential elements of the crime charged, the Rules provide that these are considered as admissions by the accused and will no longer require any proof during trial.[72] The prosecution is then relieved of its duty to present evidence of such admitted fact during trial as the accused has been imposed the "burden" to establish such fact for the prosecution's case.[73] Pushing this scenario further, it would not be farfetched for a conviction to rest solely on the results of a request for admission. This goes against the rule that an accused should be convicted on the strength of the evidence presented by the prosecution.[74]

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[70] *People v. Arciaga*, G.R. No. L-38179, June 16, 1980, 98 SCRA 1, 17.

[71] See *People v. Gargoles*, G.R. No. L-40885, May 18, 1978, 83 SCRA 282, 294.

[72] See Bar Matter No. 411, Revised Rules on Evidence (Rules 128-134), Rule 129, Sec. 4, July 1, 1989.

[73] See *F.W. Means & Co. v. Carstens*, 428 N.E.2d 251 (1981).

[74] *People v. Arciaga*, supra note 70, 17-18; *People v. Legaspi*, G.R. No. 117802, April 27, 2000, 331 SCRA 95, 127.

As such, while the utility of Request for Admission is undoubted, its translation into criminal litigation necessitates its modification. The accused should have access to this procedural tool in order to establish facts and narrow factual issues on trial, which may be essential in the preparation of his defense. In recognition, however, of the accused's right against self-incrimination, Requests for Admission cannot be wielded by the prosecution to elicit admissions from the accused.

It may be argued that a one-sided approach may frustrate the State's interest to prosecute criminals because "allowing the accused to subject [the prosecution or any of its witnesses] to a request for admission would be tantamount to shifting to the accused some form of control over the direction of the prosecution," which "would violate the basic principle that criminal actions are prosecuted under the sole discretion and control of the public prosecutor."[75]

However, as I see it, granting the accused the use of Request for Admission does not in any way lessen its objectives or limit its benefits only to the accused. The refining of issues and establishment of the truthfulness or falsity of the facts surrounding the accusation, achieved through the service of a request to admit, may also benefit the prosecution in the form of a guilty plea or an abbreviated litigation through plea-bargaining.[76]

Further, the argument is premised on an "expansive" Request for Admission which is not sanctioned by the rules.

To be sure, Rule 26 does not give the parties the unbridled discretion to include in their request for admission any matter related to the case. The scope of matters that a party may request the adversary to admit is limited by Section 1 of Rule 26 and

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[75] See Concurring Opinion of Justice Perlas-Bernabe, p. 8.

[76] See William J. Brennan, Jr., supra note 59, at 288, citing Anderson, *What Price Conviction?*, AMERICAN BAR ASSN. SECTION OF CRIMINAL LAW PROCEEDINGS 41 (1958); Fletcher, Pretrial Discovery in State Criminal Cases, 12 Stan. L. Rev. 293, 319 (1960); Comment, Pre-Trial Disclosure in Criminal Cases, 60 YALE L.J. 626, 646 (1951), Cf. 4 MOORE, FEDERAL PRACTICE ¶ 26.02 (3d ed. 1962).

has been clarified by relevant jurisprudence. Section 1 of Rule 26 clearly states that a Request for Admission should only pertain to (1) the genuineness of relevant documents or (2) the veracity of a relevant matter of fact. Thus, in *Development Bank of the Philippines v. Court of Appeals*,[77] the Court held that matters of law, conclusions, or opinions cannot be subject of a Request for Admission and are therefore not deemed impliedly admitted under Rule 26.

Moreover, in a catena of cases,[78] the Court has clarified that the very subject matter of the complaint or matters which have already been admitted or denied by a party are not proper subjects of a request for admission. The Court explained that "[a] request for admission is not intended to merely reproduce or reiterate the allegations of the requesting party's pleading but should set forth relevant evidentiary matters of fact, or documents described in and exhibited with the request, whose purpose is to establish said party's cause of action or defense."[79]

As applied to criminal cases, the essential elements of the crime alleged in the Information are not proper matters of a Request for Admission. An accused's request for admission therefore will not deprive the public prosecutor of the discretion and control on what evidence should be presented during trial because the burden to prove each and every element of the crime charged in the information or any other crime necessarily included therein remains with the prosecution. As explained, Request for Admission, as a discovery tool, simply aids the parties in establishing undisputed and uncontroverted facts leading to reduced trial time and costs.

Proceeding from the foregoing, I find that respondent Ang's *Request for Admission* does not fall under Rule 26 of the Rules

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[77] G.R. No. 153034, September 20, 2005, 470 SCRA 317, 326.

[78] *Po v. Court of Appeals*, G.R. No. L-34341, August 22, 1988, 164 SCRA 668; *Concrete Aggregates Corporation v. Court of Appeals*, G.R. No. 117574, January 2, 1997, 266 SCRA 88, 94; *Lañada v. Court of Appeals*, G.R. Nos. 102390 & 102404, February 1, 2002, 375 SCRA 543, 553; See *Duque v. Yu, Jr.*, G.R. No. 226130, February 19, 2018, 856 SCRA 97.

[79] *Po v. Court of Appeals*, id. at 670.

of Court. As aptly pointed out in the *ponencia*[80] and by some of our Colleagues, some of the matters contained in respondent Ang's *Request* intimately relate to the factual allegations of the Information[81] or the essential elements of the crimes charged which the prosecution is obliged to prove,[82] while other matters are mere conclusions and opinions.[83] These matters are not proper subjects of a Request for Admission and therefore cannot be deemed impliedly admitted pursuant to Rule 26. Hence, it was a grave and serious error on the part of the trial court to declare the matters contained in respondent Ang's *Request for Admission* as the People's implied and judicial admissions in the consolidated criminal cases filed against respondents. In this regard, the nullification of the Joint Orders dated February 12, 2015, July 24, 2015, March 10, 2016, and September 5, 2016 issued by the trial court was proper.

All told, I submit that the Court should not absolutely bar the accused from availing of mechanisms which may aid in his defense. The inherent imbalance in our criminal justice system and the constitutional rights of the accused, which courts are duty bound to protect, should prompt the Court to afford the accused all available remedies, including relevant discovery procedures, such as a Request for Admission under Rule 26 of the Rules of Court.

Unfortunately, however, in the present case, respondent Ang improperly availed of such discovery procedure. The matters contained in her *Request for Admission* are beyond the scope of Rule 26 and cannot therefore be considered as the People's implied and judicial admissions in the consolidated criminal cases filed against respondents.

In this light, I vote to grant the petition.

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[80] See *ponencia*, p. 24.

[81] See Separate Concurring Opinion of Justice Leonen, pp. 11-15.

[82] See Concurring Opinion of Justice Perlas-Bernabe, p. 8.

[83] See Separate Concurring Opinion of Justice Leonen, pp. 15-17.

EN BANC

[G.R. No. 237663. October 6, 2020]

REPUBLIC OF THE PHILIPPINES, *Petitioner*, *v.* **HEIRS OF MA. TERESITA A. BERNABE and COOPERATIVE RURAL BANK OF BULACAN,** *Respondents*.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; THE BASES CONVERSION AND DEVELOPMENT ACT OF 1992 (REPUBLIC ACT No. 7227); THE BASES CONVERSION AND DEVELOPMENT AUTHORITY (BCDA) IS NOT A CORPORATION, EITHER AS A STOCK OR NONSTOCK CORPORATION, BUT A GOVERNMENT INSTRUMENTALITY WITH CORPORATE POWERS (GICP) OR GOVERNMENT CORPORATE ENTITY (GCE), VESTED OR ENDOWED WITH THE POWERS OF A CORPORATION, INCLUDING THE POWER TO SUE AND BE SUED IN ITS CORPORATE NAME AND THE RIGHT TO OWN, HOLD AND ADMINISTER THE LANDS THAT HAVE BEEN TRANSFERRED TO IT, WITH OPERATIONAL AUTONOMY, AND PART OF THE NATIONAL GOVERNMENT MACHINERY ALTHOUGH NOT INTEGRATED WITHIN THE DEPARTMENTAL FRAMEWORK.— [W]hile Section 3 of R.A. 7227 recognizes the BCDA as a body corporate with the attribute of perpetual succession and vested with the powers of a corporation and Section 5 of R.A. 7227 vests the BCDA with the power, among others, to succeed in its corporate name, to sue and be sued in such corporate name and to adopt, alter and use a corporate seal which can be judicially noticed, these provisions do not make the BCDA a corporation, either a stock or nonstock corporation as defined under the Corporation Code as well as the Revised Corporation Code — they merely endow the BCDA with all or full corporate powers so that it can enjoy operational autonomy. And, since its capitalization provision, Section 6 of R.A. 7227, cannot qualify the BCDA as a stock or nonstock corporation, then it is an *Instrumentality* under Section 2(10)

of the Introductory Provisions of the Administrative Code as well as *Government Instrumentality with Corporate Powers (GICP)/Government Corporate Entity (GCE)* under Section 3(n) of R.A. 10149. Given the ruling of the Court in *BCDA v. CIR* and the express classification of the BCDA as a Government Instrumentality with Corporate Powers (GICP)/Government Corporate Entity (GCE) under Section 3(n) of R.A. 10149, the Court recognizes the BCDA as a GICP or GCE vested or endowed with the powers of a corporation, including the power to sue and be sued in its corporate name and the right to own, hold and administer the lands that have been transferred to it, with operational autonomy, and part of the National Government machinery although not integrated within the departmental framework.

2. ID.; ID.; ID.; ID.; THE BCDA IS A MERE TRUSTEE OF THE REPUBLIC; THE TRANSFER OF THE MILITARY RESERVATIONS AND OTHER PROPERTIES, *I.E.*, CLARK AIR BASE PROPER AND PORTIONS OF THE CLARK REVERTED BASE LANDS, (CAB LANDS) FROM THE CLARK SPECIAL ECONOMIC ZONE (CSEZ) TO THE BCDA WAS NOT MEANT TO TRANSFER THE BENEFICIAL OWNERSHIP OF THESE ASSETS FROM THE REPUBLIC TO THE BCDA, BUT MERELY TO ESTABLISH THE BCDA AS THE GOVERNING BODY OF THE CSEZ.— Since the BCDA is a GICP or GCE, what is the nature of its interest in the CAB Lands that were transferred to it by virtue of Proc. No. 163 "to own, hold and/or administer under Section 4(a) of R.A. 7227? x x x. In *Government Service Insurance System v. City Treasurer of the City of Manila*, the Court, applying the doctrine in *Manila International Airport Authority*, held that the Government Service Insurance System (GSIS), similar to MIAA, is an instrumentality of the National Government whose properties are owned by the Republic, *viz.*: x x x [T]he subject properties under GSIS's name are likewise owned by the Republic. The GSIS is but a **mere trustee** of the subject properties which have either been ceded to it by the Government or acquired for the enhancement of the system. This particular property arrangement is clearly shown by the fact that the **disposal or conveyance of said subject properties are either done by or through the authority of the President** x x x. In consonance with the aforequoted pronouncements of the Court, the Court holds, in the words of *Manila International*

Airport Authority, that the BCDA is a mere trustee of the Republic. The transfer of the military reservations and other properties — the CAB Lands — from the CSEZ to the BCDA was not meant to transfer the beneficial ownership of these assets from the Republic to the BCDA. The purpose was merely to establish the BCDA as the governing body of the CSEZ.

3. ID.; ID.; ID.; ID.; THE REPUBLIC, BEING THE BENEFICIAL OWNER OF THE MILITARY RESERVATIONS AND THEIR EXTENSIONS, INCLUDING THE CAB LANDS AND CAMP WALLACE, IS THE REAL PARTY IN INTEREST AND NOT THE BCDA, IN ALL CASES INVOLVING THE TITLE TO AND OWNERSHIP THEREOF; THE BCDA CANNOT DISPOSE OF THE CAB LANDS; HENCE, ITS EXECUTIVE HEAD CANNOT SIGN THE DEED OF CONVEYANCE ON BEHALF OF THE REPUBLIC; ONLY THE PRESIDENT OF THE REPUBLIC IS AUTHORIZED TO SIGN SUCH DEED OF CONVEYANCE.— Given that the BCDA itself is owned solely by the Republic and that R.A. 7227, the law creating the BCDA, provides that "[w]ith respect to the military reservations and their extensions, the President upon recommendation of the [BCDA] x x x shall likewise be authorized to sell or dispose those portions of lands which the [BCDA] x x x may find essential for the development of [its] projects," then it is the Republic that has retained the beneficial ownership of the CAB Lands pursuant to Article 428 of the Civil Code, which provides that only the owner has the right to dispose of a thing. Since the BCDA cannot dispose of the CAB Lands, the BCDA does not own the military reservations and their extensions, including the CAB Lands, that were transferred to it. The BCDA's status as a mere trustee of the CAB Lands is made obvious by the fact that under the law creating it, its executive head cannot even sign the deed of conveyance on behalf of the Republic and only the President of the Republic is authorized to sign such deed of conveyance, which is a recognition that the property being disposed of belongs to the Republic pursuant to Section 48, Chapter 12, Book I of the Administrative Code x x x. Being the beneficial owner of the CAB Lands, the Republic is the real party in interest in this case. With these pronouncements, the Court now abandons its ruling in *Shipside Incorporated* that the Republic is not the real party in interest in cases involving the title to and ownership

of the military reservations and their extensions, including the CAB Lands and Camp Wallace, transferred to the BCDA. Henceforth, in cases involving the title to and ownership of the military reservations and their extensions, including the CAB Lands and Camp Wallace, transferred to the BCDA, the Republic, being the beneficial owner, is the real party in interest and not the BCDA.

4. ID.; ID.; ID.; ID.; THE AUTHORITY TO INSTITUTE AN ACTION FOR REVERSION TO THE GOVERNMENT OF LANDS OF PUBLIC DOMAIN, ON BEHALF OF THE REPUBLIC, IS PRIMARILY CONFERRED UPON THE OFFICE OF THE SOLICITOR GENERAL.— The Court clarifies that the BCDA has limited ownership right and disposing power. This is recognized as one of the powers of the BCDA under Section 5(h) of R.A. 7227: "To acquire, own, hold, administer, and lease real and personal properties, including agricultural lands, property rights and interests and encumber, lease, mortgage, sell, alienate or otherwise dispose of the same at fair market value it may deem appropriate." Clearly, the cause of action as pleaded in the Second Amended Complaint is one for reversion with cancellation of title. This is evident from the denomination of the case as one: "For: Cancellation of Title and Reversion" and the x x x allegations and prayer of the Second Amended Complaint x x x. Being one for reversion, the action should indeed be instituted by the OSG on behalf of the Republic pursuant to Section 101 of Commonwealth Act No. 141, as amended, or the *Public Land Act*, which provides: "All actions for the reversion to the Government of lands of the public domain or improvements thereon shall be instituted by the Solicitor-General or the officer acting in his stead, in the proper courts, in the name of the Commonwealth of the Philippines." The Court interpreted this provision in *Republic v. Mangotara* in this wise*:* Clear from the aforequoted provision that the authority to institute an action for reversion, on behalf of the Republic, is primarily conferred upon the OSG. While the OSG, for most of the time, will file an action for reversion upon the request or recommendation of the Director of Lands, there is no basis for saying that the former is absolutely bound or dependent on the latter. It must be recalled that the authority of the Director of Lands is limited to those disposable lands of public domain which have been proclaimed to be subject to disposition under the *Public Land Act* or Commonwealth Act

No. 141. In the present case, the CAB Lands have been transferred to the BCDA as the trustee thereof and, thus, the Director of Lands can no longer be deemed the administrator of the CAB Lands on the assumption that they have already been proclaimed as disposable lands of public domain.

5. ID.; ID.; ID.; ID.; THE BCDA, BEING THE TRUSTEE OF THE CAB LANDS, THROUGH ITS AUTHORIZED SIGNATORY, CAN EXECUTE THE VERIFICATION AND CERTIFICATION AGAINST FORUM SHOPPING; REQUIREMENTS ON THE VERIFICATION AND CERTIFICATION AGAINST FORUM SHOPPING, SUBSTANTIALLY COMPLIED WITH; RELAXATION OF THE RULE, PROPER DUE TO SPECIAL CIRCUMSTANCES AND JURISPRUDENTIAL SIGNIFICANCE OF THE CASE AT BAR AND IN THE INTEREST OF JUSTICE.— [T]he CA found the VCAFS attached to the Second Amended Complaint defective x x x. Since the basis for the CA and the RTC in ruling that the VCAFS executed by the BCDA's President and CEO is their reliance on *Shipside Incorporated*, which the Court now finds to be not in accord with R.A. 7227, the Administrative Code and R.A. 10149, as well as prevailing jurisprudence, the BCDA, being the trustee of the CAB Lands, through its authorized signatory, can execute the VCAFS. The authority of the BCDA's President and CEO to sign the VCAFS is also being questioned on the alleged lack of the resolution of the Board of the BCDA designating him as the authorized signatory. x x x. In *Shipside Incorporated*, the defect in the VCAFS, consisting of the failure to show proof that Lorenzo Balbin, the resident manager for petitioner therein, who was the signatory in the VCAFS, was authorized by petitioner's board of directors to file such a petition, was brushed aside: In certain exceptional circumstances, however, the Court has allowed the belated filing of the certification. x x x In all these cases, there were special circumstances or compelling reasons that justified the relaxation of the rule requiring verification and certification on non-forum shopping. x x x. A perusal of the Secretary's Certificate dated February 6, 2018 attached to the Petition shows that on the occasion of the 504th Regular Board Meeting of the BCDA Board held on November 22, 2017, Resolution No. 2017-11-184 was approved, authorizing the OSG to file the cancellation of titles and/or reversion cases against claimants of properties that form

part of the Fort Stotsenburg Military Reservation in Angeles City, Pampanga, and the President and CEO, or the Executive Vice President, or the General Counsel of the BCDA, is authorized to verify, certify and execute a certificate against non-forum shopping. The Court notes that the Secretary's Certificate has been belatedly filed and could not under ordinary circumstances cure the defect of the VCAFS attached to the Second Amended Complaint. However, given the special circumstances and jurisprudential significance of the present case, the Court deems it proper in the interest of justice to relax the rule with respect to the requirements on the VCAFS and that there was substantial compliance by the Republic with the said requirements.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Campanilla Ponce Law Firm for Heirs of Ma. Teresita A. Bernabe.

PDIC Office of the General Counsel for Cooperative Rural Bank of Bulacan.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a petition for review[1] (Petition) under Rule 45 of the Rules of Court filed by petitioner Republic of the Philippines (Republic), represented by the Office of the Solicitor General (OSG), assailing the Decision[2] dated February 21, 2018 of the Court of Appeals[3] (CA) in CA-G.R. CV No. 104631. The CA Decision denied the Republic's appeal and

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[1] *Rollo*, pp. 10-32, excluding Annexes.

[2] Id. at 34-50. Penned by Associate Justice Carmelita Salandanan Manahan, with Associate Justices Romeo F. Barza and Stephen C. Cruz, concurring.

[3] First (1st) Division.

affirmed the Resolution[4] dated May 13, 2014 rendered by the Regional Trial Court, Branch 59, Angeles City (RTC), in Civil Case No. 11682. The RTC Resolution granted the Motion to Dismiss filed by respondent Cooperative Rural Bank of Bulacan (CRBB) and dismissed the Republic's Second Amended Complaint.

The Facts and Antecedent Proceedings

The CA Decision narrates the facts of the case as follows:

> On August 23, 2004, a Complaint for Cancellation of Title and Reversion was filed by [the Republic] through the [OSG] against [respondent] Ma. Teresita E. Bernabe [(Bernabe)].
>
> The Complaint alleges that on July 31, 1908, [the] then Governor General of the Philippines, James F. Smith, issued an unnumbered proclamation reserving certain parcels of land in the province of Pampanga for military purposes.
>
> While said parcels of land remained as United States Military Reservation, a portion thereof was surveyed, segregated and designated as "Lot No. 727, Psd-5278, Angeles Cadastre." Said Lot No. [7]27 was assigned in favor of one Jose Henson, who later subdivided the same into seven (7) sublots, namely: Lot No. 727-A, Lot No. 727-B, Lot No. 727-C, Lot No. 727-D, Lot No. 727-E, Lot No. 727-F and Lot No. 727-G. One of the sublots, Lot No. 727-G, was further subdivided into sixty-three (63) portions as evinced by Survey Plan Csd-11198.
>
> The sublots covered by Survey Plan Csd-11198 are portions of the Fort Stotsenburg Military Reservation, which is currently known as Clark Air Force Base. Said military reservation was never released as alienable and disposable land of the public domain, hence, they are neither susceptible to disposition under the provisions of Commonwealth Act No. 141, the Public Land Act, nor registrable under Act No. 496, the Land Registration Act.
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> As evidenced by a subdivision survey covering Lot No. 965, Psd-5278, formerly Lot No. 42 of Csd-11198, one Francisco Garcia [(Garcia)] caused the registration of the same under the Torrens System

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[4] *Rollo*, pp. 82-95. Penned by Presiding Judge Ma. Angelica T. Paras-Quiambao.

of Registration; by virtue of the said registration, Garcia was then issued an Original Certificate of Title No. 83 on August 16, 1968. On March 8, 1968, Garcia sold a portion of the said Lot No. 965 to Nicanor Romero for which Transfer Certificate of Title No. 21685 was issued. The said portion [(subject property)] was then further sold to Bernabe for which Transfer Certificate of Title No. 107736 was issued.

During the fact-finding investigation and relocation survey conducted by the Bureau of Lands to determine the location of the subject property in relation to the perimeter area of Clark Air Force Base, it was discovered that the subject property was neither occupied nor cultivated by the claimants thereof. The subject property was found inside Fort Stotsenburg Military Reservation which was being used as a target range by Clark Air Force Military personnel.

As no markers or monuments were found on the subject property, the subdivision survey made on the said property must be deemed as inaccurate. Garcia's acquisition of the subject property was tainted with fraud and misrepresentation, hence, the Decision of the Court of First Instance in Cadastral Case No. 1, LRC Record No. 124 which adjudicated the subject property in favor of Garcia and decreed the consequent issuance of Original Certificate [of Title] No. 83 must be declared as null and void; since the Original Certificate of Title No. 83 issued to Garcia is null and void, the Transfer Certificate of Title No. 107736 registered under the name of Bernabe is without valid and binding effect.

On January 23, 2006, while this case was pending, [respondents] Heirs of Bernabe mortgaged the subject property covered by Transfer Certificate of Title No. 107736 to [CRBB]. After being informed of the mortgage, the Republic, through the OSG, filed on December 5, 2011, an Amended Complaint impleading CRBB as defendant. Atty. Arnel Paciano D. Casanova [(Atty. Casanova)], the President and Chief Executive Officer of the Bases Conversion and Development Authority (BCDA), signed the Amended Complaint's Verification and Certification Against Forum Shopping.

On March 5, 2012, the OSG filed a Second Amended Complaint indicating the place of business of x x x CRBB as Cagayan Valley Road, Banga 1st Plaridel, Bulacan.

x x x x x x x x x

Instead of submitting a responsive pleading, CRBB filed a Motion to Dismiss arguing that the Republic never renounced its ownership over the Clark Air Force Base, hence, the proper party to initiate a case for reversion is the Director of Lands. The instant complaint for cancellation of title and reversion, not being initiated by the Director of Lands, should be dismissed. Assuming that BCDA is the proper party, the complaint is still procedurally defective since it is not appended with a valid verification and certification against forum shopping. There is no showing that Atty. Casanova, in signing the x x x Verification and Certification Against Forum Shopping, was indeed authorized by the BCDA Board to sign said documents; and, if indeed the BCDA is the real party in interest, it cannot raise the defense of imprescriptibility, it being engaged in proprietary function. Finally, it contended that CRBB and the Heirs of Bernabe entered into their loan and mortgage transactions in good faith relying on what appeared on the title of the subject property, therefore, they must be protected.

For its part, the OSG filed its Opposition contending that: the Republic is the real party in interest, being the owner of all lands of the public domain under the concept of *jura regalia*. Atty. Casanova need not be authorized by the BCDA Board because he signed the x x x Verification and Certification Against Forum Shopping, not for BCDA, but for the Republic. Atty. Casanova had sufficient knowledge and belief to swear to the truth of the allegations in the Second Amended Complaint. The defense of prescription is unavailing because said defense does not run against the State and its subdivisions; and, to grant x x x CRBB's Motion to Dismiss on account of some procedural infirmity would be tantamount to a denial of due process against the State.

Meanwhile, a Notice was sent by CRBB informing the [RTC] that it was placed under receivership by the Bangko Sentral ng Pilipinas (BSP) on May 24, 2013. It likewise stated that the Philippine Deposit Insurance Commission (PDIC) is in the process of liquidating CRBB x x x.

On July 24, 2013, an Entry of Appearance with Motion to Suspend Proceedings was filed by the Office of the General Counsel (OGC), [as counsel for] PDIC on behalf of CRBB upon discovery of the latter's insolvency and its placement under receivership. The [RTC], in its July 26, 2013 Order, noted the said entry of appearance and ordered the temporary suspension of the proceedings for a period of three (3) months.

On January 8, 2014, CRBB, through PDIC, filed a Reply with Additional Ground for the Motion to Dismiss contending that the instant case is dismissible because the same must be adjudicated under the exclusive jurisdiction of the Liquidation Court.

On February 21, 2014, the OSG filed a Rejoinder averring that liquidation proceedings filed in another court does not divest the [RTC] of its jurisdiction to take cognizance of the reversion proceedings. Citing the settled precept in procedural law that jurisdiction, once acquired, continues until the case is finally terminated, it postulated that the [RTC], which first acquired jurisdiction over the instant case, shall retain the same until the case is terminated.

On May 13, 2014, the [RTC] rendered [a] Resolution, granting CRBB's Motion to Dismiss[, the dispositive portion of which states:

> **WHEREFORE**, premises considered, the prayer in the "Motion to Dismiss" dated December 19, 2012 filed by [CRBB] is hereby **GRANTED**.
>
> The Second Amended Complaint filed by the [Republic] is hereby ordered **DISMISSED** without prejudice to the filing of an appropriate action by the [BCDA] to which a valid verification and certification against forum shopping must be attached.
>
> Furnish the parties' respective counsels with copies hereof.][5]

Aggrieved, the Republic, through the OSG, filed a Motion for Reconsideration to which CRBB, as represented by PDIC, interposed its Opposition. On September 17, 2014, the OSG filed its Comment thereon. On December 15, 2014, the [RTC] rendered a Resolution denying said motion for reconsideration.

[The Republic, then, filed an appeal to the CA.][6]

Ruling of the CA

In its Decision dated February 21, 2018, the CA denied the Republic's appeal. The CA agreed with the RTC that the Republic is not the real party in interest because, from the allegations of

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[5] Id. at 95.

[6] Id. at 34-41.

the Republic's Second Amended Complaint, the subject property being located inside the Fort Stotsenburg Military Reservation, which is presently known as Clark Air Base, is under the direct control and ownership of the BCDA pursuant to Proclamation[7] No. 163, series of 1993.[8] Thus, according to the CA, the BCDA, by virtue of its ownership over the subject property, is the party which stands to be benefited or injured by the verdict in the instant case, and, being the real party in interest, the instant case for reversion and cancellation of title must be lodged in its name as the plaintiff.[9] The CA applied the Court's ruling in the 2001 case of *Shipside Incorporated v. Court of Appeals*[10] *(Shipside Incorporated)* that the Republic lacks standing to initiate reversion proceedings covering properties transferred to the BCDA.[11]

The CA further stated that assuming the Republic is the real party in interest, the Second Amended Complaint is dismissible due to the defects in the Verification and Certification Against Forum Shopping (VCAFS) attached thereto because it is beyond the official functions of the BCDA, much less, its President and Chief Executive Officer (CEO), to sign the VCAFS.[12] Assuming that the BCDA was competent to act on behalf of the Republic, Atty. Casanova's signature on the VCAFS may not be deemed valid because of the lack of any evidence showing that he was particularly authorized by the BCDA Board of Directors (Board) to sign the same.[13]

The dispositive portion of the CA Decision states:

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[7] The CA Decision inadvertently mentioned "Presidential Decree (P.D.) No. 163, series of 1993." Id. at 43.

[8] *Rollo*, pp. 42-43.

[9] Id. at 43.

[10] G.R. No. 143377, February 20, 2001, 352 SCRA 334 [Per J. Melo, Third Division].

[11] *Rollo*, pp. 43-46.

[12] Id. at 48-49.

[13] Id. at 49.

WHEREFORE, premises considered, the appeal is hereby **DENIED**. The Resolution dated May 13, 2014 of the Regional Trial Court, Branch 59, Angeles City in Civil Case No. 11682 is hereby **AFFIRMED**.

SO ORDERED.[14]

Hence, the instant Petition, without first seeking reconsideration of the CA Decision. Respondents Heirs of Ma. Teresita A. Bernabe (Heirs of Bernabe) filed a Comment[15] dated November 20, 2018. CRBB, represented by its liquidator PDIC, filed a Comment[16] dated December 10, 2018. Both Comments did not question the non-filing by the Republic of a motion to reconsider the CA Decision and merely reiterated the ruling and disquisitions of the lower courts. The Republic filed a Consolidated Reply[17] dated September 9, 2019.

The Issues

The Petition states only two issues to be resolved:

1. Whether the CA erred in affirming the ruling of the RTC that the Republic is not the real party in interest and cannot invoke imprescriptibility of action.

2. Whether the CA erred in affirming the Resolution of the RTC dismissing the Second Amended Complaint for reversion and cancellation of title on the ground that the BCDA President cannot sign the VCAFS.[18]

The Court's Ruling

The Petition is impressed with merit.

The resolution of the instant Petition rests mainly on the determination of whether the Republic is the real party in interest

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[14] Id.

[15] Id. at 104-115.

[16] Id. at 122-142.

[17] Id. at 157-165.

[18] Id. at 17.

to institute and prosecute the instant case for reversion and cancellation of title.

As defined in Section 2, Rule 3 of the Rules of Court, a real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Section 2 adds that unless otherwise authorized by law or the Rules of Court, every action must be prosecuted or defended in the name of the real party in interest.

To determine who is the real party in interest, the nature or character of the subject property and who has present ownership thereof have to be inquired into.

As alleged by the Republic in its Second Amended Complaint, on July 31, 1908, the then Governor General of the Philippines, James F. Smith, through an unnumbered Proclamation, issued an Executive Order wherein "[certain] lands [were] reserved for the extension of the Camp Stotsenburg military reservation near Angeles, Pampanga x x x as declared by Executive Order of September 1, 1903 (G.O. No. 34, War Department, October 13, 1903) x x x viz.: [a]ll public lands x x x."[19] The September 1, 1903 Executive Order "reserved for military purposes subject to private rights x x x [certain] tract of public land near Angeles, Pampanga."[20] Similar to the initial reservation, the reservation for the extension of Camp Stotsenburg was subject to private rights since the reservation was subject to the condition that "no private property shall be taken or destroyed without first making payment therefor x x x."[21]

Under that unnumbered Proclamation of the then Governor General of the Philippines, James F. Smith, the lands which were reserved for Camp Stotsenburg and its extension were all public lands subject to private rights. Later, Camp Stotsenburg became Clark Air Base. As alleged in the Second Amended Complaint, during the fact-finding investigation and relocation

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[19] Id. at 73-76. Quoted portion at 74.

[20] Id. at 73.

[21] Id. at 76.

survey conducted by the Bureau of Lands, it was ascertained that the subject property was inside the Fort Stotsenburg Military Reservation (now Clark Air Base), which was being used as a target range by the Clark Air Force Military personnel, that it was never occupied nor cultivated by the claimants thereof, and that there were no monuments or markers existing thereon.[22]

In 1993, then President Fidel V. Ramos, through Proclamation No. 163,[23] series of 1993 (Proc. 163), created the Clark Special Economic Zone (CSEZ), which "shall cover the lands consisting of the Clark military reservations, including the Clark Air Base[24] proper and portions of the Clark reverted baselands [(CAB Lands)], and excluding the areas covered by previous Presidential Proclamations, the areas turned over to the Department of Agrarian Reform (DAR), and the areas in the reverted baselands reserved for military use."[25] The total area of the CSEZ or CAB Lands is 28,041 hectares, more or less, subject to actual survey, covering Clark Air Base proper and portions of the Clark reverted baselands.[26]

Proc. 163 also provides:

SECTION 2. *Transfer of CSEZ Areas to the Bases Conversion and Development Authority*. — The Clark Air Base proper covering 4,440 hectares, more or less, and portions of the Clark reverted baselands covering 23,601 hectares, more or less, totalling 28,041 hectares declared as the total area of the CSEZ in accordance with Section 1 hereof are hereby transferred to the BCDA.

These areas are approximate and subject to actual ground surveys.

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[22] Id. at 78.

[23] CREATING AND DESIGNATING THE AREA COVERED BY THE CLARK SPECIAL ECONOMIC ZONE AND TRANSFERRING THESE LANDS TO THE BASES CONVERSION AND DEVELOPMENT AUTHORITY PURSUANT TO REPUBLIC ACT NO. 7227, April 3, 1993.

[24] Clark Air Base is the term used in this Decision and not "Clark Air Force Base" which the lower courts have repeatedly used because "Clark Air Base" is the term adverted to in Proc. 163.

[25] Proclamation No. 163, series of 1993, Sec. 1.

[26] Id.

The BCDA shall determine utilization and disposition of the above mentioned lands.

SECTION 3. *Governing Body of the Clark Special Economic Zone*. — Pursuant to Section 15 of R.A. 7227, the BCDA is hereby established as the governing body of the CSEZ. The BCDA shall promulgate all necessary policies, rules and regulations to govern and regulate the CSEZ thru the operating and implementing arm it shall establish for the CSEZ.

It will be recalled that Republic Act No. (R.A.) 7227[27] or the *Bases Conversion and Development Act of 1992* created the Bases Conversion and Development Authority (BCDA), "a body corporate x x x which shall have the attribute of perpetual succession and shall be vested with the powers of a corporation."[28] One of the BCDA's purposes is: "To own, hold and/or administer the military reservations of John Hay Air Station, Wallace Air Station, O'Donnell Transmitter Station, San Miguel Naval Communications Station, Mt. Sta. Rita Station (Hermosa, Bataan) and those portions of Metro Manila military camps which may be transferred to it by the President."[29] Being a corporate entity, the BCDA is vested with the power, among others: "To succeed in its corporate name, to sue and be sued in such corporate name and to adopt, alter and use a corporate seal which shall be judicially noticed."[30] Section 9 of R.A. 7227 provides: "The powers and functions of the Conversion Authority shall be exercised by a Board of Directors to be composed of nine (9) members x x x."

There is a specific provision in R.A. 7227 for the transfer of properties to the BCDA, *viz.*:

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[27] AN ACT ACCELERATING THE CONVERSION OF MILITARY RESERVATIONS INTO OTHER PRODUCTIVE USES, CREATING THE BASES CONVERSION AND DEVELOPMENT AUTHORITY FOR THE PURPOSE, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES, March 13, 1992.

[28] R.A. 7227, Sec. 3.

[29] Id., Sec. 4 (a).

[30] Id., Sec. 5 (a).

SECTION 7. *Transfer of Properties*. — Pursuant to paragraph (a), Section 4 hereof, the President shall transfer forthwith to the Conversion Authority:

(a) *Station*	*Area in has. (more or less)*
John Hay Air Station	570
Wallace Air Station	167
O'Donnell Transmitter Station	1,755
San Miguel Naval Communications Station	1,100
Mt. Sta. Rita Station (Hermosa, Bataan)	

(b) Such other properties including, but not limited to, portions of Metro Manila military camps, pursuant to Section 8 of this Act: *Provided, however*, That the areas which shall remain as military reservations shall be delineated and proclaimed as such by the President.

R.A. 7227 expressly provides that the BCDA is to own, hold and/or administer the military reservations and other properties transferred to it.

Given that, under Proc. 163, the CAB Lands were expressly transferred to the BCDA and the BCDA is empowered to determine their utilization and disposition, and that under R.A. 7227, BCDA is to own, hold and/or administer the properties transferred to it, it would seem that the Republic might have divested its right of dominion over properties that had been transferred to the BCDA and it would seem that BCDA would be the real party in interest in this case rather than the Republic.

This was the very ruling of the Court in the 2001 case of *Shipside Incorporated*. In that case, the OSG, representing the Republic, filed a complaint for revival of judgment and cancellation of titles which had been issued over parcels of land located inside Camp Wallace. Shipside Incorporated filed a Motion to Dismiss based on the ground, among others, that the Republic was not the real party in interest because the real property covered by the Torrens titles sought to be cancelled, allegedly part of Camp Wallace (Wallace Air Station), were under the ownership and administration of the BCDA under

R.A. 7227. The Court upheld Shipside Incorporated's argument and declared:

> With the transfer of Camp Wallace to the BCDA, the government no longer has a right or interest to protect. Consequently, the Republic is not a real party in interest and it may not institute the instant action. Nor may it raise the defense of imprescriptibility, the same being applicable only in cases where the government is a party in interest. Under Section 2 of Rule 3 of the 1997 Rules of Civil Procedure, "every action must be prosecuted or defended in the name of the real party in interest." To qualify a person to be a real party in interest in whose name an action must be prosecuted, he must appear to be the present real owner of the right sought to be enforced (*Pioneer Insurance v. CA*, 175 SCRA 668 [1989]). A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. And by real interest is meant a present substantial interest, as distinguished from a mere expectancy, or a future, contingent, subordinate or consequential interest (*Ibonilla v. Province of Cebu*, 210 SCRA 526 [1992]). Being the owner of the areas covered by Camp Wallace, it is the Bases Conversion and Development Authority, not the Government, which stands to be benefited if the land covered by TCT No. T-5710 issued in the name of petitioner is cancelled.
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> x x x x x x x x x
>
> We, however, must not lose sight of the fact that the BCDA is an entity invested with a personality separate and distinct from the government [pursuant to] Section 3 of [R.A.] 7227 x x x.
>
> x x x x x x x x x
>
> It may not be amiss to state at this point that the functions of government have been classified into governmental or constituent and proprietary or ministrant. While public benefit and public welfare, particularly, the promotion of the economic and social development of Central Luzon, may be attributable to the operation of the BCDA, yet it is certain that the functions performed by the BCDA are basically proprietary in nature. The promotion of economic and social development of Central Luzon, in particular, and the country's goal for enhancement, in general, do not make the BCDA equivalent to the Government. Other corporations have been created by government to act as its agents for the realization of its programs, the SSS, GSIS, NAWASA and the NIA, to count a few, and yet, the Court has ruled

that these entities, although performing functions aimed at promoting public interest and public welfare, are not government-function corporations invested with governmental attributes. It may thus be said that the BCDA is not a mere agency of the Government but a corporate body performing proprietary functions.

x x x x x x x x x

Having the capacity to sue or be sued [under Section 5 of R.A. 7227], it should thus be the BCDA which may file an action to cancel petitioner's title, not the Republic, the former being the real party in interest. One having no right or interest to protect cannot invoke the jurisdiction of the court as a party plaintiff in an action (*Ralla v. Ralla*, 199 SCRA 495 [1991]). A suit may be dismissed if the plaintiff or the defendant is not a real party in interest. If the suit is not brought in the name of the real party in interest, a motion to dismiss may be filed, as was done by petitioner in this case, on the ground that the complaint states no cause of action (*Tanpingco v. IAC*, 207 SCRA 652 [1992]).

x x x x x x x x x

Moreover, to recognize the Government as a proper party to sue in this case would set a bad precedent as it would allow the Republic to prosecute, on behalf of government-owned or controlled corporations, causes of action which have already prescribed, on the pretext that the Government is the real party in interest against whom prescription does not run, said corporations having been created merely as agents for the realization of government programs.[31]

The dismissal of the complaint filed by the Republic in *Shipside Incorporated* was, however, "without prejudice to the filing of an appropriate action by the Bases Development and Conversion Authority."[32]

Despite the transfer of the CAB Lands to the BCDA and the ruling of the Court in *Shipside Incorporated* that the BCDA is a corporate body performing proprietary functions with a personality separate and distinct from the government, the

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[31] *Shipside Incorporated v. Court of Appeals*, supra note 10, at 348-352.

[32] *Id.* at 353.

Republic has taken the view that with the passage of R.A. 10149[33] or the *GOCC Governance Act of 2011*, the BCDA is now considered "a mere government instrumentality, albeit possessed with corporate powers" pursuant to its Section 3 (n),[34] which provides:

> SECTION 3. *Definition of Terms*. —
>
> x x x x x x x x x
>
> (n) *Government Instrumentalities with Corporate Powers (GICP)/ Government Corporate Entities (GCE*) refer to instrumentalities or agencies of the government, which are neither corporations nor agencies integrated within the departmental framework, but vested by law with special functions or jurisdiction, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy usually through a charter including, but not limited to, the following: the Manila International Airport Authority (MIAA), the Philippine Ports Authority (PPA), the Philippine Deposit Insurance Corporation (PDIC), the Metropolitan Waterworks and Sewerage System (MWSS), the Laguna Lake Development Authority (LLDA), the Philippine Fisheries Development Authority (PFDA), the Bases Conversion and Development Authority (BCDA), the Cebu Port Authority (CPA), the Cagayan de Oro Port Authority, the San Fernando Port Authority, the Local Water Utilities Administration (LWUA) and the Asian Productivity Organization (APO). (Underscoring supplied)

The Republic argues that while Section 3 of R.A. 7227 vested the BCDA with the powers of a corporation, the said Section was superseded by Section 3 (n) of R.A. 10149 and *Shipside Incorporated* can no longer be invoked as precedent since it merely applied Section 3 of R.A. 7227.[35]

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[33] AN ACT TO PROMOTE FINANCIAL VIABILITY AND FISCAL DISCIPLINE IN GOVERNMENT-OWNED OR -CONTROLLED CORPORATIONS AND TO STRENGTHEN THE ROLE OF THE STATE IN ITS GOVERNANCE AND MANAGEMENT TO MAKE THEM MORE RESPONSIVE TO THE NEEDS OF PUBLIC INTEREST AND FOR OTHER PURPOSES, JUNE 6, 2011.

[34] *Rollo*, p. 20.

[35] Id. at 21.

Both the RTC and the CA rejected the Republic's stance. The CA adopted *in toto* the RTC's disquisition, which is reproduced below:

"The reliance on [R.A. 10149] is misleading, taking into consideration the following disquisition:

First. [R.A. 10149] which was promulgated in 2011, did not specifically revoke the BCDA's autonomy. x x x

The thrust of the law was to create an oversight body called Governance Commission for Government-Owned and Controlled Corporations (GCG) over all government-owned or controlled corporations (GOCC). This body will implement the declaration of policy to actively exercise the State's ownership rights in [GOCCs] and to promote growth by ensuring that operations are consistent with national development policies and programs. This [Commission] is empowered to evaluate and determine if a certain GOCC should be reorganized, merged, streamlined, etc. It recommends actions to the President, such as abolition or privatization, but it does not, nor is it authorized to summarily abolish GOCCs. Clearly, the law does not divest [the] BCDA of its autonomous corporate powers but only seeks to ensure its compliance and viability in accordance with the State policy.

Second. The cited provision by the [Republic], Section 3 (n) of [R.A. 10149] was merely one [among] the [enumeration] in the Definition of Terms covered by the said law. It is basic that a law must be read in its entirety and piecemeal citations and interpretations are not favored. And the reading of the entire [R.A. 10149] shows that there is no alteration whatsoever regarding the corporate powers of [a] GOCC. [The] BCDA thus remains a distinct and separate corporate body vested with powers of a corporation from the State. Being a separate body, [the] BCDA has no business signing the [VCAFS of the complaint] filed by the Republic.

Third. [Combing] through [R.A. 10149's] declaration of policies, not one of its seven sub-provisions specifically state that [the] BCDA's autonomy has been revoked. x x x

The repealing clause in [R.A. 10149] did not do away with [the] BCDA's autonomy. Rules on statutory construction again remind that express repeals are favored over implied ones. Considering that nowhere in [R.A. 10149] is there any allusion to the diminishment

of [the] BCDA or any other Government [I]nstrumentality with Corporate Powers (GICP) for that matter. Accordingly, its autonomy stands [notwithstanding] the repealing clause in [R.A. 10149].

Fourth. Hiding in plain sight is a contradiction to the [Republic's] claims. Section 3(n) of [R.A. 10149] itself [provides: GICP/ Government Corporate Entities (GCE) refer to instrumentalities or agencies of the government, which are neither corporations nor agencies integrated within the departmental framework, but vested by law with special functions or jurisdiction, endowed with some, if not all corporate powers, administering special funds, and enjoying operational autonomy usually through a charter x x x].

Even if the court were to stretch the construction of the statute, it has no provision elastic enough to cover matters pertaining to the complete subordination of these entities under the new oversight entity. It even acknowledges the operational autonomy of bodies such as [the] BCDA. x x x"[36]

Unfortunately, the ruling in *Shipside Incorporated* that "the BCDA is not a mere agency of the Government but a corporate body performing proprietary functions"[37] is no longer in accord with the later rulings of the Court.

Manila International Airport Authority v. Court of Appeals[38] *(Manila International Airport Authority)*, which was decided by the Court *en banc* in 2006, has become the precedent in determining whether a government entity or agency is an "Instrumentality" or agency of the National Government or a "Government-Owned or -Controlled Corporation" (GOCC) pursuant to their definitions under the Administrative Code of 1987[39] (Administrative Code).

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[36] Id. at 46-48.

[37] *Shipside Incorporated v. Court of Appeals*, supra note 10, at 350.

[38] G.R. No. 155650, July 20, 2006, 495 SCRA 591 [Per J. Carpio, En Banc].

[39] Took effect one year after its publication in the Official Gazette on July 25, 1987.

In *Manila International Airport Authority*, the issue was whether the approximately 600 hectares of land, including runways and buildings (Airport Lands and Buildings) then under the Bureau of Air Transportation, which the Manila International Airport Authority (MIAA) Charter transferred to MIAA, are exempt from real estate tax assessments under existing laws. In ruling that MIAA's Airport Lands and Buildings are exempt from real estate tax imposed by local governments, the Court had to first determine whether MIAA is a GOCC or an instrumentality of the National Government. On this matter, the Court ruled:

1. MIAA is Not a Government-Owned or Controlled Corporation

Respondents argue that MIAA, being a [GOCC] is not exempt from real estate tax. x x x

There is no dispute that a [GOCC] is not exempt from real estate tax. However, MIAA is **not** a [GOCC]. Section 2(13) of the Introductory Provisions of the Administrative Code of 1987 defines a [GOCC] as follows:

> SEC. 2. *General Terms Defined*. — x x x x
>
> (13) *Government-owned or controlled corporation* refers to any agency **organized as a stock or non-stock corporation**, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) percent of its capital stock: x x x. (Emphasis supplied)

A [GOCC] must be "**organized as a stock or non-stock corporation**." MIAA is not organized as a stock or non-stock corporation. MIAA is not a stock corporation because it has **no capital stock divided into shares**. MIAA has no stockholders or voting shares. Section 10 of the MIAA Charter provides:

> SECTION 10. *Capital*. — The capital of the Authority to be contributed by the National Government shall be increased from Two and One-half Billion (₱2,500,000,000.00) Pesos to Ten Billion (₱10,000,000,000.00) Pesos to consist of:

> (a) The value of fixed assets including airport facilities, runways and equipment and such other properties, movable and immovable[,] which may be contributed by the National Government or transferred by it from any of its agencies x x x;
>
> (b) That the amount of P605 million as of December 31, 1986 representing about seventy *per centum* (70%) of the unremitted share of the National Government from 1983 to 1986 to be remitted to the National Treasury as provided for in Section 11 of E.O. No. 903 as amended, shall be converted into the equity of the National Government in the Authority. Thereafter, the Government contribution to the capital of the Authority shall be provided in the General Appropriations Act.

Clearly under its Charter, MIAA does not have capital stock that is divided into shares.

Section 3 of the Corporation Code defines a stock corporation as one whose "*capital stock is divided into shares and x x x authorized to distribute to the holders of such shares dividends x x x.*" MIAA has capital but it is not divided into shares of stock. MIAA has no stockholders or voting shares. Hence, MIAA is not a stock corporation.

MIAA is also not a non-stock corporation because it has no members. Section 87 of the Corporation Code defines a non-stock corporation as "one where no part of its income is distributable as dividends to its members, trustees or officers." A non-stock corporation must have members. Even if we assume that the Government is considered as the sole member of MIAA, this will not make MIAA a non-stock corporation. Non-stock corporations cannot distribute any part of their income to their members. Section 11 of the MIAA Charter mandates MIAA to remit 20% of its annual gross operating income to the National Treasury. This prevents MIAA from qualifying as a non-stock corporation.

Section 88 of the Corporation Code provides that non-stock corporations are "organized for charitable, religious, educational, professional, cultural, recreational, fraternal, literary, scientific, social, civi[c] service, or similar purposes, like trade, industry, agriculture and like chambers." MIAA is not organized for any of these purposes. MIAA, a public utility, is organized to operate an international and domestic airport for public use.

Since MIAA is neither a stock nor non-stock corporation, MIAA does not qualify as a [GOCC]. What then is the legal status of MIAA within the National Government?

MIAA is a *government instrumentality* vested with corporate powers to perform efficiently its governmental functions. MIAA is like any other government instrumentality, the only difference is that MIAA is vested with corporate powers. Section 2(10) of the Introductory Provisions of the Administrative Code defines a government "*instrumentality*" as follows:

> SEC. 2. *General Terms Defined*. — x x x x
>
> (10) *Instrumentality* refers to any agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, **endowed with some if not all corporate powers**, administering special funds, and **enjoying operational autonomy**, usually through a charter. x x x (Emphasis supplied)

When the law vests in a government instrumentality corporate powers. The instrumentality does not become a corporation. Unless the government instrumentality is organized as a stock or non-stock corporation, it remains a government instrumentality exercising not only governmental but also corporate powers. Thus, MIAA exercises the governmental powers of eminent domain, police authority and the levying of fees and charges. At the same time, MIAA exercises "all the powers of a corporation under the Corporation Law, insofar as these powers are not inconsistent with the provisions of this Executive Order."

Likewise, when the law makes a government instrumentality *operationally autonomous*, the instrumentality remains part of the National Government machinery although not integrated with the department framework. The MIAA Charter expressly states that transforming MIAA into a "separate and autonomous body" will make its operation more "financially viable."

Many government instrumentalities are vested with corporate powers but they do not become stock or non-stock corporations, which is a necessary condition before an agency or instrumentality is deemed a [GOCC]. Examples are the Mactan International Airport Authority, the Philippine Ports Authority, the University of the Philippines and *Bangko Sentral ng Pilipinas*. All these government instrumentalities

exercise corporate powers but they are not organized as stock or non-stock corporations as required by Section 2(13) of the Introductory Provisions of the Administrative Code. These government instrumentalities are sometimes loosely called government corporate entities. However, they are not [GOCCs] in the strict sense as understood under the Administrative Code, which is the governing law defining the legal relationship and status of government entities.

A government *instrumentality* like MIAA falls under Section 133(o) of the Local Government Code, which states:

> SEC. 133. *Common Limitations on the Taxing Powers of Local Government Units*. — **Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following**:
>
> x x x x
>
> (o) **Taxes, fees or charges of any kind on the National Government, its agencies and *instrumentalities*** and local government units. (Emphasis and italics supplied)[40] (Italics in the original; additional emphasis and underscoring supplied)

Applying the same parameters that the Court *en banc* used in *Manila International Airport Authority* to determine whether a government agency is an instrumentality or a GOCC, the Court thereafter ruled in the 2018 case of *Bases Conversion and Development Authority v. Commissioner of Internal Revenue*[41] *(BCDA v. CIR)* that the BCDA is a government instrumentality vested with corporate powers and not a GOCC. That case

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[40] *Manila International Airport Authority v. Court of Appeals*, supra note 38, at 615-619.

[41] G.R. No. 205925, June 20, 2018, 867 SCRA 179 [Per J. Reyes, Jr., Second Division]. The Court relied upon the rulings in *Manila International Airport Authority* that many government authorities are vested with corporate powers but they do not become stock or non-stock corporations, which is a necessary condition before an agency or instrumentality is deemed a GOCC and in *Philippine Fisheries Development Authority v. Court of Appeals*, G.R. No. 169836, July 31, 2007, 528 SCRA 706 that a government instrumentality retains its classification as such albeit having been endowed with some if not all corporate powers. (Id. at 187-188.)

concerned the exemption of the BCDA from the payment of legal fees incident to the filing of pleadings or other applications with the courts.

Similar to *Manila International Airport Authority*, the Court in *BCDA v. CIR* used as its basis Section 2 (10) and (13) of the Introductory Provisions of the Administrative Code, which defines respectively *Instrumentality* as "any agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter," and *Government-owned or controlled corporation* as "any agency organized as a stock or nonstock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) percent of its capital stock."[42]

The Court noted in *BCDA v. CIR* that while the BCDA has authorized capital stock of ₱100 Billion, pursuant to Section 6 of R.A. 7227, the same is not divided into shares of stock. The BCDA has no voting shares and there is no provision in R.A. 7227 which authorizes the distribution of dividends and allotments of surplus and profits to the BCDA stockholders. The Court, noting Section 3[43] of the Corporation Code which defined a stock corporation as one whose capital stock is divided

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[42] Id. at 186-187.

[43] REVISED CORPORATION CODE OF THE PHILIPPINES, R.A. 11232 provides:

SEC. 3. *Classes of Corporations*. — Corporations formed or organized under this Code may be stock or nonstock corporations. Stock corporations are those which have capital stock divided into shares and are authorized to distribute to the holders of such shares, dividends, or allotments of the surplus profits on the basis of shares held. All other corporations are nonstock corporations.

into shares and authorized to distribute to the holders of such shares dividends, ruled that the BCDA is not a stock corporation.

The Court likewise ruled that the BCDA is not a nonstock corporation because it is not organized for any of the purposes stated in Section 88[44] of the Corporation Code: "charitable, religious, educational, professional, cultural, fraternal, literary, scientific, social, civic service, or similar purposes, like trade, industry, agricultural and like chambers, or any combination thereof," and recognized that, according to Section 4 of R.A. 7227, the BCDA is "organized for a specific purpose — to own, hold and/or administer the military reservations in the country and implement its conversion to other productive uses."[45]

In *BCDA v. CIR*, the Court, as it did in *Manila International Airport Authority*, basically applied the Administrative Code, which is the governing law defining the legal relationship and status of government entities.

Thus, the Court concluded in *BCDA v. CIR*:

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[44] The pertinent provisions of the Revised Corporation Code of the Philippines are:

SEC. 86. *Definition*. — For purposes of this Code and subject to its provisions on dissolution, a nonstock corporation is one where no part of its income is distributable as dividends to its members, trustees, or officers: *Provided*, That any profit which a nonstock corporation may obtain incidental to its operations shall, whenever necessary or proper, be used for the furtherance of the purpose or purposes for which the corporation was organized, subject to the provisions of this Title.

The provisions governing stock corporations, when pertinent, shall be applicable to nonstock corporations except as may be covered by specific provisions of this Title.

SEC. 87. *Purposes*. — Nonstock corporations may be formed or organized for charitable, religious, educational, professional, cultural, fraternal, literary, scientific, social, civic service, or similar purposes, like trade, industry, agricultural and like chambers, or any combination thereof, subject to the special provisions of this Title governing particular classes of nonstock corporations.

[45] *Bases Conversion Development Authority v. Commissioner of Internal Revenue*, supra note 41, at 191.

From the foregoing, it is clear that BCDA is neither a stock nor a nonstock corporation. BCDA is a government instrumentality vested with corporate powers. Under Section 21, Rule 141 of the Rules of Court, agencies and instrumentalities of the Republic of the Philippines are exempt from paying legal or docket fees. Hence, BCDA is exempt from the payment of docket fees.[46]

The Court notes that Section 2 (10) of the Introductory Provisions of the Administrative Code, which defines *Instrumentality* as "any agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter" is practically identical to the definition of *Government Instrumentality with Corporate Powers (GICP)/Government Corporate Entity (GCE)* under Section 3 (n) of R.A. 10149 as "instrumentalities or agencies of the government, which are neither corporations nor agencies integrated within the departmental framework, but vested by law with special functions or jurisdiction, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy usually through a charter." While under R.A. 10149 the qualification now is "neither corporations nor agencies integrated within the departmental framework," unlike in the Administrative Code, which states "not integrated within the department framework," the addition of "corporations" as excluded entities in the term GICP/GCE is simply to reflect the main distinction between GOCCs and GICPs/GCEs — that for a government agency to be categorized as GOCC it must first be a corporation as defined in the Revised Corporation Code.

The Court also notes the definition of GOCC under Section 3 (o) of R.A. 10149:

> (o) *Government-Owned or -Controlled Corporation (GOCC)* refers to any agency organized as a stock or nonstock corporation, vested with functions relating to public needs

[46] Id. at 193.

> whether governmental or proprietary in nature, and owned by the Government of the Republic of the Philippines directly or through its instrumentalities either wholly or, where applicable as in the case of stock corporations, to the extent of at least a majority of its outstanding capital stock: *Provided, however*, That for purposes of this Act, the term "GOCC" shall include GICP/GCE and GFI[47] as defined herein.

The definition of a GOCC under R.A. 10149 has basically retained the definition of a GOCC under Section 2 (13) of the Introductory Provisions of the Administrative Code but reduced the ownership threshold from "at least fifty-one (51) per cent of its capital stock" to "at least a majority of its outstanding capital stock."

The Court further notes that the proviso "for purposes of this Act, the term "GOCC" shall include GICP/GCE and GFI as defined herein" is for ease of reference only and is not intended to subsume GICPs/GCEs and GFIs into the category of GOCCs such that their inherent differences have been abrogated. In other words, these three categories or classifications of government agencies have not been merged into one. The definitions and characteristics of the three different groups have been retained in R.A. 10149. The Court's observation is based on the following:

(1) The different types of agencies of the government have been respectively defined under Section 3, Definition of Terms, of R.A. 10149. If the intention was to have all agencies and instrumentalities of government be called GOCCs, then the

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[47] R.A. 10149, Sec. 3 (m) defines Government Financial Institutions (GFIs) as:

> (m) *Government Financial Institutions (GFIs)* refer to financial institutions or corporations in which the government directly or indirectly owns majority of the capital stock and which are either: (1) registered with or directly supervised by the Bangko Sentral ng Pilipinas, or (2) collecting or transacting funds or contributions from the public and place them in financial instruments or assets such as deposits, loans, bonds and equity, including, but not limited to, the Government Service Insurance System and the Social Security System.

definitions of GICPs/GCEs and GFIs should have been included in the GOCC definition and not made separately.

(2) Aside from Section 3, GICPs/GCEs and GFIs also appear in Section 4, on Coverage: "This Act shall be applicable to all GOCCs, GICPs/GCEs, and government financial institutions, including their subsidiaries, but excluding the Bangko Sentral ng Pilipinas, state universities and colleges, cooperatives, local water districts, economic zone authorities and research institutions: *Provided*, That in economic zone authorities and research institutions, the President shall appoint one-third (1/3) of the board members from the list submitted by the GCG." Clearly, there is no intention to merge GICPs/GCEs and GFIs into GOCCs.

(3) In other Sections of R.A. 10149, only the term GOCC is mentioned. Its long title is "An Act to Promote Financial Viability and Fiscal Discipline in Government-Owned or-Controlled Corporations and to Strengthen the Role of the State in its Governance and Management to Make Them More Responsive to the Needs of Public Interest and for Other Purposes." Its short title pursuant to Section 1 of R.A. 10149 is the *GOCC Governance Act of 2011*. Indeed, it would be inconvenient to name it "GICP/GCE, GOCC, GFI Governance Act of 2011" and add "Government Instrumentalities with Corporate Powers/Government Corporate Entities and Government Financial Institutions" in its expanded title. In Section 2 on Declaration of Policy, it mentions that "[t]he State recognizes the potential of government-owned or -controlled corporations (GOCCs) as significant tools for economic development," without mentioning GICPs/GCEs and GFIs, but the latter are also covered, not to mention that they too are significant tools of development. Even the name of the Commission created by R.A. 10149 only GOCC is mentioned, the Governance Commission for Government-Owned or -Controlled Corporations (CGC). If only GOCCs are included, then it would not be "a central advisory, monitoring, and oversight body with authority to formulate, implement and coordinate

policies x x x, which [is] attached to the Office of the President," as provided in Section 5.

Thus, the rulings of the Court in *Manila International Airport Authority* and *BCDA v. CIR* on which agencies of government may be classified as government instrumentalities or GICPs/GCEs have not in any way been affected by the passage of R.A. 10149.

Going back to *Shipside Incorporated*, the Court's pronouncement that "the BCDA is not a mere agency of the Government but a corporate body performing proprietary functions"[48] no longer holds true given the Court's contrary ruling in *BCDA v. CIR* that the "BCDA is a government instrumentality vested with corporate powers,"[49] which ruling is pursuant to the *en banc* case of *Manila International Airport Authority*. In the same vein, the CA and the RTC erred in relying on *Shipside Incorporated* although they were correct in pronouncing that R.A. 10149 did not repeal R.A. 7227.

To reiterate, while Section 3 of R.A. 7227 recognizes the BCDA as a body corporate with the attribute of perpetual succession and vested with the powers of a corporation and Section 5 of R.A. 7227 vests the BCDA with the power, among others, to succeed in its corporate name, to sue and be sued in such corporate name and to adopt, alter and use a corporate seal which can be judicially noticed, these provisions do not make the BCDA a corporation, either a stock or nonstock corporation as defined under the Corporation Code as well as the Revised Corporation Code — they merely endow the BCDA with all or full corporate powers so that it can enjoy operational autonomy. And, since its capitalization provision, Section 6 of R.A. 7227, cannot qualify the BCDA as a stock or nonstock corporation, then it is an *Instrumentality* under Section 2 (10) of the Introductory Provisions of the Administrative Code as

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[48] *Shipside Incorporated v. Court of Appeals*, supra note 10, at 350.

[49] *Bases Conversion and Development Authority v. Commissioner of Internal Revenue*, supra note 41, at 193.

well as *Government Instrumentality with Corporate Powers (GICP)/Government Corporate Entity (GCE)* under Section 3 (n) of R.A. 10149.

Given the ruling of the Court in *BCDA v. CIR* and the express classification of the BCDA as a Government Instrumentality with Corporate Powers (GICP)/Government Corporate Entity (GCE) under Section 3 (n) of R.A. 10149, the Court recognizes the BCDA as a GICP or GCE vested or endowed with the powers of a corporation, including the power to sue and be sued in its corporate name and the right to own, hold and administer the lands that have been transferred to it, with operational autonomy, and part of the National Government machinery although not integrated within the departmental framework.[50]

Since the BCDA is a GICP or GCE, what is the nature of its interest in the CAB Lands that were transferred to it by virtue of Proc. No. 163 "to own, hold and/or administer" under Section 4 (a) of R.A. 7227? Does the following pronouncement in *Shipside Incorporated* still hold true and can be applied to the CAB Lands?

> With the transfer of Camp Wallace to the BCDA, the government no longer has a right or interest to protect. Consequently, the Republic is not a real party in interest and it may not institute the instant action. Nor may it raise the defense of imprescriptibility, the same being applicable only in cases where the government is a party in interest. x x x To qualify a person to be a real party in interest in whose name an action must be prosecuted, he must appear to be the present real owner of the right sought to be enforced x x x. Being the owner of the areas covered by Camp Wallace, it is the Bases Conversion and Development Authority, not the Government, which stands to be benefited if the land covered by TCT No. T-5710 issued in the name of petitioner is cancelled.[51]

Unfortunately, *Shipside Incorporated* failed to consider that the authority conferred upon the BCDA to own, hold and/or

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[50] See *Manila International Airport Authority v. Court of Appeals*, supra note 38, at 618.

[51] *Shipside Incorporated v. Court of Appeals*, supra note 10, at 348-349.

administer the military reservations and other properties or the CAB Lands, transferred to it, is not absolute but it is qualified by this provision of R.A. 7227:

SECTION 8. *Funding Scheme*. — The capital of the Conversion Authority shall come from the sales proceeds and/or transfers of certain Metro Manila military camps, including all lands covered by Proclamation No. 423, series of 1957, commonly known as Fort Bonifacio and Villamor (Nichols) Air Base, namely:

x x x x

Provided, That the following areas shall be exempt from sale:

x x x x

x x x *Provided, further*, That the boundaries and technical description of these exempt areas shall be determined by an actual ground survey.

The President is hereby authorized to sell the above lands, in whole or in part, which are hereby declared alienable and disposable pursuant to the provisions of existing laws and regulations governing sales of government properties: *Provided*, That no sale or disposition of such lands will be undertaken until a development plan embodying projects for conversion shall be approved by the President in accordance with paragraph (b), Section 4,[52] of this Act. However, six (6) months after approval of this Act, the President shall authorize the Conversion Authority to dispose of certain areas in Fort Bonifacio and Villamor as the latter so determines. The Conversion Authority shall provide the President a report on any such disposition or plan for disposition

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[52] SECTION 4. *Purposes of the Conversion Authority*. — The Conversion Authority shall have the following purposes:

x x x x

(b) To adopt, prepare and implement a comprehensive and detailed development plan embodying a list of projects including but not limited to those provided in the Legislative-Executive Bases Council (LEBC) framework plan for the sound and balanced conversion of the Clark and Subic military reservations and their extensions consistent with ecological and environmental standards, into other productive uses to promote the economic and social development of Central Luzon in particular and the country in general;

x x x x

within one (1) month from such disposition or preparation of such plan. The proceeds from any sale, after deducting all expenses related to the sale, of portions of Metro Manila military camps as authorized under this Act, shall be used for the following purposes with their corresponding percent shares of proceeds:

(1) Thirty-two and five-tenths percent (3[2].5%) — To finance the transfer of the AFP military camps and the construction of new camps, the self-reliance and modernization program of the AFP, the concessional and long-term housing loan assistance and livelihood assistance to AFP officers and enlisted men and their families, and the rehabilitation and expansion of the AFP's medical facilities;

(2) Fifty percent (50%) — To finance the conversion and the commercial uses of the Clark and Subic military reservations and their extensions;

(3) Five percent (5%) — To finance the concessional and long-term housing loan assistance for the homeless of Metro Manila, Olongapo City, Angeles City and other affected municipalities contiguous to the bases areas as mandated herein; and

(4) The balance shall accrue and be remitted to the National Treasury to be appropriated thereafter by Congress for the sole purpose of financing programs and projects vital for the economic upliftment of the Filipino people.

Provided, That, in the case of Fort Bonifacio, two and five-tenths percent (2.5%) of the proceeds thereof in equal shares shall each go to the Municipalities of Makati, Taguig and Pateros: *Provided, further*, That in no case shall farmers affected be denied due compensation.

With respect to the military reservations and their extensions, the President upon recommendation of the Conversion Authority or the Subic Authority when it concerns the Subic Special Economic Zone shall likewise be authorized to sell or dispose those portions of lands which the Conversion Authority or the Subic Authority may find essential for the development of their projects. (Emphasis and underscoring supplied)

In *Manila International Airport Authority*, the Court held that MIAA is a mere trustee of the Republic and the Republic retained beneficial ownership of the Airport Lands and Buildings

that were transferred from the Bureau of Air Transportation to MIAA, *viz.*:

c. MIAA is a Mere Trustee of the Republic

MIAA is merely holding title to the Airport Lands and Buildings in trust for the Republic. Section 48, Chapter 12, Book I of *the Administrative Code allows instrumentalities like MIAA to hold title to real properties owned by the Republic*, thus:

> SEC. 48. *Official Authorized to Convey Real Property*. — Whenever real property of the Government is authorized by law to be conveyed, the deed of conveyance shall be executed in behalf of the government by the following:
>
> (1) For property belonging to and titled in the name of the Republic of the Philippines, by the President, unless the authority therefor is expressly vested by law in another officer.
>
> (2) **For property belonging to the Republic of the Philippines but titled in the name of any political subdivision or of any corporate agency or instrumentality**, by the executive head of the agency or instrumentality. (Emphasis supplied)

In MIAA's case, its status as a mere trustee of the Airport Lands and Buildings is clearer because even its executive head cannot sign the deed of conveyance on behalf of the Republic. Only the President of the Republic can sign such deed of conveyance.

d. Transfer to MIAA was Meant to Implement a Reorganization

The MIAA Charter, which is a law, transferred to MIAA the title to the Airport Lands and Buildings from the Bureau of Air Transportation of the Department of Transportation and Communications. The MIAA Charter provides:

> SECTION 3. *Creation of the Manila International Airport Authority*. — x x x x
>
> **The land where the Airport is presently located as well as the surrounding land area of approximately six hundred hectares, are hereby transferred, conveyed and assigned to the ownership and administration of the Authority subject to existing rights, if any.** x x x **Any portion thereof shall not**

> **be disposed through sale or through any other mode unless specifically approved by the President of the Philippines.** (Emphasis supplied)
>
> x x x x
>
> The transfer of the Airport Lands and Buildings from the Bureau of Air Transportation to MIAA was not meant to transfer beneficial ownership of these assets from the Republic to MIAA. The purpose was merely to *reorganize a division in the Bureau of Air Transportation into a separate autonomous body*. The Republic remains the beneficial owner of the Airport Lands and Buildings. MIAA itself is owned solely by the Republic. No party claims any ownership rights over MIAA's assets adverse to the Republic.
>
> The MIAA Charter expressly provides that the Airport Lands and Buildings "*shall not be disposed through sale or through any other mode unless specifically approved by the President of the Philippines*." This only means that the Republic retained the beneficial ownership of the Airport Lands and Buildings because under Article 428 of the Civil Code, only the "owner has the right to x x x dispose of a thing." Since MIAA cannot dispose of the Airport Lands and Buildings, MIAA does not own the Airport Lands and Buildings.[53] (Italics in the original; underscoring supplied)

In *Government Service Insurance System v. City Treasurer of the City of Manila*,[54] the Court, applying the doctrine in *Manila International Airport Authority*, held that the Government Service Insurance System (GSIS), similar to MIAA, is an instrumentality of the National Government whose properties are owned by the Republic, *viz.*:

> x x x [T]he subject properties under GSIS's name are likewise owned by the Republic. The GSIS is but a **mere trustee** of the subject properties which have either been ceded to it by the Government or acquired for the enhancement of the system. This particular property arrangement is clearly shown by the fact that the **disposal or**

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[53] *Manila International Airport Authority v. Court of Appeals*, supra note 38, at 626-628.

[54] G.R. No. 186242, December 23, 2009, 609 SCRA 330 [Per J. Velasco, Jr., Third Division].

conveyance of said subject properties are either done by or through the authority of the President x x x.[55] (Emphasis and underscoring supplied)

In consonance with the aforequoted pronouncements of the Court, the Court holds, in the words of *Manila International Airport Authority*, that the BCDA is a mere trustee of the Republic. The transfer of the military reservations and other properties — the CAB Lands — from the CSEZ to the BCDA was not meant to transfer the beneficial ownership of these assets from the Republic to the BCDA. The purpose was merely to establish the BCDA as the governing body of the CSEZ.

Given that the BCDA itself is owned solely by the Republic and that R.A. 7227, the law creating the BCDA, provides that "[w]ith respect to the military reservations and their extensions, the President upon recommendation of the [BCDA] x x x shall likewise be authorized to sell or dispose those portions of lands which the [BCDA] x x x may find essential for the development of [its] projects,"[56] then it is the Republic that has retained the beneficial ownership of the CAB Lands pursuant to Article 428 of the Civil Code, which provides that only the owner has the right to dispose of a thing. Since the BCDA cannot dispose of the CAB Lands, the BCDA does not own the military reservations and their extensions, including the CAB Lands, that were transferred to it.

The BCDA's status as a mere trustee of the CAB Lands is made obvious by the fact that under the law creating it, its executive head cannot even sign the deed of conveyance on behalf of the Republic and only the President of the Republic is authorized to sign such deed of conveyance, which is a recognition that the property being disposed of belongs to the Republic pursuant to Section 48, Chapter 12, Book I of the Administrative Code, which provides:

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[55] Id. at 347.

[56] R.A. 7227, Sec. 8.

SECTION 48. *Official Authorized to Convey Real Property*. — Whenever real property of the Government is authorized by law to be conveyed, the deed of conveyance shall be executed in behalf of the government by the following:

(1) For property belonging to and titled in the name of the Republic of the Philippines, by the President, unless the authority therefor is expressly vested by law in another officer;

(2) For property belonging to the Republic of the Philippines but titled in the name of any political subdivision or of any corporate agency or instrumentality, by the executive head of the agency or instrumentality.

Thus, the pronouncement of the Court in *Shipside Incorporated* that with respect to the transfer of Camp Wallace to the BCDA, "the government no longer has a right or interest to protect[, the BCDA being] the owner of the areas covered by Camp Wallace" no longer holds true in light of the Court's ruling in *Manila International Airport Authority* on the beneficial ownership of the Republic and the government instrumentality to which certain government assets have been transferred being regarded as mere trustee thereof when the right of disposition by the government instrumentality of such assets has been withheld, and the subsequent cases[57] that reiterated the said ruling.

Being the beneficial owner of the CAB Lands, the Republic is the real party in interest in this case.

With these pronouncements, the Court now abandons its ruling in *Shipside Incorporated* that the Republic is not the real party in interest in cases involving the title to and ownership of the military reservations and their extensions, including the CAB Lands and Camp Wallace, transferred to the BCDA. Henceforth,

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[57] See *Metropolitan Waterworks Sewerage System v. Local Government of Quezon City*, G.R. No. 194388, November 7, 2018, 884 SCRA 493 [Per J. Leonen, Third Division]; *Government Service Insurance System v. City Treasurer of Manila*, supra note 54; *Mactan-Cebu International Airport Authority (MCIAA) v. City of Lapu-Lapu*, G.R. No. 181756, June 15, 2015, 757 SCRA 323 [Per J. Leonardo-de Castro, First Division].

in cases involving the title to and ownership of the military reservations and their extensions, including the CAB Lands and Camp Wallace, transferred to the BCDA, the Republic, being the beneficial owner, is the real party in interest and not the BCDA.

The Court clarifies that the BCDA has limited ownership right and disposing power. This is recognized as one of the powers of the BCDA under Section 5 (h) of R.A. 7227: "To acquire, own, hold, administer, and lease real and personal properties, including agricultural lands, property rights and interests and encumber, lease, mortgage, sell, alienate or otherwise dispose of the same at fair market value it may deem appropriate."

Clearly, the cause of action as pleaded in the Second Amended Complaint is one for reversion with cancellation of title. This is evident from the denomination of the case as one: "For: Cancellation of Title and Reversion"[58] and the following allegations and prayer of the Second Amended Complaint:

> 7. However, the above-mentioned lots covered by survey plan Csd-11198 are portions of the Fort Stotsenburg Military Reservation (later Clark Air Force Base).
>
> 8. The aforementioned Fort Stotsenburg Military Reservation from which said lots were taken was never released as alienable and disposable land of the public domain and, therefore, is neither susceptible to disposition under the provisions of CA No. 141, the Public Land Act, nor registrable under Act No. 496, the Land Registration Act.
>
> x x x x
>
> 12. During the fact-finding investigation and relocation survey conducted by the Bureau of Lands to determine the location of the above-mentioned property in relation to the perimeter area of Clark Air Force Base, it was ascertained that the parcel of land in question was never occupied nor cultivated by the claimants thereof. The lot was found inside the Fort Stotsenburg Military Reservation (now

[58] *Rollo*, p. 72.

Clark Air Base) which was being used as a target range then by the Clark Air Force Military personnel. Furthermore, the subdivision survey made thereon was found to be illegally undertaken as there were no monuments or markers existing on said land.

13. The 1967 Court of First Instance Decision in Cadastral Case No. 1, LRC Record No. 124 adjudicating Lot No. 965 (formerly Lot No. 42, Angeles City Cadastre) in favor of Francisco Garcia and OCT No. 83 issued in his name, are null and void *ab initio* since the land is part of the military reservation. His acquisition of subject land is tainted with fraud and misrepresentation.

14. Since OCT No. 83 issued to Francisco Garcia is null, TCT No. 107736 registered in the name of Ma. Teresita E. Bernabe is also void and without legal effect.

PRAYER

WHEREFORE, it is respectfully prayed that this Honorable Court:

1. DECLARE null TCT No. 107736 and all titles derived therefrom.

2. ORDER the Register of Deeds of Angeles City to cancel TCT No. 107736 and all titles derived therefrom.

3. ORDER defendants, their assigns, privies, and successors-in-interest to vacate and relinquish any and all rights over the land in question.[59]

Being one for reversion, the action should indeed be instituted by the OSG on behalf of the Republic pursuant to Section 101 of Commonwealth Act No. 141,[60] as amended, or the *Public Land Act*, which provides: "All actions for the reversion to the Government of lands of the public domain or improvements thereon shall be instituted by the Solicitor-General or the officer acting in his stead, in the proper courts, in the name of the Commonwealth of the Philippines." The Court interpreted this provision in *Republic v. Mangotara*[61] in this wise:

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[59] *Rollo*, pp. 77-79.

[60] AN ACT TO AMEND AND COMPILE THE LAWS RELATIVE TO LANDS OF THE PUBLIC DOMAIN, November 7, 1936.

[61] G.R. Nos. 170375, 170505, 173355-56, 173401, 173563-64, 178779 and 178894, July 7, 2010, 624 SCRA 360 [Per J. Leonardo-de Castro, First Division].

Clear from the aforequoted provision that the authority to institute an action for reversion, on behalf of the Republic, is primarily conferred upon the OSG. While the OSG, for most of the time, will file an action for reversion upon the request or recommendation of the Director of Lands, there is no basis for saying that the former is absolutely bound or dependent on the latter.[62]

It must be recalled that the authority of the Director of Lands is limited to those disposable lands of public domain which have been proclaimed to be subject to disposition under the *Public Land Act* or Commonwealth Act No. 141.[63] In the present case, the CAB Lands have been transferred to the BCDA as the trustee thereof and, thus, the Director of Lands can no longer be deemed the administrator of the CAB Lands on the assumption that they have already been proclaimed as disposable lands of public domain.

Regarding the second issue, the CA found the VCAFS attached to the Second Amended Complaint defective, *viz.*:

As previously discussed in *Shipside [Incorporated]* citing Section 3 of [R.A.] 7227, BCDA is not a mere agent of the government but an entity endowed with corporate personality and power tasked to perform proprietary functions. On this premise, this Court is persuaded that OSG's commencement of the instant complaint, and the signing of the [VCAFS] are matters beyond the official functions of BCDA, much less, its President and Chief Executive Officer.

Further, assuming that BCDA is competent to act in behalf of the Republic, Atty. Casanova's signature on the [VCAFS] may not be deemed valid because of lack of any evidence showing that he was particularly authorized by the BCDA Board to sign the said documents. As a body corporate, BCDA has the attributes of a corporation and it acts only through its corporate officers by virtue of resolution issued

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[62] Id. at 477.

[63] See *Taar v. Lawan*, G.R. No. 190922, October 11, 2017, 842 SCRA 365, 399-400 [Per J. Leonen, Third Division], citing *Lorzano v. Tabayag*, G.R. No. 189647, February 6, 2012, 665 SCRA 38 [Per J. Reyes, Second Division] and *Kayaban v. Republic*, No. L-33307, August 30, 1973, 52 SCRA 357 [Per C.J. Makalintal, *En Banc*].

by its board. Absent any proof manifesting authority granted to Atty. Casanova by the BCDA Board, said documents are to be deemed defective.[64]

Since the basis for the CA and the RTC in ruling that the VCAFS executed by the BCDA's President and CEO is their reliance on *Shipside Incorporated*, which the Court now finds to be not in accord with R.A. 7227, the Administrative Code and R.A. 10149, as well as prevailing jurisprudence, the BCDA, being the trustee of the CAB Lands, through its authorized signatory, can execute the VCAFS.

The authority of the BCDA's President and CEO to sign the VCAFS is also being questioned on the alleged lack of the resolution of the Board of the BCDA designating him as the authorized signatory.

In *Altres v. Empleo*,[65] the Court *en banc* restated in capsule form the jurisprudential pronouncements respecting non-compliance with the requirements on, or submission of defective, VCAFS, *viz.*:

1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective certification against forum shopping.

2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.

3) Verification is deemed *substantially complied* with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.

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[64] *Rollo*, pp. 48-49.

[65] G.R. No. 180986, December 10, 2008, 573 SCRA 583 [Per J. Carpio Morales, *En Banc*].

4) As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons."

5) The certification against forum shopping must be signed by *all* the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule.

6) Finally, the certification against forum shopping must be executed by the party-pleader, not by his counsel. If, however, for reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney designating his counsel of record to sign on his own behalf.[66]

In *Shipside Incorporated*, the defect in the VCAFS, consisting of the failure to show proof that Lorenzo Balbin, the resident manager for petitioner therein, who was the signatory in the VCAFS, was authorized by petitioner's board of directors to file such a petition, was brushed aside:

In certain exceptional circumstances, however, the Court has allowed the belated filing of the certification. x x x In all these cases, there were special circumstances or compelling reasons that justified the relaxation of the rule requiring verification and certification on non-forum shopping.

In the instant case, the merits of petitioner's case should be considered special circumstances or compelling reasons that justify tempering the requirement in regard to the certificate of non-forum shopping. x x x With more reason should we allow the instant petition since petitioner herein *did submit a certification on non-forum shopping*, failing only to show proof that the signatory was authorized to do so. That petitioner subsequently submitted a secretary's certificate

[66] Id. at 596-598.

attesting that Balbin was authorized to file an action on behalf of petitioner likewise mitigates this oversight.

It must also be kept in mind that while the requirement of the certificate of non-forum shopping is mandatory, nonetheless the requirements must not be interpreted too literally and thus defeat the objective of preventing the undesirable practice of forum-shopping. x x x Lastly, technical rules of procedure should be used to promote, not frustrate justice. While the swift unclogging of court dockets is a laudable objective, the granting of substantial justice is an even more urgent ideal.[67]

A perusal of the Secretary's Certificate[68] dated February 6, 2018 attached to the Petition shows that on the occasion of the 504th Regular Board Meeting of the BCDA Board held on November 22, 2017, Resolution No. 2017-11-184 was approved, authorizing the OSG to file the cancellation of titles and/or reversion cases against claimants of properties that form part of the Fort Stotsenburg Military Reservation in Angeles City, Pampanga, and the President and CEO, or the Executive Vice President, or the General Counsel of the BCDA, is authorized to verify, certify and execute a certificate against non-forum shopping. The Court notes that the Secretary's Certificate has been belatedly filed and could not under ordinary circumstances cure the defect of the VCAFS attached to the Second Amended Complaint. However, given the special circumstances and jurisprudential significance of the present case, the Court deems it proper in the interest of justice to relax the rule with respect to the requirements on the VCAFS and that there was substantial compliance by the Republic with the said requirements.

WHEREFORE, the Petition is hereby **GRANTED**. Accordingly, the Decision dated February 21, 2018 of the Court of Appeals in CA-G.R. CV No. 104631 is **REVERSED** and **SET ASIDE**. The Second Amended Complaint for cancellation of title and reversion filed by the Republic of the Philippines

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[67] *Shipside Incorporated v. Court of Appeals*, supra note 10, at 346-347.

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

in Civil Case No. 11682 with the Regional Trial Court of Angeles City, Branch 59 is **REINSTATED** and the said Regional Trial Court is directed to hear and resolve the case with immediate dispatch.

SO ORDERED.

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

Perlas-Bernabe, J., no part.

Baltazar-Padilla, J., on leave.

EN BANC

[G.R. No. 244336. October 6, 2020]

SOCIAL SECURITY SYSTEM, *Petitioner*, *v.* **COMMISSION ON AUDIT,** *Respondent*.

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; COMMISSION ON AUDIT; DISALLOWANCE; DISALLOWANCE OF THE 2005, 2006, 2007, AND 2008 COLLECTIVE NEGOTIATION AGREEMENT (CNA) INCENTIVES PAID TO THE RANK AND FILE EMPLOYEES OF THE PETITIONER, UPHELD FOR LACK OF LEGAL BASIS AND VIOLATION OF AUDITING RULES AND REGULATIONS.— PSLMC Resolution No. 2, Series of 2003 authorizes the grant of CNA incentives for Government Owned and Controlled Corporations (GOCCs) and Government Financial Institutions (GFIs) in recognition of the joint efforts of labor and management to accomplish targets, programs, and services at costs less than the approved costs in their respective budgets. The clear objective of PSLMC Resolution No. 2, Series of 2003 is to encourage, promote, and reward productivity, efficiency, and use of austerity measures specified in the appropriate CNA. x x x. x x x. As correctly found by the COA-CP, the grant of the CNA incentives to the employees here was fraught with serious infirmities, as follows: ***First***. The so called SSC Resolution No. 183 which supposedly authorized the grant and release of the CNA incentives was found to be inexistent by both the COA Regional Office and the COA-CP. It was not found in the official records in petitioner's own office. x x x. ***Second***. There is no showing, as none was shown that the grant of the CNA incentives formed part of a duly executed CNA for years 2005, 2006, 2007, and 2008 between the SSS management and the employees' representative the Alert and Concerned Employees for Better SSS (ACCES) in violation of **Section 5.1 of DBM BC No. 2006-1**. x x x ***Third***. Petitioner's **grant of ₱20,000.00** to each of the employees infringed Section 5.6.1 of DBM BC No. 2006-1 which **prohibits GOCCs or GFIs from making a pre-**

determination of the amount or rate of each CNA incentive to be given to the employees. x x x. ***Fourth***. Petitioner failed to adduce evidence that the amounts given as CNA incentives actually came from savings generated from its identified cost-cutting measures as mandated by Section 7.1.1 of DBM BC No. 2006-1 and Section 8 of PSLMC Resolution No. 2. Series of 2003. ***Fifth***. Petitioner further failed to show compliance with the conditions under Section 3 of PSLMC Resolution No. 2, series of 2003. x x x. Verily, therefore, the disallowance of the CNA incentives here cannot be faulted, nay, tainted with grave abuse of discretion. x x x. Indubitably, therefore, **for lack of legal basis** and for **failure to comply** with DBM BC No. 2006-1 and PSLMC Resolution No. 2, Series of 2003, the Court upholds the Notice of Disallowance No. 2012-03 against the CNA incentives granted and paid to petitioner's employees in the total amount of ₱9,333,319.66.

2. ID.; ID.; ID.; ID.; ID.; LIABILITIES OF THE CERTIFYING AND APPROVING OFFICERS AND RECIPIENT EMPLOYEES FOR THE DISALLOWED EXPENDITURE, RULES; THE APPROVING AND CERTIFYING OFFICERS OF THE PETITIONER WHO AUTHORIZED THE PAYMENT OF THE DISALLOWED AMOUNTS AND THE EMPLOYEES WHO RECEIVED THE SAME ARE LIABLE TO RETURN THEM.— [I]n the very recently promulgated case of ***Madera, et al. v. COA,*** the Court discussed in detail the respective liabilities of certifying and approving officers and the recipient employees in case of expenditure disallowance, *viz*.: x x x. x x x [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 approving and certifying officers of the SSS-WMD who authorized the payment of the disallowed amounts and the employees who received the same are liable to return them.

3. ID.; ID.; ID.; ID.; ID.; 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, BECAUSE OF THE PRESUMPTION THAT OFFICIAL DUTY IS REGULARLY PERFORMED; THE PRESUMPTION OF GOOD FAITH IS OVERTURNED WHEN THERE IS A VIOLATION OF A CLEAR AND EXPLICIT RULE OR REGULATION.— 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 willfully 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. In contrast, "good faith" is ordinarily used to describe a state of mind denoting "**honesty** and **freedom from knowledge** of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with **absence of all information**, notice, or benefit or belief of facts which render **transaction unconscientious**." Nevertheless, this presumption of good faith is overturned when there is a violation of a clear and explicit rule. Notably, the Court has invariably ruled that **the presumption of good faith fails when an explicit law, rule, or regulation has been violated.**

4. **ID.; ID.; ID.; ID.; ID.; ALLOWING THE GRANT OF THE COLLECTIVE NEGOTIATION AGREEMENT (CNA) INCENTIVES DESPITE LACK OF ABSOLUTE BASIS THEREOF CONSTITUTES GROSS NEGLIGENCE AMOUNTING TO BAD FAITH; THE APPROVING AND CERTIFYING OFFICIALS WHO ALLOWED THE ILLEGAL GRANT OF THE CNA INCENTIVES AND ITS PAYMENT TO THE EMPLOYEES ARE JOINTLY AND SEVERALLY LIABLE FOR THE RETURN OF THE DISALLOWED AMOUNTS.— Here, the x x x attendant circumstances undoubtedly negate petitioner's plea of good faith on behalf of the approving and certifying officials who allowed the grant of the CNA incentives** x x x. Indeed, the record speaks for itself. **Gross negligence amounting to bad faith indelibly characterized the actions here of the approving and certifying officials who allowed the illegal grant and its payment to the employees.** Pursuant to Section 43, Chapter V, Book VI of the 1987 Administrative Code and ***Madera***, therefore, **their liability is joint and several for the disallowed amounts received by the individual employees.**

5. **ID.; ID.; ID.; ID.; APPLYING THE PRINCIPLE OF UNJUST ENRICHMENT AND *SOLUTIO INDEBITI*, THE RECIPIENT EMPLOYEES MUST RETURN THE DISALLOWED CNA INCENTIVES, AS THEY HAVE NO VALID CLAIM TO THE SAID BENEFITS, AND THEY RECEIVED THE SAME AT THE EXPENSE OF THE GOVERNMENT.—** 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. Meanwhile, there is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience. x x x. Here, it was not proven that the employees had a hand in the execution of the CNA covering the years 2005 to 2008 which would have alerted them that the CNA did not provide for the grants under consideration. They were merely passive recipients of the subject CNA incentives. Nevertheless, **it is evident that such incentives were granted to the employees despite its absolute lack of legal basis and breach of auditing rules and regulations.** Consequently, the employees had no valid claim to the benefits they received. More, the employees received subject benefits at the expense of another, specifically, the Government. **Applying the principle of unjust enrichment and *solutio indebiti*, the employees must return the incentives they unduly received.**

6. ID.; ID.; ID.; ID.; ID.; RETURN OF THE DISALLOWED BENEFITS RECEIVED BY THE EMPLOYEES, WHEN MAY BE EXCUSED; EXCEPTIONS, NOT PRESENT.— **Madera** decreed, however, that restitution may be excused in the following instances: x 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. Unfortunately for the SSS-WMD employees, **none of the exceptions are present in this case**. The disallowed CNA incentives were not given in relation to the employees' functions, nor were they given as part of performance incentives, productivity pay, or merit increases as in fact the CNA covering the years 2005 to 2008 did not provide for such kind of incentives. 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. Verily, therefore, **the employees must be held liable to return the amounts that they respectively received.**

APPEARANCES OF COUNSEL

SSS Corporate Legal Services Division for petitioner.
The Solicitor General for respondent.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This Petition for Review on *Certiorari* seeks to nullify the Decision No. 2018-305 dated March 15, 2018[1] of the Commission on Audit (COA), affirming the disallowance of the 2005, 2006, 2007, and 2008 Collective Negotiation Agreement (CNA) Incentives paid to the rank and file employees of the Social Security System-Western Mindanao Division (SSS-WMD) in the total amount of ₱9,333,319.66.

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[1] Rendered by Chairperson Michael G. Aguinaldo and Commissioner Jose A. Fabia and Commissioner Secretariat Nilda B. Plaras, *rollo*, pp. 19-28.

Antecedents

During the calendar years 2005, 2006, 2007 and 2008,[2] petitioner Social Security System (SSS) granted and released CNA incentives to its Western Mindanao Division rank and file employees[3] in the amount of ₱20,000.00 each or a total of ₱9,333,319.66.[4] The grant was purportedly based on a Supplemental CNA, specifically Social Security Commission (SSC) Resolution No. 183.[5]

On March 26, 2012, State Auditor IV Annabellea Uy issued her Notice of Disallowance No. 2012-03 in the amount of ₱9,333,319.66. She noted that: a) for the fiscal years 2005, 2006, and 2007, the grant of CNA incentives amounting to ₱6,695,500.55 were not actually included in the duly executed CNA between management and the employees' association covering these years in violation of Section 5.1[6] of the DBM Budget Circular (BC) No. 2006-01; b) for fiscal years 2005 and 2007, petitioner's actual operating income did not meet the targeted operating income in the Corporate Operating Budget (COB) approved by the DBM in violation of Section 3[7] of the

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[2] *Id.* at 20.

[3] *Id.* at 33.

[4] *Id.* at 19.

[5] *Id.* at 23.

[6] Section 5.1. The CNA Incentive in the form of cash may be granted to employees covered by this Circular, if provided for in the CNAs or in the supplements thereto, excluded between the representatives of management and the employees' organization accredited by the CSC as the sole and exclusive negotiating agent for the purpose of collective negotiations with the management of an organizational unit listed in Annex "A" of PSLMC Resolution No. 01, s. 2002, and as updated.

[7] Section 3. The CNA Incentive may be granted if all the following conditions are met by the GOCC/GFI:

a. Actual operating income at least meets the targeted operating income in the COB approved by the Department if Budget and Management (DBM)/ Office of the President for the year. For GOCCs/GFIs, which by nature of their functions consistently incur operating losses, the current year's operating

PSLMC Resolution No. 2, series of 2003;[8] c) as for the remaining amount of ₱2,637,819.11, the same had been disallowed due to the excessive accruals of cash incentives for years 2006, 2007, and 2008 in violation of Sections 5.7[9] and 7.1[10] of the DBM BC No. 2006-01; and d) the SSS-WMD approving and certifying officers, *i.e.*, Assistant Vice President Rodrigo B. Filoteo (Approving Officer), Administrative Section Head Arlene

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loss should have been minimized or reduced compared to or at most equal that of prior year's levels;

b. Actual operating expenses are less than the DBM approved level of operating expenses in the COB as to generate sufficient source of funds for the payment of CNA Incentives; and

c. For income generating GOCCs/GFIs, dividends amounting to at least 50% of their annual earnings have been remitted to the National Treasury in accordance with the provisions of Republic Act No. 7656 dated November 9, 1993.

[8] *Rollo*, p. 22.

[9] Section 5.7. The CNA Incentive for the year shall be paid as a one-time benefit after the end of the year, provided that the planned programs/activities/projects have been implemented in accordance with the performance targets for the year.

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[10] Section 7.1. The CNA shall be sourced from savings from the released Maintenance and Other Operating Expenses (MOOE) allotments for the year under review, still valid for obligation during the year or payment of the CNA, subject to the following conditions:

7.1.1. Such Savings were generated out of the cost-cutting measures identified in the CNAs and supplements thereto;

7.1.2. Such savings shall be reckoned from the date of signing of the CNA and supplements thereto;

7.1.3. Such savings shall be net of the priorities in the use thereof such as augmentation of amounts set aside for compensation, bonus, retirement gratuity, terminal leave benefits, old-age pension of veterans and other personal benefits authorized by law and in special and general provisions of the annual General Appropriations Act, as well as other MOOE items found to be deficient. Augmentation shall be limited to the actual amount of deficiencies incurred; and

7.1.4. The basic rule that augmentation can be done only if there is deficiency in specific expenditure items, should be strictly observed.

Vargas (Certifying Officer), and Accounting Section Head Ma. Luz D. Abella (Certifying Officer),[11] and all the payees who received the disallowed CNA incentives ought to be liable for the irregular disbursement of government funds.[12]

The Ruling of COA—Regional Office

On petitioner's appeal, COA Regional Director Atty. Roy L. Ursal affirmed by Decision[13] dated November 26, 2013. He found that the purported SSC Resolution No. 183 which authorized the grant **never existed** per verification with the COA-SSS Head Office.[14] Since there was no authority to grant the CNA incentives, their payment was an irregular transaction per Sections 5.1[15] and 5.3[16] of DBM BC No. 2006-1.

Further, the grant of CNA incentives in the fixed amount of ₱20,000.00 is contrary to Section 5.6[17] of DBM BC No. 2006-1.

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[11] *Rollo*, p. 39.

[12] *Id.*

[13] *Id.* at 33-37.

[14] *Id.* at 35.

[15] Section 5.1. The CNA Incentive in the form of cash may be granted to employees covered by this Circular, if provided for in the CNAs or in the supplements thereto, excluded between the representatives of management and the employees' organization accredited by the CSC as the sole and exclusive negotiating agent for the purpose of collective negotiations with the management of an organizational unit listed in Annex "A" of PSLMC Resolution No. 01, s. 2002, and as updated.

[16] Section 5.3. Such CAN Incentive shall refer to those provided in CNAs and supplements thereto which were signed on or after the effectivity of PSLMC Resolution No. 04, S. 2002 and PSLMC Resolution No. 2, s. 2003, or signed and ratified by a majority of the general membership on or after the effectivity of PSLMC Resolution No. 02, s. 2004, "Approving and Adopting the Amended Rules and Regulations Governing the Exercise of the Right of Government Employees to Organize."

[17] Section 5.6. The amount/rate of the individual CAN Incentive:

5.6.1. Shall not be pre-determined in the CNAs or in the supplements thereto since it is dependent on savings generated from cost-cutting measures and systems improvement, and also from improvement of productivity and income in GOCCs and GFIs.

The same ordains that no amount shall be predetermined in the CNAs as it ought to be dependent on the cost-cutting measures specified under the CNA or its supplements.[18]

Section 5.7[19] of DBM BC No. 2006-1 was also violated when petitioner used up 80% of its savings in 2006, 2007, and 2008 as CNA incentives, albeit the grant was not covered by any validly existing CNA executed between the management and the employees' organization. This was also in breach of Section 6.1.3[20] of DBM BC No. 2006-1. At any rate, the apportionment of 80% of the savings for CNA incentives constituted excessive expenditure considering that the employees were already given other benefits.[21]

Meanwhile, in 2005, petitioner's target operating income fell short by 1.03 percent.[22] It meant that petitioner failed to fulfill the condition for the grant of CNA incentives laid down in Section 3 of PSLMC Resolution No. 2, Series of 2003 — that

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[18] *Rollo*, p. 35.

[19] Section 5.7. The CNA Incentive for the year shall be paid as a one-time benefit after the end of the year, provided that the planned programs/activities/projects have been implemented in accordance with the performance targets for the year.

[20] Section 6.1.3. The apportioned amounts of such savings shall cover the following items:

Fifty percent (50%) for CNA Incentive.

Thirty percent (30%) for the improvement of working conditions and other programs and/or to be added as part of the CNA Incentive, as may be agreed upon in the CNA.

Twenty percent (20%) to be reverted to the General Fund for the national government agencies or to the General Fund of the constitutional commissions, state universities and colleges, and local government units concerned as the case may be; or for GOCCs and GFIs, the twenty percent (20%) is to be retained and to be used for the operations of the agency to include among others, purchase of equipment critical to the operations and productivity improvement programs.

[21] *Rollo*, pp. 35-36.

[22] *Id.* at 36.

the actual operating income of the GOCC should meet the targeted income in the COB approved by the DBM.[23]

In sum, the disallowance of the CNA incentives was justified because its grant lacked legal basis and contravened the auditing rules and regulations set forth under DBM BC No. 2006-1 and PSLMC Resolution No. 2, Series of 2003.

Both the approving and certifying officers as well as the recipients of subject CNA incentives were found liable for the disallowed amount.[24]

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

On January 17, 2014, petitioner further sought relief from the COA-CP which by Decision No. 2015-045 dated February 23, 2015 dismissed petitioner's petition for late filing.[25] On motion for reconsideration, however, the COA-CP, per its assailed Decision No. 2018-305 dated March 15, 2018, resolved the petition on the merits,[26] affirming, with modification the Decision of the COA Regional Office. Its dispositions may be summarized as follows:

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[23] Section 3. The CNA Incentive may be granted if all the following conditions are met by the GOCC/GFI:

a. Actual operating income at least meets the targeted operating income in the COB approved by the Department of Budget and Management (DBM)/ Office of the President for the year. For GOCCs/GFIs, which by nature of their functions consistently incur operating losses, the current year's operating loss should have been minimized or reduced compared to or at most equal that of prior year's levels;

b. Actual operating expenses are less than the DBM approved level of operating expenses in the COB as to generate sufficient source of funds for the payment of CNA Incentives; and

c. For income generating GOCCs/GFIs, dividends amounting to at least 50% of their annual earnings have been remitted to the National Treasury in accordance with the provisions of Republic Act No. 7656 dated November 9, 1993.

[24] *Rollo*, p. 37.

[25] *Id.* at 19.

[26] *Id.* at 20.

a) The purported SSC Resolution No. 183 which authorized the questioned CNA incentives was **non-existent**. In fact, petitioner did not even attach a copy of it to the petition filed before the COA-CP.[27]

b) The grant of ₱20,000.00 to each employee of the SSS Western Mindanao Division violated Sections 5.6.1 and 5.7[28] of DBM BC No. 2006-1.

c) Petitioner **failed to** show that the conditions provided under Section 3 of PSLMC Resolution No. 2, Series of 2003[29] had already been fulfilled before it granted the CNA incentives to the employees.[30]

d) The disallowance of the 2005, 2006, 2007, and 2008 CNA incentives[31] was proper as the grant of these benefits was devoid of legal basis, nay, in breach of auditing rules and regulations.

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[27] *Id.* at 23.

[28] Section 5.7. The CNA Incentive for the year shall be paid as one-time benefit after the end of the year, provided that the planned programs/activities/ projects have been implemented in accordance with the performance targets for the year.

[29] Section 3, PSLMC Resolution No. 2, series of 2003. The CNA Incentive may be granted if all the following conditions are met by the GOCC/GFI:

a. Actual operating income at least meets the targeted operating income in the COB approved by the Department of Budget and Management (DBM)/ Office of the President for the year. For GOCCs/GFIs, which by nature of their functions consistently incur operating losses, the current year's operating loss should have been minimized or reduced compared to or at most equal that of prior year's levels;

b. Actual operating expenses are less than the DBM approved level of operating expenses in the COB as to generate sufficient source of funds for the payment of CNA Incentives; and

c. For income generating GOCCs/GFIs, dividends amounting to at least 50% of their annual earnings have been remitted to the National Treasury in accordance with the provisions of Republic Act No. 7656 dated November 9, 1993. (Emphasis supplied)

[30] *Rollo*, p. 24.

[31] *Id.* at 25.

e) As for the issue of liability, the passive recipients need not return the disallowed CNA incentives since they had no knowledge of any irregularity surrounding the grant.[32]

f) With respect to the approving and certifying officers, however, good faith cannot be appreciated in their favor because they were expected to know the laws, rules and regulations in the performance of their duties. Thus, they are solidarily liable for the disallowed amounts.[33]

The Present Petition

Petitioner now asks the Court to nullify the dispositions of the COA-CP insofar as it affirmed the disallowance of the CNA incentives, held the approving and certifying officers jointly and solidarily liable for the return of the disallowed amount, and absolved the employees from returning the respective amounts they received. Petitioner essentially argues:

a) It made prior negotiations and consultations with the SSS Employees Union Panels, DBM, and PSLMC on the grant of the CNA incentives.

b) The SSC issued several resolutions in the past providing for a similar grant of CNA incentives to SSS officials and employees.[34]

c) The approving and certifying officials merely performed their respective official functions when they affixed their signatures to the CNA incentives vouchers.[35] Hence, they should be absolved from refunding the disallowed amount on ground of good faith.[36]

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[32] *Id.* at 25-26.

[33] *Id.* at 26.

[34] *Id.* at 9.

[35] *Id.* at 10.

[36] *Id.*

d) In accord with the principle against unjust enrichment, the passive recipients themselves ought to return the disallowed CNA incentives.[37]

On the other hand, the COA-CP, through Solicitor General Jose Calida, and Senior State Solicitors B. Marc Canuto and Cheryl Angeline Roque-Javier ripostes, in the main:

a) Petitioner's failure to comply with DBM BC No. 2006-1 and PSLMC Resolution No. 2, Series of 2003 warranted the disallowance of the 2005, 2006, 2007, and 2008 CNA incentives.

b) The approving and certifying officials deliberately disregarded the aforesaid circular and resolution, hence, they are deemed to have acted in bad faith.

c) The payees are not obliged to refund the CNA incentives since they had no knowledge of the irregularity surrounding the grant.[38]

Issues

1. Did the COA-CP gravely abuse its discretion when it affirmed the disallowance of the 2005, 2006, 2007, and 2008 CNA incentives paid to the employees?

2. Are the approving and certifying officers liable to return the disallowed amount? How about the employees who received the grant?

Ruling

The 2005, 2006, 2007, and 2008 CNA incentives patently lacked legal basis and violated auditing rules and regulations

[37] *Id.* at 12-13.

[38] *Id.* at 68-70.

PSLMC Resolution No. 2, Series of 2003[39] authorizes the grant of CNA incentives for Government Owned and Controlled Corporations (GOCCs) and Government Financial Institutions (GFIs) in recognition of the joint efforts of labor and management to accomplish targets, programs, and services at costs less than the approved costs in their respective budgets. The clear objective of PSLMC Resolution No. 2, Series of 2003 is to encourage, promote, and reward productivity, efficiency, and use of austerity measures specified in the appropriate CNA.[40]

Section 3 of PSLMC Resolution No. 2, Series of 2003 bears the conditions **for the grant of CNA incentives**, *viz.*:

a) Actual operating income at least meets the targeted operating income in the Corporate Operating Budget (COB) approved by the Department of Budget and Management (DBM)/Office of the President for the year. For GOCCs/GFIs, which by the nature of their functions consistently incur operating losses, the correct year's operating loss should have been minimized or reduced compared to or at most equal that of prior year's levels;

b) Actual operating expenses are less than the DBM-approved level of operating expenses in the COB as to generate sufficient source of funds for the payment of CNA Incentive; and

c) For income generating GOCCs/GFIs, dividends amounting to at least 50% of their annual earnings have been remitted to the National Treasury in accordance with provisions of Republic Act No. 7656 dated November 9, 1993.

On December 27, 2005, former President Gloria Macapagal-Arroyo issued Administrative Order No. 135 (A.O. 135),[41]

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[39] GRANT OF COLLECTIVE NEGOTIATION AGREEMENT (CNA) INCENTIVE FOR GOVERNMENT OWNED OR CONTROLLED CORPORATIONS (GOCCs) AND GOVERNMENT FINANCIAL INSTITUTIONS (GFIs).

[40] *Manila International Airport Authority v. Commission on Audit*, 681 Phil. 644, 660 (2012).

[41] AUTHORIZING THE GRANT OF COLLECTIVE NEGOTIATION AGREEMENT (CNA) INCENTIVE TO EMPLOYEES IN GOVERNMENT AGENCIES.

confirming the grant of the CNA incentives to rank and file employees pursuant to PSLMC Resolution No. 2, Series of 2003[42] subject to cost-cutting measures to be identified in the CNA and exclusive sourcing of these incentives from the savings that may be generated during the term of the CNA.[43]

On February 1, 2006, the DBM issued its implementing DBM Budget Circular No. 2006-1, *viz.*:

> 5.1 The CNA Incentive in the form of cash may be granted to employees covered by this Circular, **if provided for in the CNAs or in the supplements thereto, executed between the representatives of the management and the employees' organization** accredited by the CSC as the sole and exclusive negotiating agent for the purpose of collective negotiations with the management of an organizational unit listed in Annex "A" of PSLMC Resolution No. 01, s. 2002 and as updated.
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> x x x x x x x x x
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> 5.6 The amount/rate of the individual CNA Incentive:
>
> 5.6.1 **Shall not be pre-determined** in the CNAs or in the supplements thereto since it is dependent on savings generated from cost-cutting measures and systems improvement, and also from improvement of productivity and income in GOCCs and GFIs;

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[42] A.O. 135, SECTION 1. Grant of Incentive. — The grant of the Collective Negotiation Agreement (CNA) incentive to national government agencies (NGAs), local government units (LGUs), state universities and colleges (SUCs), government-owned or controlled corporations (GOCCs), and government financial institutions (GFIs), if provided in their respective CNAs and supplements thereto executed between the management and employees' organization accredited by the Civil Service Commission, is hereby authorized.

Furthermore, the grant of the CNA incentive pursuant to CNAs entered into on or after the effectivity of PSLMC Resolution No. 4, series of 2002, and PSLMC Resolution No. 2, series of 2003, and in strict compliance therewith, is confirmed.

[43] A.O. 135, SEC. 3. Cost-Cutting Measures and Systems Improvement. — The management and the accredited employees' organization shall identify in the CNA the cost-cutting measures and systems improvement to be jointly undertaken by them so as to achieve effective service delivery and agency targets at lesser costs.

5.6.2 Shall not be given upon signing and ratification of the CNAs or supplements thereto, as this gives the CNA Incentive the character of the CNA Signing Bonus which the Supreme Court has ruled against for not being a truly reasonable compensation (*Social Security System vs. Commission on Audit*, 384 SCRA 548, July 11, 2002);

5.6.3 May vary every year during the term of the CNA, at rates depending on the savings generated after the signing and ratification of the CNA; and

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5.7 The **CNA Incentive for the year shall be paid as a one-time benefit after the end of the year**, provided that the planned programs/activities/projects have been implemented and completed in accordance with the performance targets for the year.

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6.1.3 The apportioned amounts of such savings shall cover the following items:

Fifty percent (50%) for CNA Incentive.

Thirty percent (30%) for the improvement of working conditions and other programs and/or to be added as part of the CNA Incentive, **as may be agreed upon in the CNA**.

Twenty percent (20%) to be reverted to the General Fund for the national government agencies to the General Fund of the constitutional commissions, state universities and colleges, and local government units concerned as the case may be; or for GOCCs and GFIs, the twenty percent (20%) is to be retained and to be used for the operations of the agency to include among others, purchase of equipment critical to the operations and productivity improvement programs.

7.0 Funding Source

7.1 The CNA Incentive **shall be sourced solely from savings** from released Maintenance and Other Operating Expenses (MOOE) allotments for the year under review, still valid for obligation during the year of payment of the CNA, subject to the following conditions:

7.1.1 **Such savings were generated out of cost-cutting measures** identified in the CNAs and supplements thereto;

7.1.2 Such savings shall be reckoned from the date of signing of the CNA and supplements thereto;

x x x x x x x x x

7.2 GOCCs/GFIs and LGUs may pay the CNA Incentive from **savings in their respective approved corporate operating budgets or local budgets**. (Emphasis supplied)

As correctly found by the COA-CP, the grant of the CNA incentives to the employees here was fraught with serious infirmities, as follows:

First. The so called SSC Resolution No. 183 which supposedly authorized the grant and release of the CNA incentives was found to be inexistent by both the COA Regional Office and the COA-CP.[44] It was not found in the official records in petitioner's own office. Notably, petitioner has never produced its copy then and even now notwithstanding that the same has been its main anchor of defense since day one and despite both COA tribunals' persistent finding that it truly did not exist. Since petitioner inexplicably cannot produce the supposed document, the logical conclusion is there was no such document to speak of in the first place. We, therefore, quote with concurrence the relevant findings of the COA Regional Office and Commission Proper on the inexistent Resolution No. 183, thus:

Decision No. 2013-29 of the COA Regional Office:

The contention by SSS that there was indeed a supplemental CAN approved in a form of SSC Resolution No. 183 dated April 2, 2003 which provides for the grant of P20,000.00 to each employee payable in two (2) tranches covering those within the collective negotiating unit as of December 31, 2014 **was negated by the COA-SSS Head Office as per verification, no such supplemental CNA existed**.[45] (Emphasis and underscoring supplied)

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[44] *Rollo*, p. 35.

[45] *Id.*

Decision No. 2018-305 of the COA-CP:

Contrary to the assertion of the petitioner, the incentive was not validly granted under the Supplemental CAN in the form of Social Security Commission (SSC) Resolution No. 183 dated April 2, 2003. As verified by the COA-SSS Head Office, **no such Supplemental CNA existed**. Thus, this Commission sustains the determination of the RD that the Supplemental CNA invoked by the petitioner to have been allegedly used as basis in the grant of said incentive, was not even attached to the Petition for Review dated January 17, 2014.[46] (Emphasis and underscoring supplied)

Second. There is no showing, as none was shown that the grant of the CNA incentives formed part of a duly executed CNA for years 2005, 2006, 2007, and 2008 between the SSS management and the employees' representative the Alert and Concerned Employees for Better SSS (ACCES)[47] in violation of **Section 5.1 of DBM BC No. 2006-1**. Both COA Regional Office and COA-CP aptly discussed how this infirmity likewise led to the disallowance, thus:

Decision No. 2013-29 of COA Regional Office:

Records show that the **main reason why the various payment of CNA Incentives were disallowed** was because **there is nowhere in the CNA executed** between the representatives of the management — SSS and the employees' organization — ACCES **which provides for such case incentive**.[48] (Emphasis supplied)

Decision of No. 2018-305 of COA-CP:

ND No. 2012-03 was issued primarily on the ground that there was **no authority** allowing payment of CNA Incentives to the employees of SSS-WMD considering that **such form of incentive was not provided in the CNA for CYs 2005-2008**. Thus, the payment of the same without an authority **violates Section 5.1 of DBM BC No. 2006-1** x x x.[49] (Emphasis supplied)

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[46] *Id.* at 23.

[47] *Id.*

[48] *Id.* at 35.

[49] *Id.* at 23.

Third. Petitioner's **grant of ₱20,000.00** to each of the employees infringed Section 5.6.1 of DBM BC No. 2006-1 which **prohibits GOCCs or GFIs from making a pre-determination of the amount or rate** of each CNA incentive to be given to the employees. Petitioner likewise breached Section 5.7[50] of DBM BC No. 2006-1 when it used up 80% of its savings for years 2005, 2006, and 2007 for the employees' CNA incentives notwithstanding that this grant was not even covered by a duly existing CNA executed between management and the employees' organization for the three (3) fiscal years in question. Not only that. There was also a breach of the prescribed apportionment of savings under Section 6.1.3[51] of DBM BC No. 2006-1, *viz.*:

> 50% for CNA Incentives;
> 30% for improvement of working conditions and/or to be added as part of the CNA Incentive, as may be agreed upon in the CNA; and
> 20% is to be retained and to be used for the operations of the agency to include among others, purchase of equipment critical to the operations and productivity improvement programs.

We keenly note as well the unrefuted finding below that during the four (4) years in question, the employees here were also granted other benefits by petitioner over and above the disputed CNA incentives which all the more made the use of 80% of petitioner's savings for that purpose excessive.[52]

Fourth. Petitioner failed to adduce evidence that the amounts given as CNA incentives actually came from savings generated from its identified cost-cutting measures as mandated by Section 7.1.1 of DBM BC No. 2006-1 and Section 8 of PSLMC Resolution No. 2, Series of 2003.

Fifth. Petitioner further failed to show compliance with the conditions under Section 3 of PSLMC Resolution No. 2, series

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[50] Section 5.7. The CNA Incentive for the year shall be paid as a one-time benefit after the end of the year, provided that the planned programs/activities/projects have been implemented in accordance with the performance targets for the year.

[51] Supra note 20.

[52] *Rollo*, pp. 24-25; 35-36.

of 2003, thus: a) the actual operating income should meet the targeted income in the Corporate Operating Budget (COB) approved by the DBM; b) there should be sufficient source of funds for payment of CNA incentives; and c) dividends amounting to at least 50% of the agency's actual earnings should have been remitted to the National Treasury. In fact, records reveal that for fiscal years 2005 and 2007, petitioner's actual operating income did not even meet the targeted operating income in the COB approved by the DBM.[53] Petitioner was silent on this point.

Verily, therefore, the disallowance of the CNA incentives here cannot be faulted, nay, tainted with grave abuse of discretion. On this score, petitioner's claim that there were consultations and negotiations which took place among the stakeholders such as the SSS Employees Union Panels, DBM, and PSLMC prior to the approval of the disallowed incentives[54] and that SSC had actually authorized similar grants in the past[55] is a bare allegation devoid of any probative weight. The truth is petitioner has not belied the finding of COA that there was in fact nothing in the duly executed CNA for 2005 to 2008 providing for such cash incentives.[56]

Indubitably, therefore, **for lack of legal basis** and for **failure to comply** with DBM BC No. 2006-1 and PSLMC Resolution No. 2, Series of 2003, the Court upholds the Notice of Disallowance No. 2012-03 against the CNA incentives granted and paid to petitioner's employees in the total amount of ₱9,333,319.66.

The certifying and approving officers and the individual employees are all liable to return the disallowed amounts

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[53] *Id.* at 22.

[54] *Id.* at 9.

[55] *Id.*

[56] *Id.* at 35.

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.

Significantly, in the very recently promulgated case of ***Madera, et al. v. COA***,[57] the Court 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 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

[57] G.R. No. 244128, September 18, 2020.

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 [nay 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.

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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.

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

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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."

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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.

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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 <u>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</u>. Notably, when the COA includes payees as persons liable in an ND, the nature of their participation is stated as "received payment."

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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. **<u>This, as well, is the foundation of the rules of return that the Court now promulgates</u>**.

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 approving and certifying officers of the SSS-WMD 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.[58] 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 willfully 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.[59]

In contrast, "good faith" is ordinarily used to describe a state of mind denoting "**honesty** and **freedom from knowledge** of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with **absence of all information**, notice, or benefit or belief of facts which render **transaction unconscientious**." Nevertheless, this presumption of good faith is overturned when there is a violation of a clear and explicit rule.[60]

Notably, the Court has invariably ruled that **the presumption of good faith fails when an explicit law, rule, or regulation has been violated**, *viz.*:

In ***Dr. Velasco, et al. v. COA, et al.***,[61] the Court held that the blatant failure of the approving officers to abide by the provisions of AO 103 and AO 161 enjoining heads of government agencies from granting incentive benefits without prior approval of the

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

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

[60] *Sambo, et al. v. Commission on Audit*, 811 Phil. 344, 355 (2017).

[61] 695 Phil. 226 (2012), cited in *Sambo v. Commission on Audit*, supra.

President overcame the presumption of good faith. The Court enunciated that the **deliberate disregard** of these issuances is **equivalent to gross negligence amounting to bad faith**. Consequently, the approving officers were held liable for the refund of the subject incentives.

Thus, in ***Reyna v. COA***,[62] the Court affirmed the liability of the approving public officers therein, notwithstanding their proffered but unsubstantiated claims of good faith, since their actions **violated an explicit rule** in the Land Bank of the Philippines' Manual on Lending Operations.

Similarly, in ***Casal v. OCA***,[63] the Court found that despite the prohibition in AO Nos. 268 and 29 on the grant of incentive benefits unless authorized by the President, the National Museum officers approved and authorized the questioned incentive award to its officials and employees. The Court added that even if the grant of the incentive award was not for a dishonest purpose, the **patent disregard** of the issuances of the President amounted to **gross negligence**, making the approving officers liable for the refund of the disallowed incentive award.

In ***Rotoras v. COA***,[64] the Court decreed that **officials and officers who disbursed the disallowed amounts are liable to refund**: (1) when they **patently disregarded existing rules** in granting the benefits to be disbursed, **amounting to gross negligence**; (2) when there was **clearly no legal basis** for the benefits or allowances; (3) when the amount disbursed is so exorbitant that the approving officers were alerted to its validity and legality; or (4) **when they knew that they had no authority over such disbursement**.

Further, the Court in ***Manila International Airport Authority (MIAA) v. COA***[65] ordained that the officers of the MIAA **abused**

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[62] 657 Phil. 209 (2011).

[63] 538 Phil. 634 (2006), cited in *Delos Santos, et al. v. Commission on Audit,* 716 Phil. 322, 336 (2013).

[64] G.R. No. 211999, August 20, 2019.

[65] 681 Phil. 644 (2012), cited in *Department of Public Works and Highways, Region IV-A v. Commission on Audit*, G.R. No. 237987, March 19, 2019.

their authority, amounting to **bad faith**, when they certified and approved the funding for the CNA Incentive to MIAA officers and employees without assuring that the conditions imposed by PSLMC Resolution No. 2, Series of 2003, are complied with.

Here, the following attendant circumstances undoubtedly negate petitioner's plea of good faith on behalf of the approving and certifying officials who allowed the grant of the CNA incentives:

One. They approved, certified, and allowed the grant despite the glaring absence from the records of the supposed SSC Resolution No. 183 authorizing the CNA incentives. COA's unrefuted finding was that the so called document never existed.

Two. They approved, certified, and allowed the grant despite the glaring absence from the records of a duly executed CNA for years 2005, 2006, 2007, and 2008 between the SSS management and the employees' representative[66] providing for CNA incentives in violation of **Section 5.1 of DBM BC No. 2006-1**.

Three. They approved, certified, and allowed the grant to each of the employees the amount **of ₱20,000.00** contrary to Section 5.6.1 of DBM BC No. 2006-1 which prohibits **GOCCs or GFIs from making a pre-determination of the amount or rate** of each CNA incentive to be given to the employees.

Four. They approved, certified, and allowed the use of 80% of the savings for fiscal years 2005, 2006, and 2007, albeit it was in breach of the prescribed apportionment of savings under Section 6.1.3[67] of DBM BC No. 2006-1.

Five. They approved, certified, and allowed the grant without any finding on record that the amount paid actually came from savings generated from identified cost-cutting measures as mandated by Section 7.1.1 of DBM BC No. 2006-1 and Section 8 of PSLMC Resolution No. 2, Series of 2003.

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[66] *Rollo*, p. 23.

[67] Supra note 20.

Six. They approved, certified, and allowed the grant despite the absence of any showing on record that the following conditions of Section 3 of PSLMC Resolution No. 2, series of 2003 had been satisfied, to wit: a) the actual operating income should meet the targeted income in the Corporate Operating Budget (COB) approved by the DBM; b) there should be sufficient source of funds for payment of CNA incentives; and c) dividends amounting to at least 50% of the agency's actual earnings should have been remitted to the National Treasury. For sure, these officers could not have overlooked petitioner's financial records showing that for years 2005 and 2007, its actual operating income did not even meet the targeted operating income in the COB approved by the DBM.[68]

Indeed, the record speaks for itself. **Gross negligence amounting to bad faith indelibly characterized the actions here of the approving and certifying officials who allowed the illegal grant and its payment to the employees**.

Pursuant to Section 43, Chapter V, Book VI of the 1987 Administrative Code and ***Madera***, therefore, **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. Meanwhile, there is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience.[69]

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[68] *Rollo*, p. 22.

[69] *Department of Public Works and Highways, Region IV-A v. Commission on Audit*, G.R. No. 237987, March 19, 2019.

Notably, in ***Dubongco v. Commission on Audit***,[70] the Court affirmed the disallowance of CNA incentives sourced out of CARP funds. More, it held that although the payees committed no fraud in obtaining the disallowed CNA benefits, they are considered trustees of the disallowed amounts. The Court, thus, **directed the payees to return the CNA benefits they obtained as it is against equity and good conscience to continue holding on to them**. The Court instructed, thus:

> Finally, the payees received the disallowed benefits with the mistaken belief that they were entitled to the same. **If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes**. A constructive trust is substantially an **appropriate remedy against unjust enrichment**. It is raised by equity in respect of property, which has been acquired by fraud, *or where, although acquired originally without fraud*, it is against equity that it should be retained by the person holding it. In fine, the payees are considered as trustees of the disallowed amounts, as although they committed no fraud in obtaining these benefits, **it is against equity and good conscience for them to continue holding on to them**. (Emphasis supplied)

Here, it was not proven that the employees had a hand in the execution of the CNA covering the years 2005 to 2008 which would have alerted them that the CNA did not provide for the grants under consideration. They were merely passive recipients of the subject CNA incentives. Nevertheless, **it is evident that such incentives were granted to the employees despite its absolute lack of legal basis and breach of auditing rules and regulations**. Consequently, the employees had no valid claim to the benefits they received.[71] More, the employees received subject benefits at the expense of another, specifically, the Government. **Applying the principle of unjust enrichment and *solutio indebiti*, the employees must return the incentives they unduly received**.[72]

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[70] G.R. No. 237813, March 5, 2019.

[71] *Id.*

[72] Supra note 69.

Madera decreed, however, 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.
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> 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 the SSS-WMD employees, **none of the exceptions are present in this case**. The disallowed CNA incentives were not given in relation to the employees' functions, nor were they given as part of performance incentives, productivity pay, or merit increases as in fact the CNA covering the years 2005 to 2008 did not provide for such kind of incentives. 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.

Verily, therefore, **the employees must be held liable to return the amounts that they respectively received**. As earlier discussed, **the approving and certifying officers of the SSS-WMD are jointly and severally liable for the disallowed amounts received by the individual employees**.

ACCORDINGLY, the assailed Decision No. 2015-045 dated February 23, 2015 and Decision No. 2018-305 dated March

15, 2018 of the Commission on Audit-Commission Proper are **AFFIRMED** with **MODIFICATION**, *viz.*:

1. The Social Security System - Western Mindanao Division employees are individually liable to return the amounts which they received pursuant to the 2005, 2006, 2007, and 2008 CNA Incentives; and

2. The Social Security System - Western Mindanao Division officials who took part in the approval of the unauthorized incentives are jointly and solidarily liable for the return of the disallowed amounts in connection with the 2005, 2006, 2007, and 2008 CNA Incentives.

SO ORDERED.

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

Baltazar-Padilla, J., on leave.

SECOND DIVISION

[A.C. No. 8959. October 7, 2020]

RISIE G. BAYGAR, *Complainant, v.* **ATTY. CLARO MANUEL M. RIVERA,** *Respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; A LAWYER'S ACTS DONE IN THE PERFORMANCE OF OFFICIAL DUTIES AS MUNICIPAL ADMINISTRATOR CANNOT BE ASSAILED THROUGH A DISBARMENT COMPLAINT.— Whether to include Risie or not in the charge is purely discretionary on the part of Atty. Rivera. If he perceives that Risie is involved in the management of the business of her father without the requisite business permit, then he can very well include Risie in the charge. In any event, it is the prosecutor who will ultimately decide whether to include or drop Risie from the charge.

. . . Atty. Rivera was merely implementing the local tax ordinance when he enforced the Closure and Seizure Orders on the businesses operated by the Baygar family without the necessary business permits. More importantly, Risie's recourse from the alleged acts of Atty. Rivera is not through this disbarment complaint. She could have assailed the issuance of the Closure Orders before the proper authorities.

2. ID.; ID.; ID.; COMPLAINANT MUST PROVE BY SUBSTANTIAL EVIDENCE THAT A LAWYER COMMITTED ACTS IN VIOLATION OF THE LAWYER'S OATH AND THE CODE OF PROFESSIONAL RESPONSIBILITY (CPR) WHILE PERFORMING OFFICIAL FUNCTIONS.— Atty. Rivera's acts could not be considered as violations of the Lawyer's Oath and the CPR. Atty. Rivera was merely performing his official duties as Municipal Administrator of the Municipality of Binangonan, particularly the implementation of the Closure Order against the businesses operated by the Baygar family and matters related thereto. As Municipal Administrator, one of his duties is to "assist in the coordination of the work of all the officials of the local government unit, under the supervision, direction, and

control of the governor or mayor, and for this purpose, he may convene the chiefs of offices and other officials of the local government unit." The implementation of a closure order and the issuance of business permits may be considered well within this function of a Municipal Administrator. Significantly, Risie failed to prove by substantial evidence that in the performance of his functions, Atty. Rivera committed acts in violation of the Lawyer's Oath and the CPR.

D E C I S I O N

HERNANDO, *J.*:

This administrative case arose from a Petition for Disbarment[1] filed by complainant Risie G. Baygar (**Risie**) against respondent Atty. Claro Manuel M. Rivera (**Atty. Rivera**) before the Office of the Bar Confidant of this Court. The case was referred to the Commission on Bar Discipline (**CBD**) of the Integrated Bar of the Philippines (**IBP**), and docketed as CBD Case No. 12-3391.

The Factual Antecedents

In her Petition, Risie alleges that Atty. Rivera committed acts constitutive of a Violation of the Lawyer's Oath and the Code of Professional Responsibility (CPR).[2] At the time of the commission of the acts complained of, Atty. Rivera was the Municipal Administrator[3] of Binangonan, Rizal.

In her Complaint, Risie alleged that in the morning of March 9, 2010, officers from the Business Permit and Licensing Office (**BPLO**) of Binangonan went to the *sari-sari* store of her father, Rodolfo Baygar (**Rodolfo**)[4] and informed them that they need

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[1] *Rollo*, vol. I, pp. 1-14. Filed before the Office of the Bar Confidant on March 24, 2011.

[2] Id. at 1.

[3] Id.

[4] Id.

to secure a business permit for their billiard table[5] and sari-sari store.[6] They handed Risie a *No Permit Notice* dated March 9, 2010 for the billiard table and a videoke machine.[7]

In the evening of March 17, 2010, Atty. Rivera, together with BPLO officers, health office, and members of the Binangonan Police and Special Action Unit, returned to the store to implement a Closure Order (**Closure Order**).[8] However, Risie noticed that the Closure Order was dated March 18, 2010.[9] When she returned the Closure Order back to them, the enforcers changed the date and added the phrase "w/ BILLIARD."[10] Thereafter, Atty. Rivera ordered the seizure of billiard accessories[11] to which Risie protested since the Closure Order did not include the seizure of the said items.[12] However, Atty. Rivera allegedly threatened[13] Risie with imprisonment instead of just seizing the items.[14] Meanwhile, an altercation ensued between Rodolfo and R. Collantes, a member of Atty. Rivera's team, as Rodolfo did not want to give up the items that were being seized.[15]

On March 22, 2010, Risie and her father secured the necessary business permits for the *sari-sari* store, videoke machine, and billiard table.[16] Risie then asked the Municipal Treasurer where

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[5] Id.

[6] Id.

[7] Id. at 15; see Annex "A".

[8] Id. at 1, 16; see Annex "B".

[9] Id. at 2, 16; see id.

[10] Id.

[11] Id. at 2.

[12] Id.

[13] Id.; Atty Rivera: *"Anong gusto mo ikulong kita! Ano?! Gusto mo ikulong kita iwan namin yan. Ano gusto mo ikaw ang bitbitin namin at ikulong? Ano ha. Sige?!"*

[14] Id. at 2.

[15] Id.

[16] Id. at 17-20; see Annexes "C", "C-2", "D", and "D-2".

to claim the previously seized items[17] who, in turn, referred Risie to Atty. Rivera.[18] Risie then proceeded to Atty. Rivera's office and asked for the release of the seized items.[19] However, Atty. Rivera did not release the seized items and instead asked her to pay additional fines for their release.[20]

Meanwhile, on May 18, 2010, the Municipal Treasurer issued another *Closure Order* (**Second Closure Order**) against Risie's father for failure to pay the fines and penalties in relation to the March 17, 2010 operation.[21] Attached to the Second Closure Order is a computation of the fines and penalties prepared by Atty. Rivera.[22] Rodolfo protested the Second Closure Order.[23] Then, Risie and her father were surprised when they learned that Atty. Rivera filed a criminal complaint against them for Violation of Municipal Ordinance No. 2006-006 for operating a business without securing a business permit.[24]

This prompted Risie and her father to file various cases against Atty. Rivera. Aside from this complaint for disbarment, Rodolfo also instituted an administrative case against Atty. Rivera before the Civil Service Commission (CSC)[25] and criminal complaints

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[17] Id. at 2.

[18] Id. at 3.

[19] Id.

[20] Id.; Atty. Rivera: *"Anong gusto mo kukunin mo ang mga yun at maging magkaibigan tayo o magdedemanda ka. Pwede kitang ipakulong nung gabing nagpunta kami sa inyo dahil wala kayong permit, ngayon dahil sa wala kayong permit nuon ipapatubos ko sa iyo yan ng limang libo (₱5,000) para sa bola, limang libo (₱5,000) para sa tako at isang libo (₱1,000) para sa alak. Gumawa ka na rin ng letter baka sabihin naman nila na pineperahan kita."*

[21] Id. at 7, 26; see Annex "F".

[22] Id. at 27-28; see Annex "G".

[23] Id. at 8, 29; see Annex "H".

[24] Id. at 8, 30-34; see Annex "I".

[25] Id. at 10, 43-52; see Annex "N".

for Falsification of Public Documents[26] and Robbery[27] before the Provincial Prosecutor of Rizal.

Risie claims that the officers should have merely locked the establishment without seizing the items as the closure order did not give them authority to do so.[28] Moreover, the billiard table was not initially included in the scope of the closure order and was added only during the operation.[29] And, the additional amounts demanded by Atty. Rivera were not included in the original assessment, hence, it must have been extortion.[30]

In his Comment,[31] Atty. Rivera claims that Risie has distorted the truth to suit her purpose of continuously harassing him when she felt aggrieved by the processes of the municipality in implementing the local tax ordinance.[32] He claims that on March 17, 2010, the Municipal Mayor ordered him to assemble a team to carry out the closure of the businesses owned and operated by the Baygar family on the night of the same day[33] since the Office of the Mayor received several complaints that the businesses operated by the Baygar family caused disturbance to the area at night.[34]

Atty. Rivera then organized a team and proceeded to the store in the evening of the same day.[35] Atty. Rivera claims that it was Risie who started arguing with Carina Biazon (**Carina**), a BPLO Inspector, in a loud voice.[36] Atty. Rivera alleges that

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[26] Id. at 10, 53-56; see Annex "O".

[27] Id. at 7, 22-25; see Annex "E".

[28] Id. at 3.

[29] Id. at 4.

[30] Id. at 6.

[31] Filed before the Office of the Bar Confidant on September 16, 2011.

[32] *Rollo*, vol. I, p. 85.

[33] Id. at 85, 107; see Annex "4".

[34] Id.

[35] Id. at 85-86.

[36] Id. at 86-87.

it was Carina who changed the date and added the phrase "w/ BILLIARD" in the Closure Order.[37] He did not question the corrections because he believed that he and the team had the authority from the Municipal Mayor to conduct the operation; besides, the billiard table indeed did not have a business permit at that time.[38] He admitted having given the order to seize the billiard accessories and bottles of beer.[39] A Special Action Unit member, R. Collantes, complied with his order to seize the items.[40] However, an altercation ensued between Rodolfo and R. Collantes.[41]

Atty. Rivera avers that he was never in possession of the seized items and that these were kept in the BPLO.[42]

On March 22, 2010, Risie went to his office asking for the release of the seized items. He advised Risie that she may either pay the fine or she can write the Mayor a letter-request for the release of seized items.[43]

Instead of heeding his advice, Risie and her father Rodolfo filed various criminal and administrative cases against him, including this Petition for Disbarment.[44]

Atty. Rivera claims that he was merely performing his job of implementing the local tax ordinance.[45] As the Municipal Administrator, he is tasked to enforce the local tax ordinance that was allegedly violated by the Baygar family.[46] He explains

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[37] Id. at 87-88.

[38] Id.

[39] Id. at 88.

[40] Id. at 89.

[41] Id.

[42] Id. at 90.

[43] Id.

[44] Id. at 91-92.

[45] Id. at 85.

[46] Id. at 88.

that the error in the date of the closure order was a mere inadvertence, as their original plan was to conduct the operation on the night of March 17, 2010.[47] As to the addition of the phrase "w/BILLIARD," he believed that the correction was proper since the billiard table had no business permit at that time.[48] He insists that the seizure of the items was for a legitimate purpose.[49] He denied acting in an arrogant manner towards Risie and her father.[50] On the contrary, he addressed them in a subtle and low voice.[51] He also explains that the original assessment given to Risie did not include the fine imposed in connection to the seized items because at that time, the assessment of penalties was not yet included in the computerization program of the municipality.[52] Atty. Rivera further explains that the criminal case for Violation of Municipal Ordinance No. 2006-006 was filed against both Risie and Rodolfo as they were in violation of the ordinance in operating businesses without the required business permits.[53]

In her Reply, Risie attached a video recording of the events that transpired in the evening of March 17, 2010.[54] Atty. Rivera challenged the authenticity and accuracy of the video recording.[55]

Report and Recommendation of the IBP:

In his Report and Recommendation dated June 25, 2013, Investigating Commissioner Michael G. Fabunan noted that (a) there was no reason for Atty. Rivera to criminally charge

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[47] Id. at 85-86.

[48] Id. at 87-88.

[49] Id. at 88.

[50] Id. at 89.

[51] Id.

[52] Id. at 91.

[53] Id. at 92.

[54] Id. at 119-125.

[55] *Rollo*, vol. II, pp. 16-18.

Risie for violating Municipal Ordinance No. 2006-006 because she is not the owner of the business subject of the closure order; (b) the closure order did not authorize seizure of the items; (c) Atty. Rivera and the team improperly implemented the closure order a day before the stated date.[56] The Investigating Commissioner recommended that Atty. Rivera be suspended from the practice of law for a period of six months.[57]

In its Resolution No. XXI-2014-474[58] dated August 9, 2014, the IBP Board of Governors (BOG) adopted with modification the Report and Recommendation of the Investigating Commissioner by increasing the period of suspension to one year, to wit:

> RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, **with modification**, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A," and finding the recommendation fully supported by the evidence on record and the applicable laws, and for gross violation of Rule 6.02 of the Code of Professional Responsibility, Atty. Claro Manuel M. Rivera is hereby **SUSPENDED from the practice of law for one (1) year**.

Atty. Rivera filed a Motion for Reconsideration[59] but it was denied by the IBP BOG in its Resolution No. XXI-2015-373[60] dated June 5, 2015.

The Court's Ruling

The Court disagrees with the findings and recommendation of the IBP. A judicious review of the allegations of Risie failed to show that Atty. Rivera committed acts constitutive of a Violation of the Lawyer's Oath and the CPR.

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[56] *Rollo*, vol. IV, pp. 2-9.

[57] Id.

[58] Id. at 1.

[59] Id. at 10-15.

[60] *Rollo*, vol. V, unpaginated.

According to the IBP, it was error on the part of Atty. Rivera to have criminally charged Risie for violating Municipal Ordinance No. 2006-006 because she is not the owner of the business subject of the closure order. We disagree. Whether to include Risie or not in the charge is purely discretionary on the part of Atty. Rivera. If he perceives that Risie is involved in the management of the business of her father without the requisite business permit, then he can very well include Risie in the charge. In any event, it is the prosecutor who will ultimately decide whether to include or drop Risie from the charge.

Next, the IBP recommends that Atty. Rivera should be held administratively liable for seizing other items that are not included in the seizure order and for prematurely implementing the Closure Order. We again disagree. As we see it, Atty. Rivera was merely implementing the local tax ordinance when he enforced the Closure and Seizure Orders on the businesses operated by the Baygar family without the necessary business permits. More importantly, Risie's recourse from the alleged acts of Atty. Rivera is not through this disbarment complaint. She could have assailed the issuance of the Closure Orders before the proper authorities.

To stress, Atty. Rivera's acts could not be considered as violations of the Lawyer's Oath and the CPR. Atty. Rivera was merely performing his official duties as Municipal Administrator of the Municipality of Binangonan, particularly the implementation of the Closure Order against the businesses operated by the Baygar family and matters related thereto. As Municipal Administrator, one of his duties is to "assist in the coordination of the work of all the officials of the local government unit, under the supervision, direction, and control of the governor or mayor, and for this purpose, he may convene the chiefs of offices and other officials of the local government unit."[61] The implementation of a closure order and the issuance of business permits may be considered well within this function

[61] An Act Providing for a Local Government Code of 1991 [LOCAL GOVERNMENT CODE OF 1991], Republic Act No. 7160, Sec. 480 (1991).

of a Municipal Administrator. Significantly, Risie failed to prove by substantial evidence that in the performance of his functions, Atty. Rivera committed acts in violation of the Lawyer's Oath and the CPR.

Finally, it has not escaped our attention that the Baygars already filed an administrative complaint against Atty. Rivera before the CSC as well as two criminal complaints before the Office of the Provincial Prosecutor of Rizal.

WHEREFORE, the administrative complaint against respondent Atty. Claro Manuel M. Rivera is hereby **DISMISSED** for lack of merit.

SO ORDERED.

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

Baltazar-Padilla, J., on leave.

SECOND DIVISION

[A.C. No. 11217. October 7, 2020]

LINO C. BERNAL, JR., *Complainant, v.* **ATTY. ERNESTO M. PRIAS,** *Respondent*.

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; DISBARMENT PROCEEDINGS, PURPOSE AND NATURE OF.— The purpose of disbarment is mainly to determine the fitness of a lawyer to continue acting as an officer of the court and as participant in the dispensation of justice. It is to protect the courts and the public from the misconduct of the officers of the court and to ensure the administration of justice by requiring that those who exercise this important function shall be competent, honorable and trustworthy men in whom courts and clients may repose confidence. A case of suspension or disbarment is *sui generis* and not meant to grant relief to a complainant as in a civil case, but is intended to cleanse the ranks of the legal profession of its undesirable members in order to protect the public and the courts.

2. ID.; ID.; ID.; IN DISBARMENT PROCEEDINGS, BURDEN OF PROOF LIES ON THE COMPLAINANT.— Jurisprudence is replete with cases reiterating that in disbarment proceedings, the burden of proof rests upon the complainant. For the Court to exercise its disciplinary powers, the case against the respondent must be established by convincing and satisfactory proof. In the recent case of *Reyes v. Nieva*, this Court had the occasion to clarify that the proper evidentiary threshold in disbarment cases is substantial evidence. Substantial evidence is more than a mere scintilla of evidence. It has been consistently defined as such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

3. ID.; ID.; MISREPRESENTING ONESELF AS REPRESENTATIVE AUTHORIZED TO REDEEM THE SUBJECT PROPERTY IS A CLEAR INDICATION OF DISHONESTY AND DECEITFUL CONDUCT; PENALTY OF TWO (2) YEARS SUSPENSION, IMPOSED.— It is

undeniable that respondent participated in the auction sale of the property for the purpose of protecting his gravel and sand business and that after he lost in the bidding, he represented himself as the representative of the owner authorized to redeem the subject lot despite the absence of a written authority. To further show his willful and deliberate interest in the property, he promised to submit the authority during his meeting with the complainant, but failed to do so. It was later on discovered that respondent was never authorized to exercise the right of redemption when the officers of Solid Builders, Inc. informed complainant that they will be the ones to redeem the subject land pursuant to Section 261 of Republic Act No. 7160 . . . .

As a lawyer, respondent fully knew that he was not authorized to redeem the property and yet he deliberately misrepresented himself and paid the redemption amount at the City Treasurer's Office of Antipolo. This is clearly reprehensible which must be dealt with accordingly by this Court. Time and again, lawyers should be reminded to maintain a high moral and ethical standard not only in the exercise of the noble profession, but in their private conduct as well. . . .

A painstaking review of the case shows that respondent has miserably failed to discharge that ethical conduct required of him as a member of the Bar. His act of misrepresenting himself as a representative of Solid Builders, Inc. authorized to redeem the property is a clear indication of dishonesty and deceitful conduct which will erode public confidence in the legal profession. The Court, therefore, finds respondent liable for violation of the Lawyer's Oath and Rules 1.01 and 1.02, Canon 1 of the CPR . . . .

. . .

. . . [T]he Court hereby **SUSPENDS** him from the practice of law for two years effective immediately upon receipt of this Decision.

D E C I S I O N

DELOS SANTOS, *J.*:

The present Complaint of Lino C. Bernal, Jr. (complainant) against respondent Atty. Ernesto Prias (respondent) for

Disbarment, was referred to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

The Antecedent Facts

Complainant gives the following account of the facts that spawned the filing of the present administrative complaint.

Sometime in December 2014, respondent went to the office of the City Treasurer of Antipolo City to redeem a property registered under the name of Solid Builders, Inc. by claiming to be the authorized representative of the delinquent taxpayer/ person holding a lien or claim over the property. It was the first time that complainant, as Officer-in-Charge of the City Treasurer's Office of Antipolo City, met respondent when the latter went to his office and made such representation to redeem the said property.[1]

The subject property is situated in *Sitio* Labahan, *Barangay* Mambugan, Antipolo City with an area of 766 square meters (sq m), more or less, as described under Transfer Certificate of Title (TCT) No. N-123108 and declared for real property tax purposes under Tax Declaration No. AC-011-05640 with PIN No. 177-01-011-026-188.[2]

On December 22, 2014, respondent paid the unpaid real property taxes plus the corresponding interest which amounted to ₱167,982.80 as shown by Official Receipt No. 4449001.[3]

Respondent was thereafter informed that the payment tendered by him will only redound to the benefit of the declared owner indicated on the Tax Declaration. He was also advised to submit proof of his authority, or any proof of ownership, or any mode of conveyance to redeem the subject property in behalf of the registered owner on or before January 12, 2015.[4]

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[1] *Rollo*, p. 5.

[2] Id.

[3] Id. at 7.

[4] Id. at 5.

However, on the aforementioned due date, respondent failed to submit any proof of authority to qualify him as a person having legal interest or as a duly authorized representative of the registered owner of the subject property.[5]

On January 30, 2015, complainant, in his capacity as City Treasurer, sent respondent a Letter[6] thereby informing him that the payment he tendered for the redemption of the subject property could no longer serve its purpose of redemption for failure to show sufficient proof of legal representation and that mere redemption cannot qualify the latter as a person of legal interest, more so to convey ownership unto his name. The pertinent portion of the letter states:

> In a meeting held at my office last January 9, 2015, you committed to submit documents such as Memorandum of Agreement, Contract to Sell, Deed of Sale, written Professional Engagement by the property owner/s, among others, on or before January 12, 2015, in support of your legal personality, either as a lawyer or legally constituted representative of the declared owner or otherwise, to redeem the abovementioned property in the amount of One Hundred Sixty Seven Thousand Nine Hundred Eighty Two and 80/100 (PhP167,982.80) covering the tax due from CY 2006 to CY 2014, publication cost and accrued interest.
>
> Notwithstanding the foregoing, we did not receive to-date any document that will qualify you as "*person having legal interest*" or as a duly constituted representative of the owner to redeem the aforementioned property.
>
> In view thereof, please be advised that the payment you made for the redemption of the said property is hereby cancelled and of no further force effect.
>
> Finally, may we invite you to our office at your convenient time and please bring the original receipt of the said payment to enable us to facilitate your refund therefor.[7]

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[5] Id.

[6] Id. at 9.

[7] Id.

Complainant thereafter attended a meeting with the registered owners of the subject property at the VV Soliven Building, EDSA, Quezon City and was informed by the President/Chairman of Solid Builders, Inc. that respondent has visited their office and offered to buy the above-described property, but his offer was denied. That a certain Florentina Genove was the duly authorized legal representative of the registered owners who were authorized to redeem the property by virtue of a Special Power of Attorney and a Board Resolution issued by the Board of Directors of the corporation.[8]

In his defense, respondent explained that he leased the lot from a certain Mr. Carriaga who introduced himself as the owner. The lot was used by him in his gravel and sand business. At that time, it was unknown to the respondent that somebody else owns the lot. That respondent occupied the property peacefully until the lot was auctioned by the City Treasurer of Antipolo sometime in 2014 for tax delinquency. Respondent participated in the auction, but the property was awarded to La Verne Realty Corporation as the winning bidder.[9]

Later, respondent and his wife went to the office of the City Treasurer of Antipolo and were given the details of the lot and the unpaid real property tax. Respondent told complainant personally that he is the actual possessor of the delinquent lot levied by the City of Antipolo and that he is interested in redeeming the property in the name of the registered owner. Respondent argued that being the actual possessor of the lot, he may be considered to be a person having legal interest on the delinquent property. Meanwhile, complainant explained to respondent that there shall be an authority issued by the registered owner for him to redeem the aforementioned property in behalf of the registered owner.[10]

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[8] Id. at 6.

[9] Id. at 30.

[10] Id. at 31.

After a tedious conversation, the complainant eventually agreed to the request of the respondent, subject to the condition that the latter will submit an authority from the registered owner and shall pay the amount of tax delinquency plus interest. Complainant then set the period for the submission of the authority being sought.[11]

In accordance with the condition imposed by the complainant, respondent went to the office of the registered owner at VV Soliven Building along EDSA and negotiated with Mrs. Purita Soliven (Mrs. Soliven) and Atty. Zorreta, one of the legal counsels of Mrs. Soliven, wife of the former President of Solid Builders, Inc. Respondent was then cordially informed that the registered owners will be the one to redeem the property considering that the delinquent tax is not so big and within their means.[12]

That contrary to the self-serving allegations of the complainant, the respondent has an outstanding verbal agreement with Solid Builders, Inc. to buy the property in the amount of ₱10,000.00 per sq. m. However, the same has not materialized due to the difficulty of Solid Builders, Inc. to conduct a relocation survey of the remaining area left, after the lot was traversed by the Marcos Highway and consequently reduced. Respondent has also demanded for a certified photocopy of the title of the lot, but unfortunately there has been no compliance to the request made.[13]

In sum, respondent is of the position that he never misrepresented himself as the authorized representative of the registered owner contrary to the averments of the complainant. There never was any concealment of the fact that respondent is the actual possessor of the lot and the only purpose of the redemption in the name of Solid Builders, Inc. was to avoid paying interest in the period before the allowable redemption period has expired. These are apparent from the allegations of

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[11] Id.

[12] Id.

[13] Id. at 14.

the complainant under paragraphs 5, 6, 7, and 8 of his Affidavit-Complaint[14] that in the event that no authority be submitted, the payment made by respondent will be cancelled, with no force and effect and thereafter be refunded.[15]

Respondent further maintained that there never was any act of dishonesty, immorality, or deceitful conduct on his part, as can be gleaned from the allegations above. It was not unlawful to redeem a levied property, neither was it immoral, considering that nothing was concealed by the respondent to the complainant in desiring to redeem the levied property. There was no deceit to speak of.[16]

In parting, respondent asserted that complainant seems to be motivated by personal reasons in filing a complaint against respondent, in the absence of any showing that his office or his person was adversely affected when he himself caused the acceptance of the redemption money. Respondent could not think of any reason, considering that the discussion at complainant's office was very professional, cordial and without any animosity shown by either party except for exchange of ideas on the issue. The dispute arose only when respondent was shown a letter from the winning bidder, La Verne Realty Corporation, objecting to the redemption done by the respondent thereby assailing squatters as a negative factor in the growth of the local government to which respondent did not mind.[17]

By a Verified Disbarment Complaint/Letter-Affidavit,[18] complainant directly filed with the Supreme Court a disbarment case against respondent for violation of the Lawyer's Oath and Rule 1.01, Canon 1 of the Code of Professional Responsibility (CPR), which states:

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[14] Id. at 5-6.

[15] Id. at 13-14.

[16] Id. at 14-15.

[17] Id. at 16.

[18] Id. at 1-6.

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

Subsequently, the Supreme Court, Second Division issued a Resolution[19] directing the respondent to file a Comment within 10 days from notice, to which he complied.[20] Subsequently, the Court issued a Resolution dated October 12, 2016 which reads as follows:

The Court resolves to NOTE respondent's comment dated 11 June 2016 on the verified disbarment complaint/letter-affidavit in compliance with the Resolution dated 20 April 2016, and to REFER this case to the Integrated Bar of the Philippines for investigation, report and recommendation/decision within ninety (90) days from receipt of the records.

Report and Recommendation of the IBP

Pursuant to a referral by the Court, a Notice of Mandatory Conference/Hearing[21] dated March 29, 2017 was issued by Commissioner Rebecca Villanueva-Maala (Commissioner Maala) of the IBP Commission on Bar Discipline (CBD).

Afterwards, the IBP Board of Governors approved the Report and Recommendation[22] dated July 10, 2017 of Commissioner Maala in CBD Case No. 17-5294 (ADM. Case No. 11217), a salient portion of which, states:

WHEREFORE, there being no clear, convincing and satisfactory proof to warrant disciplinary action against respondent, ATTY. ERNESTO M. PRIAS, we respectfully recommend that this complaint for disbarment be DISMISSED for lack of merit.[23]

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[19] Id. at 10.

[20] Id. at 12-17.

[21] Id. at 20.

[22] Id. at 73-75.

[23] Id. at 75.

Our Ruling

The Court resolves to reverse the IBP findings.

The purpose of disbarment is mainly to determine the fitness of a lawyer to continue acting as an officer of the court and as participant in the dispensation of justice.[24] It is to protect the courts and the public from the misconduct of the officers of the court and to ensure the administration of justice by requiring that those who exercise this important function shall be competent, honorable and trustworthy men in whom courts and clients may repose confidence.[25] A case of suspension or disbarment is *sui generis* and not meant to grant relief to a complainant as in a civil case, but is intended to cleanse the ranks of the legal profession of its undesirable members in order to protect the public and the courts.[26]

Jurisprudence is replete with cases reiterating that in disbarment proceedings, the burden of proof rests upon the complainant.[27] For the Court to exercise its disciplinary powers, the case against the respondent must be established by convincing and satisfactory proof.[28] In the recent case of *Reyes v. Nieva*,[29] this Court had the occasion to clarify that the proper evidentiary threshold in disbarment cases is substantial evidence. Substantial evidence is more than a mere scintilla of evidence.[30] It has been consistently defined as such amount of relevant evidence which

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[24] *Office of the Court Administrator v. Atty. Liangco*, 678 Phil. 305, 323 (2011).

[25] See *Diaz v. Atty. Gerong*, 225 Phil. 44, 48 (1986).

[26] *Cristobal v. Atty. Renta*, 743 Phil. 145, 148 (2014).

[27] *Concepcion v. Atty. Fandiño, Jr.*, 389 Phil. 474, 481 (2000).

[28] *Castro v. Atty. Bigay, Jr.*, 813 Phil. 882, 888 (2017), citing *Francia v. Atty. Abdon*, 739 Phil. 299, 311 (2014).

[29] 794 Phil. 360 (2016).

[30] *Miro v. Vda. de Erederos*, 721 Phil. 772, 787 (2013), citing *Montemayor v. Bundalian*, 453 Phil. 158, 167 (2003).

a reasonable mind might accept as adequate to justify a conclusion.[31]

In *Narag v. Narag*,[32] the Court held that:

> [T]he burden of proof rests upon the complainant, and the Court will exercise its disciplinary power only if she establishes her case by clear, convincing and satisfactory evidence.

In evaluating the respective versions of the parties, the IBP-CBD tend to give more credence to the allegations of respondent. The Court, however, is not, at all, convinced as regards his exoneration in the light of the undisputed factual setting which tends to dwell on his fitness as a member of the Bar. On the contrary, the evidence presented by the complainant has sufficiently and convincingly established respondent's culpability for violation of the Lawyer's Oath and Rule 1.01, Canon 1 of the CPR. It is undeniable that respondent participated in the auction sale of the property for the purpose of protecting his gravel and sand business and that after he lost in the bidding, he represented himself as the representative of the owner authorized to redeem the subject lot despite the absence of a written authority. To further show his willful and deliberate interest in the property, he promised to submit the authority during his meeting with the complainant, but failed to do so. It was later on discovered that respondent was never authorized to exercise the right of redemption when the officers of Solid Builders, Inc. informed complainant that they will be the ones to redeem the subject land pursuant to Section 261 of Republic Act No. 7160, which states:

> SEC. 261. *Redemption of Property Sold*. — Within one (1) year from the date of sale, the owner of the delinquent real property or person having legal interest therein, or his representative, shall have the right to redeem the property upon payment to the local treasurer of the amount of the delinquent tax, including the interest due thereon,

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[31] *Prangan v. National Labor Relations Commission*, 351 Phil. 1070, 1076 (1998).

[32] 353 Phil. 643, 655-656 (1998).

and the expenses of sale from the date of delinquency to the date of sale, plus interest of not more than two percent (2%) per month on the purchase price from the date of sale to the date of redemption. Such payment shall invalidate the certificate of sale issued to the purchaser and the owner of the delinquent real property or person having legal interest therein shall be entitled to a certificate of redemption which shall be issued by the local treasurer or his deputy.

From the date of sale until the expiration of the period of redemption, the delinquent real property shall remain in the possession of the owner or person having legal interest therein who shall remain in the possession of the owner or person having legal interest therein who shall be entitled to the income and other fruits thereof.

The local treasurer or his deputy, upon receipt from the purchaser of the certificate of sale, shall forthwith return to the latter the entire amount paid by him plus interest of not more than two percent (2%) per month. Thereafter, the property shall be free from all lien of such delinquency tax, interest due thereon and expenses of sale.

As a lawyer, respondent fully knew that he was not authorized to redeem the property and yet he deliberately misrepresented himself and paid the redemption amount at the City Treasurer's Office of Antipolo. This is clearly reprehensible which must be dealt with accordingly by this Court. Time and again, lawyers should be reminded to maintain a high moral and ethical standard not only in the exercise of the noble profession, but in their private conduct as well. In the case of *Ronquillo v. Cezar*,[33] the Court made a pronouncement that: "***a lawyer may be disbarred or suspended for misconduct, whether in his professional or private capacity, which shows him to be wanting in moral character, honesty, probity, and good demeanor, [thus, rendering him] unworthy to continue as an officer of the court***."[34]

A painstaking review of the case shows that respondent has miserably failed to discharge that ethical conduct required of him as a member of the Bar. His act of misrepresenting himself

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[33] 524 Phil. 311 (2006).

[34] Id. at 315.

as a representative of Solid Builders, Inc. authorized to redeem the property is a clear indication of dishonesty and deceitful conduct which will erode public confidence in the legal profession. The Court, therefore, finds respondent liable for violation of the Lawyer's Oath and Rules 1.01 and 1.02, Canon 1 of the CPR which provide:

> CANON 1 — A lawyer shall uphold the Constitution, obey the laws of the land and promote respect for law of and legal processes.
>
> Rule 1.01 — A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.
>
> 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.

The practice of law is not a right, but a privilege. It is granted only to those of good moral character. The Bar must maintain a high standard of honesty and fair dealing. Lawyers must conduct themselves beyond reproach at all times whether they are dealing with their clients or at 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.

WHEREFORE, respondent Atty. Ernesto M. Prias is hereby found **GUILTY** of violating the Lawyer's Oath and Rules 1.01 and 1.02, Canon 1 of the Code of Professional Responsibility. Accordingly, the Court hereby **SUSPENDS** him from the practice of law for two years effective immediately upon receipt of this Decision. He is **WARNED** that a repetition of the same offense or similar acts in the future shall be dealt with more severely.

Let copies of this Decision be furnished the Office of the Bar Confidant to be attached to the personal record of Atty. Ernesto M. Prias; the Office of the Court Administrator for dissemination to all lower courts; and the Integrated Bar of the Philippines for proper guidance and information.

SO ORDERED.

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

Baltazar-Padilla, J., on leave.

FIRST DIVISION

[A.C. No. 12086. October 7, 2020]
(Formerly CBD Case No. 12-3300)

ANTONIO T. AGUINALDO, *Complainant, v.* **ATTY. ISAIAH C. ASUNCION, JR.,** *Respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; MISCONDUCT; DISHONEST AND DECEITFUL CONDUCT, DEFINED; A LAWYER'S FAILURE TO DISCLOSE THE STATUS OR THE OWNERSHIP OF THE PROPERTY SUBJECT OF THE SALE CONSTITUTES MISCONDUCT.— Atty. Asuncion employed trickery by luring Aguinaldo into agreeing to buy the subject property. Respondent should not have led the complainant to believe that the subject parcel of land was still owned by his mother when in truth and in fact, it was already sold to another buyer. Atty. Asuncion failed to disclose the fact that the property is already owned by the Posadas family. This was substantiated by the fact that the respondent failed to produce documents to prove his title/ownership of the property when it was required by the complainant. As a lawyer, the respondent was duty-bound to observe fairness and candor in his dealing with the complainant.

. . .

The Court has ruled that to be "dishonest" means the disposition to lie, cheat, deceive, defraud or betray; be untrustworthy; lacking in integrity, honesty, probity, integrity in principle, fairness and straightforwardness. We have also rules that conduct that is "deceitful" means the proclivity for fraudulent and deceptive misrepresentation, artifice or device that is used upon another who is ignorant of the true facts, to the prejudice and damage of the party imposed upon. In order to be deceitful, the person must either have knowledge of the falsity or acted in reckless and conscious ignorance thereof, especially if the parties are not on equal terms, and was done with the intent that the aggrieved party act thereon, and the latter indeed acted in reliance of the false statement or deed in the manner contemplated to his injury.

. . .

. . . Respondent's failure to disclose material facts regarding the status of the subject property . . . constitutes misconduct which should be administratively sanctioned.

2. ID.; ID.; ID.; OBSTINATE REFUSAL TO RETURN THE EARNEST MONEY CONSTITUTES MISCONDUCT.— [T]he respondent willfully refused to return the earnest money given by the complainant, notwithstanding the fact that the transaction did not materialize. Atty. Asuncion's integrity was placed in serious doubt when the earnest money was paid by Aguinaldo in advance. It started motivating the respondent's every move to seemingly evade the pending transaction back then. The respondent even blamed the complainant for the failed transaction and insist that the latter had forfeited the earnest money for backing out from the transaction in view of the unrealistic condition he has imposed and his failure to pay the down payment.

. . .

. . . [H]is obstinate refusal to return the earnest money constitutes misconduct which should be administratively sanctioned.

3. ID.; ID.; CIVIL LAW; SALES; EARNEST MONEY; AN EARNEST MONEY IS PART OF THE PURCHASE PRICE AND IS NOT FORFEITED WHEN THE TRANSACTION DOES NOT MATERIALIZE, ESPECIALLY IN THE ABSENCE OF A CLEAR AND EXPRESS AGREEMENT THEREON, AND HENCE, IT SHOULD BE RETURNED. — Under Article 1482 of the Civil Code, whenever earnest money is given in a contract of sale, it shall be considered as part of the purchase price and as proof of the perfection of the contract. Petitioner clearly stated without any objection from private respondents that the earnest money was intended to form part of the purchase price. It was an advance payment which must be deducted from the total price. Hence, the parties could not have intended that the earnest money or advance payment would be forfeited when the buyer should fail to pay the balance of the price, especially in the absence of a clear and express agreement thereon. In the present case, Aguinaldo and Atty. Asuncion did not agree to have the earnest money forfeited should the buyer fail to pay the balance of the price since no

express agreement exists to support such claim. Hence, in the first place, Atty. Asuncion should have returned the money when the transaction did not materialize.

D E C I S I O N

PERALTA, *C.J.*:

Before us is a Complaint for Disbarment[1] filed by Antonio T. Aguinaldo (*Aguinaldo*) before the Integrated Bar of the Philippines-Commission on Bar Discipline (*IBP-CBD*) seeking to disbar the respondent Atty. Isaiah C. Asuncion, Jr. (*Atty. Asuncion*), for allegedly violating the Lawyer's Oath and the Code of Professional Responsibility (*CPR*).

The facts are as follows.

Complainant alleged that sometime in October 2010, he, together with the respondent, the respondent's mother and their agent Mia Gan, talked about the sale of respondent's property at Banauang, Moncada, Tarlac, consisting of 4.4 hectares. Respondent agreed to sell the property to complainant. As part of the agreement, the complainant handed to respondent One Hundred Thousand Pesos (₱100,000.00) as earnest money. Later, respondent went back to the complainant asking for Four Hundred Thousand Pesos (₱400,000.00) which the complainant refused to give due to the fact that the respondent failed to present documents pertaining to the property. Due to the continued failure of respondent to give the particular details of the property subject of their agreement, complainant sought the return of his money. Despite repeated demand, respondent failed to return the earnest money to the damage of the complainant.

For respondent's failure to return the earnest money, complainant accuses respondent of fraud and of using his profession to take advantage of the limited knowledge of the complainant which is in violation of the Lawyer's Oath and the CPR.

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

On the other hand, the respondent claims that he is wrongfully accused of fraud by the complainant. He asserts that the agreement he had with the complainant was that the earnest money would serve as guaranty that the complainant would not back out from the transaction and that the respondent's mother would not sell the subject portion of the land to other buyers until November 20, 2012, the date when the complainant is bound to pay the down payment of Four Hundred Thousand Pesos (₱400,000.00). He insists that he is not legally obliged to return the earnest money since the complainant failed to comply with his own obligation of not paying the down payment on its due date and is then considered to have backed out from the transaction.

In addition, the respondent explains that the complainant is deemed to have backed out from the transaction when he was imposing a condition which was not previously discussed and agreed upon. These conditions include that the portion of the 4.4 hectares he was buying be first segregated and that a separate title be issued for said portion, which is contrary to the usual practice of transactions involving the sale of undivided portion of the land.

Likewise, the respondent asserts that his failure to return the earnest money does not give rise to any wrongdoing on his part. In support of his position, he cites the case of *Spouses Doromal v. Court of Appeals*,[2] where according to him, the Supreme Court had ruled that the money given as earnest money by the buyer to the sellers was acknowledged to have been received under the concept of the old Civil Code as a guaranty that the buyer would not back out, and if they should do so, they would forfeit the amount paid.

Lastly, the respondent claims that he did not use his profession to take advantage of the limited knowledge of the complainant because the dispute between them purely involves a contract to sell a land based on complainant's own terms which did not push through owing to the complainant's failure to comply with his own obligation.

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[2] *Spouses Doromal v. Court of Appeals*, 160-A Phil. 85 (1975).

On June 13, 2012, a mandatory conference was held attended by both parties. They were ordered to submit their respective verified position papers as well as their respective comments. On August 28, 2012, both parties filed a Joint Manifestation and Motion to Dismiss[3] stating that a settlement between them was reached out of their mutual desire to make peace with each other.

However, on December 4, 2012, the complainant filed his Position Paper[4] stating that the settlement between him and the respondent did not materialize for the failure of the respondent to comply with the terms of settlement. In response, the respondent filed his Manifestation with Comment[5] claiming that the complainant did not enter the settlement in good faith faulting the latter for not honoring the previous settlement.

Upon a thorough evaluation of the evidence presented by the parties in their respective pleadings, the IBP-CBD submitted its Report and Recommendation[6] dated December 14, 2014 finding Atty. Asuncion to have violated Canon 1 of the CPR, specifically Rule 1.01 for engaging in deceitful conduct. Thus, the IBP Investigating Commissioner found Atty. Asuncion administratively liable for misconduct and recommended that he be meted the penalty of suspension from the practice of law for six (6) months. This ruling is based on Atty. Asuncion's failure to disclose material facts regarding the status of the subject property and his obstinate refusal to return the earnest money.

In a Resolution[7] dated February 25, 2016, the IBP Board of Governors (*IBP-BOG*) resolved to adopt the aforesaid Report and Recommendation. Atty. Asuncion moved for reconsideration reiterating his arguments from previous pleadings. However,

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[3] *Id*. at 73-74.

[4] *Id*. at 75-77.

[5] *Id*. at 78-82.

[6] *Id*. at 87-96.

[7] *Id*. at 85.

the reconsideration was denied by the IBP Board of Governors through Notice of Resolution[8] No. XXII-17-1269 dated April 20, 2017.

On February 7, 2018, the IBP-CBD transmitted to the Court the Notices of Resolution and records of the case for appropriate action.

The Issue Before the Court

The essential issue in this case is whether or not respondent should be held administratively liable for violating the Code of Professional Responsibility.

Our Ruling

The Court resolves to adopt the findings of fact of the IBP.

In the present case, the issue between the parties is a contractual dispute that can be raised before the proper courts. However, a case of suspension or disbarment is *sui generis* and not meant to grant relief to a complainant as in a civil case, but is intended to cleanse the ranks of the legal profession of its undesirable members in order to protect the public and the courts. A disbarment case is not an investigation into the acts of respondent but on his conduct as an officer of the court and his fitness to continue as a member of the Bar.[9]

Public interest is its primary objective, and the real question for determination is whether or not the attorney is still a fit person to be allowed the privileges as such. Hence, in the exercise of its disciplinary powers, the Court merely calls upon a member of the Bar to account for his actuations as an officer of the Court with the end in view of preserving the purity of the legal profession and the proper and honest administration of justice by purging the profession of members who by their misconduct have proven themselves no longer worthy to be entrusted with the duties and responsibilities pertaining to the office of an

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[8] *Id*. at 108.

[9] *Cristobal v. Atty. Renta*, 743 Phil. 145, 148 (2014).

attorney.[10] Corollarily, the Court will limit the issue on whether Atty. Asuncion committed transgressions that would have held him administratively liable for violating the Code of Professional Responsibility.

Canon 1 of the Code of Professional Responsibility provides:

> CANON 1 - A lawyer shall uphold the Constitution, obey the laws of the land and promote respect for law of and legal processes.
>
> Rule 1.01 - A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

Canon 1 clearly mandates the obedience of every lawyer to laws and legal processes. To the best of his ability, a lawyer is expected to respect and abide by the law and, thus, avoid any act or omission that is contrary thereto. A lawyer's personal deference to the law not only speaks of his character but it also inspires respect and obedience to the law, on the part of the public.[11]

Given the facts of this case, Atty. Asuncion employed trickery by luring the Aguinaldo into agreeing to buy the subject property. Respondent should not have led the complainant to believe that the subject parcel of land was still owned by his mother when in truth and in fact, it was already sold to another buyer. Atty. Asuncion failed to disclose the fact that the property is already owned by the Posadas family. This was substantiated by the fact that the respondent failed to produce documents to prove his title/ownership of the property when it was required by the complainant. As a lawyer, the respondent was duty-bound to observe fairness and candor in his dealing with the complainant.

Further, the respondent willfully refused to return the earnest money given by the complainant, notwithstanding the fact that the transaction did not materialize. Atty. Asuncion's integrity was placed in serious doubt when the earnest money was paid

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[10] *Junielito Espanto v. Atty. Erwin V. Belleza*, A.C. No. 10756, February 21, 2018.

[11] *Id*.

by Aguinaldo in advance. It started motivating the respondent's every move to seemingly evade the pending transaction back then. The respondent even blamed the complainant for the failed transaction and insist that the latter had forfeited the earnest money for backing out from the transaction in view of the unrealistic condition he has imposed and his failure to pay the down payment.

As correctly pointed out by the IBP-CBD, it states in its Report and Recommendation that:

> Respondent's claim is preposterous. In the first place[,] no document exist to show that the earnest money was given merely as guaranty that the complainant would not [back out] from the transaction. Other than a mere photocopy of what he claims to be a written proposal of the complainant purportedly indicating that the earnest money is not part of the purchase price, respondent failed to present clear and convincing proof to support his claim.[12]

Under Article 1482 of the Civil Code, whenever earnest money is given in a contract of sale, it shall be considered as part of the purchase price and as proof of the perfection of the contract. Petitioner clearly stated without any objection from private respondents that the earnest money was intended to form part of the purchase price. It was an advance payment which must be deducted from the total price. Hence, the parties could not have intended that the earnest money or advance payment would be forfeited when the buyer should fail to pay the balance of the price, especially in the absence of a clear and express agreement thereon.[13] In the present case, Aguinaldo and Atty. Asuncion did not agree to have the earnest money forfeited should the buyer fail to pay the balance of the price since no express agreement exists to support such claim. Hence, in the first place, Atty. Asuncion should have returned the money when the transaction did not materialize.

Moreover, it is apparent that the misrepresentation of the respondent led the complainant to agree to buy the subject

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[12] *Rollo*, p. 94.

[13] *Goldenrod, Inc. v. Court of Appeals*, 359 Phil. 468, 474 (1998).

property and parted with the earnest money. The utter lack of good faith of the respondent was evident from his acts. *First*, despite the persistent demand by the complainant, the respondent stubbornly refused to give back the earnest money considering that the transaction did not push through. *Second*, regardless of the chances that has been given to the respondent to return the earnest money, he simply ignored the complainant. It must be noted that there has been a negotiated settlement between the parties in this case but the respondent again failed to return the money attributing to the complainant the fault for the non-fulfillment of the respondent's obligation.

The Court has ruled that to be "dishonest" means the disposition to lie, cheat, deceive, defraud or betray; be untrustworthy; lacking in integrity, honesty, probity, integrity in principle, fairness and straightforwardness. We have also ruled that conduct that is "deceitful" means the proclivity for fraudulent and deceptive misrepresentation, artifice or device that is used upon another who is ignorant of the true facts, to the prejudice and damage of the party imposed upon. In order to be deceitful, the person must either have knowledge of the falsity or acted in reckless and conscious ignorance thereof, especially if the parties are not on equal terms, and was done with the intent that the aggrieved party act thereon, and the latter indeed acted in reliance of the false statement or deed in the manner contemplated to his injury.[14]

Accordingly, there seems to be nothing unreasonable with the expectation that Atty. Asuncion exercises good faith in all his dealings, whether in his professional or private capacity. Here, the Court cannot ascribe good faith to the respondent as he did not show any willingness to make good of his obligation. Instead, as noted by the IBP-CDB, he continued to buy time and puts up new excuses for his failure to return the earnest money. Time and again, the Court has ruled that membership in the legal profession is a high personal privilege burdened with conditions, including continuing fidelity to the law and

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[14] *Ana Maria Kare v. Atty. Catalina L. Tumaliuan*, A.C. No. 8777, October 9, 2019.

constant possession of moral fitness. Lawyers, as guardians of the law, play a vital role in the preservation of society, and a consequent obligation of lawyers is to maintain the highest standards of ethical conduct. Failure to live by the standards of the legal profession and to discharge the burden of the privilege conferred on one as a member of the bar warrant the suspension or revocation of that privilege.[15]

In view of the foregoing, the Court finds no cogent reason to depart from the resolution of the IBP-BOG to suspend the respondent from the practice of law for a period of six (6) months. Respondent's failure to disclose material facts regarding the status of the subject property and his obstinate refusal to return the earnest money constitute[s] misconduct which should be administratively sanctioned.

WHEREFORE, respondent Atty. Isaiah C. Asuncion, Jr. is hereby found **GUILTY** of committing dishonest, deceitful, and fraudulent acts prejudicial to the legal profession and in violation of Canon 1, Rule 1.01 of the Code of Professional Responsibility. Accordingly, he is **SUSPENDED** from the practice of law for a period of six (6) months, reckoned from receipt of this Decision, with **WARNING** that a similar misconduct in the future shall be dealt with more severely.

Let a copy of this Decision be furnished the Office of the Bar Confidant and the Integrated Bar of the Philippines for their information and guidance. The Court Administrator is **DIRECTED** to **CIRCULATE** this Decision to all courts in the country.

SO ORDERED.

Caguioa, Lazaro-Javier, Lopez, and *Gaerlan,*[*] *JJ.*, concur.

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[15] *Id.*

[*] Designated additional member per Special Order No. 2788 dated September 16, 2020.

FIRST DIVISION

[A.C. No. 12274. October 7, 2020]

RE: ORDER DATED DECEMBER 5, 2017 IN ADM. CASE NO. NP-008-17 (LUIS ALFONSO R. BENEDICTO *V.* ATTY. JOHN MARK TAMAÑO) ISSUED BY THE EXECUTIVE JUDGE, REGIONAL TRIAL COURT, BACOLOD CITY, *Complainant, v.* ATTY. JOHN MARK TAMAÑO, *Respondent.*

SYLLABUS

1. LEGAL ETHICS; NOTARIES PUBLIC; NOTARIAL RULES; ENTRIES IN THE NOTARIAL REGISTER; FAILURE TO MAKE PROPER ENTRIES CONCERNING NOTARIAL ACTS CONSTITUTES GROSS NEGLIGENCE, WHICH IS A GROUND FOR THE REVOCATION OF COMMISSION OR IMPOSITION OF APPROPRIATE ADMINISTRATIVE SANCTIONS; CASE AT BAR.— Section 2, Rule VI of the Notarial Rules enumerates the details required to be written in the notarial register of a notary public. . . .

The notary public's failure to make the proper entry or entries in the notarial register concerning his notarial acts is a ground for the revocation of his commission or imposition of appropriate administrative sanctions.

Here, Atty. Tamaño did not deny notarizing the five UCSPAI's GIS and even stated that the affiants appeared before him for the notarization of the GIS. However, he failed to record the GIS in his notarial register. . . .

. . .

There is no doubt, Atty. Tamaño's failure to record the GIS in his notarial book is inexcusable and constitutes gross negligence in carefully discharging his duties as a notary public. By failing to record proper entries in the notarial register, Atty. Tamaño violated his duty under Canon 1 of the CPR to uphold

and obey the laws of the land, specifically, the Notarial Rules, and to promote respect for law and legal processes.

. . .

Thus, in keeping with recent jurisprudence, . . . [and] [t]aking into account all of Atty. Tamaño's acts, which violated his duties as a duly commissioned notary public and Canons 1 and 9 of the CPR, we deem it proper to suspend him from the practice of law for a period of one year, revoke his incumbent notarial commission, if any, and disqualify him from being commissioned as a notary public for two years.

2. ID.; ID.; ID.; NOTARIZATION IS INVESTED WITH SUBSTANTIVE PUBLIC INTEREST, FOR IT CONVERTS A PRIVATE DOCUMENT INTO A PUBLIC ONE, MAKING IT ADMISSIBLE IN EVIDENCE WITHOUT FURTHER PROOF OF ITS AUTHENTICITY AND DUE EXECUTION.— We have repeatedly held that notarization is not an empty, meaningless or routinary act, but invested with substantive public interest. It is through the act of notarization that a private document is converted into a public one, making it admissible in evidence without further proof of its authenticity and due execution. In *Bernardo v. Atty. Ramos*, we emphasized the significance of recording notarized documents in the notarial books. . . .

3. ID.; ID.; ID.; ENTRIES IN THE NOTARIAL REGISTER; NOTARIES PUBLIC MUST CAUSE THE PERSONAL RECORDATION OF EVERY NOTARIAL ACT IN THE NOTARIAL BOOKS AND CANNOT DELEGATE IT TO AN UNQUALIFIED PERSON.— Atty. Tamaño offered plain oversight by his office staff in failing to log details of the GIS in the notarial book as excuse. We stress, however, that notaries public are the ones charged by the law with the recording in the notarial registry books of the necessary information regarding documents they have notarized. Section 2, Rule VI of the Notarial Rules declares in no uncertain terms that "the *notary shall record* in the notarial register" the details of documents and instruments executed by him. Clearly, notaries public must cause the personal recordation of every notarial act in the notarial books since they are personally accountable for all entries in

their notarial register. Atty. Tamaño's delegation of his notarial function to his office staff is also a direct violation of Rule 9.01, Canon 9 of the CPR, which provides that "[a] lawyer shall not delegate to any unqualified person the performance of any task which by law may only be performed by a member of the Bar in good standing."

4. ID.; ID.; ID.; FAILURE TO STRICTLY COMPLY WITH THE NOTARIAL RULES DEGRADES THE FUNCTION OF NOTARIZATION AND DIMINISHES PUBLIC CONFIDENCE ON NOTARIAL DOCUMENTS.— The principal function of a notary public is to authenticate documents. When a notary public certifies to the due execution and delivery of the document under his hand and seal, he gives the document the force of evidence. Given the evidentiary value accorded to notarized documents, the failure of the notary public to record the document in his notarial register corresponds to falsely making it appear that the document was notarized when, in fact, it was not. It cannot be overemphasized that notaries public are urged to observe with utmost care and utmost fidelity the basic requirements in the performance of their duties; otherwise, the confidence of the public in the integrity of notarized deeds will be undermined. Undoubtedly, Atty. Tamaño's failure to strictly comply with the rules on notarial practice degrades the function of notarization and diminishes public confidence on notarial documents.

APPEARANCES OF COUNSEL

Jonathan M. Polines for complainant.

R E S O L U T I O N

LOPEZ, *J.*:

Notarization converts a private document into a public document, making it admissible in evidence without further proof of its authenticity and due execution.[1] Considering the

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

evidentiary value given to notarized documents, notaries public must ensure proper recording of documents in their notarial registers, lest, falsely making it appear that they were notarized when in fact they were not;[2] the confidence of the public in the integrity of documents will be undermined.[3]

ANTECEDENTS

The case stemmed from a verified Complaint[4] for the permanent revocation of Atty. John Mark M. Tamaño's (Atty. Tamaño) notarial commission filed by United Cadiz Sugarcane Planters Association, Inc.'s (UCSPAI) Corporate Secretary Luis Alfonso R. Benedicto (Benedicto) before the Office of the Executive Judge, Regional Trial Court, Bacolod City, and docketed as Adm. Case No. NP-008-17. Atty. Tamaño allegedly notarized UCSPAI's General Information Sheets (GIS) for the years 2010, 2011, 2012, 2013, and 2014 without the affiants'[5] personal appearance. Also, Atty. Tamaño assigned the notarial particulars of documents he previously notarized and entered in his notarial register on the UCSPAI's GIS. Hence, UCSPAI's GIS were not recorded in Atty. Tamaño's notarial books.

In his Answer,[6] Atty. Tamaño averred that Benedicto admitted in the pleadings he filed in the related falsification and perjury cases that he signed the 2014 GIS. Benedicto cannot now deny that he appeared before him to execute the 2014 GIS since he never questioned its validity and due execution. Even so, Benedicto's alleged non-appearance did not cause damage or prejudice to him or to UCSPAI, which benefited from the notarized GIS that complied with the requirements of the Securities and Exchange Commission (SEC).

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[2] *Bernardo v. Atty. Ramos*, 433 Phil. 8, 16-17 (2002).

[3] *Arrieta v. Llosa*, 346 Phil. 932, 937 (1997).

[4] *Rollo*, pp. 8-15.

[5] GIS for the years 2010, 2011, 2012 and 2013 were executed by Enrique C. Regalado; and the 2014 GIS by Luis Alfonso R. Benedicto; see *id*. at 20, 24, 28, 33 and 38.

[6] *Id*. at 69-74.

During the preliminary conference, the parties stipulated that Atty. Tamaño did not record in his notarial register the UCSPAI's GIS for the years 2010 up to 2014.[7] This was supported by the Certificates[8] issued by the Office of the Clerk of Court of Bacolod City and Atty. Tamaño's notarial books[9] showing that the notarial particulars written on the UCSPAI's GIS[10] pertain to different documents:

Year	Notarial Particulars	Instrument recorded in Atty. Tamaño's notarial register	Instrument not recorded in Atty. Tamaño's notarial register
2010	Doc. No. 183; Page No. 36; Book No. 204; Series of 2010	Certificate executed by Wilfredo Remula	UCSPAI's GIS for the year 2010
2011	Doc. No. 312; Page No. 63; Book No. 268; Series of 2011	Deed of Absolute Sale executed by Julius Caesar Lacson and Jonathan Bayona	UCSPAI's GIS for the year 2011
2012	Doc. No. 7; Page No. 2; Book No. 307; Series of 2012	Contract Extension Agreement executed by Victor C. Go	UCSPAI's GIS for the year 2012
2013	Doc. No. 279; Page No. 56; Book No. 363; Series of 2013	Sworn Statement (RTPL) executed by Atty. Ma. Cecilia Soriano Salcedo Mating	UCSPAI's GIS for the year 2013
2014	Doc. No. 170; Page No. 34; Book No. 424; Series of 2014	Memorandum of Agreement Executed by Ricky Desampasado and Rico C. Catalogo	UCSPAI's GIS for the year 2014

[7] *Id*. at 177.

[8] *Id*. at 210-212.

[9] *Id*. at 183-203.

[10] *Id*. at 204-209.

Atty. Tamaño claimed that he found out about the unrecorded notarized UCSPAI's GIS when he received a copy of the complaint filed against him in Adm. Case No. NP-008-17.[11] He then learned from his staff that they failed to enter the five GIS in his notarial books. Atty. Tamaño explained that as an office practice, he would sign the documents after reading and ascertaining their authenticity and due execution and then refer to his staff for filling in the notarial details and affixing his notarial seal. He admitted that there were lapses committed by his office staff to which he is responsible.

In an Order[12] dated December 5, 2017, Executive Judge Raymond Joseph G. Javier found that Atty. Tamaño failed to record in his notarial register the notarized GIS of UCSPAI for the years 2010 to 2014, in violation of Section 2 (a), Rule VI of the 2004 Rules of Notarial Practice and accordingly, revoked Atty. Tamaño's notarial commission, *viz.*:

REVOCATION OF APPOINTMENT

of **ATTY. JOHN MARK M. TAMAÑO** as **NOTARY PUBLIC** for and in the Cities of Bacolod and Talisay and the Municipalities of Murcia and Salvador Benedicto, all in the Province of Negros Occidental, for the term ending **December 31, 2017** without prejudice to the outcome of this administrative case pending before him.[13] (Emphasis in the original.)

Thereafter, the entire records of Adm. Case No. NP-008-17 was transmitted to this Court.[14]

On July 25, 2018, the Office of the Bar Confidant (OBC) issued its Report for Raffle[15] recommending that the Order dated December 5, 2017 in Adm. Case No. NP-008-17 be docketed

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[11] *Id*. at 275-280.

[12] *Id*. at 5-6, 333-334.

[13] *Id*. at 6 and 334.

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

[15] *Id*. at 337.

as a regular administrative case against Atty. Tamaño. In a Resolution[16] dated August 22, 2018, the Court approved the instant administrative case, sustained the revocation of Atty. Tamaño's appointment as a notary public until December 31, 2017, and required Atty. Tamaño to show cause: (1) why his notarial commission as notary public should not be revoked; (2) why he should not be permanently disqualified from being commissioned as notary public; and, (3) why he should not be suspended from the practice of law.

In his Answer,[17] Atty. Tamaño insisted that Benedicto and Enrique Regalado, Sr. accomplished and executed the UCSPAI's GIS in his presence. However, he admitted his serious neglect in attending to his duties as notary public, particularly, in not making sure that the notarized documents are recorded in the notarial register. Benedicto averred in his Reply[18] that Atty. Tamaño is not worthy of compassion considering that he violated the Notarial Rules for a continuous period of five years. Atty. Tamaño cannot pass the blame to his staff in failing to record the GIS in his notarial books.

On February 6, 2019, the Court referred the case to the OBC for evaluation, report, and recommendation.[19]

On May 30, 2019, the OBC issued its Report and Recommendation[20] finding Atty. Tamaño to have violated his duties as a notary public and a lawyer under Sections 1 and 2 (a), Rule VI and Section 1, Rule XI of the Notarial Rules as well as Rule 1.01, Canon 1 of the Code of Professional Responsibility (CPR) when he assigned to his office secretary the task of recording the notarial acts in the notarial registry book. The OBC recommended that Atty. Tamaño be suspended

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[16] *Id*. at 338-340.

[17] *Id*. at 342-349.

[18] *Id*. at 351-359.

[19] *Id*. at 364-366.

[20] *Id*. at 367-371.

from the practice of law for two years and be perpetually disqualified from being commissioned as a notary public, *viz.*:

WHEREFORE, IN VIEW OF THE FOREGOING, it is respectfully recommended that respondent **ATTY. JOHN MARK M. TAMAÑO** be **SUSPENDED** from the practice of law for a period of two (2) years and **PERPETUALLY DISQUALIFIED** from being commissioned as a notary public for violations of Sections 1 and 2 (a), Rule VI and Section 1, Rule XI of the 2004 Rules on Notarial Practice (A.M. No. 02-8-13-SC) as well as Rule 1.01, Canon 1 of the Code of Professional Responsibility (CPR) with a warning that a repetition of the same or similar acts will be dealt with more severely.[21]

RULING

The OBC's Report and Recommendation, now before this Court for final action, is well grounded.

Section 2, Rule VI of the Notarial Rules enumerates the details required to be written in the notarial register of a notary public:

SECTION 2. *Entries in the Notarial Register*. —

(a) **For every notarial act, the notary shall record in the notarial register at the time of notarization the following**:

(1) the entry number and page number;
(2) the date and time of day of the notarial act;
(3) the type of notarial act;
(4) the title or description of the instrument, document or proceeding;
(5) the name and address of each principal;
(6) the competent evidence of identity as defined by these Rules if the signatory is not personally known to the notary;
(7) the name and address of each credible witness swearing to or affirming the person's identity;
(8) the fee charged for the notarial act;
(9) the address where the notarization was performed if not in the notary's regular place of work or business; and

[21] *Id*. at 371.

(10) any other circumstance the notary public may deem of significance or relevance.

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(e) **The notary public shall give to each instrument or document executed, sworn to, or acknowledged before him a number corresponding to the one in his register, and shall also state on the instrument or document the page/s of his register on which the same is recorded. No blank line shall be left between entries**.[22] (Emphasis supplied.)

The notary public's failure to make the proper entry or entries in the notarial register concerning his notarial acts is a ground for the revocation of his commission or imposition of appropriate administrative sanctions.[23]

Here, Atty. Tamaño did not deny notarizing the five UCSPAI's GIS and even stated that the affiants appeared before him for the notarization of the GIS. However, he failed to record the GIS in his notarial register. Atty. Tamaño assigned the entries of the notarial details of UCSPAI's GIS for the years 2010 up to 2014 to five distinct documents. The Certificates[24] issued by the Office of the Clerk of Court of Bacolod City revealed that as *per* Atty. Tamaño's notarial books submitted to them, the notarial particulars assigned to the UCSPAI's 2010 GIS pertain to a Certificate executed by Wilfredo Remula,[25] the 2011 GIS' notarial details pertain to a Deed of Absolute Sale executed by Julius Caesar Lacson and Jonathan Bayona,[26] the 2012 GIS to a Contract Extension Agreement executed by Victor C. Go,[27] the 2013 GIS to a Sworn Statement (RTPL) executed by Atty.

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[22] 2004 Rules on Notarial Practice; A.M. No. 02-08-13-SC; promulgated on July 6, 2004.

[23] *Id*., Rule XI, Sec. 1.

[24] *Supra* note 8.

[25] *Rollo*, p. 204.

[26] *Id*. at 206.

[27] *Id*. at 207.

Ma. Cecilia Soriano Salcedo Mating,[28] and the 2014 GIS to a Memorandum of Agreement Executed by Ricky Desampasado and Rico C. Catalogo.[29] Undoubtedly, the GIS of UCSPAI for the years 2010, 2011, 2012, 2013, and 2014 are not found in Atty. Tamaño's notarial register.

We have repeatedly held that notarization is not an empty, meaningless or routinary act, but invested with substantive public interest.[30] It is through the act of notarization that a private document is converted into a public one, making it admissible in evidence without further proof of its authenticity and due execution.[31] In *Bernardo v. Atty. Ramos*,[32] we emphasized the significance of recording notarized documents in the notarial books:

> The notary public is further enjoined to record in his notarial registry the necessary information regarding the document or instrument notarized and retain a copy of the document presented to him for acknowledgment and certification especially when it is a contract. The notarial registry is a record of the notary public's official acts. Acknowledged documents and instruments recorded in it are considered public document. If the document or instrument does not appear in the notarial records and there is no copy of it therein, doubt is engendered that the document or instrument was not really notarized, so that it is not a public document and cannot bolster any claim made based on this document. Considering the evidentiary value given to notarized documents, the failure of the notary public to record the document in his notarial registry is tantamount to falsely making it appear that the document was notarized when in fact it was not.[33] (Citations omitted.)

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[28] *Id*. at 208.

[29] *Id*. at 209.

[30] *Almario v. Agno*, A.C. No. 10689, January 8, 2018; *Villaflores-Puza v. Atty. Arellano*, 811 Phil. 313, 315 (2017), citing *Mariano v. Atty. Echanez*, 785 Phil. 923, 927 (2016).

[31] *Gaddi v. Atty. Velasco*, 742 Phil. 810, 815 (2014).

[32] 433 Phil. 8 (2002).

[33] *Id*. at 16-17.

There is no doubt, Atty. Tamaño's failure to record the GIS in his notarial book is inexcusable and constitutes gross negligence in carefully discharging his duties as a notary public. By failing to record proper entries in the notarial register, Atty. Tamaño violated his duty under Canon 1 of the CPR to uphold and obey the laws of the land, specifically, the Notarial Rules, and to promote respect for law and legal processes.

Atty. Tamaño offered plain oversight by his office staff in failing to log details of the GIS in the notarial book as excuse. We stress, however, that notaries public are the ones charged by the law with the recording in the notarial registry books of the necessary information regarding documents they have notarized.[34] Section 2, Rule VI of the Notarial Rules declares in no uncertain terms that "the *notary shall record* in the notarial register" the details of documents and instruments executed by him. Clearly, notaries public must cause the personal recordation of every notarial act in the notarial books since they are personally accountable for all entries in their notarial register.[35] Atty. Tamaño's delegation of his notarial function to his office staff is also a direct violation of Rule 9.01, Canon 9 of the CPR, which provides that "[a] lawyer shall not delegate to any unqualified person the performance of any task which by law may only be performed by a member of the Bar in good standing."

Still, Atty. Tamaño claimed that UCSPAI benefited from the notarization because the SEC required submission of notarized GIS. We cannot give honor, much less credit to this lame justification. The principal function of a notary public is to authenticate documents. When a notary public certifies to the due execution and delivery of the document under his hand and seal, he gives the document the force of evidence.[36] Given

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[34] *Roa-Buenafe v. Lirazan, supra* note 1; *Dr. Malvar v. Atty. Baleros,* 807 Phil. 16, 28 (2017).

[35] *Sps. Chambon v. Atty. Ruiz,* 817 Phil. 712, 721 (2017).

[36] *Bernardo v. Atty. Ramos, supra* note 32 at 17.

the evidentiary value accorded to notarized documents, the failure of the notary public to record the document in his notarial register corresponds to falsely making it appear that the document was notarized when, in fact, it was not. It cannot be overemphasized that notaries public are urged to observe with utmost care and utmost fidelity the basic requirements in the performance of their duties; otherwise, the confidence of the public in the integrity of notarized deeds will be undermined.[37] Undoubtedly, Atty. Tamaño's failure to strictly comply with the rules on notarial practice degrades the function of notarization and diminishes public confidence on notarial documents.

In several cases, the Court has subjected lawyers who were remiss in their duties as notaries public to disciplinary sanction. We imposed the following penalties: (1) revocation of notarial commission; (2) disqualification from being commissioned as notary public; and (3) suspension from the practice of law.[38]

In *Bernardo v. Atty. Ramos*,[39] the notary public admitted that he failed to register in his notarial book the deed of absolute sale he notarized. That he notarized the document out of sympathy for his *kababayan* is not a legitimate excuse. We suspended the lawyer from the practice of law for six months, revoked his notarial commission, and disqualified him from reappointment to the office of notary public.

In *Dr. Malvar v. Atty. Baleros*,[40] the lawyer assigned the same notarial details to two distinct documents. She also delegated her notarial function of recording entries in her notarial register to her staff and the assailed document was missing from the notarial records. The Court suspended the lawyer from the practice of law for six months, disqualified her from reappointment as notary public for two years, and revoked her notarial commission.

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[37] *Dr. Malvar v. Atty. Baleros*, 807 Phil. 16, 29-30 (2017).

[38] *Fire Officer I Sappayani v. Atty. Gasmen*, 768 Phil. 1, 9 (2015).

[39] 433 Phil. 8 (2002).

[40] 807 Phil. 16 (2017).

In *Sps. Chambon v. Ruiz*,[41] the lawyer not only notarized an incomplete notarial document, but he also admittedly delegated to his secretary his duty of entering details in his notarial register. The Court found him doubly negligent in the performance of his duties as a notary public and ruled that his acts constitute dishonesty. He was meted out the penalty of perpetual disqualification from being a notary public, suspension from the practice of law for one year, and revocation of his notarial commission.

In the recent case of *Roa-Buenafe v. Lirazan*,[42] the lawyer delegated the task of notarization to his secretary who supposedly entered the notarial details in his notarial book. He also failed to explain why there was no copy in his notarial records of the documents he had admittedly notarized. We suspended the lawyer from the practice of law for one year, revoked his incumbent notarial commission and disqualified him from reappointment as notary public for two years.

Thus, in keeping with recent jurisprudence, the Court modifies the recommended penalty of the OBC. Five documents — GIS — were notarized using notarial details similar to other notarized documents in a continuous period of five years. These documents were submitted by UCSPAI to the SEC, a government agency, as part of the reportorial requirements of the company. Taking into account all of Atty. Tamaño's acts, which violated his duties as a duly commissioned notary public and Canons 1 and 9 of the CPR, we deem it proper to suspend him from the practice of law for a period of one year, revoke his incumbent notarial commission, if any, and disqualify him from being commissioned as a notary public for two years.

FOR THESE REASONS, the Court finds respondent Atty. John Mark Tamaño GUILTY of violation of the 2004 Rules on Notarial Practice and the Code of Professional Responsibility. Atty. John Mark Tamaño is **SUSPENDED** from the practice

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[41] 817 Phil. 712 (2017).

[42] *Supra* note 1.

of law for one (1) year; his incumbent notarial commission, if any, is **REVOKED**; and he is **DISQUALIFIED** from reappointment as notary public for a period of two (2) years. He is **WARNED** that a repetition of the same offense or similar acts in the future shall be dealt with more severely.

The suspension from the practice of law, the revocation of his notarial commission, if any, and the prohibition from being commissioned as a notary public shall take effect immediately upon respondent's receipt of this Resolution. 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 Resolution be furnished to the Office of the Bar Confidant, to be appended to respondent's personal record as attorney; the Integrated Bar of the Philippines for its information and guidance; and the Office of the Court Administrator for circulation to all courts in the country.

SO ORDERED.

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

SECOND DIVISION

[A.C. No. 12766. October 7, 2020]
(Formerly CBD Case No. 12-3589)

RODOLFO L. ORENIA III, *Complainant, v.* **ATTY. ROMEO S. GONZALES,** *Respondent*.

SYLLABUS

1. LEGAL ETHICS; NOTARIES PUBLIC; 2004 NOTARIAL PRACTICE LAW; DUTIES OF A NOTARY PUBLIC.— [T]he Court has stressed that the duties of a notary public are dictated by public policy. As such, a notary public is mandated to discharge with fidelity the duties of his office. Having taken a solemn oath under the Code of Professional Responsibility, a lawyer commissioned as a notary public has a responsibility to faithfully observe the rules governing notarial practice.

In keeping with the faithful observance of his duties, a notary public shall keep, maintain, protect and provide for lawful inspection, a chronological official notarial register of notarial acts consisting of a permanently bound book with numbered pages.

2. ID.; ID.; ID.; FAILURE TO ENTER A NOTARIAL ACT IN THE NOTARIAL REGISTER AND THE ASSIGNMENT OF ERRONEOUS NOTARIAL DETAILS IN A NOTARIZED DOCUMENT CONSTITUTE DERELICTION OF A NOTARY PUBLIC'S DUTIES; PENALTY.— Section 2, Rule VI of the Notarial Rules requires that every notarial act must be registered in the notarial register[.]

Here, Atty. Gonzales readily admitted that he failed to record the Director's Certificate in his notarial register. Moreover, he admitted that he failed to provide the instrument with different notarial details and assigned it with the same entries as the Deed of Sale he notarized the day prior, . . .

. . .

It is well-settled that failure to make entry in the notary public's notarial register concerning his notarial acts violates

his duty under the Code of Professional Responsibility to uphold and obey the laws of the land and to promote respect for law and legal processes. . . .

. . .

Under the circumstances, the Court finds the revocation of Atty. Gonzales' notarial commission, disqualification of his notarial commission for one (1) year, and suspension from the practice of law for three (3) months appropriate.

3. ID.; ID.; ID.; DELEGATION OF NOTARIAL FUNCTIONS TO A SECRETARY IS A CLEAR VIOLATION OF THE NOTARIAL RULES.— Atty. Gonzales' delegation to his former secretary of his notarial function of recording entries in his notarial register is a clear contravention of the explicit provision of the notarial rules that such duty must be fulfilled by the notary public himself and not by anyone else. This is a direct violation of Rule 9.01, Canon 9 of the Code of Professional Responsibility. . . .

Being the one charged by law to record in the notarial register the necessary information regarding documents or instruments being notarized, Atty. Gonzales cannot evade liability by passing the negligence to his former secretary and invoke good faith. Failure to enter a notarial act in one's notarial register and the assignment of erroneous notarial details in a notarized instrument constitute dereliction of a notary public's duties[.]

4. ID.; ID.; ID.; FAILURE TO COMPLY WITH THE NOTARIAL RULES SERIOUSLY UNDERMINES THE DEPENDABILITY AND EFFICACY OF NOTARIZED DOCUMENTS.— The Court reminds Atty. Gonzales that a notary public must observe the highest degree of compliance with the basic requirements of notarial practice in order to preserve public confidence in the integrity of the notarial system. The notarization of public documents is vested with substantive public interest. Courts, administrative agencies, and the public at large must be able to rely upon the acknowledgment executed by a notary public and appended to a private instrument. Atty. Gonzales' failure to strictly comply with the rules on notarial practice seriously undermines the dependability and efficacy of notarized documents.

D E C I S I O N

INTING, *J.*:

For the Court's consideration is the Resolution[1] dated May 28, 2019 of the Integrated Bar of the Philippines (IBP) Board of Governors which resolved to grant respondent Atty. Romeo S. Gonzales' (Atty. Gonzales) Motion for Partial Reconsideration[2] of the IBP Board of Governors' Resolution No. XXII-2016-414[3] dated August 26, 2016. The IBP Board of Governors reconsidered and deleted the six-month suspension from the practice of law imposed against Atty. Gonzales, but affirmed the immediate revocation of his notarial commission, and disqualified him from being commissioned as a notary public for two years.

The Antecedents

Atty. Gonzales was the counsel of a certain Domingo C. Reyes (Mr. Reyes), one of the owners of Anaped Estate, Inc. (Anaped). Through Atty. Gonzales, Mr. Reyes and his siblings filed a criminal complaint for Falsification of Public Document and Use of Falsified Documents[4] against one Rodrigo C. Reyes and a certain Emerencia R. Gungab,[5] the employers of Rodolfo L. Orenia III (complainant).

In return, complainant filed a Complaint Affidavit[6] for *Estafa* through Falsification of Public Document (counter-complaint) against Mr. Reyes, his siblings, and Atty. Gonzales. Pending resolution by the prosecutor's office of the complainant's counter-

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[1] *Rollo*, p. 132.

[2] *Id.* at 125-128.

[3] *Id.* at 110-111.

[4] See Information dated November 12, 2002 in Criminal Case No. 90256 filed with Metropolitan Trial Court, City of Mandaluyong, *id.* at 39.

[5] Also referred to as Emerenciana R. Gungab in some parts of the *rollo*.

[6] *Rollo*, pp. 9-14.

complaint, complainant filed the instant administrative case[7] for Disbarment against Atty. Gonzales.

Complainant alleged the following:

On December 28, 1998, Atty. Gonzales notarized a Deed of Sale executed by one Antonio A. Guanzon. The document was recorded in Atty. Gonzales' notarial registry as Doc. No. 305; Page No. 62; Book No. 10; Series of 1998, and certified by the Office of the Clerk of Court, Regional Trial Court (RTC), Quezon City.[8] On December 29, 1998, Atty. Gonzales notarized another document called Director's Certificate,[9] and was assigned the same notarial details as the Deed of Sale he notarized the day prior. Atty. Gonzales failed to record the Director's Certificate in his notarial register.

Complainant averred that in addition to Atty. Gonzales' failure to record the Director's Certificate in his notarial register, he also participated in its falsification because the Director's Certificate was never authorized by the Anaped's Board of Directors. He further averred that the parties to the purported Director's Certificate could not have personally signed and executed the certificate in the presence of Atty. Gonzales. According to the complainant, Atty. Gonzales also misrepresented himself as the Corporate Secretary of Anaped when he signed the minutes of the meeting dated March 24, 2006.[10]

Lastly, complainant accused Atty. Gonzales of being liable for conduct unbecoming a lawyer because Atty. Gonzales attempted to hit him and told him the following: *"ulol ka"* during the preliminary investigation of the counter-complaint

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[7] *Id.* at 1-5.

[8] See Certification dated July 19, 2012 of the Office of the Clerk of Court, Regional Trial Court, Quezon City, *id.* at 8.

[9] *Id.* at 6.

[10] See Minutes of the Directors' Meeting by the President of Anaped Estate, Inc., *id.* at 25-26.

he filed. This prompted him to file the instant case for disbarment against Atty. Gonzales with the IBP-Commission on Bar Discipline (CBD).[11]

On October 29, 2012, Atty. Gonzales filed his Answer[12] admitting that he indeed failed to record the Director's Certificate in his notarial register due to the inadvertence of his former secretary. Atty. Gonzales denied the other allegations against him, and claimed that the disbarment case was a harassment suit to force him to drop the cases he was handling against the complainant's employers.

On April 10, 2013, Atty. Gonzales submitted his Respondent's Conference Brief.[13]

On January 30, 2014, Atty. Gonzales filed an Omnibus Motion[14] praying for the dismissal of the complaint against him on the ground of the complainant's failure to file his conference brief. Atty. Gonzales also submitted an undated Affidavit of Undertaking[15] purportedly executed by the complainant which contained a commitment by the latter to provide information against his employers, and to cause the dismissal of the instant disbarment case in exchange for money.

On February 7, 2014, the IBP CBD issued another Notice of Mandatory Conference[16] scheduled on March 5, 2014. During the mandatory conference, only Atty. Gonzales appeared.[17] The Investigating Commissioner then terminated the mandatory conference, and issued an Order[18] directing the parties to submit their respective Position Papers.

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[11] *Id.* at 4, 27-28, 113.

[12] *Id.* at 32-37.

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

[14] *Id.* at 51-53.

[15] *Id.* at 61-62.

[16] *Id.* at 65.

[17] See Minutes of the Hearing dated March 5, 2014, *id.* at 66.

[18] *Id.* at 67; issued by Integrated Bar of the Philippines-Commission on Bar Discipline Commissioner Almira A. Abella-Orfanel.

On March 27, 2014, Atty. Gonzales filed his Respondent's Position Paper.[19] He reiterated his defense that his failure to record the Director's Certificate in his notarial register, and to assign a different document number to the instrument was due to the inadvertence of his former secretary. He also reiterated that complainant executed an Affidavit of Undertaking offering to dismiss the instant case and provide information against his employers. Still, complainant did not submit his Position Paper.

Recommendation of the IBP Investigating Commissioner

In the Report and Recommendation[20] dated August 11, 2015, Investigating Commissioner Almira A. Abella-Orfanel recommended for the dismissal of the complaint against Atty. Gonzales for lack of merit.[21]

Recommendation of the IBP Board of Governors

In the Resolution No. XXII-2016-414[22] dated August 26, 2016, the IBP Board of Governors reversed the recommendation of Investigating Commissioner Almira A. Abella-Orfanel, and recommended that Atty. Gonzales be placed under a six month suspension from the practice of law. Additionally, it disqualified Atty. Gonzales from being commissioned as a notary public with revocation of his current notarial commission.

Aggrieved, Atty. Gonzales moved for the reconsideration of the IBP Board of Governors' Resolution No. XXII-2016-414.

On May 28, 2019, the IBP Board of Governors passed a Resolution[23] which granted Atty. Gonzales' Motion for Partial Reconsideration[24] of the August 26, 2016 Resolution No. XXII-

[19] *Id.* at 68-75.

[20] *Id.* at 112-115.

[21] *Id.* at 115.

[22] *Id.* at 110-111.

[23] *Id.* at 132.

[24] *Id.* at 125-128.

2016-414. It deleted Atty. Gonzales' six-month suspension from the practice of law, but imposed against him the immediate revocation of his notarial commission, and the disqualification of his commission as a notary public for two years.[25]

The Ruling of the Court

The Court adopts the findings of the IBP Board of Governors, but modifies the penalty it recommended.

Time and again, the Court has stressed that the duties of a notary public are dictated by public policy. As such, a notary public is mandated to discharge with fidelity the duties of his office.[26] Having taken a solemn oath under the Code of Professional Responsibility, a lawyer commissioned as a notary public has a responsibility to faithfully observe the rules governing notarial practice.[27]

In keeping with the faithful observance of his duties, a notary public shall keep, maintain, protect and provide for lawful inspection, a chronological official notarial register of notarial acts consisting of a permanently bound book with numbered pages.[28]

Section 2, Rule VI of the Notarial Rules requires that every notarial act must be registered in the notarial register, *viz.*:

> SEC. 2. Entries in the Notarial Register. — (a) For every notarial act, the notary shall record in the notarial register at the time of notarization the following:
>
> (1) the entry number and page number;
> (2) the date and time of day of the notarial act;
> (3) the type of notarial act;
> (4) the title or description of the instrument, document or proceeding;

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[25] *Id.*

[26] See *Roa-Buenafe v. Atty. Lirazan*, A.C. No. 9361, March 20, 2019; see also *Agbulos v. Viray*, 704 Phil. 1, 9 (2013).

[27] *Id.*

[28] Section 1, 2004 Rules on Notarial Practice.

(5) the name and address of each principal;
(6) the competent evidence of identity as defined by these Rules if the signatory is not personally known to the notary;
(7) the name and address of each credible witness swearing to or affirming the person's identity;
(8) the fee charged for the notarial act;
(9) the address where the notarization was performed if not in the notary's regular place of work or business; and
(10) any other circumstance the notary public may deem of significance or relevance.

Here, Atty. Gonzales readily admitted that he failed to record the Director's Certificate in his notarial register. Moreover, he admitted that he failed to provide the instrument with different notarial details and assigned it with the same entries as the Deed of Sale he notarized the day prior, *viz.*: "Document No. 305; Page No. 62; Book No. X; Series of 1998."

As an excuse, Atty. Gonzales attributes to his former secretary the negligent assignment of erroneous notarial details on the Director's Certificate, and the failure to record the instrument in the notarial register.

It is well-settled that failure to make entry in the notary public's notarial register concerning his notarial acts violates his duty under the Code of Professional Responsibility to uphold and obey the laws of the land and to promote respect for law and legal processes. Moreover, Atty. Gonzales' delegation to his former secretary of his notarial function of recording entries in his notarial register is a clear contravention of the explicit provision of the notarial rules that such duty must be fulfilled by the notary public himself and not by anyone else. This is a direct violation of Rule 9.01, Canon 9 of the Code of Professional Responsibility which provides that:

> Rule 9.01 — A lawyer shall not delegate to any unqualified person the performance of any task which by law may only be performed by a member of the Bar in good standing.

Being the one charged by law to record in the notarial register the necessary information regarding documents or instruments

being notarized, Atty. Gonzales cannot evade liability by passing the negligence to his former secretary and invoke good faith. Failure to enter a notarial act in one's notarial register and the assignment of erroneous notarial details in a notarized instrument constitute dereliction of a notary public's duties which warrants the revocation of a lawyer's commission as a notary public.[29] Section 1 (b) (2), Rule XI of the 2004 Rules on Notarial Practice is explicit:

> RULE XI
> REVOCATION OF COMMISSION AND DISCIPLINARY SANCTIONS
>
> SECTION 1. *Revocation and Administrative Sanctions.* —
>
> x x x x x x x x x
>
> (b) In addition, the Executive Judge may revoke the commission of, or impose appropriate administrative sanctions upon, any notary public who:
>
> x x x x x x x x x
>
> (2) fails to make the proper entry or entries in his notarial register concerning his notarial acts;

The Court reminds Atty. Gonzales that a notary public must observe the highest degree of compliance with the basic requirements of notarial practice in order to preserve public confidence in the integrity of the notarial system.[30] The notarization of public documents is vested with substantive public interest. Courts, administrative agencies, and the public at large must be able to rely upon the acknowledgment executed by a notary public and appended to a private instrument. Atty. Gonzales' failure to strictly comply with the rules on notarial practice seriously undermines the dependability and efficacy of notarized documents.

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[29] *Id.*

[30] *Roa-Buenafe v. Atty. Lirazan,* supra note 26, citing *Heirs of Pedro Alilano v. Atty. Examen,* 756 Phil. 608 (2015).

Jurisprudence provides that a notary public who fails to discharge his duties as such is meted out the following penalties: (1) revocation of notarial commission; (2) disqualification from being commissioned as notary public; and (3) suspension from the practice of law — the terms of which vary based on the circumstances of each case.[31]

Under the circumstances, the Court finds the revocation of Atty. Gonzales' notarial commission, disqualification of his notarial commission for one (1) year, and suspension from the practice of law for three (3) months appropriate.

As for the complainant's other allegations that Atty. Gonzales misrepresented himself, falsified the Director's Certificate, and attempted to hit him while uttering the words "*ulol ka*," the IBP Board of Governors correctly brushed them aside. Notably, complainant did not adduce any evidence or document in support of his allegations against Atty. Gonzales. Moreover, from the time complainant filed his Complaint, he did not anymore participate in the subsequent proceedings of the case despite being ordered to do so to substantiate his allegations. Thus, there is no means for the Court to deliberate and decide upon the issues.

WHEREFORE, the notarial commission of respondent Atty. Romeo S. Gonzales, if still existing, is hereby **REVOKED**, and he is **DISQUALIFIED** from being commissioned as notary public for a period of one (1) year. He is also **SUSPENDED** from the practice of law for three (3) months effective immediately with a **WARNING** that the repetition of a similar violation will be dealt with more severely. He is **DIRECTED** to report the date of his receipt of this Decision to enable the Court to determine when his suspension shall take effect.

Let a copy of this Decision be entered in the personal records of respondent Atty. Romeo S. Gonzales as a member of the bar, and copy furnished the Office of the Bar Confidant, the

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[31] *Bakidol v. Atty. Bilog*, AC No. 11174, June 10, 2019, citing *Sappayani v. Gasmen*, 768 Phil. 1, 9 (2015).

Integrated Bar of the Philippines, and the Office of the Court Administrator for circulation to all courts in the country.

SO ORDERED.

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

Baltazar-Padilla, J., on leave.

FIRST DIVISION

[G.R. No. 204420. October 7, 2020]

HEIRS OF TEOFILO BASTIDA, represented by CRISELDA BERNARDO, *Petitioners*, *v*. **HEIRS OF ANGEL FERNANDEZ, namely, FERNANDO A. FERNANDEZ married to GEMMA NAPALCRUZ, ERMELITA F. CASIMIRO, MA. LUISA FERNANDEZ, married to CESAR ENRIQUEZ, SR., ZENAIDA F. PELAYO married to GHANDIE PELAYO, and LUCIA F. PAJARITO, married to EDITO PAJARITO,** *Respondents*.

SYLLABUS

1. **REMEDIAL LAW; JURISDICTION; THE NATURE OF AN ACTION IS DETERMINED BY THE ALLEGATIONS IN THE COMPLAINT AND THE CHARACTER OF THE RELIEFS SOUGHT.—** Jurisdiction is defined as the power and authority to hear, try, and decide a case. In order for the court or an adjudicative body to have authority to dispose of the case on the merits, it must acquire jurisdiction over the subject matter. It is axiomatic that jurisdiction over the subject matter is conferred by law in force at the time the action was filed. Moreover, what determines the nature of an action are the allegations in the complaint and the character of the reliefs sought. Thus, when a court or tribunal has no jurisdiction over the subject matter, the only power it has is to dismiss the case.

2. **LABOR AND SOCIAL LEGISLATION; THE COMPREHENSIVE AGRARIAN REFORM PROGRAM (CARP); JURISDICTION OF THE DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB); AGRARIAN DISPUTES; FOR THE DARAB TO HAVE JURISDICTION OVER A PETITION FOR CANCELLATION OF REGISTERED CERTIFICATE OF LAND OWNERSHIP AWARD (CLOA), IT MUST RELATE TO AN AGRARIAN DISPUTE BETWEEN THE LANDOWNER AND TENANTS.—** [T]he heirs of Teofilo filed their complaint before the PARAD in 1998 and is covered

by the 1994 DARAB Rules of Procedure. Specifically, the rules provide that the DARAB has primary jurisdiction to determine and adjudicate all agrarian disputes involving the implementation of the CARP which includes the issuance, correction, and cancellation of CLOAs which have been registered with the Land Registration Authority. . . .

At first glance, it would appear that jurisdiction over the cancellation of CLOA recorded with the Registry of Deeds lies with the DARAB. However, jurisprudence edifies that for the DARAB to have jurisdiction, the case must relate to an agrarian dispute between landowners and tenants to whom a CLOA had been issued. An "agrarian dispute" is defined under Section 3(d) of Republic Act (RA) No. 6657 or the "Comprehensive Agrarian Reform Law of 1988," as: (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**.

3. ID.; ID.; ID.; TENANCY RELATIONSHIP; ELEMENTS THEREOF MUST BE PRESENT BEFORE THE DARAB CAN TAKE COGNIZANCE OF THE CASE.— [T]he DARAB can validly take cognizance of the controversy if there is tenancy relationship between the parties, with the following indispensable elements, to wit:

(1) [t]hat the parties are the landowner and the tenant or agricultural lessee;
(2) that the subject matter of the relationship is an agricultural land;
(3) that there is consent between the parties to the relationship;
(4) that the purpose of the relationship is to bring about agricultural production;

(5) that there is personal cultivation on the part of the tenant or agricultural lessee; and

(6) that the harvest is shared between the landowner and the tenant or agricultural lessee.

4. ID.; ID.; ID.; ID.; THE CULTIVATION OF AN AGRICULTURAL LAND WILL NOT *IPSO FACTO* MAKE ONE A TENANT; CASE AT BAR.—[T]he heirs of Teofilo did not allege any tenancy, leasehold, or agrarian relations with the heirs of Angel except for the fact that Lot No. 990 is an agricultural land. In their complaint, the heirs of Teofilo focused on the erroneous grant of the CLOA based on the grounds that Lot No. 990 was prematurely placed under the CARP; the heirs of Angel committed misrepresentation; and there was no ocular investigation . . . .

Verily, these allegations fall outside the authority of the DARAB and have no bearing on tenancy relationship. The mere fact that Lot No. 990 is an agricultural land and that the heirs of Teofilo are cultivating it does not *ipso facto* make them a tenant.

5. ID.; ID.; REPUBLIC ACT NO. 9700; JURISDICTION OF THE DEPARTMENT OF AGRARIAN REFORM (DAR) SECRETARY; CASES INVOLVING THE CANCELLATION OF CLOA IN THE IMPLEMENTATION OF THE AGRARIAN REFORM PROGRAM AND OTHER AGRARIAN LAWS AND REGULATIONS BETWEEN PARTIES WHO ARE NOT AGRICULTURAL TENANTS OR LESSEES ARE COGNIZABLE BY THE DAR SECRETARY; CASE AT BAR.— [T]he *Heirs of Julian dela Cruz v. Heirs of Alberto Cruz* is instructive:

> . . . **The cases involving the issuance, correction and cancellation of the CLOAs by the DAR in the administrative implementation of agrarian reform laws, rules and regulations to parties who are not agricultural tenants or lessees are within the jurisdiction of the DAR and not of the DARAB.** . . .

Notably, the DAR Secretary issued CLOA No. 00006890 in favor of the heirs of Angel in the exercise of his administrative powers. Correlatively, the DAR Secretary also had the authority to withdraw the CLOA upon a finding that it is contrary to law

and DAR orders, circulars and memoranda. The resolution of such issue will entail the application and implementation of agrarian reform laws. Indeed, RA No. 9700 made clear that all cases involving the cancellation of CLOAs and other titles issued under any agrarian reform program are now within the exclusive and original jurisdiction of the DAR Secretary. Also, the 2009 DARAB Rules of Procedure authorizes the adjudicator to dismiss the complaint without prejudice and refer it to the DAR Secretary in the event a case shall necessitate the determination of a prejudicial issue involving an agrarian law implementation case. As such, the CA properly dismissed the complaint of the heirs of Teofilo before the DARAB for lack of jurisdiction.

6. ID.; ID.; REMEDIAL LAW; FORUM SHOPPING; REQUISITES THEREOF; THERE IS NO IDENTITY IN THE RIGHTS ASSERTED AND RELIEFS SOUGHT WHEN ONE ACTION IS AGAINST A HOMESTEAD APPLICATION AND THE OTHER ACTION IS FOR CANCELLATION OF CLOA.—[W]e disagree with the CA's conclusion that the heirs of Teofilo are guilty of forum shopping. It bears emphasis that forum shopping is the institution of two or more actions or proceedings involving the same parties for the same cause of action, either *simultaneously* or *successively*, on the expectation that one or the other court would render a favorable disposition. It exists when the following requisites concur: (1) that the parties to the action are the same or at least representing the same interests in both actions; (2) that there is substantial identity in the causes of action and reliefs sought, the relief being founded on the same facts; and (3) that the result of the first action is determinative of the second in any event and regardless of which party is successful or that judgment in one, would amount to *res judicata* or constitute *litis pendentia*.

Here, there is no identity in the rights asserted and relief sought. The pending protest with the DENR is against the homestead application of the heirs of Angel while the case before the DARAB is for CLOA cancellation. Evidently, the issues require the resolution of matters within the competence of DAR with respect to the implementation of the CARP and with the DENR as regards public land applications. More importantly, the DENR's ruling on the rightful homestead grantee will not amount to *res judicata* with respect to the validity of the CLOA. Suffice it to say that a homestead grantee is not automatically

a CARP beneficiary or CLOA awardee. The DAR will still have to ascertain whether a homestead grantee fulfilled the requirements of Section 6 of RA 6657 in order to retain the land.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioners.
Sotto & Sotto Law Office for respondents.

R E S O L U T I O N

LOPEZ, *J.*:

A conflict of jurisdiction between the Department of Agrarian Reform Adjudication Board and the Department of Agrarian Reform Secretary over the cancellation of a certificate of land ownership award, is the main issue in this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the Court of Appeals-Cagayan de Oro City's (CA) Decision[1] dated July 13, 2012 in CA-G.R. SP No. 02220-MIN.

ANTECEDENTS

In 1955, Teofilo Bastida (Teofilo) applied for a homestead patent over a landholding that included an agricultural lot with an area of 9.8307 hectares (Lot No. 990) situated at Tagpangi, Vitali, Zamboanga City. On the same year, the Bureau of Lands certified and recommended that the application be approved. Later, Teofilo died and his children (heirs of Teofilo) continued to cultivate the landholding.

In 1959, however, Angel Fernandez (Angel) also applied for a homestead patent over Lot No. 990 which Teofilo allegedly sold to him. The heirs of Teofilo protested the application before the Regional Office of the Department of Environment and

[1] *Rollo*, pp. 40-53; penned by Associate Justice Maria Elisa Sempio Diy, with the concurrence of Associate Justices Edgardo T. Lloren and Jhosep Y. Lopez.

Natural Resources (DENR). Meanwhile, Angel died during the pendency of the case. But in 1989, the DENR Regional Office granted Angel's homestead application and awarded Lot No. 990 to his heirs (heirs of Angel). Dissatisfied, the heirs of Teofilo appealed to the DENR Central Office.

In 1998, the heirs of Teofilo learned that Lot No. 990 had been placed under the Comprehensive Agrarian Reform Program (CARP) and that the Department of Agrarian Reform (DAR) already issued to the heirs of Angel a Certificate of Land Ownership Award No. 00006890 (CLOA No. 00006890) recorded in the Registry of Deeds as OCT No. 0-4633. Thus, the heirs of Teofilo sought to cancel the CLOA before the Provincial Agrarian Reform Adjudicator (PARAD) and claimed that it was prematurely issued since the dispute involving Angel's homestead patent is still pending appeal before the DENR Central Office. In contrast, the heirs of Angel assailed the PARAD's jurisdiction because the controversy did not involve an agrarian dispute.

On June 1, 1999, the PARAD cancelled CLOA No. 00006890 and recalled OCT No. 0-4633. Citing DAR Memorandum Circular No. 07 dated May 26, 1993,[2] the PARAD ruled that *"[l]ands with adverse claims shall not be covered until the adverse claims are resolved administratively or judicially in which event, the "adjudicate" shall have the option to be a CARP beneficiary."*[3] The PARAD disposed that the heirs of Angel cannot be considered adjudicates of the land entitled to be CARP beneficiaries because of the pending protest between the parties,[4] thus:

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[2] IMPLEMENTING GUIDELINES ON THE DISTRIBUTION AND TITLING OF PUBLIC AGRICULTURAL LANDS TURNED OVER BY THE NATIONAL LIVELIHOOD AND SUPPORT FUND (NLSF) TO THE DEPARTMENT OF AGRARIAN REFORM FOR DISTRIBUTION UNDER THE CARP PURSUANT TO E.O. 407, SERIES OF 1990, AS AMENDED BY E.O. 448, SERIES OF 1991, AND AS CLARIFIED UNDER MEMORANDUM ORDER NO. 107 OF THE PRESIDENT OF THE PHILIPPINES; dated March 23, 1993.

[3] *Rollo*, p. 74.

[4] *Id.* at 71-75.

WHEREFORE, x x x judgment is hereby rendered, as follows:

1. Declaring the coverage of the land in question and the issuance of OCT No. 0-4633 (CLOA No. 00006890) premature and improper;

2. Ordering public respondents to recall OCT No. 0-4633 (CLOA No. 00006890) issued to private respondents and to surrender the same to the Office of the Registrar, Registry of Deeds, Zamboanga City, for cancellation;

3. Ordering the Registrar, Registry of Deeds, Zamboanga City to cancel OCT No. 0-4633 (CLOA No. 00006890);

4. Dismissing other claims and counter-claims for lack of evidence.

No costs.

SO ORDERED.[5]

Unsuccessful to secure a reconsideration, the heirs of Angel appealed to the Department of Agrarian Reform Adjudication Board (DARAB). On July 7, 2005, the DARAB dismissed the appeal and sustained the PARAD's findings without prejudice to the outcome of the protest,[6] to wit:

WHEREFORE, x x x the Appeal is DISMISSED for lack of merit. The Decision dated 01 June 1999 is hereby MODIFIED without prejudice to the outcome of the protest and/or appeal before the Office of the Secretary of DENR.

SO ORDERED.[7]

The heirs of Angel elevated the case to the CA through a Rule 43 petition for review docketed as CA-G.R. SP No. 02220-MIN. They argued that the PARAD and DARAB have no jurisdiction over the case and that the heirs of Teofilo committed forum shopping when they filed an action to cancel the CLOA

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[5] *Id.* at 75.

[6] *Id.* at 80-86.

[7] *Id.* at 86.

before the PARAD despite pendency of their protest on the homestead patent before the DENR.

On July 13, 2012, the CA granted the petition and held that PARAD and DARAB have no authority to take cognizance of the controversy absent any agrarian dispute between the parties. The CA likewise found the heirs of Teofilo guilty of forum shopping,[8] *viz.*:

> WHEREFORE, the petition is hereby GRANTED. The assailed Decision dated July 7, 2005 and Resolution dated October 9, 2007, both of the Department of Agrarian Reform Adjudication Board (DARAB), are SET ASIDE. Accordingly, the amended complaint of respondents in Regional Case No. IX-ZC-833-R-98 is hereby DISMISSED.
>
> SO ORDERED.[9]

Hence, this recourse. The heirs of Teofilo insist that the DARAB has jurisdiction over the cancellation of the CLOA because it was already recorded with the Registry of Deeds. The DAR Secretary can assume jurisdiction only in complaints involving unregistered CLOAs. Finally, the heirs of Teofilo argue that they did not violate the rule against forum shopping given that the actions pending in the DENR and the DARAB are separate and distinct. On the other hand, the heirs of Angel posit that the DARAB has no authority over the controversy absent agrarian dispute between the parties. They also contend that the heirs of Teofilo are guilty of forum shopping because the issues raised before the DENR and the DARAB are intertwined.

RULING

The petition is partly meritorious.

Jurisdiction is defined as the power and authority to hear, try, and decide a case. In order for the court or an adjudicative

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[8] *Id.* at 40-53.

[9] *Id.* at 53.

body to have authority to dispose of the case on the merits, it must acquire jurisdiction over the subject matter. It is axiomatic that jurisdiction over the subject matter is conferred by law in force at the time the action was filed.[10] Moreover, what determines the nature of an action are the allegations in the complaint and the character of the reliefs sought.[11] Thus, when a court or tribunal has no jurisdiction over the subject matter, the only power it has is to dismiss the case.[12]

Here, the heirs of Teofilo filed their complaint before the PARAD in 1998 and is covered by the 1994 DARAB Rules of Procedure. Specifically, the rules provide that the DARAB has primary jurisdiction to determine and adjudicate all agrarian disputes involving the implementation of the CARP which includes the issuance, correction, and cancellation of CLOAs which have been registered with the Land Registration Authority, to wit:

RULE II

Jurisdiction of the Adjudication Board

SEC. 1. *Primary and Exclusive Original and Appellate Jurisdiction.* — The Board shall have primary and exclusive jurisdiction, both original and appellate, **to determine and adjudicate all agrarian disputes involving the implementation of the Comprehensive Agrarian Reform Program (CARP)** under Republic Act No. 6657, Executive Order Nos. 228, 229, and 129-A, Republic Act No. 3844 as amended by Republic Act No. 6389, Presidential Decree No. 27 and other agrarian laws and their implementing rules and regulations. Specifically, such jurisdiction shall include but not be limited to cases involving the following:

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[10] *Alemar's (Sibal & Sons), Inc. v. CA*, 403 Phil. 236, 242 (2001).

[11] *Spouses Atuel v. Spouses Valdez*, 451 Phil. 631, 642 (2003).

[12] *Mitsubishi Motors Phils. Corp. v. Bureau of Customs*, 760 Phil. 954, 960 (2015), citing *COCOFED v. Republic of the Phils.*, 679 Phil. 508, 560-562 (2012); *Spouses Genato v. Viola*, 625 Phil. 514, 527-529 (2010); *Perkin Elmer Singapore Pte. Ltd. v. Dakila Trading Corp.*, 556 Phil. 822, 836-837 (2007); *Allied Domecq Phils., Inc. v. Judge Villon*, 482 Phil. 894, 900-902 (2004); *Katon v. Palanca, Jr.*, 481 Phil. 168, 182 (2004); and *Zamora v. CA*, 262 Phil. 298, 308-309 (1990).

x x x x x x x x x

(f) Those involving the issuance, correction and **cancellation of Certificates of Land Ownership Award (CLOAs)** and Emancipation Patents (EPs) which are **registered with the Land Registration Authority [LRA]**;

x x x x x x x x x

Matters involving strictly the administrative implementation of Republic Act No. 6657, otherwise known as the Comprehensive Agrarian Reform Law (CARL) of 1988 and other agrarian laws as enunciated by pertinent rules shall be the **exclusive prerogative of and cognizable by the Secretary of the DAR.**[13] (Emphases supplied.)

x x x x x x x x x

At first glance, it would appear that jurisdiction over the cancellation of CLOA recorded with the Registry of Deeds lies with the DARAB. However, jurisprudence edifies that for the DARAB to have jurisdiction, the case must relate to an agrarian dispute between landowners and tenants to whom a CLOA had been issued. An "agrarian dispute"[14] is defined under Section 3 (d) of Republic Act (RA) No. 6657 or the "Comprehensive Agrarian Reform Law of 1988," as:

(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.**

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[13] 1994 DARAB Rules and Procedure.

[14] *The Hon. Secretary of the Department of Agrarian Reform v. Heirs of Abucay*, G.R. Nos. 186432 & 186964, March 12, 2019, citing *Sutton v. Lim*, 700 Phil. 67, 74 (2012); *Phil. Overseas Telecommunications Corp. v. Gutierrez*, 537 Phil. 682, 685 (2006); *Mateo v. CA*, 497 Phil. 83-92 (2005); *Spouses Atuel v. Spouses Valdez*, 451 Phil. 631, 643 (2003); *Arzaga v. Copias*, 448 Phil. 171, 177-178 (2003); *Monsanto v. Zerna*, 423 Phil. 151, 160-161 (2001); *Almuete v. Andres*, 421 Phil. 522, 529-530 (2001); *Heirs of the Late Herman Rey Santos v. CA*, 384 Phil. 26, 32 (2000).

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.** (Emphases supplied.)

Simply put, the DARAB can validly take cognizance of the controversy if there is tenancy relationship between the parties, with the following indispensable elements,[15] to wit:

(1) [t]hat the parties are the landowner and the tenant or agricultural lessee;

(2) that the subject matter of the relationship is an agricultural land;

(3) that there is consent between the parties to the relationship;

(4) that the purpose of the relationship is to bring about agricultural production;

(5) that there is personal cultivation on the part of the tenant or agricultural lessee; and

(6) that the harvest is shared between the landowner and the tenant or agricultural lessee.[16]

Here, the heirs of Teofilo did not allege any tenancy, leasehold, or agrarian relations with the heirs of Angel except for the fact that Lot No. 990 is an agricultural land. In their complaint, the heirs of Teofilo focused on the erroneous grant of the CLOA based on the grounds that Lot No. 990 was prematurely placed under the CARP; the heirs of Angel committed misrepresentation; and there was no ocular investigation, *viz.*:

3. That sometime in 1994 or immediately the years before that, the Department of Agrarian Reform was assisting farmers who possessed all the qualifications and none of the disqualifications of a CARP beneficiary in titling lands they were possessing and cultivating which are alienable and disposable;

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[15] *Mateo v. CA, supra* at 93-94.

[16] *Mateo v. CA, supra* at 94; *Morta, Sr. v. Occidental*, 367 Phil. 438, 446 (1999).

4. That complainants tried to avail of such program of the DAR for themselves but parcels of land complainants were possessing and cultivating, which was applied by Teofilo Bastida, father of complainants described as Lot Nos. 990, 989, and 1721 **were and still are a subject matter on appeal in the office of [the] Department of Environment and Natural Resources at Diliman, Quezon [C]ity, that complainants' desire could not prosper**;

5. That on the latter part of 1996, complainants noticed the heirs of Angel Fernandez were harvesting the fruits of Lanzones, coconuts and some other agricultural products on the lot we are possessing and cultivating, complainants tried to stop them but their efforts proved in vain;

6. That Last February 9, 1998, Criselda Bernardo went to [the] Department of Agrarian Reform Regional Office, inquiring whether Lot nos. 990, 989 and 1721 can be titled but the former was **shocked to have been informed that Lot 990 has [already been] titled by the DAR since 1994**, and that "Certificate of Land Ownership Award" (CLOA for short) with the number 00006890 was already granted to the heirs of Angel Fernandez[.] x x x;

7. That complainants heirs of Teofilo Bastida, are questioning why lot 990 was titled in the names of the respondent heirs of Angel Fernandez;

8. That the heirs of Teofilo Bastida are questioning the legality of the CLOA No. 00006890 issued to the heirs of Angel Fernandez because x x x the **respondent heirs have mis-represented [*sic*] the date information which tended to support as basis [for] the issuance of a collective [CLOA] by the DAR in their (respondents') favor**;

9. That the DAR employees Task Force during 1994, or immediately the years before that, under the Provincial Agrarian Reform officer (PARO) x x x and team leader **Municipal Agrarian Reform Officer (MARO)** x x x **failed to and did not conduct ocular Investigation to determine and prove whether the heirs of Angel Fernandez were really the possessors-cultivators of Lot No. 990** at Tagpangi, Vitali, Zamboanga City[.][17] (Emphases supplied.)

Verily, these allegations fall outside the authority of the DARAB and have no bearing on tenancy relationship. The mere

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[17] *Rollo*, pp. 102-103.

fact that Lot No. 990 is an agricultural land and that the heirs of Teofilo are cultivating it does not *ipso facto* make them a tenant.[18] As aptly discussed in *Estate of Pastor M. Samson v. Spouses Susano,*[19] there must be substantial evidence to prove a leasehold relationship between the parties, to wit:

> **It has been repeatedly held that occupancy and cultivation of an agricultural land will not *ipso facto* make one a *de jure* tenant.** Independent and concrete evidence is necessary to prove personal cultivation, sharing of harvest, or consent of the landowner. Substantial evidence necessary to establish the fact of sharing cannot be satisfied by a mere scintilla of evidence; there must be concrete evidence on record adequate to prove the element of sharing. To prove sharing of harvests, a receipt or any other credible evidence must be presented, because self-serving statements are inadequate. Tenancy relationship cannot be presumed; the elements for its existence are explicit in law and cannot be done away with by conjectures. **Leasehold relationship is not brought about by the mere congruence of facts but, being a legal relationship, the mutual will of the parties to that relationship should be primordial.**[20] x x x. (Emphases supplied; citations omitted.)

On this point, the *Heirs of Julian dela Cruz v. Heirs of Alberto Cruz*[21] is instructive:

> The Court agrees x x x that, under Section 2(f), Rule II of the DARAB Rules of Procedure, the DARAB has jurisdiction over cases involving the issuance, correction and cancellation of CLOAs which were registered with the LRA. However, for the DARAB to have jurisdiction in such cases, they must relate to an agrarian dispute between landowner and tenants to whom CLOAs have been issued by the DAR Secretary. **The cases involving the issuance, correction and cancellation of the CLOAs by the DAR in the administrative implementation of agrarian reform laws, rules and regulations**

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[18] *Isidro v. CA (7th Div.)*, 298-A Phil. 481, 490 (1993).

[19] 664 Phil. 590 (2011).

[20] *Id.* at 612-613.

[21] 512 Phil. 389 (2005).

to parties who are not agricultural tenants or lessees are within the jurisdiction of the DAR and not of the DARAB.

x x x x x x x x x

In fine then, the petitioners should have filed their petition x x x with the DAR Secretary instead of the DARAB. For its part, the DARAB should have dismissed the petition for lack of jurisdiction; or, at the very least, transferred the petition to the DAR Secretary for resolution on its merits. In case the DAR Secretary denies their petition, the petitioners may appeal to the Office of the President, and in case of an adverse ruling, a petition for review with the CA under Rule 43 of the 1997 Rules of Civil Procedure.[22] (Emphases supplied.)

Notably, the DAR Secretary issued CLOA No. 00006890 in favor of the heirs of Angel in the exercise of his administrative powers. Correlatively, the DAR Secretary also had the authority to withdraw the CLOA upon a finding that it is contrary to law and DAR orders, circulars and memoranda. The resolution of such issue will entail the application and implementation of agrarian reform laws.[23] Indeed, RA No. 9700[24] made clear that all cases involving the cancellation of CLOAs and other titles issued under any agrarian reform program are now within the exclusive and original jurisdiction of the DAR Secretary. Also,

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[22] *Id.* at 404-406.

[23] *Id.* at 404.

[24] AN ACT STRENGTHENING THE COMPREHENSIVE AGRARIAN REFORM PROGRAM (CARP), EXTENDING THE ACQUISITION AND DISTRIBUTION OF ALL 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; approved on August 7, 2009.

Section 9 of RA No. 9700 provides that: "Section 9. Section 24 of Republic Act No. 6657, as amended, is hereby further amended to read as follows: x x x 'All cases involving the cancellation of registered emancipation patents, certificates of land ownership award, and other titles issued under any agrarian reform program are within the exclusive and original jurisdiction of the Secretary of the DAR.'"

the 2009 DARAB Rules of Procedure authorizes the adjudicator to dismiss the complaint without prejudice and refer it to the DAR Secretary in the event a case shall necessitate the determination of a prejudicial issue involving an agrarian law implementation case.[25] As such, the CA properly dismissed the complaint of the heirs of Teofilo before the DARAB for lack of jurisdiction, *viz.*:

> The Court agrees with respondents' contention that under Section 2(f), Rule II of the DARAB Rules of Procedure, the DARAB has jurisdiction over cases involving the issuance, correction and cancellation of CLOAs which were registered with the LRA x x x. However, for the DARAB to have jurisdiction in such cases, they must relate to an agrarian dispute between landowner and tenants to whom CLOAs have been issued by the DAR Secretary. The cases involving the issuance, correction and cancellation of the CLOAs by the DAR in the administrative implementation of agrarian reform laws, rules and regulations to parties who are not agricultural tenants or lessees, are within the jurisdiction of the DAR and not of the DARAB. For the DARAB to have jurisdiction over the case, there must be a tenancy relationship between the parties. x x x
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> x x x x x x x x x
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> In this case, no juridical tie of land ownership and tenancy was alleged between petitioner-heirs of Angel Fernandez and respondent-heirs of Teofilo Bastida, which would so categorize the controversy as an agrarian dispute. In fact, the parties were contending for the ownership of the same parcel of land.[26] (Citations omitted.)

Nevertheless, we disagree with the CA's conclusion that the heirs of Teofilo are guilty of forum shopping. It bears emphasis

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[25] Rule II, Section 4 of the 2009 DARAB Rules of Procedure provides that: "SECTION 4. *Referral to Office of the Secretary (OSEC)*. — In the event that a case filed before the Adjudicator shall necessitate the determination of a prejudicial issue involving an agrarian law implementation case, the Adjudicator shall dismiss the case without prejudice to its re-filing, and, for purposes of expediency, refer the same to the Office of the Secretary or his authorized representative in the locality."

x x x x x x x x x

[26] *Rollo*, pp. 47-50.

that forum shopping is the institution of two or more actions or proceedings involving the same parties for the same cause of action, either *simultaneously or successively*, on the expectation that one or the other court would render a favorable disposition.[27] It exists when the following requisites concur: (1) that the parties to the action are the same or at least representing the same interests in both actions; (2) that there is substantial identity in the causes of action and reliefs sought, the relief being founded on the same facts; and (3) that the result of the first action is determinative of the second in any event and regardless of which party is successful or that judgment in one, would amount to *res judicata*[28] or constitute *litis pendentia*.[29]

Here, there is no identity in the rights asserted and relief sought. The pending protest with the DENR is against the homestead application of the heirs of Angel while the case before the DARAB is for CLOA cancellation. Evidently, the issues require the resolution of matters within the competence of DAR with respect to the implementation of the CARP and with the DENR as regards public land applications. More importantly, the DENR's ruling on the rightful homestead grantee will not amount to *res judicata* with respect to the validity of the CLOA. Suffice it to say that a homestead grantee is not automatically a CARP beneficiary or CLOA awardee. The DAR will still have to ascertain whether a homestead grantee fulfilled the

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[27] *Madara v. Hon. Perello*, 584 Phil. 613, 628 (2008).

[28] *Dayot v. Shell Chemical Company, (Phils.), Inc*. 552 Phil. 602, 614 (2007); *Taningco v. Taningco*, 556 Phil. 567, 575 (2007); *Go v. Looyuko*, 563 Phil. 36, 71-72 (2007); *Spouses Arquiza v. CA*, 498 Phil. 793, 804 (2005); *Sherwill Development Corp. v. Sitio Sto. Niño Residents Association, Inc.*, 500 Phil. 288, 301 (2005); and *Ssangyong Corp. v. Unimarine Shipping Lines, Inc*., 512 Phil. 171, 180 (2005).

[29] *Phil. Radiant Products, Inc. v. Metropolitan Bank & Trust Company, Inc*., 513 Phil. 414, 429 (2005); *PAL Employees Savings & Loan Ass'n., Inc. v. PAL, Inc*., 520 Phil. 502, 517 (2006); *Veluz v. CA*, 399 Phil. 539, 548 (2000), citing *Alejandrino v. CA*, 356 Phil. 851, 868 (1998); and *Dasmariñas Village Assoc., Inc. v. CA*, 359 Phil. 944, 954 (1998).

requirements of Section 6 of RA 6657 in order to retain the land.[30]

FOR THESE REASONS, the petition is **PARTLY GRANTED**. The Court of Appeals' Cagayan de Oro City's Decision dated July 13, 2012 in CA-G.R. SP No. 02220-MIN is **AFFIRMED** with **MODIFICATION** in that the dismissal of the complaint for lack of jurisdiction is without prejudice to its re-filing before the Department of Agrarian Reform Secretary.

SO ORDERED.

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

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[30] *Almero v. Heirs of Angel Pacquing*, 747 Phil. 479, 485 (2014).

SECOND DIVISION

[G.R. No. 205448. October 7, 2020]

HEIRS OF ESPIRITA[*] TABORA-MABALOT, RODOLFO TABORA, and TERESITA MABALOT, namely: MARILOU MABALOT, JOSEPHINE MABALOT, and MARISSA MABALOT, *Petitioners, v.* **LORETO GOMEZ, JR., CATHERINE GOMEZ, and NEIL GOMEZ,** *Respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; CERTIFICATION AGAINST FORUM SHOPPING; IN AN ACTION GROUNDED ON A CO-OWNERSHIP SHARE, THE SIGNATURE OF ONE OF THE CO-OWNERS ON THE CERTIFICATION CONSTITUTES SUBSTANTIAL COMPLIANCE.— [T]he Rules of Court require the petitioner to submit a certification against forum shopping together with his petition. In case there are several petitioners, the certification must be signed by all of them. Otherwise, those who did not sign will be dropped and will no longer be considered as parties.

However, the recognized exception to this rule is when "all the plaintiffs or petitioners share a common interest and involve a common cause of action or defense." In which case, "the signature of only one of them in the certification against forum shopping" is substantial compliance.

Herein petitioners' claim on the subject property is grounded on the co-ownership right/share of their predecessor-in-interest, Espirita. This commonality in their interest brings the petitioners within the exception, such that the signature of any one of them (in this case, Marissa) on the certification substantially complies with the rule.

2. ID.; ID.; JUDGMENTS; EXECUTION OF JUDGMENTS; A JUDGMENT MAY BE EXECUTED WITHIN FIVE (5)

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[*] Referred to as "Esperita" in some parts of the *rollo*.

YEARS BY MOTION OR WITHIN TEN (10) YEARS THROUGH AN INDEPENDENT ACTION.— The prevailing party in a decided case may move for execution, as a matter of right, within five years from the finality of the decision sought to be enforced. Beyond this period, he may revive the judgment through an independent action. The Civil Code of the Philippines requires a party to bring the independent action within ten years from its finality. Otherwise, his right of action will have prescribed.

3. ID.; ID.; ID.; ACTION FOR REVIVAL OF A JUDGMENT; WHERE THE ORIGINAL CASE IS NOT AN ATTEMPT TO EXECUTE THE PREVIOUS CASE OR A REVIVAL THEREOF, THE TEN-YEAR PRESCRIPTIVE PERIOD TO ENFORCE A JUDGMENT DOES NOT APPLY.— [T]he ten-year prescriptive period on actions seeking to enforce a judgment obligation could not have applied to the Gomez Siblings' complaint. The original action here was not for the execution of a previous judgment or the revival thereof.

The case at bar stems from a complaint in Civil Case No. 05-CV-2116 filed by the Gomez Siblings. They alleged that, as the true and lawful owners of the co-ownership shares pertaining to Espirita, Teresita and Rodolfo over the subject land, they were entitled to the cancellation of TCT No. T-5690 and the issuance of a new title in their names. *These averments constitute a cause of action for reconveyance, not the revival or execution of a judgment.*

That the Gomez Siblings cited the ruling in Civil Case No. 92-CV-0753—an earlier case involving them and the petitioners' predecessors-in-interest—to support their claim does not convert their complaint into an action to revive the judgment in the first civil case. To be sure, while they prevailed in Civil Case No. 92-CV-0753, the RTC then did not explicitly order for the issuance of a new title in favor of the Gomez Siblings.

4. ID.; ID.; ID.; DOCTRINE OF *RES JUDICATA;* CONCLUSIVENESS OF JUDGMENTS; IMMUTABILITY OF JUDGMENTS; ISSUES THAT HAVE BEEN SQUARELY RULED UPON IN A PREVIOUS PROCEEDING MAY NO LONGER BE RELITIGATED

IN ANY FUTURE CASE BETWEEN THE SAME PARTIES. — [T]he Court cannot allow the petitioners to assail anew the documents' validity and unenforceability.

To recall, in the first civil case (Civil Case No. 92-CV-0753), the RTC terminated the co-ownership between the Tabora siblings. It found that the affidavits, together with the acknowledgment receipts of the amounts paid by the respondents for each co-ownership share, clearly conveyed the intention of the parties to consummate a sale of Espirita, Teresita, and Rodolfo's co-ownership shares to the Gomez siblings. As there was no ground to annul the affidavits, the RTC gave the documents full faith and credit. It further held that as notarized documents, the affidavits are presumed to have been regularly executed. Without fear and convincing proof to overturn this presumption, the notarized documents shall serve "as evidence of facts in clear unequivocal manner therein expressed."

After the decision lapsed into finality, the parties were bound by the matters adjudged in Civil Case No. 92-CV-0753. The issues previously settled therein may no longer be relitigated. The doctrine of *res judicata* in the concept of conclusiveness of judgment precludes the parties from raising issues squarely ruled upon in a previous proceeding in any future case between the same parties, albeit involving a different cause of action.

Furthermore, when the RTC reinstated the co-ownership over the subject land in the second civil case (Civil Case No. 05-CV-2116), directly contravening the final and executory decision in Civil Case No. 92-CV-0753, it disregarded not only the doctrine of *res judicata*, but also that of immutability of judgments.

APPEARANCES OF COUNSEL

Sergio S.J. Milan for petitioners.
Ramon M. Bayan for respondents.

RESOLUTION

INTING, *J.*:

Before the Court is a Petition for Review[1] on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision[2] dated June 26, 2012 and the Resolution[3] dated December 17, 2012 of the Court of Appeals (CA) in CA-G.R. CV No. 95434. In the assailed issuances, the CA reversed and set aside the Decision[4] of Branch 63, Regional Trial Court (RTC), La Trinidad, Benguet in Civil Case No. 05-CV-2116.

The Antecedents

Siblings Balbina, Espirita, Teresita, and Rodolfo, all surnamed Tabora (Tabora Siblings) were co-owners of a 5,450 square-meter parcel of land located in Pico, La Trinidad, Benguet, covered by Transfer Certificate of Title (TCT) No. T-5690 (subject land).[5]

Balbina had three children with Loreto Gomez, Sr., namely: herein respondents Loreto, Jr., Catherine, and Neil, all surnamed Gomez (Gomez Siblings).[6] Prior to Balbina's passing on February 1, 1991, Espirita, Teresita, and Rodolfo executed separate Affidavits of Waiver conveying their individual co-ownership share in the subject land to Catherine, Loreto, Jr., and Neil, respectively,[7] in exchange of a consideration amounting to ₱50,000.00 per share.[8]

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[1] *Rollo*, pp. 9-24.

[2] *Id.* at 26-55; penned by Associate Justice Leoncia R. Dimagiba with Associate Justices Normandie B. Pizarro and Stephen C. Cruz, concurring.

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

[4] *Id.* at 72-86; penned by Presiding Judge Benigno M. Galacgac.

[5] *Id.* at 28-29.

[6] *Id.* at 29.

[7] *Id.* at 36.

[8] *Id.* at 85.

First Civil Case

After Balbina passed away, Espirita and Teresita filed a complaint before Branch 10, RTC, La Trinidad, Benguet docketed as Civil Case No. 92-CV-0753 against the Gomez Siblings seeking for the partition of the subject land and annulment of the Affidavits of Waiver.[9] In a Decision dated October 28, 1994, the RTC dismissed the complaint for lack of merit, terminating the co-ownership over the subject land. It ruled as follows:

"In fine, this Court believes and so holds that the money paid to the plaintiffs was in consideration for the purchase of their respective shares in the property co-owned. *There indeed was a sale consummated which had the effect of terminating the co-ownership as between them and the other co-owners.* Their claim for partition, therefore has to be denied."[10] (Italics supplied.)

The counsel for therein plaintiffs Espirita and Teresita received a copy of the above-quoted Decision on November 8, 1994. The case was not appealed, causing the Decision to lapse into finality.[11]

Second Civil Case

The subject land remained registered under the Tabora Siblings' names as co-owners (TCT No. T-5690)[12] even after Espirita, Teresita, and Rodolfo's deaths.[13]

In May 2005, relying on the RTC decision in Civil Case No. 92-CV-0753, which declared them as the lawful purchasers of Espirita, Teresita, and Rodolfo's respective co-ownership shares, the Gomez Siblings filed an action for reconveyance/recovery

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[9] *Id.* at 30.

[10] *Id.*

[11] *Id.* at 49.

[12] *Id.* at 74.

[13] *Id.* at 30-31; Rodolfo, Teresita, and Esperita died on July 7, 2000, July 13, 2000, and July 29, 2004, respectively.

of ownership, cancellation of certificate of title, specific performance with damages against the heirs of Espirita, herein petitioners Marilou, Edwin, and Marissa, all surnamed Mabalot (Mabalot Siblings) before Branch 63, RTC, La Trinidad, Benguet. The case was docketed as Civil Case No. 05-CV-2116.[14]

The Gomez siblings sought for the following reliefs: *first*, to be declared as the true and lawful owners of Espirita, Teresita, and Rodolfo's co-ownership shares over the subject land. *Second*, for TCT No. T-5690 to be cancelled and a new title be issued in their names. *Third*, to have the Mabalot Siblings execute a document ceding Espirita, Teresita, and Rodolfo's co-ownership shares in their favor. *Fourth*, to be remunerated for moral damages, exemplary damages, and attorney's fees.[15]

In their defense, the Mabalot Siblings argued as follows: *first*, the action was premature, having been filed without first complying with Article 222[16] of the Civil Code. *Second*, the Affidavit of Waivers were void because these were executed without: (1) compliance with the prescribed form; (2) the co-owners' consent; and (3) obtaining confirmation from the National Commission on Indigenous Peoples (NCIP), a requirement for property transfers involving members of a cultural minority.[17] *Third*, the subject land remained undivided. Thus, even assuming that the affidavits were valid, they were nonetheless entitled to exercise their right of redemption and pre-emption in relation to the portions pertaining to Rodolfo and Teresita's shares.[18]

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[14] *Id.* at 72.

[15] *Id.* at 73-74.

[16] Article 222 of the Civil Code provides: "No suit shall be filed or maintained between members of the same family unless it should appear that earnest efforts toward a compromise have been made, but that the same have failed, subject to the limitations in Article 2035."

[17] *Rollo*, p. 31.

[18] *Id.* at 75.

The RTC Ruling

In the Decision dated June 2, 2010, the RTC ruled against the Gomez Siblings' complaint, *viz.*:

> WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of the defendants and against the plaintiffs as follows:
>
> *Declaring the property covered by Transfer Certificate of Title No. T-5690 as co-owned* by the late Balbina, Teresita, Espirita and Rodolfo, all surnamed Tabora and,
>
> Ordering the defendants to return or reimburse the plaintiffs of the total amount of P150,000.00 which the late Teresita, Espirita and Rodolfo, all surnamed Tabora separately received from the plaintiffs.
>
> SO ORDERED.[19] (Italics supplied.)

In ruling in favor of the Mabalot Siblings, the RTC declared the Affidavits of Waiver as unenforceable contracts based on the following reasons: *first*, during trial, the plaintiffs, through their witness Loreto, Sr., admitted that the parties (*i.e.*, Tabora Siblings and their successors-in-interest, the Gomez and Mabalot Siblings), including himself, are members of the *Ibaloi* tribe. Thus, the Affidavits of Waiver should have been submitted to the NCIP for appropriate action prior to execution.[20] *Second*, the consideration given by the Gomez Siblings in exchange of Espirita, Teresita, and Rodolfo's co-ownership shares (₱50,000.00 per share) was "too meager" and did not commensurate the actual value of property ceded to them. *Third*, Loreto, Sr. also admitted that he personally drafted and prepared the Affidavits of Waiver, brought them to Esperita, Teresita, and Rodolfo for signature, and had the documents notarized thereafter.[21]

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[19] *Id.* at 86.

[20] *Id.* at 85.

[21] *Id.*

As a consequence thereof, the RTC reinstated the Tabora Siblings' co-ownership over the subject land[22] in contrast to the decision in Civil Case No. 92-CV-0753.[23]

Aggrieved, the Gomez Siblings appealed the decision to the CA.

The CA Ruling

In its assailed Decision, the CA granted the Gomez Siblings' appeal, *viz.*:

> WHEREFORE, in view of the foregoing, the Decision of the RTC Branch 63 of La Trinidad, Benguet docketed as Civil Case No. 05-CV-2116 dated June 2, 2010 is hereby REVERSED and SET ASIDE. The decision in Civil Case No. 92-CV-0753 dated October 28, 1994 rendered by RTC Branch 10 of La Trinidad[,] Benguet is hereby REINSTATED and should be carried into effect. Plaintiffs-appellants Catherine Gomez, Loreto Gomez, Jr., and Neil Gomez are now declared the true and lawful owners of the co-ownership shares of Esperita Tabora-Mabalot, Teresita Tabora and Rodolfo Tabora, respectively, of that land covered by TCT No. T-5690 located in La Trinidad, Benguet. The public defendant Registry of Deeds for the Province of Benguet is hereby ordered to cancel TCT No. [T-]5690 and issue a new title in its stead in the names of Balbina Tabora, Loreto Gomez[,] Jr. and Catherine Gomez and Neil Gomez as co-owners thereof.
>
> SO ORDERED.[24]

The CA pointed out that the land in dispute in the present case was the subject of Civil Case No. 92-CV-0753. In the first civil case, the RTC already declared the Gomez Siblings as the lawful purchasers of Espirita, Teresita, and Rodolfo's co-ownership shares and dissolved the co-ownership over the subject land.[25] The Decision was not appealed. Hence, it became final and executory. The RTC in Civil Case No. 05-CV-2116

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[22] *Id.* at 86.

[23] *Id.* at 28.

[24] *Id.* at 54.

[25] *Id.* at 46.

erred when it invalidated the Affidavits of Waiver, contrary to the first RTC Decision.[26] There was no reason to once more rule on the merits of the case.[27]

The Mabalot Siblings moved for reconsideration, but the CA denied it.[28]

Hence, the present petition.

Petitioners' Arguments

Petitioners recognized that the RTC in Civil Case No. 92-CV-0753 dated October 28, 1994, terminated the co-ownership among the Tabora siblings over the subject land and denied partition thereof. They also admitted that there was no appeal taken from the decision and it became final and executory on November 23, 1994.[29]

However, Gomez Siblings did not pursue the execution of the earlier decision either by motion within five years or by independent action reviving the judgment within ten years from its finality. Thus, the decision "has since become a stale judgment that can no longer be enforced."[30] Furthermore, the respondents were guilty of laches. They were presumed to have abandoned their right or declined to assert it.[31]

Ultimately, petitioners maintained that a sale of real property must be made through a public instrument. Inasmuch as the Affidavits of Waiver were private documents, the RTC in Civil Case No. 05-CV-2116 correctly declared these as unenforceable.

The petitioners also pointed out the following: (1) there was no showing that Alfonso Mabalot, Espirita's husband, assented

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[26] *Id.* at 50.

[27] *Id.* at 51.

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

[29] *Id.* at 15.

[30] *Id.*

[31] *Id.* at 16.

to the execution of his wife's Affidavit of Waiver.[32] Thus, if adjudged as valid, it must be construed to pertain only to half of Espirita's share in the co-ownership; and (2) they may still dispute the validity of Rodolfo's affidavit, inasmuch as it was never put in issue.[33] In this regard, his affidavit must be invalidated because Rodolfo, who was suffering an abnormality, could not have understood the import of what he signed. Moreover, his affidavit was notarized without personally appearing before the notary public.[34]

The Court's Ruling

The petition is unmeritorious.

The Court shall first address the procedural matter raised by the respondents before resolving the substantive aspect of the present case.

One signature on the certification against forum shopping is substantial compliance.

In their Respondents' Comment,[35] the Gomez Siblings point out that the certification[36] against forum shopping accompanying the present petition was signed by Marissa Mabalot only, supposedly for herself and in behalf of the other petitioners, namely: Edwin Mabalot, Oscar Mabalot, Marilou Mabalot, and

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[32] *Id.* at 20.

[33] *Id.* at 21.

[34] *Id.* at 22.

[35] *Id.* at 107-122.

[36] *Id.* at 24; with the heading, "Verification." It reads, "I, x x x Marissa M. Bomogao, x x x depose and say:

x x x x x x x x x

That I have not filed any case involving the same issues in other courts or tribunals nor a case is pending therein. Should I learn that a case is pending involving the same parties and issues in any court or tribunal, I shall notify the court within five (5) days from knowledge of such pendency."

Josephine Mabalot. This amounts to a defective petition, which must be dismissed.

Verily, the Rules of Court[37] require the petitioner to submit a certification against forum shopping together with his petition. In case there are several petitioners, the certification must be signed by all of them. Otherwise, those who did not sign will be dropped and will no longer be considered as parties.[38]

However, the recognized exception to this rule is when "all the plaintiffs or petitioners share a common interest and involve a common cause of action or defense." In which case, "the signature of only one of them in the certification against forum shopping" is substantial compliance.[39]

Herein petitioners' claim on the subject property is grounded on the co-ownership right/share of their predecessor-in-interest, Espirita. This commonality in their interest brings the petitioners within the exception, such that the signature of any one of them (in this case, Marissa) on the certification substantially complies with the rule.

Complaint in second civil case is not an attempt to execute the judgment in the first civil case or a revival thereof.

The petitioners admit that the RTC decision in Civil Case No. 92-CV-0753 dated October 28, 1994 lapsed into finality on November 23, 1994. However, they contend that the Gomez Siblings only had ten years from the date of finality to enforce the judgment *via* an independent action. Thus, when the Gomez Siblings filed their complaint in Civil Case No. 92-CV-0753 in May 2005, they were already barred from enforcing the decision from the first civil case.

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[37] Section 4 (e), Rule 45 in rotation to Section 2, Rule 42, RULES OF COURT.

[38] *Fernandez v. Villegas*, 741 Phil. 689, 698 (2014), citing *Ingles, et al. v. Judge Estrada, et al.*, 708 Phil. 271, 301-303 (2013).

[39] *Id.*

The petitioners are mistaken.

The prevailing party in a decided case may move for execution, as a matter of right,[40] within five years from the finality of the decision sought to be enforced.[41] Beyond this period, he may revive the judgment through an independent action.[42] The Civil Code of the Philippines requires a party to bring the independent action within ten years from its finality.[43] Otherwise, his right of action will have prescribed.

However, the ten-year prescriptive period on actions seeking to enforce a judgment obligation could not have applied to the Gomez Siblings' complaint.[44] The original action here was not for the execution of a previous judgment or the revival thereof.

The case at bar stems from a complaint in Civil Case No. 05-CV-2116 filed by the Gomez Siblings. They alleged that, as the true and lawful owners of the co-ownership shares pertaining to Espirita, Teresita and Rodolfo over the subject land,[45] they were entitled to the cancellation of TCT No. T-5690 and the issuance of a new title in their names.[46] *These averments constitute a cause of action for reconveyance, not the revival or execution of a judgment*.

That the Gomez Siblings cited the ruling in Civil Case No. 92-CV-0753 — an earlier case involving them and the petitioners' predecessors-in-interest — to support their claim does not convert their complaint into an action to revive the judgment in the first civil case. To be sure, while they prevailed in Civil Case

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[40] Section 1, Rule 39, RULES OF COURT.

[41] Section 6, Rule 39, RULES OF COURT.

[42] *Id.*

[43] Article 1144 in relation to Article 1152, CIVIL CODE.

[44] The provisions on enforcement and revival do not apply to a subsequent action which is based on a different cause of action. *See Diaz, et al. v. Valenciano*, 822 Phil. 291, 311 (2017).

[45] *Rollo*, p. 72.

[46] *Id.* at 73.

No. 92-CV-0753, the RTC then did not explicitly order for the issuance of a new title in favor of the Gomez Siblings. The *fallo* in the earlier decision in Civil Case No. 92-CV-0753 reads:

> WHEREFORE, all premises considered, judgment is hereby rendered in favor of all the defendants and against the plaintiffs, the complaint is hereby DISMISSED for lack of merit.[47]

Inasmuch as the dispositive portion plainly called for a dismissal, a motion for execution, as a matter of right, or an independent action for the revival of judgment, even if instituted within the ten-year prescriptive period, would not have been the proper remedies to ask for reconveyance and other reliefs prayed for by herein respondents.

Parties may no longer re-litigate the issue on the Affidavits of Waiver's validity and enforceability.

The Mabalot siblings insist that the Affidavits of Waiver are unenforceable documents. However, the Court cannot allow the petitioners to assail anew the documents' validity and unenforceability.

To recall, in the first civil case (Civil Case No. 92-CV-0753), the RTC terminated the co-ownership between the Tabora siblings. It found that the affidavits, together with the acknowledgment receipts of the amounts paid by the respondents for each co-ownership share, clearly conveyed the intention of the parties to consummate a sale of Espirita, Teresita, and Rodolfo's co-ownership shares to the Gomez siblings. As there was no ground to annul the affidavits, the RTC gave the documents full faith and credit.[48] It further held that as notarized documents, the affidavits are presumed to have been regularly executed. Without clear and convincing proof to overturn this

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[47] *Id.* at 47.

[48] *Id.* at 46.

presumption, the notarized documents shall serve "as evidence of facts in clear unequivocal manner therein expressed."[49]

After the decision lapsed into finality, the parties were bound by the matters adjudged in Civil Case No. 92-CV-0753. The issues previously settled therein may no longer be relitigated. The doctrine of *res judicata* in the concept of conclusiveness of judgment precludes the parties from raising issues squarely ruled upon in a previous proceeding in any future case between the same parties, albeit involving a different cause of action.[50]

Furthermore, when the RTC reinstated the co-ownership over the subject land in the second civil case (Civil Case No. 05-CV-2116), directly contravening the final and executory decision in Civil Case No. 92-CV-0753, it disregarded not only the doctrine of *res judicata*, but also that of immutability of judgments.[51]

Thus, the CA correctly overturned the erroneous ruling and ordered for the cancellation of TCT No. T-5690 and the issuance of a new title in favor of herein respondents. This finally laid to rest issues that have long been settled between parties who have remained in litigation for over two decades.

WHEREFORE, the petition is **DENIED**. The Decision dated June 26, 2012 and the Resolution dated December 17, 2012 of the Court of Appeals in CA-G.R. CV No. 95434 are **AFFIRMED**.

SO ORDERED.

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

Baltazar-Padilla, J., on leave.

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[49] *Id.*

[50] See *Celendro v. Court of Appeals*, 369 Phil. 1102 (1999). Also see *Panganiban, et al. v. Oamil*, 566 Phil. 161 (2008).

[51] *Celendro v. Court of Appeals, supra* note 50 at 176.

SECOND DIVISION

[G.R. No. 205572. October 7, 2020]

PATRICK U. GABUTINA, *Petitioner, v.* **OFFICE OF THE OMBUDSMAN,** *Respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; RULES OF PROCEDURE OF THE OFFICE OF OMBUDSMAN (ADMINISTRATIVE ORDER NO. 07, AS AMENDED); PROHIBITED PLEADINGS IN ADMINISTRATIVE CASES BEFORE THE OMBUDSMAN; THE FILING OF PROHIBITED PLEADINGS DOES NOT TOLL THE RUNNING OF THE PRESCRIPTIVE PERIOD TO APPEAL AND DOES NOT PREVENT THE APPEALED DECISION FROM ATTAINING FINALITY.— Section 5(g), Rule III of Administrative Order No. 07, also known as the Rules of Procedure of the Office of Ombudsman, as amended by Administrative Order No. 17, enumerates the prohibited pleadings in administrative cases filed with the Office of the Ombudsman, . . .

. . .

Under the above-mentioned provisions of Administrative Order No. 07, as amended, the filing of the four enumerated pleadings, which ought to be stricken off the records of the case, did not have the effect of tolling the prescriptive period for taking an appeal on the October 29, 2004 Decision of the Office of the Ombudsman. Said pleadings, though differently captioned, are all in the nature of a motion for reconsideration since they uniformly pray for the reversal of the October 29, 2004 Decision.

More importantly, since the filing of the said pleadings did not stop the reglementary period for taking an appeal, their filing necessarily did not prevent the October 29, 2004 Decision of the Ombudsman from attaining finality. Even the June 21, 2011 Motion for Reinvestigation wherein Gabutina allegedly raised new evidence, should be stricken off the record as well for having been filed out of time and for being a prohibited

pleading. Gabutina's filing of multiple pleadings, despite the clear restrictions under the law, constitute a clear mockery of the judicial system. He must be reminded that though access to the courts is guaranteed, there is and there must be a limit to it.

2. ID.; ID.; ID.; ID.; REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; A PETITION FOR REVIEW UNDER RULE 43 OF THE RULES OF COURT FILED ONLY AFTER SIX YEARS MUST FAIL.— [T]he Court cannot anymore relax the rules for Gabutina, as his delay in filing a Petition for Review under Rule 43 of the Rules of Court before the CA spanned more than six years, when, in the first place, he only had 15 days under the law to do so. The Court has consistently held that the right to appeal is a mere statutory privilege and may be exercised only in the manner prescribed by, and in accordance with, the provisions of law. Under Administrative Order No. 07, as amended, Gabutina only had 15 days from the time he received the February 18, 2005 Order on March 17, 2005 within which to file a Petition for Review with the CA. In the second place, his six-year delay was not justified by any compelling reason; thus, his Petition for Review must fail. Ironically, as respondent, Gabutina should have pursued the procedural remedies available to him. It was his own undoing that rendered his cause a failure.

APPEARANCES OF COUNSEL

Ban Mikhael C. Pacuribot for petitioner.

D E C I S I O N

HERNANDO, *J.*:

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assails the February 15, 2012[2] Resolution

[1] *Rollo*, pp. 3-14.

[2] Id. at 180-185; penned by Associate Justice Pedro B. Corales and concurred in by Associate Justices Edgardo A. Camello and Carmelita Salandanan-Manahan.

of the Court of Appeals (CA) in CA-G.R. SP No. 04641-MIN which dismissed outright the Petition for Review filed by petitioner Patrick U. Gabutina (Gabutina) due to technical infirmities and considering that the assailed September 8, 2011[3] and February 18, 2005[4] Orders, and the October 29, 2004 Decision[5] of the Office of the Ombudsman, in Administrative Case No. OMB-C-A-04-0072-B have already attained finality.

Said Orders and Decision found Gabutina guilty of Grave Misconduct and for receiving for personal use a fee, gift, or other valuable thing in the course of his official duties or in connection therewith, when such fee, gift, or other valuable thing is given in the hope or expectation of receiving a favor or better treatment, in violation of Rule IV, Section 52, paragraph A, sub-paragraphs 3 and 9 of Memorandum Circular No. 19, s. 1999 or the Revised Uniform Rules on Administrative Cases in the Civil Service. Also assailed is the December 17, 2012 Resolution[6] of the CA denying Gabutina's motion for reconsideration.

The Antecedents:

On January 21, 2004, John Kenneth T. Moreno (Moreno) filed an Affidavit-Complaint[7] against Gabutina, Chief of Staff of Congressman Oscar S. Moreno (Congressman Moreno), and Metodio G. Baldivino, Jr., a.k.a. "Jun Balds" (Baldivino), Manager for Infrastructure Projects of Congressman Moreno, before the Office of the Ombudsman Preliminary Investigation and Administrative Adjudication Bureau-A. The Affidavit-Complaint charged both Gabutina and Baldivino with the following crimes: (1) Violation of Republic Act No. 6713 or

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[3] Id. at 29-33.

[4] Id. at 99-104.

[5] Id. at 84-98; approved by Overall Deputy Ombudsman Margarito P. Gervacio, Jr.

[6] Id. at 15-17; penned by Associate Justice Edgardo A. Camello and concurred in by Associate Justices Edgardo T. Lloren and Oscar V. Badelles.

[7] Id. at 105-107.

the Code of Conduct of Ethical Standards for Public Officials and Employees; (2) Violation of Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act; and (3) Swindling (Estafa) under Article 315, No. 1 (b) of the Revised Penal Code.

The following are the facts, as summarized by the Graft Investigation and Prosecution Officer of the Office of the Ombudsman:

> [O]n November 15, 2002, the Complainant [Moreno] received a phone call from Metodio G. Baldivino, Jr., who identified himself as the one in-charge of all the infrastructure projects of Congressman Oscar S. Moreno, Representative of the lone district of Misamis Oriental, Mindanao. During the said conversation, Respondent Baldivino, Jr., requested for an urgent meeting with the Complainant regarding some projects to be [bid]. Thus, they agreed to meet on the following Monday at the New Lane Restaurant in Gingoog City. Therein, Respondent Baldivino allegedly demanded for Php500,000.00 which, according to him, will be given to Congressman Moreno as an advance "SOP" so that they will cause the award of the Farm to Market Project to the Complainant. Allegedly, it was in the same meeting where Respondent Baldivino called the other Respondent Gabutina to confirm the amount demanded, to which the latter approved. A week later, the Complainant went personally to the Office of Respondent Gabutina at the Staff Office of Congressman Moreno, at the Batasan Complex, to confirm and verify the amount allegedly demanded as advance "SOP" for Congressman Moreno. Thereat, Respondent Gabutina confirmed later receiving part of the said amount and assured the Complainant that the project is forthcoming.
>
> As a consequence thereof, the Complainant deposited the agreed amount in the ATM Account of Respondent Baldivino at the Landbank, Gingoog City on 29 November 2002 and 2 December 2002. Both amounts were withdrawn [by respondent Baldivino] on the same day that they were deposited.
>
> On 28 February 2003, Respondent Baldivino allegedly asked for an additional amount of Php150,000.00 for another 1.5 million pesos worth of project, and instructed the Complainant to deposit the same under the account of Respondent Gabutina at the Philippine National Bank (PNB), Batasan Branch, Quezon City. However, the Complainant opted to deliver it personally to Respondent Baldivino, in Gingoog City. On 21 April 2003, the herein Respondent gave again the assurance

that the said projects will be [bid] out in May 2003 to the Complainant, and even texted to the latter the specific control identification number of the two (2) Farm to Market Road Projects, registered with the Pre-qualification, Bids and Awards Committee of the Department of Public Works and Highways (DPWH), Main Office, Port Area, Manila. Unfortunately, the aforesaid projects were [bid] out and given to another contractor based in Butuan City, and not to the Complainant as promised by the Respondents. Henceforth, the Complainant demanded for the return of the principal amount but the Respondents failed to make good their promise to return it despite repeated demands.[8]

In his Counter-Affidavit,[9] Gabutina denied Moreno's allegations and averred the following, as also summarized by the Graft Investigation and Prosecution Officer of the Office of the Ombudsman:

[R]espondent Gabutina averred that he never asked for, negotiated or demanded money in consideration of or in exchange for the award of any project or projects funded from appropriation allotted to the Province of Misamis Oriental pertaining to the Congressional District of Hon. Congressman Oscar S. Moreno; that he denied using his position to get commission or SOP money from contractors to enable them to get an assigned or pre-awarded contract projects before the bidding takes place; that pre and post qualifications of contractors for purposes of awarding projects of the government, whether funded from congressional allocation or otherwise, are determined and evaluated pursuant to the rules, regulations, and guidelines that implement acts of Congress or Executive Orders of the President of the Philippines such as R.A. No. 7718 and Department Order No. 152, series of 2000, DPWH; that he had not lobbied, asked, demanded personally or thru Metodio G. Baldivino, from Mr. Kenneth T. Moreno any cut, commission, SOP money as consideration for, exchange, or for what not, of any award of contract for infrastructure project or projects, as to pre-arrange an award in his favor, because that cannot be done or negotiated under and pursuant to government rules on bidding and awarding of government projects; that it is not true that he maintains communications with Mr. Baldivino, Jr., as to pre-determine contractors to whom contracts for infrastructure projects

[8] Id. at 85-87.

[9] Id. at 114-118.

may be [awarded], as there is no such thing as pre-determined/pre-arranged contractors of the congressman's choice; that he is not aware of any meeting between the Complainant and Jun Balds, which the latter allegedly called him to confirm an SOP of Php500,000.00 to get a project worth Php 5M; he likewise denied having met the Complainant, thus, he never received in whole or in part any SOP or grease money that the latter mentioned; and that the Complainant, as contractor, fully knows under government rules and regulations, that awards of contracts for infrastructure project[s] are always done thru public bidding to ensure competitiveness in the prosecution of project, and that in the pre and post qualifications of contracts there is a committee which evaluates the same; a contractor cannot just demand pre-arranged or pre-determined awarding of contracts because of an SOP money.[10]

The Findings of the Office of the Ombudsman:

On October 29, 2004, the Office of the Ombudsman rendered a Decision[11] finding Gabutina guilty as charged while dismissing the administrative case against Baldivino. The dispositive portion of the Decision reads:

WHEREFORE, Public Respondent Patrick U. Gabutina is hereby found GUILTY of Grave Misconduct and receiving for personal use of a fee, gift or other valuable things in the course of official duties or in connection therewith when such fee, gift or other valuable things is given by any person in the hope or expectation of receiving a favor or better treatment than that accorded to other persons, or committing acts punishable under the anti-graft laws, pursuant to Section 52, paragraph a, sub-paragraphs 3 and 9, Rule IV, Revised Uniform Rules on Administrative Cases in the Civil Service (Memorandum Circular No. 19, Series of 1999). Accordingly, he is meted out the penalty of DISMISSAL FROM THE SERVICE with all its accessory penalties, including perpetual disqualification from entering government service.

As regards Respondent Metodio G. Baldivino, Jr., the administrative case against him is hereby DISMISSED for lack of disciplinary jurisdiction over his person.

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[10] *CA rollo*, pp. 73-75.

[11] *Rollo*, pp. 84-98.

SO ORDERED.[12]

In an Order[13] dated February 18, 2005, the Office of the Ombudsman dismissed Gabutina's Motion for Reconsideration,[14] *viz.*:

WHEREFORE, the Motion for Reconsideration dated 14 December 2004 of Movant-Respondent Patrick U. Gabutina is hereby DENIED. The Decision under date of 29 October 2004 of this Office if AFFIRMED in toto.

x x x x

SO ORDERED.[15]

On March 17, 2005, Gabutina received the February 18, 2005 Order from the Office of the Ombudsman.[16] On March 27, 2005, instead of filing an appeal under Rule 43 of the Rules of Court with the CA, Gabutina filed a Motion for Leave to File and Admit 2nd Motion for Reconsideration[17] and a 2nd Motion for Reconsideration[18] with the Office of the Ombudsman, on the belief that "a 2nd Motion for Reconsideration would still be the most preferable course of action or ground x x x in consonance with the administration and interest of justice and fair play."[19]

While his 2nd Motion for Reconsideration was pending with the Office of the Ombudsman, Gabutina also filed on May 10, 2005 with the same Office a Petition for Review of the Decision dated 29 October 2004 approved by the Overall Deputy Ombudsman,[20] assailing the aforesaid Decision. In his Petition

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[12] Id. at 96-97.

[13] Id. at 99-104.

[14] Id. at 122-130.

[15] Id. at 102-103.

[16] Id. at 135.

[17] Id. at 134-137.

[18] Id. at 138-156.

[19] Id. at 135-136.

[20] Id. at 56-83.

for Review, Gabutina admitted that his Motion for Leave and a 2nd Motion for Reconsideration were still pending before the Office of the Ombudsman.

On May 6, 2008, the Office of the Ombudsman issued an Order[21] treating Gabutina's Petition for Review dated May 10, 2005 as his third Motion for Reconsideration and denying the same. Citing Rule III, Section 8 of Administrative Order No. 07, otherwise known as the Rules of Procedure of the Office of Ombudsman, it emphasized that only one motion for reconsideration may be filed before the Office of the Ombudsman, thus, Gabutina's second and third Motions must fail. Furthermore, these Motions shall not stop the Decision of the Office of the Ombudsman from attaining finality. In the end, the Office of the Ombudsman held:

> WHEREFORE, the Petition for Review which is hereby treated as respondent's third (3rd) motion for reconsideration is DENIED. The October 29, 2004 Decision as well as the February 18, 2005 Order are hereby AFFIRMED in toto.
>
> So ordered.[22]

Despite the repeated denial of the Office of the Ombudsman of his motions, Gabutina filed yet again a Motion for Reinvestigation[23] on June 21, 2011, raising the same issues and grounds as contained in his motions for reconsideration.

On September 8, 2011, the Office of the Ombudsman issued another Order,[24] dismissing Gabutina's Motion for Reinvestigation. It reiterated that only one motion for reconsideration or reinvestigation is allowed by the Rules and that all the pleadings filed by Gabutina, though differently captioned, asked for the same thing: the reversal of the Decision dated October 29, 2004. The dispositive portion reads:

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[21] Id. at 49-50.

[22] Id. at 50.

[23] Id. at 34-48.

[24] Id. at 29-32.

WHEREFORE, the motion for reinvestigation is hereby DENIED with finality. The 29 October 2004 Decision and all the subsequent Orders are deemed affirmed *in toto*.

SO ORDERED.[25]

On December 21, 2011, Gabutina filed a Petition for Review[26] with the CA raising the following arguments:

(1) That respondent Office of the Ombudsman erred in giving less weight and consideration to the Order issued by the Regional Trial Court of Misamis Oriental, Branch 43, Gingoog City, dismissing with prejudice the criminal case for estafa against Gabutina and Baldivino;[27] [and]

(2) That the Office of the Ombudsman erred in finding conspiracy between Baldivino and Gabutina.[28]

The Ruling of the Court of Appeals:

In its Resolution[29] dated February 15, 2012, the CA dismissed outright Gabutina's Petition for Review due to several technical infirmities. Moreover, it agreed with the Office of the Ombudsman that Gabutina's 2nd Motion for Reconsideration, his Petition for Review, and Motion for Reinvestigation did not stop the running of the reglementary period for appeal and did not prevent the October 29, 2004 Decision of the Office of the Ombudsman from attaining finality.

On December 17, 2012, the CA rendered another Resolution[30] denying Gabutina's Motion for Reconsideration. The CA reiterated that it could no longer review the final and executory Decision of the Office of the Ombudsman.

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[25] Id. at 32.

[26] Id. at 18-28.

[27] Id. at 23.

[28] Id. at 24.

[29] Id. at 180-185.

[30] Id. at 15-17.

Thus, this Petition for Review on *Certiorari*.[31]

Issue

In his Petition for Review on *Certiorari* before the Court, Gabutina raises the following issue:

The CA should have given due course and consideration to the Petition for Review, thus, the Court should review the December 17, 2012 Resolution.[32]

Our Ruling

The Court denies the Petition for Review on *Certiorari* as the CA did not err in dismissing the Petition for Review filed by Gabutina.

Section 5 (g), Rule III of Administrative Order No. 07, also known as the Rules of Procedure of the Office of Ombudsman, as amended by Administrative Order No. 17, enumerates the prohibited pleadings in administrative cases filed with the Office of the Ombudsman, to wit:

Section 5. Administrative adjudication; How conducted. —

x x x x x x x x x

g) **The following pleadings shall be deemed prohibited** in the cases covered by these Rules:

1. Motion to dismiss, although any ground justifying the dismissal of the case may be discussed in the counter/affidavit/pleadings of the party;

2. Motion for bill of particulars; and

3. Dilatory motions including, but not limited to, motions for extension of time, for postponement, **second motions for reconsideration and/or reinvestigation**.

Said pleadings shall be stricken off the records of the case. (Emphasis supplied)

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[31] Id. at 3-14.

[32] Id. at 10.

Section 7, Rule III of the same Administrative Order, which is essentially similar to Section 47 of the Uniform Rules on Administrative Cases in the Civil Service,[33] additionally provides:

> *Section 7. Finality and execution of decision.* — Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable. **In all other cases, the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the Motion for Reconsideration.**
>
> **An appeal shall not stop the decision from being executory.** In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.
>
> x x x x x x x x x (Emphasis supplied)

In the case at bar, the facts and the multiple number of pleadings filed by Gabutina are undisputed. After the Office of the Ombudsman promulgated its Decision on October 29, 2004 finding him guilty of Grave Misconduct and Violation of Anti-Graft laws, Gabutina filed his first and only legally allowable Motion for Reconsideration dated December 14, 2004.

When Gabutina received the February 18, 2005 Order of the Office of the Ombudsman denying his December 14, 2004 Motion for Reconsideration, Gabutina had only 15 days from the date of receipt of the written Order on March 17, 2005, or until April 1, 2005, within which to file a verified petition for review with the CA. Instead, Gabutina filed the following pleadings before the Office of the Ombudsman on the following dates:

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[33] Section 47 of the Uniform Rules on Administrative Cases in the Civil Service (CSC Resolution No. 991936) reads:

SECTION 47. *Effect of Filing.* — An appeal shall not stop the decision

(1) Motion for Leave to File and Admit 2nd Motion for Reconsideration on March 27, 2005;

(2) 2nd Motion for Reconsideration on March 27, 2005;

(3) Petition for Review on May 10, 2005 while the Motion for Leave and 2nd Motion for Reconsideration were still pending; and

(4) Motion for Reinvestigation on June 21, 2011.

Gabutina finally filed a Petition for Review with the CA on December 21, 2011, or more than six years from his receipt of the February 18, 2005 Order on March 17, 2005.

Under the above-mentioned provisions of Administrative Order No. 07, as amended, the filing of the four enumerated pleadings, which ought to be stricken off the records of the case, did not have the effect of tolling the prescriptive period for taking an appeal on the October 29, 2004 Decision of the Office of the Ombudsman. Said pleadings, though differently captioned, are all in the nature of a motion for reconsideration since they uniformly pray for the reversal of the October 29, 2004 Decision.

More importantly, since the filing of the said pleadings did not stop the reglementary period for taking an appeal, their filing necessarily did not prevent the October 29, 2004 Decision of the Ombudsman from attaining finality. Even the June 21, 2011 Motion for Reinvestigation wherein Gabutina allegedly raised new evidence, should be stricken off the record as well for having been filed out of time and for being a prohibited pleading. Gabutina's filing of multiple pleadings, despite the clear restrictions under the law, constitute a clear mockery of the judicial system. He must be reminded that though access to the courts is guaranteed, there is and there must be a limit to it.[34]

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from being executory, and in case the penalty is suspension or removal, the respondent shall be considered as having been under preventive suspension during the pendency of the appeal, in the event he wins the appeal.

[34] *Macalalag v. Ombudsman*, 468 Phil. 918, 924 (2004).

In fine, the CA correctly held that the December 21, 2011 Petition for Review of Gabutina should be dismissed outright due to severe procedural lapses.

Finally, the Court cannot anymore relax the rules for Gabutina, as his delay in filing a Petition for Review under Rule 43 of the Rules of Court before the CA spanned more than six years, when, in the first place, he only had 15 days under the law to do so. The Court has consistently held that the right to appeal is a mere statutory privilege and may be exercised only in the manner prescribed by, and in accordance with, the provisions of law.[35] Under Administrative Order No. 07, as amended, Gabutina only had 15 days from the time he received the February 18, 2005 Order on March 17, 2005 within which to file a Petition for Review with the CA. In the second place, his six-year delay was not justified by any compelling reason; thus, his Petition for Review must fail. Ironically, as respondent, Gabutina should have pursued the procedural remedies available to him. It was his own undoing that rendered his cause a failure.

IN VIEW OF THE FOREGOING, the instant Petition for Review on *Certiorari* is hereby **DENIED**. The October 29, 2004 Decision of the Office of the Ombudsman finding Patrick U. Gabutina guilty of Grave Misconduct and of Violating Anti-Graft laws, and dismissing him from the service with all its accessory penalties, is deemed **FINAL** and **EXECUTORY**.

SO ORDERED.

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

Baltazar-Padilla, J., on leave.

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[35] Id.

THIRD DIVISION

[G.R. No. 211755. October 7, 2020]

HEIRS OF FELICISIMO GABULE, namely: ELISHAMA GABULE-VICERA, FELINA GABULE CIMAFRANCA, IEMELIF GABULE, GRETEL GABULE, represented by his spouse, CECILIA RIZA GABULE and HAMUEL GABULE represented by his spouse ISABEL GABULE, *Petitioners, v.* **FELIPE JUMUAD, substituted for by his Heirs namely: SUSANO, ISIDRA, EUGENIA, ROLDAN, ELIAS, AND BUENAVENTURA, all surnamed JUMUAD,** *Respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; DOCTRINE OF IMMUTABILITY OF JUDGMENTS; A FINAL AND EXECUTORY JUDGMENT MAY NO LONGER BE MODIFIED IN ANY RESPECT; EXCEPTIONS.— It is a hornbook rule that once a judgment has become final and executory, it may no longer be modified in any respect, even if the modification is meant to correct an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land, as what remains to be done is the purely ministerial enforcement or execution of the judgment. This is known as the doctrine of immutability of judgments. Like any other rule, the doctrine of immutability of judgments admits of certain exceptions, to wit: (1) the correction of clerical errors, (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party, (3) void judgments, and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.

2. ID.; ID.; APPEALS; THE FILING OF A *PRO FORMA* MOTION FOR RECONSIDERATION OR A SECOND MOTION FOR RECONSIDERATION DOES NOT TOLL THE RUNNING OF THE 15-DAY PERIOD TO APPEAL. — [T]he CA should not have entertained and ultimately resolved

respondent's appeal. A motion for reconsideration considered as a mere scrap of paper does not toll the running of the 15-day reglementary period within which to appeal. Respondent admitted having received a copy of the March 5, 2007 Order on March 7, 2007. His first Motion for Reconsideration did not toll the running of period within which to appeal. Respondent, thus, had only until March 22, 2007 to file an appeal before the appellate court. However, instead of doing so, he filed a Second Motion for Reconsideration which was clearly a prohibited pleading.

In *Casalla v. People*, the Court ruled that a *pro forma* motion for reconsideration did not suspend the running of the prescriptive period and such defect was not cured by the filing of a second motion for reconsideration, which is prohibited under the rules.

Therefore, by the time respondent filed an appeal, which was after having received the March 27, 2007 RTC Order expunging his second Motion for Reconsideration, the 15-day reglementary period to appeal already lapsed. Hence, the assailed March 5, 2007 Order of the RTC already attained finality.

3. ID.; ID.; JUDGMENTS; *RES JUDICATA*; DEFINITION AND FORMS OF *RES JUDICATA*.— *Res judicata* literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." It also refers to the rule that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive [of] the rights of the parties or their privies in all later suits on points and matters determined in the former suit. It rests on the principle that parties should not to be permitted to litigate the same issue more than once; that, when a right or fact has been judicially tried and determined by a court of competent jurisdiction, or an opportunity for such trial has been given, the judgment of the court, so long as it remains unreversed, should be conclusive upon the parties and those in privity with them in law or estate.

. . .

. . . *[R]es judicata* comes in two (2) forms. Sec. 47(b) of Rule 39 is often referred to as "bar by prior judgment," while paragraph (c) thereof refers to "conclusiveness of judgment."

4. ID.; ID.; ID.; ID.; *RES JUDICATA* SETS IN WHEN THE PRIOR JUDGMENT ON THE MERITS RENDERED BY

A COMPETENT COURT HAS ATTAINED FINALITY.— In this case, *res judicata* in the concept of "bar by prior judgment" applies because all the elements thereof are present.

. . .

The first judgment dated February 12, 1990 rendered by the RTC of Pagadian City, which had jurisdiction over the subject matter and the parties, had long become final after the plaintiff therein, Saldua, failed to move for reconsideration and/or timely file a notice of appeal. Said judgment was rendered on the merits because it determined the rights and liabilities of the parties based on the ultimate facts as disclosed by the pleadings or issues presented for trial.

5. ID.; ID.; ID.; ID.; IDENTITY OF PARTIES; THE DOCTRINE OF *RES JUDICATA* REQUIRES SUBSTANTIAL IDENTITY OF PARTIES; TEST TO DETERMINE SUBSTANTIAL IDENTITY OF PARTIES.— [T]here is, as between the first (Civil Case No. 2973) and the instant case (Civil Case No. 3075), identity of parties. The determination of whether there is identity of parties rests on the commonality of the parties' interest, regardless of whether they are indispensable parties or not. . . .

The principle of *res judicata* does not require absolute identity of parties. It requires, at the very least, substantial identity of parties. There is substantial identity of parties when there exists 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." Parties that represent the same interests in two petitions are, thus, considered substantial identity of parties for purposes of *res judicata*. **Definitely, one test to determine substantial identity would be to see whether the success or failure of one party materially affects the other**. As applied herein, community of interest clearly exists among Saldua, petitioners and the respondent. To render a favorable decision would, in effect, indirectly attack the trial court's declaration, which had attained finality, that Saldua had already transferred and conveyed ownership over Lot 2857, and that he no longer holds any legal right on the same.

6. ID.; ID.; ID.; ID.; IDENTITY OF SUBJECT MATTER; THERE IS IDENTITY OF SUBJECT MATTER EVEN IF

THE SECOND CASE INVOLVES ONLY A PORTION OF THE PROPERTY SUBJECT OF THE FIRST CASE.— [I]t is undisputed that the parcel of land, covered by OCT 1817 registered in the name of Gabule, was the subject matter in the two cases. In the first case, Saldua was claiming ownership over the parcel of land covered by the said title, while in the second, respondent was claiming ownership over a portion thereof.

7. ID.; ID.; ID.; ID.; IDENTITY OF CAUSES OF ACTION; *RES JUDICATA* DOES NOT REQUIRE ABSOLUTE IDENTITY OF THE CAUSES OF ACTION.— [T]he causes of action in both cases are undoubtedly identical. It has always been stressed that the doctrine of *res judicata* does not require absolute identity. Here, however, both cases sought the reconveyance of the subject property.

The Court, in *Heirs of Arania v. Intestate Estate of Sangalang*, reiterated 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. In the instant case, there is more reason that *res judicata* applies because there is, in fact, absolute identity of causes of action.

8. CIVIL LAW; LAND REGISTRATION; ACTIONS FOR RECONVEYANCE; FRAUD IN THE APPLICATION OF TITLE OVER A PROPERTY; REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; IN AN ACTION FOR RECONVEYANCE, FRAUD IN THE APPLICATION OF TITLE OVER THE PROPERTY MUST BE SUBSTANTIALLY PROVEN BY THE CLAIMANT.— It is settled that fraud is never presumed. The imputation of fraud in a civil case requires the presentation of clear and convincing evidence. Mere allegations will not suffice to sustain the existence of fraud. The burden of evidence rests on the part of the plaintiff or the party alleging fraud. The quantum of evidence is such that fraud must be clearly and convincingly shown.

. . .

> In this case, respondent is seeking reconveyance of Lot No. 2857-B-1 which measures 67 sq. m., and not the whole 337 sq. m., which he claimed to have been fraudulently included in the late Gabule's OCT. Respondent, however, failed to discharge the burden of proof. Other than a mere claim, respondent did not present any other proof that fraud attended Gabule's application of title over the subject property. . . .
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> . . .
>
> Consequently, the Court is not convinced that fraud existed because respondent had the opportunity to file a claim over the subject property, but did not. Moreover, records failed to show actual encroachment over respondent's alleged 67-sq. m. land. The Survey Report of the geodetic engineer which respondent, and the CA, relied upon did not categorically state that Gabule encroached on a portion of respondent's land. In fact, the report clearly and distinctly established that the subject area of 67 sq. m., in its entirety, is inside the title of Gabule. Nothing was mentioned that the said area was included in respondent's title which covered Lot No. 2856. Thus, respondent's evidence fell short in establishing that Gabule acted fraudulently in obtaining title over the subject property.

9. ID.; ID.; ID.; AN ACTION FOR RECONVEYANCE IS DISMISSIBLE FOR LACK OF CAUSE OF ACTION IF THE CLAIMANTS FAIL TO PROVE THEIR OWNERSHIP OVER THE PROPERTY. — It is settled that in an action for reconveyance, the free patent and the certificate of title are respected as incontrovertible. What is sought instead is the transfer of the title to the property, which has been wrongfully or erroneously registered in the defendant's name. All that is needed to be alleged in the complaint are two (2) crucial facts, namely, (1) that the plaintiff was the owner of the land, and (2) that the defendant had illegally dispossessed him of the same. Therefore, the claimant/complainant has the burden of proving ownership over the registered land. Respondent, however, failed to discharge such burden.

To conclude, respondent's complaint should have been dismissed not only because it had already been barred by *res judicata*, but also because respondent had no cause of action to file a case for reconveyance against petitioners.

APPEARANCES OF COUNSEL

Christopher G. Vicera for petitioners.
Quicoy Marin and Quicoy-Marin Law Office for respondents.

D E C I S I O N

GESMUNDO, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the January 21, 2013 Decision[1] and March 5, 2014 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. CV No. 01200-MIN which reversed and set aside the March 5, 2007 Order[3] of the Regional Trial Court, 9th Judicial Region, Pagadian City, Branch 22 *(RTC),* in Civil Case No. 3075, an action for Reconveyance and Damages, and reinstated the May 10, 2006 Decision.[4]

The Antecedents

As borne by the records, Felipe Jumuad *(respondent)* filed an action for reconveyance and damages against the heirs of Felicisimo Gabule *(petitioners).* Prior to such action, however, an action for reconveyance involving petitioners' same property was likewise filed by one Severino Saldua *(Saldua)* against the former.

Prior Case: Civil Case No. 2973
Saldua v. Heirs of Felicisimo Gabule

Saldua alleged that he is the owner of a residential lot known and designated as Lot No. 2857-B, which was, through fraudulent means and misrepresentation, included in the title of petitioners'

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[1] *Rollo,* pp. 56-73; penned by Associate Justice Romulo V. Borja with Associate Justices Ma. Luisa C. Quijano-Padilla and Marie Christine Azcarraga Jacob, concurring.

[2] Id. at 75-80.

[3] Id. at 174.

[4] Id. at 164-170.

late father Felicisimo Gabule *(Gabule)* when the latter applied for title over his land. Consequently, Felicisimo was issued Original Certificate of Title No. 1,817 *(OCT 1817)* on May 16, 1980 pursuant to a decree in the cadastral proceedings.[5] The said residential lot was the remaining portion of the ½ land known as Lot No. 2857 which he previously bought, through barter, from respondent. This barter between Saldua and respondent was confirmed by the latter himself on the witness stand.[6]

After due trial, the RTC of Pagadian City, Branch 19, rendered a Decision dismissing Saldua's complaint, thereby affirming Felicisimo's title over the subject property. The RTC explained that:

> In short, plaintiff Saldua has no more right, interest and [participation over] Lot No. 2857, because when he sol[d] one half (1/2) of said lot to Antonio Langga, as admitted by plaintiff, and which resulted to the designation of Antonio Langga's lot as Lot No. 2857-A, the portion left with plaintiff was the other half which is designated as Lot No. 2857-B, and since out of Lot No. 2857-B he sold 144 sq. m. to Alfredo Balugo and from Balugo to Agapito Bagapuro, and from Bagapuro to Telesporo Pulido, it would seem that the area left with plaintiff after he sold the 144 sq. m. is the one half of Lot No. 2857-B with an area of 144 sq. m. However, since plaintiff admitted that he is not recovering what he has given to his brother-in-law Hermogenes Daniel who applied a Miscellaneous Sales Application, it is clear that plaintiff Saldua has indeed no more interest whatsoever on Lot No. 2857-B, and therefore, has no cause of action in the case at bar.[7]

Consequently, the RTC Decision dismissing Saldua's complaint attained finality as no motion for reconsideration or appeal was filed.

Present Case: Civil Case No. 3075
Felipe Jumuad v. Heirs of Felicisimo Gabule, et al.

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[5] Id. at 103.

[6] Id. at 105.

[7] Id. at 107.

In his verified complaint, respondent alleged that he was previously the sole owner of a certain lot situated along Alano Street, San Francisco District, Pagadian City. Subsequently, he sold the one-half (½) lengthwise portion of the said lot to Saldua, who later sold half of said portion to Antonio Langga *(Langga)*, specifically the portion fronting Alano Street, Pagadian City.[8]

Saldua then sold the inner portion of his lot, about 150 square meters, to a certain Hermogenes Daniel *(Daniel)*. In turn, Daniel resold the portion to Rev. Diosdado Aenlle *(Rev. Aenlle)*. It was from Rev. Aenlle that Gabule acquired his portion of land, now occupied by his heirs. What was supposedly left to Saldua was only the middle portion of that lot which he previously acquired from respondent.[9]

However, in his application for a title over the land, Gabule, through fraudulent means and misrepresentation, included Saldua's remaining or middle portion and further encroached on a portion of respondent's lot, the subject property of this case.[10] The actual encroachment referred to a portion having a dimension of 50m. by 3.78m. by 50m.[11]

Respondent demanded from the petitioners the reconveyance of the subject lot included in Gabule's OCT 1817, but the heirs failed and refused to heed the demands.

In their Answer,[12] petitioners denied the allegations in the complaint. They specifically claimed that their father's acquisition of the land was not limited to only 150 sq. m., but in fact, the acquisition referred to a portion which was subsequently surveyed and identified as Lot No. 2857-B, Csd-12763 of Pagadian Public Land Subdivision, Pls-119, which

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[8] Id. at 110-111.

[9] Id.

[10] Id. at 111.

[11] Id. at 112.

[12] Id. at 119-121.

was previously identified as Lot No. 8833, with an area of 337 sq. m., more or less.[13]

Petitioners also averred that respondent never made any demand against them.[14]

Trial ensued. Both parties submitted their respective documentary and testimonial pieces of evidence.

On May 10, 2006, the RTC rendered judgment in favor of respondent. It was of the view that Gabule committed constructive fraud in including the subject lot in his application for a certificate of title. The Deed of Sale presented by Gabule during the cadastral proceedings showed a piece of lot with an area of 150 sq. m. He identified the deed and affirmed that he bought the property from Rev. Aenlle, and that its area was only 156.25 sq. m., more or less. However, during the relocation survey of the land for purposes of obtaining the technical description thereof for titling, the resultant area ballooned to 337 sq. m.[15]

Thus, the RTC ruled that since Gabule committed constructive fraud, under our laws, he should, through his heirs, be ordered to reconvey that portion of land duly identified during a relocation survey as Lot No. 2857-B-1 to its lawful owner, herein respondent.[16]

Aggrieved, petitioners filed a Motion to Nullify the Decision[17] dated May 10, 2006 alleging that: 1) it was null and void because the handing-down Judge had no more authority to promulgate the same, having retired in the early day of June 2006; and 2) it was inherently defective because it equated a tax declaration as a muniment of a title of ownership when it is only a right to acquire the title of ownership over the area it covers.[18]

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[13] Id. at 119.

[14] Id. at 120.

[15] Id. at 169.

[16] Id. at 170.

[17] Id. at 171-172.

[18] Id.

On March 5, 2007, the RTC issued an Order[19] setting aside the May 10, 2006 Decision. It treated the heirs' Motion to Nullify as a Motion for Reconsideration. While the trial court chose not to discuss the first ground since there was no proof presented to show that the Decision was improperly promulgated, thus, making the allegation a mere conjecture, it nonetheless granted the motion on the ground that respondent, not being an owner, has no cause of action and was not entitled to a reconveyance. In so ruling, the trial court opined that the questioned property was previously a public land, and therefore, respondent had no personality to question the land grant of the government. Furthermore, the tax declarations offered by respondent are not direct proof of ownership, unless accompanied by proof of actual possession for the required period. Respondent, however, failed to present evidence of actual possession of the questioned area.[20] Thus, he sought relief from the CA.

CA's Ruling

The CA granted respondent's appeal, thereby reinstating the May 10, 2006 Decision of the RTC. The appellate court explained that respondent need no longer prove the private character of the land because the issuance of the OCTs in the cadastral proceedings was an affirmation that the lands covered were already private in character.[21]

Further, the CA observed from the records that Gabule acted fraudulently in including the subject area in his application for a title. The OCT issued in his favor covered a parcel of land measuring an area of 337 sq. m. However, his testimony during the cadastral proceedings that he acquired a property with an area of 156.25 sq. m., more or less, from Rev. Aenlle, corresponded to the area stipulated in the Deed of Sale executed between him and the latter.

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[19] Id. at 174.

[20] Id.

[21] Id. at 64.

As a result, the CA declared that an implied trust pursuant to Article 1456 of the Civil Code was created in favor of respondent. It held that:

> Patently, Lot No. 2857-B-1 was erroneously included in appellees' title. By such erroneous inclusion, **appellees are deemed to hold the title of the property in trust and for the benefit of appellant. Thus, a constructive trust was created between the parties.**[22] (emphasis supplied)

Moreover, the CA viewed that respondent never lost possession of the subject property even after the issuance of a Certificate of Title in the name of Gabule. Consequently, respondent could file the action for reconveyance at any time, as the action does not prescribe when the plaintiff is in possession of the land to be reconveyed, as in this case.[23] Thus, the CA ruled that the RTC erred palpably in finding that "there is no evidence of actual possession on the questioned area by the plaintiff"; that respondent successfully established by preponderance of evidence his cause of action for reconveyance. Reconveyance, therefore, lies in his favor.[24]

Prejudiced by the reversal, petitioners filed a Motion for Reconsideration.[25] It was, however, denied. Hence, the present petition anchored on the following:

I.

THE ORDER OF THE RTC IN PAGADIAN CITY DISMISSING RESPONDENT'S COMPLAINT FOR RECONVEYANCE AND DAMAGES HAS LONG BECOME FINAL AND EXECUTORY; HENCE, THE COURT *A QUO* GRAVELY ERRED IN GRANTING RESPONDENT'S APPEAL;

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[22] Id. at 68.

[23] Id. at 69.

[24] Id. at 71-72.

[25] Id. at 304-342.

II.

WITH ALL DUE RESPECT, THE COURT *A QUO* GRAVELY ERRED IN FAILING TO CONSIDER THAT THE COMPLAINT FOR RECONVEYANCE AND DAMAGES FILED BY RESPONDENT IN THE RTC IN PAGADIAN CITY IS ALREADY BARRED BY *RES JUDICATA;*

III.

WITH ALL DUE RESPECT, RESPONDENT MISERABLY FAILED TO PRESENT ANY PIECE OF EVIDENCE PROVING FRAUD ON THE PART OF FELICISIMO GABULE IN SECURING TITLE OVER THE SUBJECT PROPERTY, HENCE, IT WAS GRIEVOUS ERROR ON THE PART OF THE COURT *A QUO* TO RULE THAT FELICISIMO GABULE IS GUILTY OF COMMITTING FRAUD;

IV.

THE COURT *A QUO* GRAVELY ERRED IN GRANTING RESPONDENT'S APPEAL CONSIDERING THAT:

- **A. RESPONDENT JUDICIALLY ADMITTED THAT HE HAD ALREADY SOLD THE SUBJECT LOT TO ONE SEVERINO SALDUA;**
- **B. RESPONDENT MISERABLY FAILED TO SUBSTANTIATE HIS CLAIM OF OWNERSHIP OVER LOT NO. 2857, AS HIS OWN EVIDENCE, OCT NO. 1,252 AND THE TESTIMONY OF HIS WITNESS, PERTAINED ONLY TO LOT NO. 2856;**
- **C. THERE IS NOTHING IN THE SURVEY REPORT WHICH REMOTELY SUGGESTS THAT LOT NO. 2857-B-1 IS OWNED BY RESPONDENT OR EVEN CAME FROM HIS OCT NO. 1,252; AND**
- **D. THE BOUNDARIES OF THE SUBJECT PROPERTY ARE WITHIN, AND CLEARLY DEFINED, IN FELICISIMO GABULE'S OCT NO. 1,817;**

V.

WITH ALL DUE RESPECT, THE COURT *A QUO* GRAVELY ERRED IN APPLYING THE RULE ON CONSTRUCTIVE

TRUST IN GRANTING RESPONDENT'S APPEAL CONSIDERING THAT THE PARAMETERS LAID DOWN BY THE HONORABLE COURT FOR ITS APPLICATION ARE CLEARLY WANTING IN THIS CASE.[26]

Court's Ruling

The petition is meritorious.

The RTC order is final and executory

It is a hornbook rule that once a judgment has become final and executory, it may no longer be modified in any respect, even if the modification is meant to correct an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land, as what remains to be done is the purely ministerial enforcement or execution of the judgment.[27] This is known as the doctrine of immutability of judgments. Like any other rule, the doctrine of immutability of judgments admits of certain exceptions, to wit: (1) the correction of clerical errors, (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party, (3) void judgments, and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.[28]

In this case, it was revealed that the assailed March 5, 2007 Order of the RTC of Pagadian City, which was appealed by respondent before the CA, had long become final and executory. Scrutiny of the records showed that respondent moved for reconsideration[29] of the said Order before the trial court. However,

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[26] Id. at 15-16.

[27] *One Shipping Corporation v. Peñafiel*, 751 Phil. 204 (2015), citing *Aliviado v. Procter and Gamble Phils., Inc.*, 665 Phil. 542, 551 (2011).

[28] *Gadrinab v. Salamanca*, 736 Phil. 279, 293 (2014).

[29] *Rollo*, pp. 176-177.

the trial court, in an Order[30] dated March 16, 2007, considered respondent's Motion for Reconsideration as a mere scrap of paper for violating the three (3)-day notice rule and was, thus, expunged from the records. Respondent then filed an Omnibus Motion for Reconsideration and/or to Set Aside Order dated March 5, 2007 with Motion for Execution.[31] The trial court once again, in an Order[32] dated March 27, 2007, expunged the motion from the records on the ground that it was a second Motion for Reconsideration, a prohibited pleading.

Sections 4 and 5, Rule 15 of the 1997 Revised Rules on Civil Procedure *(Rules)* state that:

Section 4. *Hearing of motion.* — Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice. (4a)

Section 5. ***Notice of hearing.*** — The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion. (5a)

On the other hand, Sec. 2, Rule 37 of the same Rules provides:

Section 2. Contents of motion for new trial or reconsideration and notice thereof. — The motion shall be made in writing stating the ground or grounds therefor, a written notice of which shall be served by the movant on the adverse party.

x x x x x x x x x

A motion for reconsideration shall point out a specifically the findings or conclusions of the judgment or final order which are not

[30] Id. at 178.

[31] Id. at 180-183.

[32] Id. at 187.

supported by the evidence or which are contrary to law making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions.

A *pro forma* motion for new trial or reconsideration shall not toll the reglementary period of appeal. (2a) (emphasis supplied)

Prescinding therefrom, the CA should not have entertained and ultimately resolved respondent's appeal. A motion for reconsideration considered as a mere scrap of paper does not toll the running of the 15-day reglementary period within which to appeal. Respondent admitted having received a copy of the March 5, 2007 Order on March 7, 2007. His first Motion for Reconsideration did not toll the running of period within which to appeal. Respondent, thus, had only until March 22, 2007 to file an appeal before the appellate court. However, instead of doing so, he filed a Second Motion for Reconsideration which was clearly a prohibited pleading.

In *Casalla v. People*,[33] the Court ruled that a *pro forma* motion for reconsideration did not suspend the running of the prescriptive period and such defect was not cured by the filing of a second motion for reconsideration, which is prohibited under the rules.[34]

Therefore, by the time respondent filed an appeal, which was after having received the March 27, 2007 RTC Order expunging his second Motion for Reconsideration, the 15-day reglementary period to appeal already lapsed. Hence, the assailed March 5, 2007 Order of the RTC already attained finality.

Res judicata has set in

Res judicata literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." It also refers to the rule that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on points and matters determined in the former suit.

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[33] 439 Phil. 958 (2002).

[34] Id. at 964.

It rests on the principle that parties should not to be permitted to litigate the same issue more than once; that, when a right or fact has been judicially tried and determined by a court of competent jurisdiction, or an opportunity for such trial has been given, the judgment of the court, so long as it remains unreversed, should be conclusive upon the parties and those in privity with them in law or estate.[35]

Under the Rules of Court, the principle of *res judicata* is specifically found in Rule 39, Sec. 47, paragraphs (b) and (c) which provide as follows:

> **Section 47.** *Effect of judgments or final orders.* — The effect of a judgment or final order rendered by a court or of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:
>
> x x x x x x x x x
>
> (b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been missed in relation thereto, conclusive between the parties and their successors in interest, by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity; and
>
> (c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto. (49a)

Prescinding therefrom, it can be deduced that *res judicata* comes in two (2) forms. Sec. 47(b) of Rule 39 is often referred to as "bar by prior judgment," while paragraph (c) thereof refers to "conclusiveness of judgment."

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[35] *Fenix (CEZA) International, Inc. v. Executive Secretary,* G.R. No. 235258, August 6, 2018, 876 SCRA 379, 387.

In *Cruz v. Tolentino*,[36] the Court once again reiterated the rule concerning the application of the principle of *res judicata*, to wit:

> For *res judicata* to serve as a bar to a subsequent action, the following elements must be present: (1) the judgment sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be a judgment on the merits; and (4) there must be as between the first and second action, identity of parties, subject matter, and causes of action. Should identity of parties, subject matter, and causes of action be shown in the two cases, *res judicata* in its aspect as a "bar by prior judgment" would apply. If as between the two cases, only identity of parties can be shown, but not identical causes of action, then *res judicata* as "conclusiveness of judgment" applies.[37]

In this case, *res judicata* in the concept of "bar by prior judgment" applies because all the elements thereof are present.

Existence of a prior judgment on the merits, rendered by a competent court, which has attained finality

The first judgment dated February 12, 1990 rendered by the RTC of Pagadian City, which had jurisdiction over the subject matter and the parties, had long become final after the plaintiff therein, Saldua, failed to move for reconsideration and/or timely file a notice of appeal. Said judgment was rendered on the merits because it determined the rights and liabilities of the parties based on the ultimate facts as disclosed by the pleadings or issues presented for trial.[38]

Particularly, the trial court, in the first case, ruled that Saldua failed to show by preponderance of evidence that he still holds

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[36] G.R. No. 210446, April 18, 2018, 861 SCRA 665.

[37] Id. at 679.

[38] *Baricuatro v. Caballero*, 552 Phil. 158, 164 (2007).

legal right on the land subject matter of the case and thus, it had to deny his claim for reconveyance.[39]

In *Encinas v. Agustin, Jr.*,[40] the Court emphasized that a judgment may be considered as one rendered on the merits "when it determines the rights and liabilities of the parties based on the disclosed facts, irrespective of formal, technical or dilatory objections;" or when the judgment is rendered "after a determination of which party is right, as distinguished from a judgment rendered upon some preliminary or formal or merely technical point."[41]

Parties, subject matter and causes of action in the two cases are identical

First, there is, as between the first (Civil Case No. 2973) and the instant case (Civil Case No. 3075), identity of parties. The determination of whether there is identity of parties rests on the commonality of the parties' interest, regardless of whether they are indispensable parties or not.[42] On February 12, 1990, the RTC of Pagadian City, Branch 19, rendered a decision[43] in an action for reconveyance entitled *"Saldua v. Heirs of Felicisimo Gabule."* Plaintiff therein, Saldua, was respondent's successor-in-interest, while petitioners were the defendants. In fact, respondent testified in the said case in favor of Saldua.

The principle of *res judicata* does not require absolute identity of parties. It requires, at the very least, substantial identity of parties. There is substantial identity of parties when there exists 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."[44] Parties that represent the same interests in

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[39] *Rollo,* p. 107.

[40] 709 Phil. 236 (2013).

[41] Id. at 255.

[42] *Spouses Santos v. Heirs of Lustre,* 583 Phil. 118, 129 (2008).

[43] *Rollo,* pp. 103-108.

[44] *Taar v. Lawan,* 820 Phil. 26, 49-50 (2017).

two petitions are, thus, considered substantial identity of parties for purposes of *res judicata.* **Definitely, one test to determine substantial identity of interest would be to see whether the success or failure of one party materially affects the other.**[45] As applied herein, community of interest clearly exists among Saldua, petitioners and the respondent. To render a favorable decision would, in effect, indirectly attack the trial court's declaration, which had attained finality, that Saldua had already transferred and conveyed ownership over Lot 2857, and that he no longer holds any legal right on the same.[46]

Second, it is undisputed that the parcel of land, covered by OCT 1817 registered in the name of Gabule, was the subject matter in the two cases. In the first case, Saldua was claiming ownership over the parcel of land covered by the said title, while in the second, respondent was claiming ownership over a portion thereof.

Third, the causes of action in both cases are undoubtedly identical. It has always been stressed that the doctrine of *res judicata* does not require absolute identity. Here, however, both cases sought the reconveyance of the subject property.

The Court, in *Heirs of Arania v. Intestate Estate of Sangalang*,[47] reiterated 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

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[45] *Bonayon v. Villegas*, G.R. No. 226195, November 7, 2016 (Notice); *Pryce Corporation v. China Banking Corporation*, 727 Phil. 1, 12 (2014); emphasis supplied.

[46] *Rollo*, p. 107.

[47] *Heirs of Arania v. Intestate Estate of Sangalang*, 822 Phil. 643 (2017).

to the subsequent action.[48] In the instant case, there is more reason that *res judicata* applies because there is, in fact, absolute identity of causes of action.

Fraud was not substantially proven

Respondent insists that Gabule acted fraudulently in securing title over the subject area. He avers that, among others, Gabule's testimony and the Deed of Sale executed in his favor showed that the latter's property only measured 150 sq. m., more or less. On the other hand, Gabule's OCT stated that the parcel of land measured 337 sq. m. Respondent, thus, concludes that Gabule committed fraud in his application for a Certificate of Title over the subject property.

It is settled that fraud is never presumed.[49] The imputation of fraud in a civil case requires the presentation of clear and convincing evidence. Mere allegations will not suffice to sustain the existence of fraud. The burden of evidence rests on the part of the plaintiff or the party alleging fraud. The quantum of evidence is such that fraud must be clearly and convincingly shown.[50]

In addressing the 337-sq. m. land in Gabule's OCT, petitioners explained that:

> Here, the deed of sale executed by Felicisimo Gabule and Aenlle states that the former acquired an area of 150 square meters, more or less, from the latter. The remaining portion of the said property titled in the name of Felicisimo Gabule actually came from the portion of one Telesporo Pulido, who was the last known person who had an interest over the remaining portion of Lot No. 2857-B. Pulido, according to the then official of the Bureau of Lands, already abandoned his claim over the said property and Felicisimo Gabule was advised

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[48] Id. at 665-666.

[49] *Philippine National Bank v. Bacani*, G.R. No. 194983, June 20, 2018, 867 SCRA 104, 122.

[50] *Tankeh v. Development Bank of the Phils.*, 720 Phil. 641, 676 (2013).

by the same officials to include the portion claimed by Pulido in his application for titling and which he did.[51]

In this case, respondent is seeking reconveyance of Lot No. 2857-B-1 which measures 67 sq. m., and not the whole 337 sq. m., which he claimed to have been fraudulently included in the late Gabule's OCT. Respondent, however, failed to discharge the burden of proof. Other than a mere claim, respondent did not present any other proof that fraud attended Gabule's application of title over the subject property. On the other hand, petitioners averred that as per testimony of one Caridad Monte *(Monte),* the custodian and person-in-charge of the cadastral case pertaining to Lot Nos. 2856 and 2857, respondent never filed any claim on Lot No. 2857 since he was only claiming the adjacent lot, Lot. No. 2856. Langga and Gabule were the only two (2) claimants of Lot No. 2857.[52] Monte further testified that Lot No. 2857 owned and titled in the name of Gabule is separate and distinct from Lot No. 2856 owned by respondent.[53]

Interestingly, respondent did not refute the abovementioned averments by the petitioners, but merely insisted that Gabule committed fraud and misrepresentation in including his parcel of land, about 67 sq. m., in the latter's application for a title. If there is anyone who should be seeking reconveyance of a land alleged to have been fraudulently titled, it would be the last known person who had real interest thereon.

Consequently, the Court is not convinced that fraud existed because respondent had the opportunity to file a claim over the subject property, but did not. Moreover, records failed to show actual encroachment over respondent's alleged 67-sq. m. land. The Survey Report[54] of the geodetic engineer which respondent, and the CA, relied upon did not categorically state that Gabule encroached on a portion of respondent's land. In

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

[52] Id. at 359.

[53] Id.

[54] Id. at 160-163.

fact, the report clearly and distinctly established that the subject area of 67 sq. m., in its entirety, is inside the title of Gabule.[55] Nothing was mentioned that the said area was included in respondent's title which covered Lot No. 2856. Thus, respondent's evidence fell short in establishing that Gabule acted fraudulently in obtaining title over the subject property.

Respondent has no cause of action

Because of the fraud and misrepresentation allegedly committed by Gabule, the CA was of the view that a constructive trust was created between him and the respondent. It ruled that:

> Patently, Lot No. 2857-B-1 was erroneously included in appellees' title. By such erroneous inclusion, appellees are deemed to hold the title of the property in trust and for the benefit of appellant. Thus, a constructive trust was created between the parties.[56]

The CA, thus, declared that reconveyance in favor of the respondent was proper.

In *Campos v. Ortega, Sr.*,[57] the Court explained what constitutes constructive trust, as follows:

> Under the principle of constructive trust, registration of property by one person in his name, whether by mistake or fraud, the real owner being another person, impresses upon the title so acquired the character of a constructive trust for the real owner, which would justify an action for reconveyance. In the action for reconveyance, the decree of registration is respected as incontrovertible but what is sought instead is the transfer of the property wrongfully or erroneously registered in another's name to its rightful owner or to one with a better right. If the registration of the land is fraudulent, the person in whose name the land is registered holds it as a mere trustee, and **the real owner is entitled to file an action for reconveyance of the property.**[58] (emphasis supplied)

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[55] Id. at 162.

[56] Id. at 68.

[57] 734 Phil. 585 (2014).

[58] Id. at 602-603.

As previously explained, respondent's allegation of fraud was unsubstantiated. Therefore, the Court sees no reason to apply the rules on constructive trust.

However, even assuming that there was indeed fraud resulting in the creation of a constructive trust, respondent's action for reconveyance should be dismissed for lack of cause of action. Respondent did not appear to be the real or lawful owner of the subject property.

Respondent, just like Saldua in the first action for reconveyance, no longer has any right or interest over the property from the moment respondent sold ½ of his property to Saldua. Saldua in turn sold ½ of his land to Langga, ¼ to a certain Alfredo Balugo which was ultimately bought by one Telesporo Pulido, and the remaining ¼ was given by Saldua to his brother-in-law Hermogenes Daniel.[59] Hermogenes Daniel then transferred said property to Rev. Aenlle from whom Gabule later purchased the same.[60]

Clearly, respondent holds no title whatsoever over Lot No. 2857-B covered by OCT 1817 registered in Gabule's name. Neither did respondent's OCT No. 1,252 covering Lot No. 2856 show that the 67-sq. m. portion marked as 2857-B-1 was within his title.

In sum, from the time respondent sold, by barter, half of his entire property to Saldua, which was later described as Lot 2857, while the other half left with respondent was described as Lot 2856, the latter had no more right or interest over the same. One having no material interest cannot invoke the jurisdiction of the court as the plaintiff in an action. When the plaintiff is not the real party in interest, the case is dismissible on the ground of lack of cause of action.[61] It baffles the Court why, even as the petitioners have raised such issue in their

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[59] *Rollo*, p. 107.

[60] Id. at 111.

[61] *Ang v. Pacunio*, 763 Phil. 542, 547-548 (2015).

Answer[62] before the trial court, the RTC never addressed the same.

It is settled that in an action for reconveyance, the free patent and the certificate of title are respected as incontrovertible. What is sought instead is the transfer of the title to the property, which has been wrongfully or erroneously registered in the defendant's name. All that is needed to be alleged in the complaint are two (2) crucial facts, namely, (1) that the plaintiff was the owner of the land, and (2) that the defendant had illegally dispossessed him of the same. Therefore, the claimant/complainant has the burden of proving ownership over the registered land.[63] Respondent, however, failed to discharge such burden.

To conclude, respondent's complaint should have been dismissed not only because it had already been barred by *res judicata,* but also because respondent had no cause of action to file a case for reconveyance against petitioners.

As a final note, the Court reiterates that parties who have the burden of proof must produce such quantum of evidence, with plaintiffs having to rely on the strength of their own evidence, not on the weakness of the defendant's.[64] For an action for reconveyance based on fraud to prosper, the party seeking reconveyance must prove by clear and convincing evidence his/her title to the property and the fact of fraud.[65]

WHEREFORE, the petition is **GRANTED.** The Decision dated January 21, 2013 and Resolution dated March 5, 2014 of the Court of Appeals in CA-G.R. CV No. 01200-MIN are **REVERSED** and **SET ASIDE.** The Order dated March 5, 2007 of the Regional Trial Court of Pagadian City, Branch 22 is **REINSTATED** insofar as it declared that respondent Felipe

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[62] *Rollo,* pp. 119-121.

[63] *Spouses Yabut v. Alcantara,* 806 Phil. 745, 760 (2017).

[64] *Ibot v. Heirs of Tayco,* 757 Phil. 441, 449 (2015).

[65] *Heirs of Spouses Tanyag v. Gabriel,* 685 Phil. 517, 532 (2012).

Jumuad had no cause of action and is not entitled to a reconveyance. Further, respondent's action for reconveyance against petitioners Heirs of Felicisimo Gabule is already barred by *res judicata*.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 213960. October 7, 2020]

REPUBLIC OF THE PHILIPPINES represented by the PHILIPPINE RECLAMATION AUTHORITY (PRA), *Petitioner, v.* **RIA S. RUBIN,** *Respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; INTERVENTION; REQUISITES THEREOF.— Intervention is a remedy by which a third party, not originally impleaded in the proceedings, becomes a litigant therein to enable him or her to protect or preserve a right or interest which may be affected by such proceedings. It is, however, settled that intervention is not a matter of right, but is instead addressed to the sound discretion of the courts and can be secured only in accordance with the terms of the applicable statute or rule. . . .

What qualifies a person to intervene is his or her possession of a legal interest in the matter in litigation or in the success of either of the parties, or an interest against both; or when he or she is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or an officer thereof. As regards legal interest as qualifying factor, the Court has ruled that such interest must be of a direct and immediate character so that the intervenor will either gain or lose by the direct legal operation of the judgment. The interest must be actual and material, a concern which is more than mere curiosity, or academic or sentimental desire; it must not be indirect and contingent, indirect and remote, conjectural, consequential or collateral. As stated, however, notwithstanding the presence of a legal interest, permission to intervene is subject to the sound discretion of the court, the exercise of which is limited by considering whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties and whether or not the intervenor's rights may be fully protected in a separate proceeding.

In sum, to allow intervention, (a) it must be shown that the movant has legal interest in the matter in litigation, or is otherwise

qualified; and (b) consideration must be given as to whether the adjudication of the rights of the original parties may be delayed or prejudiced, or whether the intervenor's rights may be protected in a separate proceeding or not. Both requirements must concur, as the first is not more important than the second.

2. ID.; ID.; ID.; EVEN IF THE MOVANT HAS LEGAL INTEREST IN THE MATTER IN LITIGATION, A MOTION FOR INTERVENTION MUST BE DENIED IF SUCH INTEREST MAY BE AMPLY PROTECTED IN A SEPARATE PROCEEDING.— The first element is present here. Petitioner definitely has a legal interest in the subject matter of Civil Case No. LP-11-0026 *(for accion reinvindicatoria)* over which it asserts its claim of ownership and possession in conflict with or adverse to that of respondent.

. . .

As for the second element - - whether petitioner's right may be protected in a separate proceeding, the reversion case necessarily comes into play. In that case, petitioner seeks to annul respondent's titles and to have subject lots reverted to the State. As it was, Branch 198 had already resolved the case in favor of petitioner by Decision dated November 27, 2014. Although the decision may not have attained finality yet, there is no denying that petitioner's asserted right or interest in the lots has so far been more than amply protected. In fact, even Branch 255 itself has recognized, in no uncertain terms, the existence and legal consequence of that Decision on the pending *accion reinvindicatoria* case before it. It is precisely for this reason that Branch 255 promptly ordered the suspension of the proceedings before it pending finality of the aforesaid Decision.

. . .

Verily, therefore, both the trial court and the Court of Appeals correctly denied petitioner's omnibus motion to intervene and admit answer-in-intervention.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
The S-Firm Law Offices for respondent.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This Petition for Review on Certiorari assails the following issuances of the Court of Appeals in CA-G.R. SP No. 128537 entitled "*Republic of the Philippines, represented by the Philippine Reclamation Authority v. Honorable Judge Emily R. Aliño-Geluz, Presiding Judge, Regional Trial Court, Branch 255, Las Piñas City and Ria S. Rubin:*"

1) Decision[1] dated January 24, 2014, affirming the denial of petitioner's Omnibus Motion: (i) For Intervention; and (ii) to Admit Attached Answer-in-Intervention[2] dated July 9, 2012 in Civil Case No. LP-11-0036; and

2) Resolution[3] dated August 26, 2014, denying petitioner's motion for reconsideration.

Antecedents

On February 4, 1977, President Ferdinand E. Marcos issued Presidential Decree No. 1085[4] (PD 1085), Series of 1977, decreeing among others, that the "*land reclaimed in the foreshore and offshore areas of Manila Bay*" is "*hereby transferred,*

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[1] Penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Romeo F. Barza and Ramon A. Cruz, all members of the Sixth Division, *rollo*, pp. 35-42.

[2] *Id*. at 118-123.

[3] *Id*. at 11.

[4] "CONVEYING THE LAND RECLAIMED IN THE FORESHORE AND OFFSHORE OF THE MANILA BAY (THE MANILA-CAVITE COASTAL ROAD PROJECT) AS PROPERTY OF THE PUBLIC ESTATES AUTHORITY AS WELL AS RIGHTS AND INTERESTS WITH ASSUMPTIONS OF OBLIGATIONS IN THE RECLAMATION CONTRACT COVERING AREAS OF THE MANILA BAY BETWEEN THE REPUBLIC OF THE PHILIPPINES AND THE CONSTRUCTION AND DEVELOPMENT CORPORATION OF THE PHILIPPINES."

conveyed and assigned to the ownership and administration of the Public Estates Authority (now petitioner Philippine Reclamation Authority)." PD 1085 further directed that a "*[s]pecial land patent/patents shall be issued by the Secretary of Natural Resources in favor of the Public Estates Authority*."[5]

On December 8, 1988, petitioner Philippine Reclamation Authority (PRA) submitted to the Department of Environment and Natural Resources-National Capital Region (DENR-NCR) its Survey Plan SWO-13-000623 for the purpose of securing a Special Land Patent on a reclaimed land identified as Lot Nos. 1 and 2, located along the Manila Cavite Coastal Road, Las Piñas City,[6] with a total area of 45,440 square meters.

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[5] "The land reclaimed in the foreshore and offshore areas of Manila Bay pursuant to the contract for the reclamation and construction of the Manila-Cavite Coastal Road Project between the Republic of the Philippines and the Construction and Development Corporation of the Philippines dated November 20, 1973 and/or any other contract or reclamation covering the same area is hereby transferred, conveyed and assigned to the ownership and administration of the Public Estates Authority established pursuant to P.D. No. 1084, provided, however, that, the rights and interest of the Construction and Development Corporation of the Philippines pursuant to the aforesaid contract shall be recognized and respected.

Henceforth, the Public Estates Authority shall exercise the rights and assume the obligations of the Republic of the Philippines (Department of Public Highways) arising from, or incident to, the aforesaid contract between the Republic of the Philippines and the Construction and Development Corporation of the Philippines.

In consideration of the foregoing transfer and assignment, the Public Estates Authority shall issue in favor of the Republic of the Philippines the corresponding shares of stocks in said entity with an issued value of _____. Said shares of stock shall be deemed fully paid and non-assessable.

The Secretary of Public Highways and the General Manager of the Public Estates Authority shall execute such contracts or agreements, including appropriate agreements with the Construction and Development Corporation of the Philippines, as may be necessary to implement the above.

Special land patent/patents shall be issued by the Secretary of Natural Resources in favor of the Public Estates Authority without prejudice to the subsequent transfer to the contractor or his assignees of such portion or portions of the land reclaimed or to be reclaimed as provided for in the abovementioned contract. On the basis of such patents, the Land Registration Commission shall issue the corresponding certificate of title."

[6] *Rollo*, p. 12.

Pending issuance of a Special Land Patent in its favor, petitioner, on September 8, 1993, entered into a Memorandum of Agreement with Manila Electric Company (MERALCO). There, petitioner granted MERALCO permission to construct and maintain a substation on a 10,000 square meter portion of the lots.[7]

By Letter dated January 15, 2001, MERALCO informed petitioner that DENR-NCR had lost Survey Plan SWO-13-000623 and that another survey plan identified as Survey Plan SWO-00-001324, covering Lot Nos. 32153-B and 32153-C, was approved on May 15, 1996. In turn, under Letter dated February 12, 2001, petitioner inquired from DENR-NCR why Survey Plan SWO-00-001324 was approved without securing a clearance from PRA considering that the lots are actually part of the reclaimed land. DENR-NCR did not reply.[8]

Per its own investigation, petitioner discovered that on May 23, 1996, a certain Espinili Laderas filed a Miscellaneous Sales Application (MSA) No. 0076-01-28 over Lot 32153-B (918 square meters) under Survey Plan SWO-00-001324 located on E. Aldana, Las Piñas City. The DENR-NCR approved the application and awarded Lot 32153-B to Espinili Laderas *via* Miscellaneous Sales Patent No. MP-007601-00-5854 dated July 26, 1999.[9]

Petitioner also discovered that a certain Edna Laborte filed Miscellaneous Sales Application No. 0076-01-28 over Lot 32153-C (899 square meters). The lot is likewise located in Las Piñas City and included in Survey Plan SWO-00-001324. The DENR-NCR, too, approved the application and awarded Lot 32153-C to Edna Laborte through Miscellaneous Sales Patent No. MP-007601-99-5855.[10]

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[7] *Id*.

[8] *Id*. at 12-13.

[9] *Id*. at 13.

[10] *Id*.

In 2005, the Land Registration Authority (LRA) informed DENR-NCR that a portion of Lot 32153-B overlapped with three (3) other lots: Psu-109396 Amd., Psu-167025 Amd., and Psu-982 Amd.; and a portion of Lot 32153-C. Per subsequent verification survey, Lot 32153-B and Lot 32153-C to Lot 12 and Lot 13, were renumbered.[11]

As a result, the DENR-NCR, through Order dated June 21, 2007, cancelled Miscellaneous Sales Patent No. MP-007601-99-5854 in Espinili Laderas' name, and issued in its stead, Miscellaneous Sales Patent No. MP-007601-07-9211 bearing a statement that Lot 32153-B had been renumbered as Lot 12 and its area had been reduced from 918 square meters to 560 square meters.[12]

By separate Order dated June 21, 2007, Miscellaneous Sales Patent No. MP-007601-99-5855 in Edna Laborte's name was also cancelled, and in its place, Miscellaneous Sales Patent No. MP-007601-07-9212 was issued. The newly-issued patent showed that Lot 32153-C was renumbered to Lot 13, and its area, reduced from 899 square meters to 608 square meters.[13]

On September 13, 2007, the Register of Deeds of Las Piñas City registered both patents and issued OCT No. O-14 covering Lot 12 in the name of Espinili Laderas, and OCT No. O-15 covering Lot 13, in the name of Edna Laborte.[14]

On even date, Espinili Laderas sold Lot 12 to respondent Ria S. Rubin through a Deed of Absolute Sale for ₱150,000.00. On September 26, 2007, the Registry of Deeds of Las Piñas City cancelled OCT No. O-14 and issued TCT No. T-107910 in respondent's name.[15]

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[11] *Id.* at 14.

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *Id.* at 15.

On respondent's request, the Registry of Deeds subdivided Lot 12 into two (2). Consequently, TCT No. T-107910 was cancelled and TCT No. T-110051 (Lot 12-A, 290 square meters) and TCT No. T-110051 (Lot 12-B, 270 square meters), issued.[16]

Meanwhile, Edna Laborte, too, sold Lot 13 through a Deed of Absolute Sale dated September 2007 to respondent for ₱150,000.00. OCT No. O-15 was cancelled and TCT No. T-107914 was issued in respondent's name.[17]

Respondent, thereafter, filed before the Regional Trial Court (RTC) – Las Piñas City an Amended Complaint dated June 21, 2011 against MERALCO, for *accion reinvindicatoria*. It was docketed Civil Case No. LP-11-0026. Respondent prayed that MERALCO immediately vacate and surrender the lots to her.[18] The case was raffled to Branch 255.

On May 31, 2012, petitioner, for its part, filed with the same court a Complaint dated March 9, 2012 entitled "*Republic of the Philippines v. Ria S. Rubin, et al.,*" for cancellation of the miscellaneous sales patents, original certificates of title, and transfer certificates of title, plus, reversion. It was docketed LRC Case No. 12-0057. The complaint also sought to enjoin respondent, her agents, assigns, and successors-in-interest from exercising acts of possession or ownership over the lots.[19] It was raffled to Branch 198.

Relevant Proceedings before Branch 255

In its Omnibus Motion: (i) For Intervention; and (ii) to Admit Attached Answer-in-Intervention[20] dated July 9, 2012, petitioner, represented by the Office of the Solicitor General (OSG),[21]

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[16] *Id*.

[17] *Id*.

[18] *Id*. at 16.

[19] *Id*.

[20] *Id*. at 118-124.

[21] Through Solicitor General Francis Jardeleza, Assistant Solicitor General Roman Del Rosario, State Solicitor Mirasol Dychingco, State Solicitor Melanie

asserted that it is the absolute owner of the lots pursuant to PD Nos. 1084 and 1085. Since it has actual, substantial, material, direct, and immediate interest in subject lots, it should be allowed to intervene.

In her Opposition[22] dated August 13, 2012, respondent riposted that petitioner did not present any direct evidence proving its legal interest in, let alone, ownership of, the disputed lots. Petitioner has no standing to intervene in this case as it can ventilate its alleged claim of ownership elsewhere. The present case is not the proper forum where petitioner can assert its claim. She holds valid titles and the same cannot be collaterally attacked through a mere intervention. Petitioner should initiate a separate proceeding for this purpose. By seeking to intervene in the case, petitioner is engaging in forum shopping.

In its Comment[23] dated August 30, 2012, MERALCO argued that its right to possess the lots emanated from the lease contract it had with petitioner. When petitioner executed the lease contract, it did so in the exercise of its ownership right conferred by PD Nos. 1084 and 1085. Consequently, when respondent filed the complaint for *accion reinvindicatoria*, she had already violated petitioner's ownership rights. Petitioner's right as a lessor can only be fully protected if it is allowed to intervene.

The Ruling of Branch 255

By its first Order[24] dated September 11, 2012, Branch 255 denied petitioner's omnibus motion to intervene and admit answer-in-intervention. The court ruled that petitioner had no authority to pre-empt another branch of the same court, that is, Branch 198, of the latter's power to hear and adjudicate the claims that were already pending before it. Petitioner's

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Quimbo, Associate Solicitor Jose Covarrubias III, and Associate Solicitor Rowena Mutia.

[22] *Rollo*, pp. 127-130.

[23] *Id*. at 131-133.

[24] *Id*. at 149-151.

intervention in this case would amount to a redundancy of its cause of action for nullification of respondent's title over the lots in question.

Petitioner's motion for reconsideration was denied by the trial court through its second Order[25] dated November 22, 2012.

Proceedings Before the Court of Appeals

Through a special civil action for certiorari, petitioner faulted the trial court with grave abuse of discretion for issuing its twin Orders dated September 11, 2012 and November 22, 2012. It underscored that in respondent's complaint below, she herself claimed to be the absolute owner of subject lots by virtue of TCT Nos. T-107914 and T-110052. It is this claim of ownership which she invoked to oust MERALCO from the lots. Since petitioner is also claiming ownership of these lots, it has the right to intervene in the case to defend MERALCO's right to possess these lots by virtue of the lease agreement between MERALCO and itself. Even though it had filed a reversion case (LRC Case No. 12-0057) against respondent involving the same lots, its interest would still be affected if an adverse decision is rendered in the *accion reinvindicatoria* case. It would certainly amount to an invasion of its ownership rights. Besides, an action for reversion has a different cause of action from *accion reinvindicatoria*.[26]

On the other hand, respondent maintained that petitioner lacked legal interest in the *accion reinvindicatoria case*. The cause of action here is for recovery of ownership and possession. Since petitioner is neither an owner nor in possession of the lots, it has no legal interest to speak of. If allowed to intervene, petitioner would be committing forum shopping since the reversion case it had filed already attacks the validity of her twin titles.[27]

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[25] *Id*. at 151-152.

[26] *Id*. at 149-164.

[27] *Id*. at 170-175.

The Ruling of the Court of Appeals

By its assailed Decision[28] dated January 24, 2014, the Court of Appeals affirmed. It ruled that petitioner has not shown such kind of legal interest that would be directly affected by whatever judgment may be rendered in the *accion reinvindicatoria* case. Petitioner has not been granted a special land patent over subject lots, thus, its interest is at best inchoate. Further, petitioner would be guilty of forum shopping if it is allowed to intervene in the case below. The Court of Appeals further explained:

> Noteworthy is the fact that in the case pending with RTC, Branch 198, one of the reliefs sought by petitioner was to enjoin private respondent from exercising acts of possession or ownership over the subject lots. Since petitioner recognized the jurisdiction of RTC, Branch 198 to protect its interest in the subject reclaimed lands, it should have desisted from pursuing a similar remedy or relief before RTC, Branch 255 inasmuch as the decision issued by the latter Branch would have the effect of pre-empting the authority of RTC, Branch 198, to act and decide upon the cancellation of patents and land titles of private respondent in LRC Case No. 12-0057.[29]

Petitioner's motion for reconsideration was denied under Resolution[30] dated August 26, 2014.

The Present Petition

Petitioner now seeks affirmative relief from the Court *via* Rule 45 of the Rules of Court. It reiterates its arguments below in support of its present petition.[31]

On the other hand, respondent posits that petitioner has no legal interest in the case and to allow petitioner to intervene

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[28] *Id*. at 35-42.

[29] *Id*. at 41.

[30] *Id*. at 11.

[31] Represented by the OSG, through Solicitor General Florin T. Hilbay, Assistant Solicitor General Eric Remegio O. Panga and Associate Solicitor Ma. Felina C. B. Yu and Associate Solicitor Rowena F. Mutia, *id*. at 9-25.

would amount to a collateral attack on her titles. Also, Branch 255, through Order dated October 1, 2015, had *motu proprio* suspended its proceedings while awaiting the final and conclusive adjudication of the reversion case pending before Branch 198,[32] thus:

x x x x x x x x x

The rationale of the Supreme Court in the aforementioned cases could be applied by analogy in the instant case **where plaintiff's prayer for the recovery of possession of the subject properties is anchored on the existence of TCT Nos. T-107914 and T-110052, which are both registered in her name, but have both already been declared null and void in the Decision dated 27 November 2014 rendered in Civil Case No. LP-12-0081 entitled "Republic of the Philippines represented by the Office of the Solicitor General and the Philippine Reclamation Authority vs. vs. Ria S. Rubin, Espenili M. Laderas, and Edna Laborte" by Branch 198 of this Court, although the same had not yet attained finality. This Court deemed it more practical and sensible to await the finality of the aforementioned decision for if the Court upholds and gives weight to plaintiff's titles and later on the decision of Branch 198 declaring the same titles as null and void is affirmed by a higher court, then there would be the existence of conflicting decisions not to mention the possible complications that would arise in the execution of the said decisions.** At this point, the Court would like to stress that, as previously pointed out in the assailed order, the decision in the instant case would affect not only one individual but all the existing consumers of the defendant. On the other hand, if the said decision—that rendered by Branch 198—is reversed by a higher court, then this Court would decide the instant case in accordance with the evidence presented before it. In sum, the finality of the decision rendered by Branch 198 is determinative of the issue raised in the instant case for the plaintiff's claim of her right to possess the subject properties is anchored on the assailed titles. Thus, faced with these possibilities, the Court is justified in issuing the assailed order.

As to the plaintiff's argument that this Court committed an error in considering the decision rendered in Branch 198 without the same being formally offered by the defendant, suffice it to say that plaintiff

[32] *Id*. at 216-219.

has already made a judicial admission of the existence thereof in her Opposition dated December 23, 2014.[33] (Emphasis supplied)

x x x x x x x x x

Petitioner replies that by virtue of PD No. 1085, it has been vested exclusive ownership and administration of all reclaimed lands that have been transferred, conveyed, and assigned to it. It had taken DENR's place as the agency charged with leasing or selling reclaimed lands of the public domain.[34]

ISSUE

Is petitioner's omnibus motion to intervene and admit answer-in-intervention in Civil Case No. LP-11-0026 proper?

Ruling

Intervention is a remedy by which a third party, not originally impleaded in the proceedings, becomes a litigant therein to enable him or her to protect or preserve a right or interest which may be affected by such proceedings. It is, however, settled that intervention is not a matter of right, but is instead addressed to the sound discretion of the courts and can be secured only in accordance with the terms of the applicable statute or rule.[35] Rule 19 of the Rules of Court reads:

Sec. 1. Who may intervene. - A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding.

Sec. 2. Time to intervene. - The motion to intervene may be filed at any time before rendition of judgment by the trial court. A copy of

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[33] *Id*. at 218.

[34] *Id*. at 238-242.

[35] *Office of the Ombudsman v. Bongais*, G.R. No. 226405, July 23, 2018.

the pleading-in-intervention shall be attached to the motion and served on the original parties.

What qualifies a person to intervene is his or her possession of a legal interest in the matter in litigation or in the success of either of the parties, or an interest against both; or when he or she is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or an officer thereof. As regards legal interest as qualifying factor, the Court has ruled that such interest must be of a direct and immediate character so that the intervenor will either gain or lose by the direct legal operation of the judgment. The interest must be actual and material, a concern which is more than mere curiosity, or academic or sentimental desire; it must not be indirect and contingent, indirect and remote, conjectural, consequential or collateral. As stated, however, notwithstanding the presence of a legal interest, permission to intervene is subject to the sound discretion of the court, the exercise of which is limited by considering whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties and whether or not the intervenor's rights may be fully protected in a separate proceeding.[36]

In sum, to allow intervention, (a) it must be shown that the movant has legal interest in the matter in litigation, or is otherwise qualified; and (b) consideration must be given as to whether the adjudication of the rights of the original parties may be delayed or prejudiced, or whether the intervenor's rights may be protected in a separate proceeding or not. Both requirements must concur, as the first is not more important than the second.[37]

The first element is present here. Petitioner definitely has a legal interest in the subject matter of Civil Case No. LP-11-0026 *(for accion reinvindicatoria)* over which it asserts its claim of ownership and possession in conflict with or adverse to that

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[36] *Executive Secretary v. Northeast Freight Forwarders, Inc.*, 600 Phil. 789 (2009).

[37] Supra.

of respondent. Although in paper, the case is directed against MERALCO, it is in reality a suit against petitioner being itself the lessor which authorized MERALCO's use and occupancy of the disputed lots. In reality, too, it is an attack on petitioner's asserted ownership and possession thereof. To be sure, whatever decision is rendered in that case would directly affect such asserted right and interest of petitioner.

As for the second element - - whether petitioner's right may be protected in a separate proceeding, the reversion case necessarily comes into play. In that case, petitioner seeks to annul respondent's titles and to have subject lots reverted to the State. As it was, Branch 198 had already resolved the case in favor of petitioner by Decision dated November 27, 2014. Although the decision may not have attained finality yet, there is no denying that petitioner's asserted right or interest in the lots has so far been more than amply protected. In fact, even Branch 255 itself has recognized, in no uncertain terms, the existence and legal consequence of that Decision on the pending *accion reinvindicatoria* case before it. It is precisely for this reason that Branch 255 promptly ordered the suspension of the proceedings before it pending finality of the aforesaid Decision. We quote anew the Order dated October 1, 2015, *viz.*:

x x x x x x x x x

The rationale of the Supreme Court in the aforementioned cases could be applied by analogy in the instant case **where plaintiff's prayer for the recovery of possession of the subject properties is anchored on the existence of TCT Nos. T-107914 and T-110052, which are both registered in her name, but have both already been declared null and void in the Decision dated 27 November 2014 rendered in Civil Case No. LP-12-0081 entitled "Republic of the Philippines represented by the Office of the Solicitor General and the Philippine Reclamation Authority vs. Ria S. Rubin, Espenili M. Laderas, and Edna Laborte" by Branch 198 of this Court, although the same had not yet attained finality. This Court deemed it more practical and sensible to await the finality of the aforementioned decision for if the Court upholds and gives weight to plaintiff's titles and later on the decision of Branch 198 declaring**

the same titles as null and void is affirmed by a higher court, then there would be the existence of conflicting decisions not to mention the possible complications that would arise in the execution of the said decisions. At this point, the Court would like to stress that, as previously pointed out in the assailed order, the decision in the instant case would affect not only one individual but all the existing consumers of the defendant. On the other hand, if the said decision – that rendered by Branch 198 – is reversed by a higher court, then this Court would decide the instant case in accordance with the evidence presented before it. In sum, the finality of the decision rendered by Branch 198 is determinative of the issue raised in the instant case for the plaintiff's claim of her right to possess the subject properties is anchored on the assailed titles. Thus, faced with these possibilities, the Court is justified in issuing the assailed order.

As to the plaintiff's argument that this Court committed an error in considering the decision rendered in Branch 198 without the same being formally offered by the defendant, suffice it to say that plaintiff has already made a judicial admission of the existence thereof in her Opposition dated December 23, 2014.[38] (Emphasis supplied)

x x x x x x x x x

Indeed, when Branch 255 deferred to Branch 198 and declared that it would await the final resolution of the reversion case, it recognized that the parties' dispute will be effectively and fully settled in the reversion case. This is evident in its disquisition that "*[t]his Court deemed it more practical and sensible to await the finality of the aforementioned decision for if the Court upholds and gives weight to plaintiff's titles and later on the decision of Branch 198 declaring the same titles as null and void is affirmed by a higher court, then there would be the existence of conflicting decisions not to mention the possible complications that would arise in the execution of the said decisions*." So must it be.

Verily, therefore, both the trial court and the Court of Appeals correctly denied petitioner's omnibus motion to intervene and admit answer-in-intervention.

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[38] *Rollo*, p. 218.

ACCORDINGLY, the petition is **DENIED**. The Decision dated January 24, 2014 and Resolution dated August 26, 2014 of the Court of Appeals in CA-G.R. SP No. 128537 are **AFFIRMED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 214714. October 7, 2020]

PHILCONTRUST RESOURCES, INC. (Formerly known as INTERASIA LAND DEVELOPMENT CO.), *Petitioner, v.* **ATTY. REYNALDO AQUINO, in his capacity as the Register of Deeds of Tagaytay City, and MR. DANILO ORBASE, in his capacity as the Provincial Agrarian Reform Officer of Trece Martires, Cavite, JESUS D. EBDANI, ISAGANI B. SAÑARES, FELICISIMO MAYUGA, MICHAEL C. NGOTOB, REYNALDO J. RELATORRES, MAURICIO S. ZAÑARES, JONATHAN M. HOLGADO, CASIANO S. PAYAD, EFREN L. CABRERA, SEGUNDO P. BALDONANZA, CORAZON M. DIGO, BERNARDO M. MENDOZA, TAGUMPAY C. REYES, ADRIEL M. SANTIAGO, MELITONA C. PANGALANAN, EFREN T. PASCUA, MANUEL M. DE CASTRO, LUISITO D. MOZO, OLIMPIA E. ERCE, RODRIGO M. DIGO, SOFRONIO M. DIGO, EDGARDO F. PAYAD, TOMAS M. LUNA, MIGUEL B. BITUIN, CARLOS R. SANTIAGO, SR., PEDRO S. DELFINADO, FAUSTINO I. ALIMBUYONG, ERENETO D. MAGSAEL, BERNARDINO R. ANARNA, GREGORIO H. PAYAD, HONORIO M. BORBON, RICARDO A. DE GUZMAN, CLAUDIA L. VALDUEZA, CENON D. MOZO, MOISES I. DE GUZMAN, DOMINGO C. LUNA, TOMAS M. LUNA and all other persons claiming rights under them (The Beneficiaries of Certificate of Land Ownership Award Nos. 251 to 298),** *Respondents.*

SYLLABUS

1. REMEDIAL LAW; JURISDICTION; THE JURISDICTION OVER THE NATURE AND SUBJECT MATTER IS DETERMINED BY THE ALLEGATIONS IN THE PETITION AND THE CHARACTER OF THE RELIEF

SOUGHT.— [T]he jurisdiction of a tribunal over the nature and subject matter of a petition or complaint is determined by the material allegations contained therein and the character of the relief sought, regardless of whether the petitioner or complainant is entitled to said relief. Jurisdiction is conferred by the Constitution and the law, and not conveniently obtained through the consent or waiver of the parties.

2. LABOR AND SOCIAL LEGISLATION; AGRICULTURAL RELATIONS; AGRICULTURAL TENANCY; COMPREHENSIVE AGRARIAN REFORM LAW (R.A. NO. 6657); DEMARCATION OF POWERS BETWEEN THE DARAB AND THE DAR SECRETARY OVER CANCELLATION OF CERTIFICATES OF LAND OWNERSHIP AWARD (CLOA) IN THE ABSENCE OF AN AGRARIAN DISPUTE BETWEEN THE PARTIES; THE JURISDICTION OVER A PETITION FOR CANCELLATION OF REGISTERED CLOA LIES WITH THE DAR SECRETARY, TO THE EXCLUSION OF THE DARAB.— Admittedly, Sections 1.6 and 3.4, Rule II of the 2003 DARAB Rules and Section 2(d) of DAR Administrative Order No. 06-00, empower both the DARAB and the DAR Secretary to resolve petitions for cancellation of CLOAs. In fact, petitioner latches on to Section 1.6 and argues that the DARAB has jurisdiction to resolve its petition for cancellation considering that the assailed CLOAs have already been registered with the LRA.

Petitioner is mistaken.

Remarkably, in *Polo Plantation Agrarian Reform Multipurpose Cooperative (POPARMUCO) v. Inson*, this Court . . . shed light on the apparent overlap of powers and clarified that the DARAB's jurisdiction over petitions for cancellation of registered CLOAs is confined to agrarian disputes.

3. ID.; ID.; ID.; ID.; ELEMENTS OF TENANCY RELATIONSHIP.— [T]he demarcation between the power of the DARAB and the DAR Secretary to cancel CLOAs does not solely depend on the fact of registration, but more so, on the existence of a tenancy relation between the parties. Hence, for the case to fall within the DARAB's jurisdiction, the petitioner must prove the following indispensable elements of tenancy:

(i) that the parties are the landowner and the tenant or agricultural lessee;

(ii) that the subject matter of the relationship is an agricultural land;

(iii) that there is consent between the parties to the relationship;

(iv) that the purpose of the relationship is to bring about agricultural production;

(v) that there is personal cultivation on the part of the tenant or agricultural lessee; and

(vi) that the harvest is shared between the landowner and the tenant or agricultural lessee.

4. ID.; ID.; ID.; ID.; DISPUTES INVOLVING PROPERTIES EXEMPT FROM CARP COVERAGE AND NOT AGRARIAN IN NATURE ARE COGNIZABLE BY THE DAR SECRETARY; CASE AT BAR.— It is immediately apparent that the petition for cancellation hinges on the main averment that the subject properties are residential in nature, and consequently, exempt from CARP coverage. It is likewise glaring from the same petition that not once did the petitioner remotely hint at the existence of a tenurial relationship between it and the respondents.

. . .

Likewise, the evidence presented by petitioner, which consisted of Certifications from various government entities stating that its lands are residential, serve as proof of exemption from CARP coverage pursuant to DAR Administrative Order No. 4, Series of 2003, also falling within the determination of the DAR Secretary.

Moreover, it is very clear from Rule II, Section 3 of the 2003 DARAB Rules that the DARAB has no jurisdiction over matters involving the classification and identification of landholdings for coverage under the CARP; exercise of the right of retention by the landowner; and applications for exemption from coverage. Accordingly, the matters raised by the petitioner must first be resolved by the DAR Secretary pursuant to the doctrine of prior resort.

5. ID.; ID.; ID.; ID.; THE RESPECTIVE JURISDICTION OF THE DARAB AND THE DAR SECRETARY TO RESOLVE

PETITIONS FOR CANCELLATION OF CLOAs HAS REMAINED UNCHANGED.— It bears noting, however, that the jurisdiction of the DARAB and the DAR Secretary over petitions for cancellation of CLOAs under the 1994 DARAB Rules and the 2003 Rules has remained unchanged.

. . .

Mirroring its predecessor, the 2003 DARAB Rules still grants the DARAB jurisdiction to adjudicate cases "involving the correction, partition, cancellation, secondary and subsequent issuances of [CLOAs] and Emancipation Patents (EPs) which are registered with the [LRA]." The only difference between the 1994 Rules and the 2003 Rules is first, the deletion of the word "issuance" in the 2003 version, and second, the removal of the caveat in Section 1, Rule II of the 1994 Rules that states that matters involving the administrative implementation of the CARL and other agrarian laws shall be the exclusive prerogative of the DAR Secretary.

Suffice it to say, the caveat in Section I, Rule II of the 1994 Rules was not actually deleted but was incorporated in a different section. In fact, under the 2003 Rules, an entire Section (Section 3) was created, which clearly and comprehensively enumerated matters that fall outside of the DARAB's jurisdiction.

Plainly, a juxtaposition of the 1994 and 2003 DARAB Rules conspicuously shows that notwithstanding the transposition of the provisions, the respective powers of the DAR Secretary and the DARAB have fundamentally remained the same.

6. ID.; ID.; ID.; ID.; ISSUES OF LACK OF NOTICE AND NON-PAYMENT OF JUST COMPENSATION ARE COGNIZABLE BY THE DAR SECRETARY; CASE AT BAR.— This Court expresses its concern over the petitioner's allegations that it was not given a notice of the proceedings and was not paid just compensation. These are serious accusations that must be resolved with dispatch by the DAR Secretary.

. . .

Notably, in *Bagongahasa, et al. v. Romualdez*, this Court held that the issues pertaining to lack of notice and non-payment of just compensation involve the implementation of agrarian laws and are within the special competence of the DAR Secretary.

7. ID.; ID.; ID.; ID.; COMPULSORY LAND ACQUISITION; PROCEDURE THEREFOR; COMPLIANCE WITH THE PROCEDURE FOR COMPULSORY LAND ACQUISITION UNDER THE CARP IS IMPERATIVE.— Section 16 of RA No. 6657 provides the proper procedure for compulsory land acquisition. Briefly, they are as follows: (i) after identifying the land, landowners and beneficiaries, the DAR shall send a notice to acquire the land and post said notice in a conspicuous place; (ii) the landowner shall accept or reject the offer within thirty (30) days from receipt of the notice; (iii) if the landowner accepts the offer, he/she shall be paid thirty (30) days after he/she executes a deed of transfer in favor of the Government and surrenders his/her title; (iv) should the landowner reject the offer, or fail to reply, the DAR shall conduct summary administrative proceedings to determine the compensation for the land; (v) the DAR shall take immediate possession of the land and request the Register of Deeds to issue a Transfer Certificate of Title in the name of the Republic of the Philippines upon (a) its payment to the owner, or (b) upon depositing the payment with any bank in case the owner has rejected the offer or has failed to respond to the offer; (vi) any party who disagrees with the decision may file a case before a court of proper jurisdiction for a final determination of just compensation.

Compliance with the procedure set forth in Section 16 is imperative, lest there be a blatant violation of the Constitutional mandate that "private property shall not be taken for public use without just compensation."

APPEARANCES OF COUNSEL

Sycip Salazar Hernandez & Gatmaitan for petitioner.
Bureau of Agrarian Legal Assistance for respondents.

D E C I S I O N

GAERLAN, *J.*:

The effective implementation of the comprehensive agrarian reform program hinges on the stakeholders' dutiful compliance

with the Constitution, and the agrarian reform laws and regulations. The agrarian laws and regulations provide the proper procedure for compulsory land acquisition, from the beginning (identification of the land, notice to acquire, and payment of just compensation) to the end (appeals or petitions for cancellation by the aggrieved party). Conformity with the rules likewise entails recognizing the respective jurisdiction of the DARAB and the DAR Secretary to resolve petitions for cancellation of CLOAs.

This resolves the Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court filed by petitioner Philcontrust Resources, Inc. (formerly known as Inter-Asia Land Development Co.) praying for the reversal of the March 17, 2014 Decision[2] and October 8, 2014 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 117752. The CA affirmed the March 25, 2010 Decision[4] of the Department of Agrarian Reform Adjudication Board (DARAB) dismissing the Petition for Cancellation of Certificates of Land Ownership Award (CLOA) filed by petitioner.

Antecedents

Petitioner is the owner of several parcels of land located at Barangay Iruhin West, Tagaytay City, covered by Transfer Certificates of Title Nos. T-25374, T-25375, T-25379, T-25380, and T-25381 (subject lands), registered in the name of Inter-Asia Land Development Co.

Petitioner received a letter dated April 21, 2003 from the Provincial Agrarian Reform Office (PARO) of Cavite, stating

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[1] *Rollo*, pp. 73-101.

[2] Id. at 14-24; penned by Associate Justice Agnes Reyes-Carpio, with Associate Justices Noel G. Tijam and Priscilla J. Baltazar-Padilla (now a Member of this Court), concurring.

[3] Id. at 26-28.

[4] Id. at 477-488; penned by DARAB Vice Chairman Edgar A. Igano, with Chairman Nasser C. Pangandaman and Members Ambrosio B. De Luna, Jim G. Coleto, Ma. Patricia Rualo-Bello, and Arnold C. Arrieta, concurring.

that the subject lands are covered by the Comprehensive Agrarian Reform Program (CARP).[5] Accordingly, CLOA Nos. 251 to 298 were issued in favor of the farmer-beneficiaries, including herein private respondents.[6]

Thereafter, the PARO sent to the Register of Deeds of Trece Martires City a Notice dated December 11, 2003, informing it of the issuance of CLOAs in favor of respondents. Consequently, the Register of Deeds cancelled petitioner's certificates of title and, in lieu thereof, issued TCT Nos. T-50012 to T-50016 in the name of the Republic of the Philippines.[7]

Aggrieved, petitioner filed a Petition for Cancellation of CLOAs[8] before the Office of the Provincial Agrarian Reform Adjudicator of Trece Martires City. Petitioner claimed that the CLOAs were irregularly issued. It asserted that the subject lands are residential and non-agricultural in nature, and thus, beyond the coverage of the CARP.[9] Likewise, it presented certifications from the Regional Agrarian Reform Adjudicator (Regional Adjudicator), Housing and Land Use Regulatory Board (HLURB), Tagaytay City Planning Development Office, National Irrigation Administration (NIA), and Department of Agriculture, all stating that said properties are residential in nature.

On the other hand, respondents countered that the determination of exemption from the coverage of the CARP is within the exclusive jurisdiction of the Department of Agrarian Reform (DAR) Secretary. They pointed out that unless the DAR Secretary issues a certificate of exemption, the properties shall remain agricultural and, hence, subject to CARP coverage. In view of the absence of a certificate of exemption, the CLOAs

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[5] Id. at 423.

[6] Id. at 422.

[7] Id.

[8] Id. at 416-420.

[9] Id. at 423.

were validly and regularly issued in accordance with R.A. No. 6657.[10]

Ruling of the Regional Adjudicator

On May 8, 2006, the Regional Adjudicator for Region IV Conchita C. Miñas (Regional Adjudicator Miñas) rendered a Decision[11] dismissing the petition for cancellation. Regional Adjudicator Miñas held that the petition may not be given due course in the absence of an exemption clearance issued by the DAR Secretary declaring that the subject lands are indeed exempt from CARP coverage. She clarified that the petitioner's evidence which consisted of a Certification issued by her office, as well as the Certifications granted by the Municipal Agrarian Reform Officer, HLURB and the NIA stating that the subject lands are not agricultural, are not sufficient bases for the cancellation of the CLOAs. However, they may be appreciated as grounds for an application for exemption under Administrative Order No. 4, Series of 2003. Accordingly, she dismissed the petition as follows:

> WHEREFORE, premises considered, judgment is hereby rendered DISMISSING the instant case.
>
> SO ORDERED.[12]

Dissatisfied with the ruling, petitioner filed a Motion for Reconsideration, which was denied by the Regional Adjudicator's December 5, 2006 Resolution.[13]

Aggrieved, petitioner filed an appeal with the DARAB reiterating that the subject lands are non-agricultural in nature. Petitioner likewise lamented that it was not notified in the proceedings and it did not receive any just compensation for its properties.

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[10] Id. at 423-424.

[11] Id. at 422-427; rendered by Regional Adjudicator Conchita C. Miñas.

[12] Id. at 426.

[13] Id. at 442-444.

Ruling of the DARAB

On March 25, 2010, the DARAB[14] affirmed the ruling of the Regional Adjudicator. It opined that to warrant the cancellation of the subject CLOAs, there must first be a finding by the DAR Secretary that the landholding is exempt from CARP coverage, which is wanting in the instant case.[15]

Likewise, the DARAB declared that it is bereft of power to act on the matters raised by the petitioner. It cited Rule II, Section 3 of its 2003 Rules of Procedure and stated that the DAR Secretary has the exclusive jurisdiction to act on all matters involving the administrative implementation of the CARL of 1988 and other agrarian laws, as well as to resolve issues pertaining to the classification and identification of landholdings for CARP coverage, initial issuance of CLOAs, including protests or oppositions thereto, landowner's right of retention, and applications for exemption from coverage under Section 10 of R.A. No. 6657 and Department of Justice Opinion No. 44.

Finally, the DARAB ratiocinated that pursuant to the doctrine of prior resort or primary administrative jurisdiction, the petition for cancellation should be filed with the DAR Secretary.[16]

The dispositive portion of the DARAB ruling states:

> WHEREFORE, premises considered, the instant Appeal is DENIED for lack of merit and the instant petition is hereby DISMISSED for lack of jurisdiction without prejudice to the filing of appropriate action with the Office of the Secretary or his authorized representative.
>
> SO ORDERED.[17]

Petitioner filed a Motion for Reconsideration, which was denied in the DARAB Resolution dated December 13, 2010.

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[14] Id. at 477-488.

[15] Id. at 486.

[16] Id. at 485.

[17] Id. at 487.

Thereafter, petitioner filed a Petition for Review under Rule 43 of the Rules of Court with the CA.

Ruling of the CA

On March 17, 2014, the CA rendered the assailed Decision[18] affirming the DARAB's ruling. It held that the DARAB has no jurisdiction to rule on the petition for cancellation of CLOAs, considering that there was no tenancy relationship between the petitioner and the respondents. It noted the petitioner's claim that the properties are residential in nature. Likewise, it observed that the petitioner failed to allege that it shared harvests with the respondents. Moreover, the CA stressed that issues pertaining to the classification of landholdings for purposes of CARP coverage, as well as the identification of CLOA beneficiaries, are strictly within the jurisdiction of the DAR Secretary. Accordingly, it dismissed the petition for cancellation, without prejudice to its re-filing, in accordance with DAR Administrative Order No. 6, Series of 2000.

The decretal portion of the CA ruling states:

> WHEREFORE, in view of the foregoing, the Petition for Review is DENIED. The Decision, dated March 25, 2010, and Resolution, dated December 13, 2010, rendered by the Department of Agrarian Reform Adjudication Board (DARAB) in DARAB Case No. 14959-14959A45, are AFFIRMED.
>
> SO ORDERED.[19] (Citations omitted)

Petitioner filed a Motion for Reconsideration, which was denied in the CA's October 8, 2014 Resolution.[20]

Undeterred, petitioner filed the instant Petition for Review on *Certiorari*[21] under Rule 45 of the Rules of Court.

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[18] Id. at 14-24.

[19] Id. at 23.

[20] Id. at 26-28.

[21] Id. at 73-101.

Issue

The pivotal issue raised in the instant case is whether or not the CA erred in dismissing the petition for cancellation of CLOAs on the ground of the DARAB's lack of jurisdiction.

Petitioner maintains that the DARAB has jurisdiction over the petition for cancellation of CLOAs. It posits that under Section 50 of the CARP law, the power to adjudicate and implement agrarian reform matters was granted to the DAR as an entity, and not solely to the DAR Secretary or the DARAB.[22] Consequently, when it filed its petition for cancellation with the PARAD, it was invoking the DAR's jurisdiction as a whole. The DAR's rules which split the powers between the Secretary and the DARAB is an invalid amendment of the CARL. This division is bereft of any legal basis.[23] It is merely artificial and is warranted only for administrative reasons.[24]

Petitioner alternatively argues that assuming that the DAR's powers under Section 50 could be validly apportioned between the DAR Secretary and the DARAB; Rule II, Sections 1.6 and 3.4. of the 2003 DARAB Rules, unambiguously grants the DARAB the power to rule on the subject petition for cancellation.[25]

Moreover, petitioner avers that the CA erred in limiting the DARAB's jurisdiction to cancel CLOAs only in cases where the parties are in tenurial relationships.[26] It points out that Rule II, Section 1.6 of the 2003 DARAB Rules states that the Adjudicator shall have primary and exclusive jurisdiction to resolve cases involving cancellation of CLOAs which are registered with the Land Registration Authority (LRA).[27] Hence,

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[22] Id. at 89.

[23] Id. at 90.

[24] Id.

[25] Id. at 89.

[26] Id. at 83.

[27] Id. at 84.

the DARAB has the power to cancel the assailed CLOAs since they have already been referred to the LRA.[28]

Furthermore, petitioner laments that the requirement for the administrative property valuation under the Comprehensive Agrarian Reform Law (CARL) was violated. It did not receive any notice of the proceedings for the acquisition of its properties. Neither was it compensated for said properties. Petitioner surmises that the DARAB has jurisdiction to resolve such matters.[29] Should the DARAB find that there was a failure to comply with the proceedings under the CARL, then it can easily nullify the TCT-CLOAs for being void *ab initio*.[30]

On the other hand, respondents, through the Bureau of Agrarian Reform Legal Assistance Office, counter that Section 50 of R.A. No. 6657 defines the jurisdiction of the DAR to determine and adjudicate agrarian reform matters. The DAR's jurisdiction is two-fold. It exercises an executive function in the enforcement and administration of laws, and a judicial power in the determination of rights and obligations of parties.[31] One power belongs to the Secretary, while the other to the DARAB. There is no invalid division of jurisdiction.[32]

Respondents state that the DARAB aptly dismissed the petition for cancellation for lack of jurisdiction. The petitioners alleged in their petition for cancellation that the properties covered by the CLOAs are no longer agricultural in nature and have been classified by the City of Tagaytay as residential. It even presented certifications from different government agencies attesting to the non-agricultural nature of the property. Respondents claim that clearly, the allegations and the reliefs sought by the petitioners fall within the jurisdiction of the DAR in the exercise

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[28] Id. at 91.

[29] Id. at 84-85.

[30] Id. at 85.

[31] Id. at 549.

[32] Id. at 549.

of its executive powers. They are covered by DAR Administrative Order No. 06-2000, the prevailing rule at the time of the filing of the petition for cancellation.[33] In the same vein, the respondents argument regarding the administrative valuation is an attack on the acquisition proceedings which falls squarely within the jurisdiction of the DAR Secretary.[34]

Respondents further posit that the exemption from CARP coverage is not automatic. Rather, there must be a declaration from the DAR Secretary that the properties are indeed excluded from CARP coverage.[35]

Ruling of the Court

The petition is denied.

The Delineation of Powers between the DAR Secretary and the DARAB

Essentially, the jurisdiction of a tribunal over the nature and subject matter of a petition or complaint is determined by the material allegations contained therein and the character of the relief sought, regardless of whether the petitioner or complainant is entitled to said relief. Jurisdiction is conferred by the Constitution and the law, and not conveniently obtained through the consent or waiver of the parties.[36]

Significantly, Section 50 of R.A. No. 6657[37] or the CARL of 1988 grants the DAR exclusive and original jurisdiction over

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[33] Id. at 550.

[34] Id. at 550.

[35] Id. at 551.

[36] *Heirs of Julian Dela Cruz v. Heirs of Alberto Cruz*, 512 Phil. 389, 400-401 (2005).

[37] 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).

all matters involving the implementation of agrarian reform, save for those falling under the exclusive jurisdiction of the Department of Agriculture and the Department of Environment and Natural Resources.

Notably, the fundamental duties of the DAR are broadly categorized into administrative functions or the enforcement, administration, and execution of agrarian reform laws; and quasi-judicial functions or the determination of the parties' rights and obligations in agrarian reform matters.[38]

A year prior to the enactment of the CARL, Executive Order (E.O.) No. 129-A[39] was passed with the objective of strengthening and expanding the functions of the DAR to effectively implement the CARP under E.O. No. 129.[40] In line with this, the power to adjudicate agrarian reform cases was assigned to the DARAB, while jurisdiction over the implementation of agrarian reform was delegated to the DAR regional offices.[41]

One of the important matters involved in agrarian reform is the issuance of CLOAs in favor of farmer-beneficiaries. A CLOA

Prior to the passage of the CARL, Section 17 of EO No. 229, Series of 1987 states that "SECTION 17. Quasi-Judicial Powers of the DAR. — The DAR is hereby vested with quasi-judicial powers to determine and adjudicate agrarian reform matters, and shall have exclusive original jurisdiction over all matters involving implementation of agrarian reform, except those falling under the exclusive original jurisdiction of the DENR and the Department of Agriculture (DA)."

[38] *Polo Plantation Agrarian Reform Multipurpose Cooperative (POPARMUCO) v. Inson*, G.R. No. 189162, January 30, 2019, citing *Sta. Rosa Realty Development Corporation v. Amante*, 493 Phil. 570 (2005).

[39] EXECUTIVE ORDER NO. 129-A, July 29, 1987.

[40] EXECUTIVE ORDER NO. 129. Providing Mechanisms for the Implementation of the Comprehensive Agrarian Reform Program.

[41] *Union Bank of the Philippines v. Hon. Regional Agrarian Reform Officer, et al.*, 806 Phil. 548, 559-561 (2017), citing Executive Order No. 129-A, Sec. 13, and Executive Order No. 129-A, Sec. 24. *Fil-Estate Properties, Inc., et al. v. Paulino Reyes, et al.*, G.R. Nos. 152797-189315, September 18, 2019; *Recarido Gelito v. Heirs of Ciriano Tirol*, G.R. No. 196367, February 5, 2020.

is a "document evidencing ownership of the land granted or awarded to the beneficiary by DAR, and contains the restrictions and conditions provided for in R.A. No. 6657 and other applicable laws."[42]

Remarkably, the respective jurisdictions of the DARAB and the DAR Secretary to resolve petitions for cancellation of CLOAs are highlighted in the 2003 DARAB Rules of Procedure:

RULE II
Jurisdiction of the Board and its Adjudicators

SECTION 1. *Primary and Exclusive Original Jurisdiction*. — The Adjudicator shall have primary and exclusive original jurisdiction to determine and adjudicate the following cases:

x x x x

1.6 Those involving the correction, partition, cancellation, secondary and subsequent issuances of Certificates of Land Ownership Award (CLOAs) and Emancipation Patents (EPs) which are registered with the Land Registration Authority;

x x x x[43]

Meanwhile, under Rule II, Section 3 of the same Rules, the DARAB and the Adjudicator are divested of jurisdiction over matters involving the administrative implementation of the CARL and other agrarian laws. Said powers are granted unto the DAR Secretary.[44]

SECTION 3. *Agrarian Law Implementation Cases*. — **The Adjudicator or the Board shall have no jurisdiction over matters involving the administrative implementation of RA No. 6657, otherwise known as the Comprehensive Agrarian Reform Law**

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[42] *Lebrudo, et al. v. Loyola*, 660 Phil. 456, 462 (2011); *Department of Agrarian Reform, Quezon City and Pablo Mendoza v. Romeo Carriedo*, G.R. No. 176549, October 10, 2018.

[43] 2003 DARAB RULES OF PROCEDURE, Rule II, Section 1.

[44] *Polo Plantation Agrarian Reform Multipurpose Cooperative (POPARMUCO) v. Inson*, supra note 38.

(CARL) of 1988 and other agrarian laws as enunciated by pertinent rules and administrative orders, which shall be under the exclusive prerogative of and cognizable by the Office of the Secretary of the DAR in accordance with his issuances, to wit:

3.1 Classification and identification of landholdings for coverage under the agrarian reform program and the initial issuance of CLOAs and EPs, including protests or oppositions thereto and petitions for lifting of such coverage;

x x x x

3.4 Recall, or cancellation of provisional lease rentals, Certificates of Land Transfers (CLTs) and CARP Beneficiary Certificates (CBCs) in cases outside the purview of Presidential Decree (PD) No. 816, including the issuance, recall, or cancellation of EPs or CLOAs not yet registered with the Register of Deeds;

3.5 Exercise of the right of retention by the landowner;

3.6 Application for exemption from coverage under Section 10 of RA 6657;

3.7 Application for exemption pursuant to Department of Justice (DOJ) Opinion No. 44 (1990);

x x x x

3.16 Such other agrarian cases, disputes, matters or concerns referred to it by the Secretary of the DAR.[45]

Relatedly, the power of the DAR Secretary to resolve petitions for cancellation of CLOAs is likewise enshrined in Section 2 of DAR Administrative Order No. 06-00:

SEC. 2. *Cases Covered*. — These Rules shall govern cases falling within the exclusive jurisdiction of the DAR Secretary which shall include the following:

x x x x

(d) Issuance, recall or cancellation of Certificates of Land Transfer (CLTs) and CARP Beneficiary Certificates (CBCs) in cases outside

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[45] 2003 DARAB RULES OF PROCEDURE, Rule II, Section 3.

the purview of Presidential Decree (PD) No. 816, including the issuance, recall or cancellation of Emancipation Patents (EPs) or Certificates of Land Ownership Awards (CLOAs) not yet registered with the Register of Deeds;

x x x x x x x x x

Admittedly, Sections 1.6 and 3.4, Rule II of the 2003 DARAB Rules and Section 2 (d) of DAR Administrative Order No. 06-00, empower both the DARAB and the DAR Secretary to resolve petitions for cancellation of CLOAs. In fact, petitioner latches on to Section 1.6 and argues that the DARAB has jurisdiction to resolve its petition for cancellation considering that the assailed CLOAs have already been registered with the LRA.

Petitioner is mistaken.

Remarkably, in *Polo Plantation Agrarian Reform Multipurpose Cooperative (POPARMUCO) v. Inson*,[46] this Court citing *Sutton v. Lim*,[47] *Heirs of Julian Dela Cruz v. Heirs of Alberto Cruz*,[48] and *Bagongahasa v. Spouses Caguin*,[49] shed light on the apparent overlap of powers and clarified that the DARAB's jurisdiction over petitions for cancellation of registered CLOAs is confined to agrarian disputes:

> While the DARAB may entertain petitions for cancellation of CLOAs, as in this case, its jurisdiction is, however, confined only to agrarian disputes. As explained in the case of *Heirs of Dela Cruz v. Heirs of Cruz* and reiterated in the recent case of *Bagongahasa v. Spouses Cesar Caguin*, **for the DARAB to acquire jurisdiction, the controversy must relate to an agrarian dispute between the landowners and tenants in whose favor CLOAs have been issued by the DAR Secretary**, to wit:
>
> 'The Court agrees with the petitioners' contention that, under Section 2(f), Rule II of the DARAB Rules of Procedure, the

[46] Supra note 38.

[47] 700 Phil. 67 (2012).

[48] Supra note 36.

[49] 661 Phil. 686 (2011).

> DARAB has jurisdiction over cases involving the issuance, correction and cancellation of CLOAs which were registered with the LRA. However, for the DARAB to have jurisdiction in such cases, they must relate to an agrarian dispute between landowner and tenants to whom CLOAs have been issued by the DAR Secretary. **The cases involving the issuance, correction and cancellation of the CLOAs by the DAR in the administrative implementation of agrarian reform laws, rules and regulations to parties who are not agricultural tenants or lessees are within the jurisdiction of the DAR and not the DARAB.**'

Thus, it is not sufficient that the controversy involves the cancellation of a CLOA already registered with the Land Registration Authority. What is of primordial consideration is the existence of an agrarian dispute between the parties.[50] (Emphasis in the original and citations omitted)

This demarcation of powers was further affirmed in a long line of cases.

In *Heirs of Santiago Nisperos, et al. v. Nisperos-Ducusin*,[51] it was emphasized that "it is not enough that the controversy involves the cancellation of a CLOA registered with the LRA for the DARAB to have jurisdiction. What is of primordial consideration is the existence of an agrarian dispute between the parties."[52]

The same ratiocination was rendered in *Automat Realty and Development Corp., et al. v. Spouses Dela Cruz*,[53] where it was reiterated that, "[a]bsent an 'agrarian dispute,' the instant case cannot fall under the limited jurisdiction of the DARAB as a quasi-judicial body."[54]

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[50] *Polo Plantation Agrarian Reform Multipurpose Cooperative (POPARMUCO) v. Inson*, supra note 38.

[51] 715 Phil. 691 (2013).

[52] Id. at 701.

[53] 744 Phil. 731 (2014).

[54] Id. at 756.

In the same vein, in *Union Bank of the Philippines v. Hon. Regional Agrarian Reform Officer, et al.*,[55] it was ordained that in the absence of a *prima facie* showing that there is a tenurial arrangement or tenancy relationship between the parties, the PARAD and the DARAB are bereft of jurisdiction over the petition for cancellation. This holds true even if the CLOAs have been registered with the LRA.[56]

Noteworthily, in *Union Bank*,[57] this Court further explained that the cancellation of CLOAs issued to beneficiaries who are not agricultural tenants, is a matter that involves the administrative implementation of agrarian reform laws and regulations. As such, said matter falls within the jurisdiction of the DAR Secretary:

> As previously discussed, the jurisdiction conferred to the DARAB is limited to agrarian disputes, which is subject to the precondition that there exist tenancy relations between the parties. This delineation applies in connection with cancellation of the CLOAs. In *Valcurza v. Tamparong, Jr.*, we stated:
>
> > 'Thus, the DARAB has jurisdiction over cases involving the cancellation of registered CLOAs relating to an agrarian dispute between landowners and tenants. However, **in** cases **concerning the cancellation of CLOAs that involve parties who are not agricultural tenants or** lessees — cases **related to the administrative implementation of agrarian reform laws, rules and regulations — the jurisdiction is with the DAR, and not the DARAB**.'
>
> x x x x
>
> Thus, in the absence of a tenancy relationship between Union Bank and private respondents, the PARAD/DARAB has no jurisdiction over the petitions for cancellation of the CLOAs. Union Bank's postulate that there can be no shared jurisdiction is partially correct; however, the jurisdiction in this case properly pertains to the DAR,

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[55] Supra note 41.

[56] Id. at 561.

[57] Id.

to the exclusion of the DARAB.[58] (Emphasis in the original and citations omitted)

Additionally, in *Lakeview Golf and Country Club, Inc. v. Luzvimin Samahang Nayon, et al.*,[59] this Court directly tacked the apparent confusion between the powers of the DARAB and the DAR Secretary to cancel CLOAs. At first glance it appears that the power to resolve petitions for cancellation of CLOAs that have been filed with the Register of Deeds lies with the DARAB. However, this Court forthwith clarified that if the material averments in the petition negate the existence of an agrarian dispute, then jurisdiction belongs to the DAR Secretary since matters relating to CARP coverage are within its exclusive prerogative:

> From the foregoing, it is clear that prior to registration with the Register of Deeds, cases involving the issuance, recall or cancellation of CLOAs are within the jurisdiction of the DAR and that, corollarily, cases involving the issuance, correction or cancellation of CLOAs which have been registered with the Register of Deeds are within the jurisdiction of the DARAB.
>
> **At first glance, in the present case, it would appear that jurisdiction lies with the DARAB. The petition before the PARAD sought the cancellation of private respondents' collective CLOA which had already been registered by the Register of Deeds of Cavite. However, the material averments of the petition invoking exemption from CARP coverage constrain us to have second look.**
>
> Noteworthy, the afore-cited Section 2 of DAR Administrative Order No. 06-00 also provides that the DAR Secretary has exclusive jurisdiction to classify and identify landholdings for coverage under the CARP, including protests or oppositions thereto and petitions for lifting of coverage. The matter of CARP coverage is strictly an

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[58] Id. at 562-563.

[59] 603 Phil. 358 (2009), citing *Padunan v. DARAB*, 444 Phil. 213 (2003); See *Dao-Ayan v. Dept. of Agrarian Reform Adjudication Board (DARAB)*, 558 Phil. 379 (2007); *Heirs of Adolfo v. Cabral*, 556 Phil. 765 (2007); *Sta. Rosa Realty Development Corporation v. Amante*, 493 Phil. 570 (2005); See *Nicanor T. Santos Dev't. Corp. v. Sec., Dept. of Agrarian Reform*, 518 Phil. 706 (2006).

administrative implementation of the CARP whose competence belongs to the DAR Secretary.[60] (Emphasis supplied)

The Arguments Raised in Support of the Cancellation of the CLOAs are Exclusively Cognizable by the DAR Secretary

To reiterate, the demarcation between the power of the DARAB and the DAR Secretary to cancel CLOAs does not solely depend on the fact of registration, but more so, on the existence of a tenancy relation between the parties. Hence, for the case to fall within the DARAB's jurisdiction, the petitioner must prove the following indispensable elements of tenancy:

(i) that the parties are the landowner and the tenant or agricultural lessee;

(ii) that the subject matter of the relationship is an agricultural land;

(iii) that there is consent between the parties to the relationship;

(iv) that the purpose of the relationship is to bring about agricultural production;

(v) that there is personal cultivation on the part of the tenant or agricultural lessee; and

(vi) that the harvest is shared between the landowner and the tenant or agricultural lessee.[61]

A perusal of the petition for cancellation[62] reveals the following averments: (i) petitioner is the owner of the subject **residential** lands; (ii) private respondents who were the beneficiaries of CLOA Nos. 251 to 298 are occupying the subject properties owned by the petitioner; (iii) the HLURB, City Planning and Development Office of Tagaytay City, NIA, DAR and Regional

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[60] Id.

[61] *Morta, Sr. v. Occidental*, 367 Phil. 438, 446 (1999), cited in *Heirs Julian Dela Cruz v. Heirs of Alberto Cruz*, supra note 36 at 403.

[62] Rollo, pp. 416-420.

Adjudicator certified that the subject lands are non-agricultural; (iv) the Department of Agriculture certified that the subject lands have ceased to be economically viable for agricultural purposes; and (v) petitioner's lands are exempted/excluded from CARP coverage.

It is immediately apparent that the petition for cancellation hinges on the main averment that the subject properties are residential in nature, and consequently, exempt from CARP coverage. It is likewise glaring from the same petition that not once did the petitioner remotely hint at the existence of a tenurial relationship between it and the respondents.

In addition, petitioner argued in its appeal before the DARAB, petition for review with the CA, and petition for review on *certiorari* before this Court that (i) the parcels of land included in the CLOAs were not validly acquired pursuant to Section 16 of the CARL; (ii) it was not paid just compensation; and (iii) its right of retention under the CARL was violated. Plainly, said arguments pertain to the implementation of the CARL. At best, they constitute grounds for the cancellation of the CLOAs under Section IV. B.9 of DAR Memorandum Order No. 2, Series of 1994, *i.e.*, that "the land is found to be exempt/excluded from P.D. [Presidential Decree] No. 27/E.O. No. 228 or CARP Coverage or to be part of the landowner's retained area as determined by the Secretary or his duly authorized representative."[63]

Likewise, the evidence presented by petitioner, which consisted of Certifications from various government entities stating that its lands are residential, serve as proof of exemption from CARP coverage pursuant to DAR Administrative Order No. 4, Series of 2003,[64] also falling within the determination of the DAR Secretary.

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[63] DAR MEMORANDUM ORDER NO. 2, Series of 1994, IV.B.9.

[64] 2003 Rules on Exemption of Lands from CARP Coverage under Section 3 (c) of Republic Act No. 6657 and Department of Justice Opinion No. 44, Series of 1990.

Moreover, it is very clear from Rule II, Section 3 of the 2003 DARAB Rules that the DARAB has no jurisdiction over matters involving the classification and identification of landholdings for coverage under the CARP; exercise of the right of retention by the landowner; and applications for exemption from coverage.[65] Accordingly, the matters raised by the petitioner must first be resolved by the DAR Secretary pursuant to the doctrine of prior resort.

Interestingly, in *Valcurza, et al. v. Atty. Tamparong, Jr.*,[66] this Court underscored that the cancellation of a CLOA based on allegations that the properties are exempt from CARP coverage and attended with fraudulent acts of the DAR officials, must be resolved by the DAR Secretary:

> Thus, the DARAB has jurisdiction over cases involving the cancellation of registered CLOAs relating to an agrarian dispute between landowners and tenants. However, in cases concerning the cancellation of CLOAs that involve parties who are not agricultural tenants or lessees—cases related to the administrative implementation of agrarian reform laws, rules and regulations—the jurisdiction is with the DAR, and not the DARAB.
>
> Here, petitioner is correct in alleging that it is the DAR and not the DARAB that has jurisdiction. First, the issue of whether the CLOA issued to petitioners over respondent's land should be cancelled hinges on that of whether the subject landholding is exempt from CARP coverage by virtue of two zoning ordinances. **This question involves the DAR's determination of whether the subject land is indeed exempt from CARP coverage—a matter involving the administrative implementation of the CARP Law. Second, respondent's complaint does not allege that the prayer for the cancellation of the CLOA was in connection with an agrarian dispute. The complaint is centered on the fraudulent acts of the MARO, PARO, and the regional director that led to the issuance of the CLOA.**[67] (Emphasis supplied and citations omitted)

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[65] *Rollo*, p. 485.

[66] 717 Phil. 324 (2013).

[67] Id. at 333-334.

A similar conclusion was reached in *Sutton*.[68] Therein petitioner alleged that her property was exempt from CARP coverage. This Court held that the petition for cancellation must be filed with the DAR Secretary considering that the controversy is not agrarian in nature and involves the administrative implementation of the agrarian reform program.[69]

Concededly, the cases cited were based on the 1994 DARAB Rules of Procedure. In fact, this was one of the petitioner's attacks against the CA ruling. Petitioner questioned the CA's reliance on cases that were resolved in accordance with the 1994 DARAB Rules.

It bears noting, however, that the jurisdiction of the DARAB and the DAR Secretary over petitions for cancellation of CLOAs under the 1994 DARAB Rules and the 2003 Rules has remained unchanged.

For clarity, the 1994 Rules states:

RULE II
Jurisdiction of the Adjudication Board

SECTION 1. *Primary and Exclusive Original and Appellate Jurisdiction.* The Board shall have primary and exclusive jurisdiction, both original and appellate, to determine and adjudicate all agrarian disputes involving the implementation of the Comprehensive Agrarian Reform Program (CARP) under Republic Act No. 6657, Executive Order Nos. 228, 229, and 129-A, Republic Act No. 3844 as amended by Republic Act No. 6389, Presidential Decree No. 27 and other agrarian laws and their implementing rules and regulations. Specifically, such jurisdiction shall include but not be limited to cases involving the following:

x x x x

f) Those involving the issuance, correction and cancellation of Certificates of Land Ownership Award (CLOAs) and Emancipation Patents (EPs) which are registered with the Land Registration Authority;

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[68] Supra note 47.

[69] Id. at 77.

x x x x

Matters involving strictly the administrative implementation of Republic Act No. 6657, otherwise known as the Comprehensive Agrarian Reform Law (CARL) of 1988 and other agrarian laws as enunciated by pertinent rules shall be the exclusive prerogative of and cognizable by the Secretary of the DAR.

Mirroring its predecessor, the 2003 DARAB Rules still grants the DARAB jurisdiction to adjudicate cases "involving the correction, partition, cancellation, secondary and subsequent issuances of [CLOAs] and Emancipation Patents (EPs) which are registered with the [LRA]." The only difference between the 1994 Rules and the 2003 Rules is first, the deletion of the word "issuance" in the 2003 version, and second, the removal of the caveat in Section 1, Rule II of the 1994 Rules that states that matters involving the administrative implementation of the CARL and other agrarian laws shall be the exclusive prerogative of the DAR Secretary.

Suffice it to say, the caveat in Section 1, Rule II of the 1994 Rules was not actually deleted but was incorporated in a different section. In fact, under the 2003 Rules, an entire Section (Section 3) was created, which clearly and comprehensively enumerated matters that fall outside of the DARAB's jurisdiction.

Plainly, a juxtaposition of the 1994 and 2003 DARAB Rules conspicuously shows that notwithstanding the transposition of the provisions, the respective powers of the DAR Secretary and the DARAB have fundamentally remained the same. Accordingly, the tenets in the cases cited still hold true.

It is likewise interesting to note that the division of powers between the DAR Secretary and the DARAB has been solidified in the law.

Under the new law, Republic Act No. 9700, which took effect on July 1, 2009, all cases involving the cancellation of certificates of land ownership award and other titles issued under any agrarian reform program are within the exclusive and original jurisdiction of the Department of Agrarian Reform Secretary. Section 9 provides:

Section 9. Section 24 of Republic Act No. 6657, as amended, is further amended to read as follows:

x x x x

All cases involving the cancellation of registered emancipation patents, certificates of land ownership award, and other titles issued under any agrarian reform program are within the exclusive and original jurisdiction of the Secretary of the DAR. [70] (Emphasis supplied)

This reinforces the fact that from the 1994 DARAB Rules until present, matters pertaining to the implementation of agrarian reform laws, such as the cancellation of CLOAs of beneficiaries who are not agricultural tenants, has always belonged to the DAR Secretary.

The Allegations of Lack of Notice of Coverage and Non-Payment of Just Compensation Must be Resolved by the Proper Body

This Court expresses its concern over the petitioner's allegations that it was not given a notice of the proceedings and was not paid just compensation. These are serious accusations that must be resolved with dispatch by the DAR Secretary.

Section 16 of RA No. 6657 provides the proper procedure for compulsory land acquisition. Briefly, they are as follows: (i) after identifying the land, landowners and beneficiaries, the DAR shall send a notice to acquire the land and post said notice in a conspicuous place; (ii) the landowner shall accept or reject the offer within thirty (30) days from receipt of the notice; (iii) if the landowner accepts the offer, he/she shall be paid within thirty (30) days after he/she executes a deed of transfer in favor of the Government and surrenders his/her title; (iv) should the landowner reject the offer, or fail to reply, the DAR shall conduct summary administrative proceedings to determine the

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[70] Id.; *Polo Plantation Agrarian Reform Multipurpose Cooperative (POPARMUCO) v. Inson*, supra note 38.

compensation for the land; (v) the DAR shall take immediate possession of the land and request the Register of Deeds to issue a Transfer Certificate of Title in the name of the Republic of the Philippines upon (a) its payment to the owner, or (b) upon depositing the payment with any bank in case the owner has rejected the offer or has failed to respond to the offer; (vi) any party who disagrees with the decision may file a case before a court of proper jurisdiction for a final determination of just compensation.

Compliance with the procedure set forth in Section 16 is imperative, lest there be a blatant violation of the Constitutional mandate that "private property shall not be taken for public use without just compensation."[71]

Notably, in *Bagongahasa, et al. v. Romualdez*,[72] this Court held that the issues pertaining to lack of notice and non-payment of just compensation involve the implementation of agrarian laws and are within the special competence of the DAR Secretary:

> While it is true that the PARAD and the DARAB lack jurisdiction in this case due to the absence of any tenancy relations between the parties, lingering essential issues are yet to be resolved as to the alleged lack of notice of coverage to respondents as landowners and their deprivation of just compensation. Let it be stressed that while these issues were discussed by the PARAD in his decision, the latter was precisely bereft of any jurisdiction to rule particularly in the absence of any notice of coverage for being an ALI case. Let it also be stressed that these issues were not met head-on by petitioners. At this juncture, the issues should not be left hanging at the expense and to the prejudice of respondents.
>
> However, this Court refuses to rule on the validity of the CARP coverage of the subject properties and the issuance of the assailed CLOAs. The doctrine of primary jurisdiction precludes the courts from resolving a controversy over which jurisdiction was initially lodged with an administrative body of special competence. The doctrine of primary jurisdiction does not allow a court to arrogate unto itself

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[71] 1987 CONSTITUTION, Article III, Section 9.

[72] Supra note 49.

authority to resolve a controversy, the jurisdiction over which is initially lodged with an administrative body of special competence. The Office of the DAR Secretary is in a better position to resolve the particular issue of non-issuance of a notice of coverage — an ALI case — being primarily the agency possessing the necessary expertise on the matter. The power to determine such issue lies with the DAR, not with this Court.[73] (Citations omitted)

Without a doubt, the spirit and intent behind the CARL are laudable. However, the objective of equitably distributing lands should not be achieved by trampling upon the property rights of landowners. The government must always endeavor to achieve "a more equitable distribution and ownership of land, with due regard to the rights of landowners to just compensation."[74] As eloquently articulated by this Court in *Bagongahasa*[75] and *Heirs of Nicolas Jugalbot v. Court of Appeals*:[76]

It must be borne in mind that this Court is not merely a Court of Law but of equity as well. Justice dictates that the DAR Secretary must determine with deliberate dispatch whether indeed no notice of coverage was furnished to respondents and payment of just compensation was unduly withheld from them despite the fact that the assailed CLOAs were already registered, on the premise that respondents were unaware of the CARP coverage of their properties; hence, their right to protest the same under the law was defeated. Respondents' right to due process must be equally respected. Apropos is our ruling in Heir of Nicolas Jugalbot v. Court of Appeals:

> '[I]t may not be amiss to stress that laws which have for their object the preservation and maintenance of social justice are not only meant to favor the poor and underprivileged. They apply with equal force to those who, notwithstanding their more comfortable position in life, are equally deserving of protection from the courts. Social justice is not a license to trample on the rights of the rich in the guise of defending the poor, where no act of injustice or abuse is being committed against them.

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[73] Id. at 696-697.

[74] REPUBLIC ACT NO. 6657.

[75] *Bagongahasa, et al. v. Romualdez*, supra.

[76] 547 Phil. 113 (2007).

> As the court of last resort, our bounden duty to protect the less privileged should not be carried out to such an extent as to deny justice to landowners whenever truth and justice happen to be on their side. For in the eyes of the Constitution and the statutes, EQUAL JUSTICE UNDER THE LAW remains the bedrock principle by which our Republic abides.'[77]

All told, strict compliance with the Constitution, agrarian laws and regulations is imperative to ensure the protection of the farmers' and landowners' rights. Accordingly, in deference to the jurisdiction of the DAR Secretary to resolve matters involving the implementation of the agrarian reform laws, the petition for cancellation of CLOAs must be dismissed for having been erroneously filed with the DARAB. However, the dismissal is without prejudice to petitioner's right to re-file its petition with the DAR Secretary.

WHEREFORE, premises considered, the petition is **DENIED for lack of merit**. Accordingly, the March 17, 2014 Decision and the October 8, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 117752 are **AFFIRMED**.

SO ORDERED.

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

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[77] *Bagongahasa, et al. v. Romualdez*, supra note 49 at 697-698.

SECOND DIVISION

[G.R. No. 220828. October 7, 2020]

REPUBLIC OF THE PHILIPPINES, represented by the PHILIPPINE MINING DEVELOPMENT CORPORATION, *Petitioner*, *v.* **APEX MINING COMPANY, INC.,** *Respondent*.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PHILIPPINE MINING ACT OF 1995 (R.A. NO. 7942); REMEDIAL LAW; QUASI-JUDICIAL AGENCIES; JURISDICTION; THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR) IS VESTED WITH ORIGINAL AND EXCLUSIVE JURISDICTION TO RESOLVE MINING DISPUTES; MINING DISPUTE, DEFINED.— The POA [Panel of Administrators] and the MAB [Mines Adjudication Board] are quasi-judicial bodies within the DENR which have been created pursuant to the enactment of RA 7942. These bodies are charged to resolve mining disputes. A mining dispute is a dispute involving (a) rights to mining areas, (b) mineral agreements, FTAAs, or permits, and (c) surface owners, occupants and claimholders/concessionaires.

Under RA 7942, the POA is vested with exclusive and original jurisdiction to hear and decide mining disputes. A party not satisfied with the decision or order of the POA may file an appeal with the MAB, whose powers and functions are listed in Section 79 of the same Act. As explicitly stated in Section 79, "*[t]he findings of fact of the [MAB] shall be conclusive and binding on the parties and its decisions or order shall be final and executory.*"

2. ID.; ID.; ID.; ID.; ID.; FACTUAL FINDINGS OF QUASI-JUDICIAL AGENCIES; FACTUAL FINDINGS OF THE DENR ON MINING CLAIMS AND PREFERENTIAL RIGHTS OVER CONTESTED AREAS ARE ACCORDED RESPECT BY THE SUPREME COURT.— Factual considerations relating to mining applications properly fall within the administrative competence of the DENR. The factual findings

of the DENR are binding upon this Court in the absence of any showing of grave abuse of discretion, or that the factual findings were arrived at arbitrarily or in disregard of the evidence on record. Since the DENR possesses the specialized knowledge and expertise in its field, its factual findings are accorded great respect and even finality by the appellate courts.

. . .

. . . It is worthy to stress Section 10 of Rule 43 which acknowledges the primacy and deference accorded to decisions of quasi-judicial agencies, specifically stating that their factual findings, when supported by substantial evidence, shall be binding on the CA. In this regard, the findings of the MAB, as the administrative body with jurisdiction over disputes relative to mining rights, should be treated with deference in recognition of its expertise and technical knowledge over such matters.

As found by the MAB, affirming the POA, NDMC had valid and existing mining claims over the contested areas denominated as Clusters 1, 2, 3, 5, and 6. Further, after evaluating the parties' respective appeals from the Decision of the POA, the MAB also found that NDMC had preferential rights over the mining areas under Cluster 4.

. . .

Apparently, the findings of the POA and the MAB have been reached after a meticulous and judicious evaluation of the records and the evidence presented by the parties. These findings deserve the Court's respect and should be deemed conclusive and binding on the parties.

3. ID.; ID.; ID.; ONLY HOLDERS OF VALID AND EXISTING MINING CLAIMS AND LEASE/QUARRY APPLICATIONS PRIOR TO THE EFFECTIVITY OF R.A. NO. 7942 CAN BE GRANTED A PREFERENTIAL RIGHT TO ENTER INTO A MINERAL AGREEMENT.— It must be emphasized that the preferential right to enter into any mode of mineral agreement, as mentioned in Section 113 of RA 7942, Section 273 of the IRR of RA 7942, and Section 8 of DMO 97-07 applies to *holders of valid and existing mining claims and lease/quarry applications prior to the effectivity of RA 7942*. No new, primary, and original mining rights are created under these provisions. . . .

. . .

As found by the MAB, prior to the effectivity of RA 7942, it was NDMC, not Apex, that had valid and existing mining claims over the contested areas denominated as Clusters 1, 2, 3, 4, 5, and 6. Regrettably, the CA altogether disregarded the factual findings of the POA and the MAB which were inevitable considerations in applying the provisions of Section 113 of RA 7942, Section 273 of the IRR of RA 7942, and Section 8 of DMO 97-07.

To highlight, the above-mentioned provisions presuppose that the applicants are *holders of valid and existing mining claims, and lease/quarry applications prior to the effectivity of RA 7942*. It is of no consequence that Apex's MPSA applications were filed earlier than NDMC's FTAA application in view of the finding that Apex had no pre-existing and valid claims over the contested areas. Verily, the preferential right under these provisions should be given to NDMC.

4. ID.; ID.; ID.; AREAS COVERED BY VALID AND EXISTING MINING RIGHTS WITH MINERAL AGREEMENT APPLICATION ARE CLOSED TO OTHER MINING APPLICATIONS. — Under Section 19(c) of RA 7942, areas covered by valid and existing mining rights are closed to mining applications. However, a precondition to the closing of these areas is provided in Section 8 of DMO 97-07. It states that *holders of valid and existing mining claims and lease/quarry applications, filed prior to the effectivity of RA 7942, are required to file mineral agreement applications pursuant to Section 273 of the IRR on or before September 15, 1997* if they have not filed any mineral agreement applications over areas covered by such mining claims and lease/quarry applications.

. . .

. . . [T]he Court affirms the MGB's determination that the FTAA application of NDMC should be treated differently and should be understood as the State's exercise of its right of ownership over NDMC's mining claims. In accepting NDMC's FTAA application, the MGB in this case merely recognized the rights of the Government to the mining property of NDMC, who held valid and existing mining claims over the contested areas. The application was not an FTAA application *per se*,

considering that the Government cannot enter into an agreement with itself. By reason of the Government's direct interest over the mineral property of NDMC, the FTAA application was meant to close to other mining applications the areas over which the NDMC had mining claims. Apparently, these areas were among those ordered closed by then Acting DENR Secretary Antonio G. M. La Viña through his issuance of the Memorandum dated September 17, 1997, which enjoined all MGB Regional Directors to close to new mining locations or applications those areas covered by valid and existing mining claims held in trust by APT or other similar entities.

5. ID.; CONSTITUTIONAL LAW; REGALIAN DOCTRINE; AS THE OWNER OF NATURAL RESOURCES, THE STATE HAS THE PRIMARY POWER AND RESPONSIBILITY IN THEIR EXPLORATION, DEVELOPMENT, AND UTILIZATION.— [I]t is worthy to emphasize Section 2, Article XII of the Constitution which pertinently states that "[*a*]*ll lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. x x x The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State*." Thus, as the owner of natural resources, the State has the primary power and responsibility in their exploration, development, and utilization.

Affirming Section 2, Article XII of the Constitution is Section 4 of RA 7942 . . . .

Thus, the Court holds that the CA erred in concluding that the FTAA application should not be considered as the State's intention to explore, develop, and utilize the country's natural resources. To insist that the Government should enter into a specific mineral agreement under RA 7942 would be a direct affront to its power to fully control and supervise the exploration, development, and utilization of the country's mineral resources. Ultimately, it amounts to depriving the State of its ownership of all natural resources.

6. CIVIL LAW; STATUTE OF LIMITATIONS; PRESCRIPTION CANNOT LIE AGAINST THE STATE.— [I]t is a time-honored principle that the statute of limitations

or the lapse of time does not run against the State. Hence, even assuming that the NDMC did not file the FTAA application or failed to file a valid mineral agreement application on or before September 15, 1997, the areas included in the FTAA application of NDMC would still be closed to other mining applications for the simple reason that it is the Government that owns the mineral property of NDMC.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Picazo Buyco Tan Fider and Santos for respondent.

D E C I S I O N

INTING, *J.*:

Before the Court is a Petition for Review[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated December 22, 2014 and the Resolution[3] dated September 23, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 133927. The assailed CA Decision reversed and set aside the Decision[4] dated October 28, 2009 of the Mines Adjudication Board (MAB), Department of Environment and Natural Resources (DENR) in MAB Case Nos. 0156-07 and 0157-07; and declared Apex Mining Company, Inc. (Apex) to have prior and preferential rights in its applications for mineral production sharing agreement with the DENR. The assailed CA Resolution, on the other hand, denied the Motion for Reconsideration (of the Decision dated December 22, 2014)[5]

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[1] *Rollo*, pp. 16-55.

[2] *Id.* at 59-93; penned by Associate Justice Myra V. Garcia-Fernandez with Associate Justices Mariflor P. Punzalan-Castillo and Francisco P. Acosta, concurring.

[3] *Id.* at 94-98.

[4] *Id.* at 810-817; signed by Chairman Jose L. Atienza, Jr. and Members Eleazar P. Quinto and Horacio C. Ramos.

[5] *Id.* at 99-117.

filed by the Philippine Mining Development Corporation (PMDC).

The Facts

Republic of the Philippines is represented in this case by the PMDC, a government corporation attached to the DENR. The PMDC became the successor-in-interest of the mining rights of North Davao Mining Corporation (NDMC).

NDMC held mining claims over areas located in the Province of Compostela Valley which were covered by mining lease contracts and published lode lease applications, as follows:

I. By Mining Lease Contracts —

A. Owned by NDMC:
LLC No. V-523 granted on January 22, 1965
MLC No. MRD-155 granted on December 13, 1978
MLC No. MRD-156 granted on December 13, 1978
MLC No. MRD-157 granted on December 13, 1978
MLC No. MRD-158 granted on December 13, 1978

B. Under Operating Agreement with NDMC:

MLC No. MRD-290 granted on March 22, 1982

II. By Published Lode Lease Applications —

A. LLA No. V-14203 Amd published in the newspaper on November 18, 1982 and posted on the same date.

B. LLA No. 14204 [sic][6] published in the newspaper on March 31, 1988 and posted on the same date.

C. LLA No. V-14205 published in the newspaper of general circulation [on] March 31, 1988 and posted on the same date.[7]

NDMC had two mining projects in the Province of Compostela Valley, namely: (1) the Amacan Copper Project, which

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[6] Should be "LLA No. V-14204."

[7] See Mines Adjudication Board (MAB) Decision dated October 28, 2009, *rollo*, p. 811.

commenced commercial operation in August 1982 and ceased in May 1992; and (2) the Hijo Gold Project, which commenced in May 1980 and ceased in 1985.[8]

During its commercial operations, NDMC secured a loan from the Philippine National Bank (PNB) using its properties, including its mining claims and rights, as collateral for the loan. As of June 30, 1986, NDMC's outstanding loan balance with the PNB amounted to ₱4,708,135,920.00. Due to NDMC's inability to pay the loan and its interest, the PNB foreclosed its properties, including the subject mining claims.[9]

On February 27, 1987, the National Government of the Philippines (Government) and the PNB executed a Deed of Transfer,[10] whereby the PNB turned over several of its assets to the Government, including NDMC's mining claims and rights.

Meanwhile, Proclamation No. 50[11] was issued by then President Corazon C. Aquino on December 8, 1986, creating the Committee on Privatization (COP) and the Asset Privatization Trust (APT). The COP and the APT were primarily tasked to take title to and possession of, conserve, provisionally manage and dispose of, assets identified for privatization or disposition and transferred to APT for the benefit of the Government.

On April 21, 1995, Apex filed with the Mines and Geo-Sciences Bureau (MGB), Regional Office No. XI, Davao City applications for Mineral Production Sharing Agreement (MPSA). The applications were denominated as APSA (XI) 99 and APSA (XI) 100. On July 26, 1995, Apex filed another MPSA application denominated as APSA (XI) 112.[12] Apex and other claimants

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[8] *Id.*

[9] *Id.*

[10] *Id.* at 154-163.

[11] Entitled "Proclaiming and Launching a Program for the Expeditious Disposition and Privatization of Certain Government Corporations and/or the Assets Thereof, and Creating the Committee on Privatization and Asset Privatization Trust."

[12] See Regional Panel of Arbitrators (POA), Mines and Geosciences Bureau Decision dated July 4, 2006 in MAC No. POA 98-003 (XI), *rollo*, p. 604.

averred that their applications cover mining claims situated in the Municipalities of Maco, Nabunturan and Maragusan in Compostela Valley, held by them either as registered claim owners, assignees or operators.[13]

On January 8, 1996, the NDMC filed an application for Financial and Technical Assistance Agreement (FTAA) with the MGB Regional Office No. XI, Davao City.[14] The FTAA application was registered as FTAA No. (XI) 014.[15] It covered, among others, the mining areas subject of Lode Lease Contract No. V-523, Mining Lease Contract Nos. MRD-155, MRD-156, MRD-157, MRD-158 and MRD-290, as well as published Lease Application Nos. V-14203 Amd, V-14204 and V-14205, covering a total area of 27,058 hectares. However, after the plotting was conducted, the MGB found that the FTAA application overlapped the valid mining rights belonging to other persons within the area in question. Thus, the MGB excluded the areas covered by these mining rights, thereby reducing the FTAA application to 20,237 hectares.[16]

On September 17, 1997, then Acting DENR Secretary Antonio G. M. La Viña issued a Memorandum[17] enjoining all MGB Regional Directors to close areas to new mining locations or applications if these areas are covered by valid and existing mining claims held in trust by APT or other similar entities.

One year later, or on September 17, 1998, Apex filed an Adverse Claim/Protest[18] against the FTAA application of NDMC before the Panel of Arbitrators (POA) for MGB Regional Office No. XI, Davao City. In the main, Apex argued that NDMC's

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[13] *Id.*

[14] *Id.*

[15] See Notice of Application for Financial and Technical Assistance Agreement of North Davao Mining Corporation, *id.* at 164.

[16] See POA Decision dated July 4, 2006, *id.* at 605.

[17] *Id.* at 179.

[18] *Id.* at 563-593.

mining claims were null and void for failure to comply with the mining laws.

On December 29, 1998, NDMC filed its Answer contending that the Adverse Claim/Protest filed by Apex should be dismissed on the ground of prescription, laches, lack of cause of action, and lack of merit.[19]

Thereafter, NDMC's Notice of Application for FTAA was published on March 16 and 18, 1999.[20]

On March 24, 1999, Apex filed a manifestation and motion praying that: 1) its Adverse Claim/Protest be treated as an adverse claim against the published FTAA application of NDMC; 2) the areas free of conflict be segregated; and 3) it be allowed to file amended MPSA applications.[21]

In its Order dated January 27, 2000, the POA granted Apex's motion and ordered the segregation of the "free areas."[22] NDMC moved to reconsider the Order, but the POA denied it in its Order dated March 28, 2000.[23]

Meanwhile, on December 6, 2000, Executive Order No. (EO) 323[24] was issued creating the Inter-Agency Privatization Council (PC) and the Privatization and Management Office (PMO) under the Department of Finance. EO 323 was aimed to continue the privatization of government assets and corporations. The PC assumed all the powers, functions, duties and responsibilities,

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[19] *Id.* at 812.

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] Entitled "Constituting an Inter-Agency Privatization Council (PC) and Creating a Privatization and Management Office (PMO) under the Department of Finance for the Continuing Privatization of Government Assets and Corporations," signed on December 6, 2000.

all properties, real or personal assets, equipment and records, as well as all obligations and liabilities previously held by the COP and APT under Proclamation No. 50.[25] Pursuant to EO 323, NDMC's assets were turned over from COP and APT to PMO.[26]

On July 4, 2003, the Natural Resources Mining and Development Corporation (NRMDC) was created under Securities and Exchange Commission (SEC) Registration No. CS200314923.[27] As stated in the Memorandum from the President[28] dated April 9, 2003, the NRMDC shall be primarily tasked to "conduct and carry on the business of exploring, developing, exchanging, selling, disposing, importing, exporting, trading and promotion of gold, silver, copper, iron and all kinds of mineral deposits and substances."

On June 6, 2005, the PC designated the NRMDC as the trustee and disposition entity for NDMC in lieu of the PMO.[29]

On April 7, 2006, the NRMDC and the Government, through the PC, executed a Trust Agreement[30] whereby the mining assets of NDMC were transferred, conveyed, and assigned to the NRDMC for development and/or disposition. As a result, NDMC's subject mining claims have been entrusted to the NRDMC.

Thereafter, pursuant to Board Resolution No. 97, Series of 2007, the corporate name of NRMDC was changed to PMDC.[31]

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[25] See MAB Decision dated October 28, 2009, *rollo*, pp. 812-813.

[26] *Id.* at 813.

[27] *Id.*

[28] RE: Incorporation of the Natural Resources Mining and Development Corporation under the Department of Environment and Natural Resources, Memorandum from the President, signed by then President Gloria Macapagal-Arroyo on April 9, 2003.

[29] *Rollo*, p. 813.

[30] *Id.* at 180-185.

[31] See Secretary's Certificate dated April 15, 2007, *id.* at 186.

The Ruling of the POA

For ease of reference, the POA grouped the disputed claims into six (6) clusters, denominated as Clusters 1, 2, 3, 4, 5, and 6. In its Decision[32] dated July 4, 2006, the POA dismissed the adverse claim of Apex, holding NDMC to have preferential right over Clusters 1, 2, 3, 5, and 6 only.

Apex filed a Motion for Reconsideration (of Decision dated 4 July 2006).[33] NDMC also filed a motion for partial reconsideration with respect to the POA's ruling that it does not have preferential rights over Cluster 4.[34]

On June 14, 2007, the POA issued an Order[35] denying both motions. Thus, Apex and NDMC filed their respective appeals[36] with the MAB.

The Ruling of the MAB

On October 28, 2009, the MAB rendered its Decision[37] in favor of NDMC, and dismissed Apex's appeal for lack of merit. The MAB set aside the POA Decision insofar as it declared that neither party had preferential rights over Cluster 4, and insofar as how Clusters 1 and 2 were plotted. Accordingly, NDMC was declared to have preferential rights over Cluster 4 in addition to Clusters 1, 2, 3, 5 and 6. The plotting of Clusters 1 and 2 was likewise ordered amended to conform to the plotting of LLA No. V-14203-Amd and LLA No. V-14205, as published.

On December 23, 2009, Apex filed a Motion for Reconsideration (of Decision dated 28 October 2009),[38] which

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[32] *Id.* at 594-616; signed by Chairperson Ma. Mercedes Villarosa-Dumagan, and Members Maximo G. Lim and Roberto Luis F. de la Fuente.

[33] *Id.* at 617-663.

[34] See Court of Appeals Decision dated December 22, 2014, *id.* at 69.

[35] *Id.* at 665-672.

[36] *Id.* at 673-795, 796-809.

[37] *Id.* at 810-817.

[38] *Id.* at 818-860.

the MAB denied in its Resolution[39] dated December 26, 2013. Consequently, Apex elevated the case to the CA *via* a Petition for Review.[40]

The Ruling of the CA

In the assailed Decision[41] dated December 22, 2014, the CA ruled in favor of Apex and set aside the MAB Decision dated October 28, 2009 and Resolution dated December 26, 2013. The dispositive portion of the CA Decision reads:

> WHEREFORE, the petition for review is GRANTED. The decision of the Mines Adjudication Board (MAB) dated October 28, 2009 and resolution dated December 26, 2013 in MAB Case No. 0156-07 and MAB Case No. 0157-07, are REVERSED and SET ASIDE. Petitioner Apex Mining Company, Inc. is declared to have prior and preferential right in its applications for mineral production sharing agreement with the Department of Environment and Natural Resources pursuant to Section 29 of Rep. Act No. 7942, covering areas subject of its applications, particularly, Clusters 1, 2, 3, 4, 5 and 6 as shown in Annex 7 of the Panel of Arbitrators' decision dated July 4, 2006, with Clusters 1 and 2 to be amended to conform to the plotting of LLA No. V-14203-Amd and LLA No. V-14205 as mentioned in the Mines Adjudication Board's decision dated October 28, 2009.
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> SO ORDERED.[42]

The CA found that under Republic Act No. (RA) 7942,[43] otherwise known as the Philippine Mining Act of 1995, the requirements for the filing and approval of mineral agreements are different from the requirements for the filing and approval

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[39] *Id.* at 864-872; signed by Chairman Ramon J.P. Paje and Members Leo L. Jasareno and Demetrio L. Ignacio, Jr.

[40] *Id.* at 411-556.

[41] *Id.* at 59-93.

[42] *Id.* at 92-93.

[43] Entitled "An Act Instituting a New System of Mineral Resources Exploration, Development, Utilization, and Conservation," approved on March 3, 1995.

of FTAA applications. The CA relied on the ruling in the case of *Diamond Drilling Corp. of the Phils. v. Newmont Phils., Inc.*[44] *(Diamond Drilling Corporation)*, which applied Section 8[45] of DENR Administrative Order No. 63, Series of 1991 (DAO 63),[46] stating in part that priority shall be given to the applicant that first filed its application over the same area. Thus, as between the MPSA applications of Apex and the FTAA application of NDMC, the CA held that Apex should be given priority since it filed its MPSA applications over the contested mining areas on April 21, 1995 and on July 26, 1996, while NDMC filed its FTAA application only on January 8, 1996.

Moreover, the CA held that DENR Memorandum dated September 17, 1997, which directed all MGB Regional Directors to close to new mining applications areas already covered by

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[44] 664 Phil. 688 (2011).

[45] Section 8 of Department of Environment and Natural Resources (DENR) Administrative Order No. 63, Series of 1991 (DAO 63) reads:

SEC. 8. *Acceptance and Evaluation of FTAA.* — All FTAA proposals shall be filed with and accepted by the Central Office Technical Secretariat (MGB) after payment of the requisite fees to the Mines and Geosciences Bureau, copy furnished the Regional Office concerned within 72 hours. The Regional Office shall verify the area and declare the availability of the area for FTAA and shall submit its recommendations within thirty (30) days from receipt. *In the event that there are two or more applicants over the same area, priority shall be given to the applicant who first filed his application.* In any case, the Undersecretaries for Planning, Policy and Natural Resources Management; Legal Services, Legislative, Liaison and Management of FASPO; Field Operations and Environment and Research, or its equivalent, shall be given ten (10) days from receipt of FTAA proposal within which to submit their comments/recommendations and the Regional Office, in the preparation of its recommendation shall consider the financial and technical capabilities of the applicant, in addition to the proposed Government share. Within five (5) working days from receipt of said recommendations, the Technical Secretariat shall consolidate all comments and recommendations thus received and shall forward the same to the members of the FTAA Negotiating Panel for evaluation at least within thirty (30) working days. (Italics supplied)

[46] Guidelines for the Acceptance, Consideration and Evaluation of Financial or Technical Assistance Agreement Proposals; signed on December 12, 1991.

valid and existing mining claims, was not an impediment to the application of Apex. The CA ratiocinated that at the time of the issuance of the Memorandum, Apex had already filed its MPSA applications with the MGB, during which time the subject mining areas were not yet closed to mining applications.

Furthermore, the CA held that the MAB committed reversible error in upholding the mining lease contracts or published lode lease applications of NDMC in support of the latter's FTAA application despite noncompliance with RA 7942 and its implementing rules and regulations (IRR) for continued recognition of its mining claims. The CA ruled that NDMC failed to submit or file any application for mineral agreement on or before September 15, 1997, the mandatory deadline for the filing of mineral agreement applications by holders of valid and existing mining claims and lease/quarry applications, pursuant to Section 113[47] of RA 7942, Section 273[48] of DAO 96-40[49] (IRR of RA 7942), and Section 8[50] of DENR

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[47] Section 113 of Republic Act No. (RA) 7942 reads:

Section 113. Recognition of Valid and Existing Mining Claims and Lease/Quarry Applications. — Holders of valid and existing mining claims, lease/quarry applications shall be given preferential rights to enter into any mode of mineral agreement with the government within two (2) years from the promulgation of the rules and regulations implementing this Act.

[48] Section 273 of DAO 96-40 reads:

Section 273. Recognition of Valid and Existing Mining Claims and Lease/Quarry Applications.

Holders of valid and existing mining claims, lease/quarry applications shall be given preferential rights to enter into any mode of Mineral Agreement with the Government until September 14, 1997: Provided, That failure on the part of the holders of valid and subsisting mining claims, lease/quarry applications to exercise their preferential rights within the said period to enter into any mode of Mineral Agreements shall constitute automatic abandonment of the mining claims, quarry/lease applications and the area thereupon shall be declared open for mining application by other interested parties.

[49] "Revised Implementing Rules and Regulations of Republic Act No. 7942, Otherwise Known as the 'Philippine Mining Act of 1995,'" dated December 19, 1996.

[50] Section 8 of DENR Memorandum Order No. 97-07 (DMO 97-07) reads:

Memorandum Order No. (DMO) 97-07.[51] According to the CA, the FTAA application of NDMC does not partake of the nature of a mineral agreement. It cited Section 3 (ab) of RA 7942 which defines a mineral agreement as "*a contract between the government and a contractor, involving mineral production-sharing agreement, co-production agreement, or joint-venture agreement*"; and declared that FTAA, on the other hand, is a service contract for financial and technical assistance.

The CA concluded that NDMC in effect abandoned its mining claims when it failed to file an application for mineral agreement on or before September 15, 1997. Additionally, it held that NDMC's abandonment of its mining claims is coupled by the

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Section 8. Claimants/Applicants Required to File Mineral Agreement.

Only holders of mining claims and lease/quarry applications filed prior to the effectivity of the Act which are valid and existing as defined in Section 5 hereof who have not filed any Mineral Agreement applications over areas covered by such mining claims and lease/quarry applications are required to file Mineral Agreement applications pursuant to Section 273 of the IRR on or before September 15, 1997; *Provided*, that the holder of such a mining claim or lease/quarry application involved in a mining dispute/case shall instead file on or before said deadline a Letter of Intent to file the necessary Mineral Agreement application; *Provided, further*, That if the mining claim or lease/quarry application is not determined to be invalid in the dispute/case, the claimant or applicant shall have thirty (30) days from the final resolution of the dispute/case to filed the necessary Mineral Agreement application; *Provided, finally*, that failure by the claimant or applicant to file the necessary Mineral Agreement application within said thirty (30)-day period shall result in the abandonment of such claim or application, after which, any area covered by the same shall be opened for Mining Applications.

Holders of such valid and existing mining claims and lease/quarry applications who had filed or been granted applications other than those for Mineral Agreements prior to September 15, 1997 shall have until such date to file/convert to Mineral Agreement applications, otherwise, such previously filed or granted applications shall be cancelled.

[51] "GUIDELINES IN THE IMPLEMENTATION OF THE MANDATORY SEPTEMBER 15, 1997 DEADLINE FOR THE FILING OF MINERAL AGREEMENT APPLICATIONS BY HOLDERS OF VALID AND EXISTING MINING CLAIMS AND LEASE/QUARRY APPLICATIONS AND FOR OTHER PURPOSES," dated August 27, 1997.

fact of the bankruptcy and revocation of its certificate of registration by the SEC and the suspension of its mining operations.

Furthermore, the CA ruled that the MAB erred in declaring NDMC to have preferential rights in its FTAA application despite the absence of certain requirements provided under RA 7942, including the following: 1) prior evaluation of the application by the MGB; 2) findings by the MGB of the sufficiency and merit of the proposal of the FTAA; and 3) the eligibility and qualification of NDMC or its successor corporation to enter into an FTAA. The CA stressed that NDMC is presently a non-operating mining corporation whose mining exploration activities have been suspended during its insolvency and conservation by APT/PMDC.

Finally, the CA held that when APT filed the FTAA proposal on January 8, 1996 in the name of NDMC, it should not be understood to mean that the State had undertaken by itself and on its own its mandate under Section 2,[52] Article XII of the 1987 Philippine Constitution (Constitution). The CA declared that the fact that NDMC was placed under APT does not mean that the State will undertake on its own the exploration and development of natural resources.

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[52] Section 2, Article XII of the Constitution reads:

Section 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty *per centum* of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the be grant.

The PMDC filed a Motion for Reconsideration (of the Decision dated December 22, 2014)[53] and a Supplemental Motion for Reconsideration (of the Decision dated December 22, 2014).[54] However, these were denied in the CA Resolution[55] dated September 23, 2015.

Hence, the instant petition with the following assignment of errors:

I

THE COURT OF APPEALS GRAVELY ERRED WHEN IT RULED THAT APEX HAS PRIOR AND PREFERENTIAL RIGHT OVER APT/NDMC BY VIRTUE OF ITS EARLIER MPSA APPLICATION.

II

THE COURT OF APPEALS GRAVELY ERRED WHEN IT FOUND THAT AT THE TIME OF APEX' MPSA APPLICATION, THE SUBJECT MINING AREAS ARE NOT YET CLOSED TO MINING APPLICATIONS.

III

THE COURT OF APPEALS GRAVELY ERRED WHEN IT HELD THAT THE MINES AND ADJUDICATION BOARD COMMITTED REVERSIBLE ERROR IN UPHOLDING NDMC/APT'S MINING LEASE CONTRACTS OR PUBLISHED LODE LEASE APPLICATIONS.

IV

THE COURT OF APPEALS GRAVELY ERRED WHEN IT RULED THAT THE MAB COMMITTED AN ERROR IN DECLARING NDMC/PMDC TO HAVE PREFERENTIAL RIGHT IN ITS FTAA APPLICATION DESPITE THE ABSENCE OF THE REQUIREMENTS UNDER REPUBLIC ACT NO. 7942.

V

THE COURT OF APPEALS GRAVELY ERRED WHEN IT CONCLUDED THAT APT'S FILING OF FTAA IN THE NAME

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[53] *Rollo*, pp. 99-117.

[54] *Id.* at 121-132.

[55] *Id.* at 94-98.

OF NDMC IS NOT TO BE UNDERSTOOD AS THE STATE'S INTENTION TO EXPLORE, DEVELOP, AND UTILIZE THE COUNTRY'S NATURAL RESOURCES.[56]

Essentially, the main issue to be resolved in this case is: *Who between the PMDC, as the successor-in-interest of NDMC, and Apex has preferential rights over the contested mining areas?*

The Court's Ruling

The petition is impressed with merit.

I. The factual findings of the MAB are treated with deference in recognition of its expertise and technical knowledge over disputes relative to mining rights; they are deemed conclusive and binding on the parties.

Factual considerations relating to mining applications properly fall within the administrative competence of the DENR.[57] The factual findings of the DENR are binding upon this Court in the absence of any showing of grave abuse of discretion, or that the factual findings were arrived at arbitrarily or in disregard of the evidence on record.[58] Since the DENR possesses the specialized knowledge and expertise in its field, its factual findings are accorded great respect and even finality by the appellate courts.[59]

The POA and the MAB are quasi-judicial bodies within the DENR which have been created pursuant to the enactment of RA 7942.[60] These bodies are charged to resolve mining disputes. A mining dispute is a dispute involving (a) rights to mining

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[56] *Id.* at 26-27.

[57] *Alecha, et al. v. Atienza, et al.*, 795 Phil. 126, 143 (2016).

[58] *Id.*, citing *Japson v. Civil Service Commission*, 663 Phil. 665, 675 (2011).

[59] *Id.*

[60] See Sections 77 to 79 of RA 7942.

areas, (b) mineral agreements, FTAAs, or permits, and (c) surface owners, occupants and claimholders/concessionaires.[61]

Under RA 7942, the POA is vested with exclusive and original jurisdiction to hear and decide mining disputes.[62] A party not satisfied with the decision or order of the POA may file an appeal with the MAB,[63] whose powers and functions are listed in Section 79 of the same Act. As explicitly stated in Section 79, "*[t]he findings of fact of the [MAB] shall be conclusive and binding on the parties and its decisions or order shall be final and executory*."

Appeals from decisions of the MAB may be taken to the CA through petitions for review in accordance with the provisions of Rule 43 of the Rules of Court.[64] It is worthy to stress Section 10[65] of Rule 43 which acknowledges the primacy and deference accorded to decisions of quasi-judicial agencies, specifically stating that their factual findings, when supported by substantial evidence, shall be binding on the CA. In this regard, the findings of the MAB, as the administrative body with jurisdiction over disputes relative to mining rights, should be treated with deference

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[61] *Heirs of Eliza Q. Zoleta v. Land Bank of the Phils., et al.*, 816 Phil. 389, 410 (2017), citing *Gonzales v. Climax Mining Ltd.*, 492 Phil. 682, 692 (2005).

[62] See Section 77 of RA 7942.

[63] See Section 78 of RA 7942.

[64] *Carpio v. Sulu Resources Dev't. Corp.*, 435 Phil. 836, 849 (2002).

[65] Section 10, Rule 43 of the Rules of Court reads:

Section 10. *Due course*. — If upon the filing of the comment or such other pleadings or documents as may be required or allowed by the Court of Appeals or upon the expiration of the period for the filing thereof, and on the records the Court of Appeals finds *prima facie* that the court or agency concerned has committed errors of fact or law that would warrant reversal or modification of the award, judgment, final order or resolution sought to be reviewed, it may give due course to the petition; otherwise, it shall dismiss the same. The findings of fact of the court or agency concerned, when supported by substantial evidence, shall be binding on the Court of Appeals.

in recognition of its expertise and technical knowledge over such matters.[66]

As found by the MAB, affirming the POA, NDMC had valid and existing mining claims over the contested areas denominated as Clusters 1, 2, 3, 5, and 6. Further, after evaluating the parties' respective appeals from the Decision of the POA, the MAB also found that NDMC had preferential rights over the mining areas under Cluster 4.

Cluster 1 covers NDMC's LLA No. V-14203-Amd, while Cluster 2 covers its LLA No. V-14205. As found by the POA, the notice of LLA No. V-14203-Amd was published on November 18, 1982, while the notice of LLA No. V-14205 was published on March 31, 1988 and April 7, 1988.[67] Pursuant to Section 48[68] of Presidential Decree No. (PD) 463,[69] the law in force at that time, Apex had 15 days from the date of first

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[66] *Naredico, Inc. v. Krominco, Inc.*, G.R. No. 196892, December 5, 2018, citing *JMM Promotions & Management, Inc. v. Court of Appeals*, 439 Phil. 1, 10-11 (2002); *Sps. Calvo v. Sps. Vergara*, 423 Phil. 939, 947 (2001); *Hon. Alvarez v. PICOP Resources, Inc.*, 538 Phil. 348, 397 (2006).

[67] See POA Decision dated July 4, 2006, *id.* at 610.

[68] Section 48 of Presidential Decree No. (PD) 463 partly reads:

SECTION 48. *Protests and Adverse Claims*. x x x

In the case of an adverse claim against a lease application, filed under Section 34 hereof, such adverse claim shall be filed within fifteen (15) days after the first date of publication of the notice of lease application if such claim was not previously investigated and decided under Presidential Decree No. 309. When an adverse claim is filed under this paragraph, all proceedings, except the publication of the notice of application for lease, the submittal of the affidavit in connection therewith and the processing of applications for temporary permit, shall be stayed until the controversy is settled or decided by the Director: *Provided*, That the operations and production under a mines temporary permit issued prior to the adverse claim shall be allowed to continue subject to the provisions of Section 33 concerning the posting of bonds.

[69] Entitled "Providing for a Modernized System of Administration and Disposition of Mineral Lands and to Promote and Encourage the Development and Exploitation Thereof" dated May 17, 1974.

publication to file its adverse claims, if any, against these applications. Further, it is stated under Section 40 of PD 463 that "[*i*]*f no adverse claim is filed within fifteen (15) days after the first publication, it shall be conclusively presumed that no such adverse claim exists and thereafter no objection from third parties to the grant of the lease shall be heard, except protest pending at the time of publication x x x*." No adverse claim or any kind of protest was filed with respect to LLA No. V-14203-Amd.[70] On the other hand, the adverse claim of Apex on LLA No. V-14205 was filed on September 17, 1988, which is way beyond the 15-day period following the first date of publication on March 31, 1988.[71] Thus, the MAB correctly affirmed the POA in ruling that Apex was already barred from questioning the validity of NDMC's mining claims covered by Clusters 1 and 2.

The POA also found that NDMC had better rights to Cluster 3. It observed that prior to NDMC, the claims over the disputed areas under Cluster 3 were held by Myrna C. Tenorio and Fred Antonio T. Tejada, the original holders of Declarations of Location (DOL). They later executed in favor of NDMC Deeds of Assignment dated July 1, 1983 and July 17, 1987.[72] Apparently, there is evidence showing that NDMC had existing claims over the areas covered by Cluster 3.

With respect to the areas under Cluster 4, while the POA ruled that neither NDMC nor Apex had preferential rights over these areas, the Court finds that the MAB was correct in reversing the POA and ruling that NDMC's claim should be upheld. NDMC had been filing the required Affidavits of Annual Work Obligations and paid the occupation fees for several years on behalf of Empire, Hijo, and Goldcoast.[73] On the contrary, while

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[70] See POA Decision dated July 4, 2006, *rollo*, p. 610.

[71] *Id.* at 611.

[72] *Id.* at 615.

[73] See MAB Decision dated October 28, 2009, *id.* at 815; see also ANNEX "O" of Petition for Review, *id.* at 210-258.

Apex claimed the existence of DOLs, it nonetheless admitted that these DOLs were not registered due to prior claims of NDMC.[74] Hence, Apex had not acquired any right over Cluster 4.

The POA was also convinced that NDMC had better rights to the claims covered by Cluster 5. It observed:

> However, based on the records of the MGB-RO No. XI, the Panel is convinced that NDMC has better rights to the claims comprising Cluster "5." APEX's APSA (XI) 112 dated 26 July 1995, (consisting of the "Edgar-IV, V and VI" blocks) appears to have been filed over areas considered closed to mining because the latter are subject to the earlier Commonwealth Act No. 137 claims of NDMC ("RA" claims). x x x[75]

The POA cited Section 19 (c) of RA 7942 which provides that mineral agreement or financial or technical assistance agreement applications shall not be allowed "in areas covered by valid and existing mining rights."

The POA similarly found NDMC to have better rights to the claims under Cluster 6, which is contiguous to Cluster 5. As supported by the records of the MGB, these claims were ceded to NDMC by Samar Mining Company, Inc. through a Deed of Assignment.[76] The POA noted that within Cluster 6, there was a mining lease contract issued in favor of NDMC denominated as MLC-MRD 523.[77]

It bears stressing that courts will not interfere in matters which are addressed to the sound discretion of the government agency entrusted with the regulation of activities coming under the special and technical training and knowledge of such agency.[78] In their evaluation of evidence and exercise of adjudicative

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[74] See MAB Decision dated October 28, 2009, *id.* at 815.

[75] *Id.* at 615.

[76] See POA Decision dated July 4, 2006, *id.* at 616.

[77] *Id.*

[78] *Dept. of Agrarian Reform v. Samson, et al.*, 577 Phil. 370, 381 (2008).

functions, administrative agencies are given wide latitude, which includes the authority to take judicial notice of the facts within their special competence.[79]

Additionally, administrative agencies like the DENR enjoy a strong presumption of regularity in the performance of official duties; they are vested with quasi-judicial powers in enforcing the laws affecting their respective fields of activity, the proper regulation of which requires of them such technical mastery of all relevant conditions obtaining in the nation. Unless rebutted by clear and convincing evidence to the contrary, the presumption becomes conclusive.[80]

Apparently, the findings of the POA and the MAB have been reached after a meticulous and judicious evaluation of the records and the evidence presented by the parties. These findings deserve the Court's respect and should be deemed conclusive and binding on the parties.

II. Apex, not being a holder of valid and existing mining claims and lease/quarry applications over the contested areas prior to the effectivity of RA 7942, cannot be granted a preferential right to enter into any mode of mineral agreement under Section 113 of RA 7942, Section 273 of the IRR of RA 7942, and Section 8 of DMO 97-07.

It must be emphasized that the preferential right to enter into any mode of mineral agreement, as mentioned in Section 113 of RA 7942, Section 273 of the IRR of RA 7942, and Section 8 of DMO 97-07 applies to *holders of valid and existing mining claims and lease/quarry applications prior to the effectivity of RA 7942*. No new, primary, and original mining rights are created under these provisions. The provisions are quoted as follows:

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[79] *Id.* at 381-382.

[80] See *Alecha, et al. v. Atienza, et al., supra* note 57 at 144-145. Citations omitted.

Section 113 of RA 7942

Section 113. *Recognition of Valid and Existing Mining Claims and Lease/Quarry Applications*. — Holders of valid and existing mining claims, lease/quarry applications shall be given preferential rights to enter into any mode of mineral agreement with the government within two (2) years from the promulgation of the rules and regulations implementing this Act.

Section 273 of the IRR of RA 7942

Section 273. Recognition of Valid and Existing Mining Claims and Lease/Quarry Applications.

Holders of valid and existing mining claims, lease/quarry applications shall be given preferential rights to enter into any mode of Mineral Agreement with the Government until September 14, 1997: Provided, That failure on the part of the holders of valid and subsisting mining claims, lease/quarry applications to exercise their preferential rights within the said period to enter into any mode of Mineral Agreements shall constitute automatic abandonment of the mining claims, quarry/lease applications and the area thereupon shall be declared open for mining application by other interested parties.

Section 8 of DMO 97-07

Section 8. Claimants/Applicants Required to File Mineral Agreement.

Only holders of mining claims and lease/quarry applications filed prior to the effectivity of the Act which are valid and existing as defined in Section 5 hereof who have not filed any Mineral Agreement applications over areas covered by such mining claims and lease/quarry applications are required to file Mineral Agreement applications pursuant to Section 273 of the IRR on or before September 15, 1997; *Provided*, that the holder of such a mining claim or lease/quarry application involved in a mining dispute/case shall instead file on or before said deadline a Letter of Intent to file the necessary Mineral Agreement application; *Provided, further*, That if the mining claim or lease/quarry application is not determined to be invalid in the dispute/case, the claimant or applicant shall have thirty (30) days from the final resolution of the dispute/case to filed the necessary Mineral Agreement application; *Provided, finally*, that failure by the claimant or applicant to file the necessary Mineral Agreement application within said thirty (30)-day period shall result in the

abandonment of such claim or application, after which, any area covered by the same shall be opened for Mining Applications.

Holders of such valid and existing mining claims and lease/quarry applications who had filed or been granted applications other than those for Mineral Agreements prior to September 15, 1997 shall have until such date to file/convert to Mineral Agreement applications, otherwise, such previously filed or granted applications shall be cancelled.

NDMC filed its FTAA application on January 8, 1996, while Apex filed its MPSA applications on April 21, 1995 and on July 26, 1996. Notably, the applications of NDMC and Apex over the same mining areas were all filed before September 15, 1997, the mandatory deadline set for the filing of mineral agreement applications *by holders of valid and existing mining claims and lease/quarry applications*.

In this case, the CA gravely erred in ruling that Apex should be given priority as its MPSA applications were filed earlier than the FTAA application of NDMC. The CA completely brushed aside the MAB's findings relative to the parties' prior claims over the areas in dispute.

As found by the MAB, prior to the effectivity of RA 7942, it was NDMC, not Apex, that had valid and existing mining claims over the contested areas denominated as Clusters 1, 2, 3, 4, 5, and 6. Regrettably, the CA altogether disregarded the factual findings of the POA and the MAB which were inevitable considerations in applying the provisions of Section 113 of RA 7942, Section 273 of the IRR of RA 7942, and Section 8 of DMO 97-07.

To highlight, the above-mentioned provisions presuppose that the applicants are *holders of valid and existing mining claims, and lease/quarry applications prior to the effectivity of RA 7942*. It is of no consequence that Apex's MPSA applications were filed earlier than NDMC's FTAA application in view of the finding that Apex had no pre-existing and valid claims over the contested areas. Verily, the preferential right under these provisions should be given to NDMC.

Apart from disregarding the prior mining lease contracts and published lode lease applications of NDMC, the CA erroneously applied Section 8 of DAO 63 as cited in the case of *Diamond Drilling Corporation*. A reading of Section 8 of DAO 63 shows that it specifically pertains to the acceptance and evaluation of FTAAs. Also, the application of this provision in the *Diamond Drilling Corporation* case did not have any relation to the provisions of Section 113 of RA 7942, Section 273 of the IRR of RA 7942, and Section 8 of DMO 97-07. Evidently, Section 8 of DAO 63 is far from being applicable to the instant case.

III. NDMC's FTAA application had closed the areas covered by Clusters 1 to 6 to other mining applications.

Under Section 19 (c) of RA 7942, areas covered by valid and existing mining rights are closed to mining applications. However, a precondition to the closing of these areas is provided in Section 8 of DMO 97-07. It states that *holders of valid and existing mining claims and lease/quarry applications*,[81] *filed*

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[81] *Section* 5 of DMO 97-07 defines "valid and existing mining claims and lease/quarry applications."

It reads:

Section 5. Valid and Existing Mining Claims and Lease/Quarry Applications.

For purposed of this Order, a mining claim shall be considered valid and existing if it has complied with the following requirements.

a. For a mining claim which Declaration of Location (DOL) was filed within the period from July 19, 1987 to July 18, 1988, it must be covered by a timely and duly filed Application for Survey and Survey Returns (if a Survey Order was issued);

b. For a mining claim which DOL was filed under the provisions of Presidential Decree No. 463 as mended, Presidential Decree No. 1214 and the CMAO as Amended but not later than July 18, 1997, it must be covered by a timely and duly filed Application for Mining Lease, Applications for Survey and Survey Returns (if a Survey Order was issued);

c. For a mining claim located/filed under the provisions of Commonwealth Act No. 137 and/or earlier laws, it must be covered by a timely and duly filed Applications for Availment under Presidential Decree No. 463 as Amended, Application for Mining Lease, Application for Survey and Survey Returns (if a Survey Order was issued).

prior to the effectivity of RA 7942, are required to file mineral agreement applications pursuant to Section 273 of the IRR on or before September 15, 1997 if they have not filed any mineral agreement applications over areas covered by such mining claims and lease/quarry applications.

As earlier stated, the MPSA applications of Apex and FTAA application of NDMC were all filed before September 15, 1997. However, since Apex had been found to have no valid and existing mining claims and lease/quarry applications over the areas covered by Clusters 1 to 6, its MPSA applications were of no consequence.

On the other hand, given that NDMC is a holder of valid and existing mining claims and lease applications over the contested areas, an important issue to address is whether its FTAA application filed on January 8, 1996 is a "mineral agreement application" within the contemplation of Section 113 of RA 7942, Section 273 of the IRR of RA 7942, and Section 8 of DMO 97-07. Another issue to address is whether the FTAA application of NDMC had closed to other mining applications the areas covered by Clusters 1 to 6.

Under RA 7942, a *mineral agreement* is defined in Section 3 (ab) as "a contract between the government and a contractor, involving mineral production-sharing agreement, co-production

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Provided, That the holder of a mining claim DOL was filed between July 19, 1988 and January 4, 1991 with or without a Letter of Intent to file for a Mineral Agreement application, shall be given up to September 15, 1997 to file the necessary Mineral Agreement application.

For purposes of this Order, a mining lease application shall be considered valid and existing only if all mining claims contained in such lease application are valid and existing as defined in this section, while applications for Quarry Licenses and Quarry Permits filed prior to April 9, 1995 shall be considered valid and existing if the concerned applicant had timely and duly filed the Application for Survey and duly submitted the Survey Returns (is the Survey Order was issued).

Notwithstanding the preceding provisions of this section, a mining claim or lease/quarry application over which an order of rejection or cancellation has been issued shall not be considered valid and existing as of the date of issuance of such order.

agreement, or joint-venture agreement." Section 3 (r) separately defines *financial or technical assistance agreement* as "a contract involving financial or technical assistance for large-scale exploration, development, and utilization of mineral resources."

In its Comment,[82] Apex argues that an FTAA application is not the mineral agreement required by the IRR of RA 7942. It cited the Memorandum dated November 19, 1998 issued by the Director of the MGB which partly states: "*[w]ith Section 8 of DMO No. 97-07, it is settled that holders of valid and existing mining claims and lease/quarry applications can only apply for a Mineral Agreement, that is, Mineral Production Sharing Agreement, Co-Production Agreement or Joint Venture Agreement*."[83]

Notably, in the same Memorandum dated November 19, 1998, the MGB also stated:

> The case of NDMC, however, should be taken differently. Here is a situation where Government's interest is directly at stake. With NDMC at the hands of the Asset Privatization Trust (APT), it has assumed the character of a government-owned entity and, therefore, it cannot be placed in the same level with private mining applicants. A cursory review of the Mining Act, the Revised IRR and DMO No. 97-07 will show that practically all these regulatory provisions, save for the provision on Government Gratuitous Permit, refer to mineral resources disposition by contractors.
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> x x x x
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> Hence, this Office is of the position that the FTAA application of NDMC is acceptable, not because there is no prohibition in the law allowing holders of valid and existing mining claims and lease/quarry applications to enter into other modes of mining rights other than Mineral Agreements, but solely because of direct Government's interest.[84]

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[82] *Rollo*, pp. 280-327.

[83] *Id.* at 290.

[84] As culled from the Comment dated March 18, 2016, *id.* Underscoring omitted.

The Court observes that the MGB issued the above Memorandum in the exercise of its quasi-judicial power. Quasi-judicial or administrative adjudicatory power is the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law.[85] The administrative body exercises its quasi-judicial power when it performs in a judicial manner an act essentially of an executive or administrative nature, where the power to act in such manner is incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted to it.[86]

Significantly, the MGB itself clarified in the Memorandum that an FTAA is not one of those considered as a mineral agreement. However, in accepting NDMC's FTAA application, the MGB took into consideration the fact that NDMC had been placed in the hands of APT and had assumed the character of a government-owned entity. The MGB set aside technicalities inasmuch as the Government's interest is directly at stake.

The opinion of MGB is well taken. In the sound exercise of its quasi-judicial power, the MGB aptly considered NDMC's case as different from that of private mining applicants. The reason for MGB's acceptance of the FTAA application filed on January 8, 1996 is clear — *it is solely due to the direct interest of the Government over NDMC's mining claims and rights, which were already entrusted to APT at the time of the FTAA application.*

Notably, the MAB also stressed in its Decision[87] that the subject mining claims of NDMC were among the assets transferred by the PNB to the Government. Briefly, the MAB explained:

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[85] *The Chairman and Executive Director, Palawan Council for Sustainable Development, et al. v. Lim*, 793 Phil. 690, 698 (2016).

[86] *Id.*

[87] *Rollo*, pp. 810-817.

It bears stressing that the subject mining claims were among the assets/properties transferred by PNB to the National Government. Thereafter, a certificate of sale over [NDMC]'s properties was issued to APT being then [sic] highest bidder. Pursuant to E.O. 323, the [NDMC] assets, among others, were turned over to PMO from the COP/APT. Then the assets/properties were transferred to the NRMDC, now PMDC, as trustee and disposition entity. Finally, on 07 April 2006, the PMDC and the National Government executed a Trust Agreement whereby the mining assets of x x x NDMC were transferred, conveyed and assigned to PMDC to develop and/or dispose of said properties.[88]

Taking the foregoing antecedents into consideration, the Court affirms the MGB's determination that the FTAA application of NDMC should be treated differently and should be understood as the State's exercise of its right of ownership over NDMC's mining claims. In accepting NDMC's FTAA application, the MGB in this case merely recognized the rights of the Government to the mining property of NDMC, who held valid and existing mining claims over the contested areas. The application was not an FTAA application *per se*, considering that the Government cannot enter into an agreement with itself. By reason of the Government's direct interest over the mineral property of NDMC, the FTAA application was meant to close to other mining applications the areas over which the NDMC had mining claims. Apparently, these areas were among those ordered closed by then Acting DENR Secretary Antonio G. M. La Viña through his issuance of the Memorandum[89] dated September 17, 1997, which enjoined all MGB Regional Directors to close to new mining locations or applications those areas covered by valid and existing mining claims held in trust by APT or other similar entities.

IV. Prescription does not lie against the State.

The CA mistakenly concluded that NDMC had in effect abandoned its mining claims when it failed to file an application

[88] *Id.* at 814.

[89] *Id.* at 179.

for mineral agreement on or before September 15, 1997, holding that NDMC's FTAA application is not a mineral agreement within the contemplation of RA 7942. Moreover, it erred in holding that the bankruptcy revocation of NDMC's certificate of registration by the SEC and the suspension of mining operations supported the finding that NDMC had indeed abandoned its mining claims.

In arriving at the above conclusion, the CA failed to consider that it was the Government's interest that was at stake. At the time of the filing of the FTAA application, the mining claims of NDMC were among the assets and properties turned over by the PNB to the Government. These assets and properties were then placed in the possession of APT. At present, the PMDC is the trustee of NDMC's mineral property. Verily, before the Court and the CA, the Government has been represented by the PMDC, as the successor-in-interest of NDMC's mining property.

The Court affirms the CA in ruling that an FTAA is not one of the mineral agreements that holders of valid and existing mining claims and lease/quarry applications could apply for in order to close the subject areas to other mining applications. As explained by the MGB, a mineral agreement could only be any of the following: an MPSA, a co-production agreement, or a joint venture agreement.

Nonetheless, while the FTAA is admittedly not a mineral agreement within the contemplation of RA 7942, it bears reiterating that NDMC's FTAA application was not an FTAA application *per se* and should be considered as the Government's direct interest and intention to exercise its ownership over the mineral property of NDMC. In addition, the FTAA application was also meant to close to other mining applications the mining areas over which the NDMC had mining claims. Therefore, it did not matter whether it was a mineral agreement or an FTAA that was applied for by NDMC. The sole reason that the MGB accepted the FTAA application was the Government's direct interest in the case.

At this juncture, it is worthy to emphasize Section 2, Article XII of the Constitution which pertinently states that "[*a*]*ll lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. x x x The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State*." Thus, as the owner of natural resources, the State has the primary power and responsibility in their exploration, development, and utilization.

Affirming Section 2, Article XII of the Constitution is Section 4 of RA 7942 which partly reads:

> Section 4. Ownership of Mineral Resources. — Mineral resources are owned by the State and the exploration, development, utilization, and processing thereof shall be under its full control and supervision. The State may directly undertake such activities or it may enter into mineral agreements with contractors.

Thus, the Court holds that the CA erred in concluding that the FTAA application should not be considered as the State's intention to explore, develop, and utilize the country's natural resources. To insist that the Government should enter into a specific mineral agreement under RA 7942 would be a direct affront to its power to fully control and supervise the exploration, development, and utilization of the country's mineral resources. Ultimately, it amounts to depriving the State of its ownership of all natural resources.

In any case, it is a time-honored principle that the statute of limitations or the lapse of time does not run against the State.[90] Hence, even assuming that the NDMC did not file the FTAA application or failed to file a valid mineral agreement application on or before September 15, 1997, the areas included in the FTAA application of NDMC would still be closed to other mining applications for the simple reason that it is the Government that owns the mineral property of NDMC.

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[90] *Rep. of the Phils. v. Hachero, et al.*, 785 Phil. 784, 797 (2016).

WHEREFORE, the petition for review is **GRANTED**. The Decision dated December 22, 2014 and the Resolution dated September 23, 2015 of the Court of Appeals in CA-G.R. SP No. 133927 are **REVERSED** and **SET ASIDE**. The Decision dated October 28, 2009 of the Mines Adjudication Board, Department of Environment and Natural Resources in MAB Case Nos. 0156-07 and 0157-07 is **REINSTATED**. Accordingly, the Philippine Mining Development Corporation, as the trustee of the mineral property of North Davao Mining Corporation, is declared to have prior and preferential rights over the areas covered by its application for Financial and Technical Assistance Agreement filed on January 8, 1996.

SO ORDERED.

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

Baltazar-Padilla, J., on leave.

SECOND DIVISION

[G.R. No. 224906. October 7, 2020]

EMMA BUENVIAJE NABO and all persons claiming rights under her, *Petitioner*, *v.* **FELIX C. BUENVIAJE,** *Respondent*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; POSSESSION BY TOLERANCE; A CASE OF UNLAWFUL DETAINER MUST STATE THE PERIOD WHEN THE OCCUPATION BY TOLERANCE STARTED AND THE ACTS OF TOLERANCE EXERCISED BY THE PARTY WITH THE RIGHT OF POSSESION.— In this case, respondent identifies his complaint as an ejectment suit alleging that since the issuance of title in his favor, he has allowed petitioner to remain on the subject property considering that the latter is his niece; that despite the withdrawal of the permission to remain on the subject property, and the receipt by petitioner of the demand to vacate and the expiration of the period granted thereon to comply, petitioner still refused and continues to refuse to vacate the subject property and to surrender the peaceful possession thereof to respondent. . . .

. . .

. . . Respondent utterly failed to substantiate his claim that he merely tolerated petitioner's possession of the subject property. It must be noted that with respondent's averment that petitioner's possession was by his mere tolerance, the acts of tolerance must be proved, for a bare allegation of tolerance will not suffice. At the very least, respondent should show the overt acts indicative of his tolerance, but he miserably failed to adduce evidence to prove tolerance in this case.

Moreover, a case of unlawful detainer must state the period when the occupation by tolerance started and the acts of tolerance exercised by the party with the right of possession. In this case, respondent claims that since the issuance of title in his favor,

he has already allowed petitioner to remain on the subject property considering that the latter is his niece. . . .

. . . [B]ecause respondent is required to state the period when petitioner's occupation by tolerance started, he was able to establish that the tolerance granted to petitioner started only on August 28, 2008, or at the time the OCT No. 0-1777 was issued in his name. Respondent, however, failed to provide essential details of his acts of tolerance as to petitioner's prior physical possession of the subject property for over 30 years, or before the issuance of the title in his name.

2. ID.; ID.; ID.; ID.; COMPLAINT FOR UNLAWFUL DETAINER; REQUISITES.— In *Cabrera, et al. v. Getaruela, et al.*, the Court held that a complaint sufficiently alleges a cause of action for unlawful detainer if it recites the following:

(1) initially, possession of the property by the defendant was by contract with or by tolerance of the plaintiff;

(2) eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession;

(3) thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and

(4) within one year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment.

3. CIVIL LAW; PROPERTY, OWNERSHIP, AND ITS MODIFICATIONS; POSSESSION; TAX DECLARATIONS OR REALTY TAX PAYMENTS OF PROPERTY ARE NOT CONCLUSIVE EVIDENCE OF OWNERSHIP, BUT THEY ARE, HOWEVER, GOOD *INDICIA* OF POSSESSION IN THE CONCEPT OF AN OWNER.— The fact that petitioner has been in continuous possession of the subject property for more than 30 years is evidenced by . . . documentary evidence. . . . Furthermore, petitioner submitted as part of her documentary evidence a number of tax declarations in her name and her spouse, and the oldest of which was registered on June 14, 1983. Also, she has been religiously paying the real property taxes thereon since 1989 as evidenced by a number of real property tax receipts.

Time and again, the Court ratiocinated that although tax declarations or realty tax payments of property are not conclusive evidence of ownership, they are, however, good *indicia* of possession in the concept of an owner, for no one in his right mind would be paying taxes for a property that is not in his actual or constructive possession. They constitute at least proof that the holder has a claim of title over the property.

4. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; IN AN ACTION FOR UNLAWFUL DETAINER, THE OWNER OF THE PROPERTY SHOULD PROVE THAT THE POSSESSION OF THE OCCUPANT IS PREMISED ON HIS PERMISSION OF TOLERANCE, AND FAILURE IN WHICH, THE OWNER COULD PURSUE OTHER APPROPRIATE LEGAL REMEDIES GRANTED TO HIM BY LAW.— Well-settled is the rule that a title issued under the Torrens system is entitled to all the attributes of property ownership, which necessarily includes possession. However, the Court has also emphasized that "*an ejectment case will not necessarily be decided in favor of one who has presented proof of ownership of the subject property. Key jurisdictional facts constitutive of the particular ejectment case filed must be averred in the complaint and sufficiently proven.*" . . .

. . .

. . . [A] study of the allegations in the respondent's complaint shows that it is one for unlawful detainer. Hence, he has a correlative burden to sufficiently allege, and thereafter prove by preponderance of evidence all the jurisdictional facts required in an action for unlawful detainer. However, respondent failed to discharge this burden.

Following the Court's ruling in *Quijano v. Atty. Amante*, in an action for unlawful detainer, respondent must show that the possession was initially lawful, and thereafter, establish the basis of the lawful possession. In the same manner, should respondent claim that petitioner's possession was by his tolerance, then his acts of tolerance must be proved as a bare allegation of tolerance will not suffice. There must be, at least, showing of respondent's overt acts indicative of his or his predecessor's permission granted to petitioner to occupy the subject property. Failure in which, petitioner's possession could

> very well be deemed illegal from the beginning. Thus, the respondent's action for unlawful detainer must necessarily fail. . . .
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> . . .
>
> The ruling of the Court does not mean that the Court favors the occupant of the subject property over the person claiming a right of ownership by virtue of a title, but rather, this ruling merely emphasizes an important fact that even a legal owner of the subject property cannot simply oust a party who is in peaceable quiet possession thereof through a summary action for ejectment, without having established by a preponderance of evidence the essential requisites of the action. Case law has it, in an action for unlawful detainer, the owner of a property should prove that the possession of the occupant is premised on his permission or tolerance, and failure in which, the owner could pursue other appropriate legal remedies granted to him by law.

APPEARANCES OF COUNSEL

Puyat Jacinto & Santos for petitioner.
Lerio & Lerio Law Office for respondent.

D E C I S I O N

INTING, *J.*:

This resolves the Petition for Review on *Certiorari* with Application for Temporary Restraining Order and/or Preliminary Injunction[1] under Rule 45 of the Rules of Court praying that the Decision[2] dated March 30, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 136811 be reversed and set aside; and that the Decision[3] dated October 4, 2013 of the Municipal

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[1] *Rollo*, Vol. 1, pp. 30-66.

[2] *Id.* at 68-74; penned by Associate Justice Danton Q. Bueser with Associate Justices Apolinario D. Bruselas, Jr. and Agnes Reyes Carpio, concurring.

[3] *Id.* at 127-130; penned by Presiding Judge Maribeth Rodriguez-Manahan.

Trial Court (MTC), San Mateo, Rizal in SCA No. 106-2012 for ejectment with damages be affirmed and reinstated.

The Antecedents

The case stemmed from a Complaint[4] for Ejectment with Damages filed by Felix C. Buenviaje (respondent) against Emma Buenviaje Nabo (petitioner) and all persons claiming rights under her.

In the complaint, respondent alleged the following:

He is the registered owner of a parcel of land (subject property) situated in the Municipality of San Mateo, Province of Rizal covered by Original Certificate of Title (OCT) No. 0-1777[5] issued by the Register of Deeds of the Province of Rizal.[6] The title was issued pursuant to a Decision[7] dated February 7, 2003 issued by the same MTC in LRC Case No. 070-2000 (LRA Record No. N-73603).

From the time of the issuance of the title in his favor, he had allowed petitioner to remain on the subject property considering that the latter is his niece, but with the understanding that should he decide to take it back, petitioner would peacefully surrender and vacate it.[8]

Sometime in July 2012, he sent a letter addressed to petitioner and to all persons claiming rights under her informing them that the authority previously granted to petitioner to remain in the subject property was being withdrawn. Petitioner was given 15 days from receipt of the letter within which to vacate the subject property and to peacefully surrender it to him.[9] Per Certification[10] dated October 1, 2012 issued by the San Mateo

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[4] *Id.* at 136-141.

[5] *Id.* at 296-300.

[6] *Id.* at 136.

[7] *Id.* at 147-149.

[8] *Id.* at 138.

[9] *Id.*

[10] *Id.* at 151.

Post Office, petitioner, through Ethel May Nabo, received the demand letter.

However, with the expiration of the period granted to petitioner to vacate the subject property, she refused to comply and still continues to refuse to vacate and surrender the peaceful possession of the subject property to him; thus, depriving him of the enjoyment of his property.[11]

Considering that he and the petitioner belong to the same *barangay*, and hoping that they could amicably settle, he reported the complaint to the *barangay*.[12] However, the conciliation failed. A *Barangay* Certificate to File Action[13] was then issued to him. Hence, the complaint praying, among others, that petitioner be ordered to vacate the premises and to immediately surrender peaceful possession thereof to respondent;[14] that petitioner be ordered to pay respondent an amount of ₱4,000.00 per month from the time the demand was made for her to vacate the subject property until she has fully surrendered possession thereof to respondent;[15] and that petitioner be ordered to pay respondent attorney's fees in the amount of ₱20,000.00.[16]

In her Answer,[17] petitioner alleged the following:

Since 1950 or since her childhood, she has been a resident of the subject property that was registered under the name of her father, Carlos Buenviaje, with the Office of the Assessor of the Province of Rizal on May 31, 1979 and for which reason Tax Declaration No. 08-0149 was issued in the latter's name. She formally acquired the subject property on May 12, 1983

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[11] *Id.* at 138-139.

[12] *Id.* at 138.

[13] *Id.* at 152.

[14] *Id.* at 140.

[15] *Id.* at 141.

[16] *Id.*

[17] *Id.* at 153-168.

through a Deed of Absolute Sale[18] (Deed) executed by and between her and her spouse, as vendees and Carlos Buenviaje, as vendor. The Deed was duly notarized on even date.[19]

Petitioner maintained that respondent was aware of her and her father's previous possession of the subject property prior to 1983 and her subsequent purchase of it in 1983. After petitioner purchased the subject property from her father, Tax Declaration No. 08-0149 was cancelled and a new one was issued in 1984 in her name and her spouse, Rolando Nabo. From then on, she and her family have been in open and continuous possession and occupancy in the concept of an owner of the subject property; and to which they have been paying real property taxes thereon since then up to the present as evidenced by the various receipts issued by the Provincial Treasurer's Office of San Mateo, Rizal.[20]

During petitioner's undisturbed possession, she introduced improvements on the ancestral home already built thereon which she declared for real property tax on July 16, 1993 under Tax Declaration No. SM-007-0183, but was exempted from it as evidenced by a certification issued by the Provincial Treasurer of San Mateo, Rizal.[21]

Petitioner asserted that sometime in 1998, respondent with Angeles P. Angeles, Local Assessment Operation Officer III of the Municipality of San Mateo, came to convince her to consolidate the subject property with respondent's unregistered adjacent property in a single application for registration of title under the latter's name; that the consolidation would be for the purpose of helping respondent's son, Benjamin Buenviaje, to obtain a loan using the properties as collateral. She declined their proposal.[22]

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[18] *Id.* at 241.

[19] *Id.* at 155.

[20] *Id.* at 156.

[21] *Id.*

[22] *Id.* at 157.

Respondent then suggested to petitioner that they simulate a sale to which the latter would exchange the subject property for another property of respondent. Petitioner did not agree.[23]

Soon thereafter, respondent, through a certain Atty. Almero of the Public Attorney's Office in the Municipality of San Mateo, approached petitioner reiterating the prior request for consolidation and registration of title of the subject property and one of the properties of respondent with an assurance that respondent and his children would execute and sign an agreement stating that once the title over the properties is issued, the respondent would return the subject property to petitioner.[24] Atty. Almero drafted an Agreement[25] embodying respondent's offer and furnished petitioner a copy thereof. However, petitioner again turned down the request.

In 2001, petitioner was informed to attend a hearing in LRC CASE No. 070-2000 (LRA Record No. N-73603) before the MTC of San Mateo, Rizal involving the subject property; she appeared in the hearing without a counsel to enter her opposition in open court and made a statement that the subject property belonged to her. She recalled that the presiding judge informed her that she needed to secure the services of a counsel to formally oppose the Application for Registration of Title of a Parcel of Land filed by respondent. After the hearing, respondent approached petitioner and informed her that he would take care of the dropping of the case and that there was no need for petitioner to attend further hearings.[26] Petitioner, thereafter, did not return to the MTC.

On May 17, 2012, petitioner was invited to attend a *barangay* conciliation and mediation proceeding initiated by respondent and his daughter, Elena Buenviaje Valbuena (Elena). Elena alleged that the subject property was already titled under

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[23] *Id.*

[24] *Id.* at 158.

[25] *Id.* at 175-177.

[26] *Id.* at 158.

respondent's name notwithstanding, petitioner's purchase of the subject property in 1983 and the latter's continuous possession of it prior to its purchase up to the present. Petitioner then exerted efforts to ascertain the truth behind Elena's claim. She inquired before the courts of San Mateo, Rizal if there was a case filed involving the registration of the subject property, but was told that all of the records were destroyed because of the typhoon Ondoy in 2009.[27]

On October 1, 2012, petitioner received a letter dated July 18, 2012 from respondent's counsel demanding her to vacate the subject property in favor of respondent.

On November 14, 2012, petitioner sent her reply[28] informing respondent's counsel that the demand to vacate had no basis in fact and in law because respondent was well aware that the subject property belonged to her as she has been in continuous and open possession thereof from May 12, 1983 up to the present.

The Ruling of the MTC

On October 4, 2013, the MTC rendered a Decision[29] dismissing the complaint. In part, the MTC ruled that while respondent sought to acquire physical possession of the subject property on the premise that he is the titled owner and that his ownership carries with it his right to possess it, the plea, however, was unavailing in an ejectment suit.[30]

The Ruling of the RTC

On July 10, 2014, Branch 77, Regional Trial Court (RTC), San Mateo, Rizal rendered a Decision[31] reversing and setting aside the MTC Decision. The dispositive portion of the Decision reads:

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[27] *Id.* at 128, 159.

[28] See Reply to Letter dated July 18, 2012, *id.* at 178.

[29] *Id.* at 127-130.

[30] *Id.* at 128.

[31] *Id.* at 131-134; penned by Judge Lily Villareal Biton.

WHEREFORE, premises considered, the Decision dated 04 October 2013 of the Municipal Trial Court of San Mateo, Rizal is hereby REVERSED and SET ASIDE and a new judgment is hereby rendered in favour of the plaintiff as against defendant and all persons claiming rights under her as follows:

1. Ordering the defendants to vacate the premises subject matter of this case and to immediately surrender peaceful possession thereof to plaintiff[;] and

2. Ordering the defendants to pay plaintiff the amount of P4,000.00 per month from the time Demand was made for her to vacate hereof, until she has fully surrendered possession of the same to the plaintiff and to pay plaintiff the amount of P20,000.00 by way of Attorney's fees.

SO ORDERED.[32]

The Ruling of the CA

On March 30, 2015, the CA rendered the assailed Decision[33] dismissing the petition for review filed by petitioner and affirmed the RTC Decision. The CA ruled that respondent, being the registered owner, also has the corresponding right to the recovery and possession of the subject property; and that petitioner, who is in physical occupancy of the land belonging to respondent, has no right whatsoever to unjustly withhold the possession of the subject property from the latter and she should immediately vacate it.[34]

Petitioner alleged that a motion for reconsideration is not a condition precedent to the filing of a petition for review on *certiorari* under Rule 45 of the Rules of Court following the Court's pronouncement in *The Bases Conversion and Development Authority v. Uy*.[35]

Hence, this petition for review on *certiorari*.

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[32] *Id.* at 133-134.

[33] *Id.* at 68-74.

[34] *Id.* at 73.

[35] 537 Phil. 18 (2006).

The Issue

WHETHER OR NOT RESPONDENT'S CERTIFICATE OF TITLE ENTITLES HIM TO OUTRIGHT POSSESSION OF THE SUBJECT PROPERTY UNDER RULE 70 OF THE RULES OF COURT WITHOUT NEED TO SUBSTANTIATE AND PROVE BY PREPONDERANCE OF EVIDENCE.[36]

Our Ruling

After considering the arguments of both parties and assiduously studying the records of the case, the Court grants the instant petition.

At the crux of the instant petition is the question of whether petitioner should vacate the subject property and surrender the possession thereof to respondent.

In her petition, petitioner maintains that: (1) the elements for a case of unlawful detainer are wanting and that respondent has utterly failed to prove them by preponderance of evidence;[37] (2) respondent failed to elaborate and substantiate the circumstances and details of the events pertaining to his alleged tolerance over petitioner's possession;[38] (3) the mere presentation of the certificate of title covering the subject property, without more, does not entitle respondent to the remedy of unlawful detainer under Rule 70 of the Rules of Court as the first element of tolerance must still be proved by a preponderance of evidence;[39] and (4) respondent cannot simply use unlawful detainer to oust the lawful physical and actual possession of petitioner, without substantiating and proving his claim of tolerance only to avoid the consequences of failing to file the appropriate action.[40]

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[36] *Rollo*, Vol. 1, p. 42.

[37] *Id.* at 43.

[38] *Id.* at 46.

[39] *Id.* at 48.

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

The contentions are meritorious.

In this case, respondent identifies his complaint as an ejectment suit alleging that since the issuance of title in his favor, he has allowed petitioner to remain on the subject property considering that the latter is his niece;[41] that despite the withdrawal of the permission to remain on the subject property, and the receipt by petitioner of the demand to vacate and the expiration of the period granted thereon to comply, petitioner still refused and continues to refuse to vacate the subject property and to surrender the peaceful possession thereof to respondent.[42]

In *Cabrera, et al. v. Getaruela, et al.*,[43] the Court held that a complaint sufficiently alleges a cause of action for unlawful detainer if it recites the following:

(1) initially, possession of the property by the defendant was by contract with or by tolerance of the plaintiff;

(2) eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession;

(3) thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and

(4) within one year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment.[44]

After a perusal of the complaint and the available records of the case, the Court finds that respondent failed to prove the first recital. Respondent utterly failed to substantiate his claim that he merely tolerated petitioner's possession of the subject

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[41] *Id.* at 138.

[42] *Id.* at 138-139.

[43] 604 Phil. 59 (2009).

[44] *Id.* at 66, citing *Fernando v. Spouses Lim*, 585 Phil. 141, 155-156 (2008).

property. It must be noted that with respondent's averment that petitioner's possession was by his mere tolerance, the acts of tolerance must be proved, for a bare allegation of tolerance will not suffice.[45] At the very least, respondent should show the overt acts indicative of his tolerance, but he miserably failed to adduce evidence to prove tolerance in this case.[46]

Moreover, a case of unlawful detainer must state the period when the occupation by tolerance started and the acts of tolerance exercised by the party with the right of possession.[47] In this case, respondent claims that since the issuance of title in his favor, he has already allowed petitioner to remain on the subject property considering that the latter is his niece.[48] OCT No. 0-1777 was issued on August 28, 2008 pursuant to the Decision dated February 7, 2003 rendered in LRC Case No. 070-2000 LRA Record No. N-73603.[49] Petitioner, on the other hand, claims that she has been in continuous possession of the subject property for more than 30 years[50] which, in fact, remains undisputed by respondent.

Otherwise stated, because respondent is required to state the period when petitioner's occupation by tolerance started, he was able to establish that the tolerance granted to petitioner started only on August 28, 2008, or at the time the OCT No. 0-1777 was issued in his name. Respondent, however, failed to provide essential details of his acts of tolerance as to petitioner's prior physical possession of the subject property for over 30 years, or before the issuance of the title in his name.

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[45] *Quijano v. Atty. Amante*, 745 Phil. 40, 52 (2014).

[46] *Id.*

[47] *Genson v. Pon-an*, G.R. No. 246054, August 7, 2019, citing *Eversely Childs Sanitarium v. Barbarona*, G.R. No. 195814, April 4, 2018, 860 SCRA 283, 288.

[48] See Memorandum (For Plaintiff-Appellant) dated April 5, 2014 filed with Branch 77, Regional Trial Court, San Mateo, Rizal, *rollo*, Vol. 1, p. 493.

[49] *Id.* at 132.

[50] *Id.* at 190.

The fact that petitioner has been in continuous possession of the subject property for more than 30 years is evidenced by the following documentary evidence, among others, to wit: (1) *Barangay* Residence Certificate[51] dated December 3, 2012; and (2) Tax Declaration No. 08-0911[52] covering 100-square meter parcel of land, issued by the Municipal Assessor's Office of San Mateo, Rizal, declared in the name of Spouses Rolando S. Nabo and petitioner, and registered on June 14, 1983.

In the words of the court *a quo*, "*x x x it is unarguable that [petitioner] has been in possession of the subject property since time immemorial. No less than their barangay officials have duly certified that [petitioner] has been there for more than 30 years. In the absence of bias or improper motive to falsely certify, said certifications enjoys the highest respect of truth and credence*."[53]

Furthermore, petitioner submitted as part of her documentary evidence a number of tax declarations in her name and her spouse, and the oldest of which was registered on June 14, 1983.[54] Also, she has been religiously paying the real property taxes thereon since 1989 as evidenced by a number of real property tax receipts.[55]

Time and again, the Court ratiocinated that although tax declarations or realty tax payments of property are not conclusive evidence of ownership, they are, however, good *indicia* of possession in the concept of an owner, for no one in his right mind would be paying taxes for a property that is not in his actual or constructive possession. They constitute at least proof that the holder has a claim of title over the property.[56]

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[51] *Id.* at 240.

[52] *Id.* at 251.

[53] As culled from the Decision dated October 4, 2013 of the Municipal Trial Court, San Mateo, Rizal, *id.* at 129. Italics supplied; citations omitted.

[54] *Id.* at 187.

[55] *Id.* at 188.

[56] *Heirs of Delfin and Maria Tappa v. Heirs of Bacud, et al.*, 783 Phil. 536, 549 (2016), citing *Heirs of Santiago v. Heirs of Santiago*, 452 Phil. 238, 248 (2003).

Notably, the CA erred in ruling that respondent's complaint is one for unlawful detainer and that the requisites were duly met.[57] It is likewise wrong for the CA to grant possession of the subject property to respondent, as a matter of right, mainly because of the OCT No. 0-1777 in the latter's name.[58]

Well-settled is the rule that a title issued under the Torrens system is entitled to all the attributes of property ownership, which necessarily includes possession.[59] However, the Court has also emphasized that "*an ejectment case will not necessarily be decided in favor of one who has presented proof of ownership of the subject property. Key jurisdictional facts constitutive of the particular ejectment case filed must be averred in the complaint and sufficiently proven*."[60] In the case of *Javelosa v. Tapus, et al.*,[61] the Court explained that:

> It is an elementary principle of civil law that the owner of real property is entitled to the possession thereof as an attribute of his or her ownership. In fact, the holder of a Torrens Title is the rightful owner of the property thereby covered, and is entitled to its possession. This notwithstanding, "the owner cannot simply wrest possession thereof from whoever is in actual occupation of the property." Rather, to recover possession, the owner must first resort to the proper judicial remedy, and thereafter, satisfy all the conditions necessary for such action to prosper.[62]

Respondent, in the present case, hinging on his claim as the owner of the subject property, opted to file an action for ejectment with damages. As previously discussed, a study of the allegations in the respondent's complaint shows that it is one for unlawful detainer. Hence, he has a correlative burden to sufficiently allege,

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[57] *Rollo*, Vol. 1, p. 73.

[58] *Id.*

[59] *Corpuz v. Spouses Agustin*, 679 Phil. 352, 360 (2012).

[60] *Dr. Carbonilla v. Abiera*, 639 Phil. 473, 481 (2010).

[61] *Javelosa v. Tapus*, G.R. No. 204361, July 4, 2018.

[62] *Id.* Citation omitted.

and thereafter prove by preponderance of evidence all the jurisdictional facts required in an action for unlawful detainer.[63] However, respondent failed to discharge this burden.

Following the Court's ruling in *Quijano v. Atty. Amante*,[64] in an action for unlawful detainer, respondent must show that the possession was initially lawful, and thereafter, establish the basis of the lawful possession.[65] In the same manner, should respondent claim that petitioner's possession was by his tolerance, then his acts of tolerance must be proved as a bare allegation of tolerance will not suffice.[66] There must be, at least, showing of respondent's overt acts indicative of his or his predecessor's permission granted to petitioner to occupy the subject property.[67] Failure in which, petitioner's possession could very well be deemed illegal from the beginning.[68] Thus, the respondent's action for unlawful detainer must necessarily fail.[69] Corollary, the complaint may not be treated as an action for forcible entry in the absence of averments that the entry in the subject property had been effected through force, intimidation, threats, strategy or stealth.[70]

In sum, the Court reiterates its previous ruling in *Pajuyo v. Court of Appeals*,[71] which states:

Ownership or the right to possess arising from ownership is not at issue in an action for recovery of possession. The parties cannot

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[63] *Id.*

[64] *Quijano v. Atty. Amante*, supra note 45.

[65] *Javelosa v. Tapus*, *supra* note 61, citing *Quijano v. Atty. Amante*, *supra* note 45.

[66] *Id.*

[67] *Id.*

[68] *Id.*

[69] *Id.*

[70] *Id.*

[71] 474 Phil. 557 (2004).

present evidence to prove ownership or right to legal possession except to prove the nature of the possession when necessary to resolve the issue of physical possession. The same is true when the defendant asserts the absence of title over the property. The absence of title over the contested lot is not a ground for the courts to withhold relief from the parties in an ejectment case.

The only question that the courts must resolve in ejectment proceedings is — who is entitled to the physical possession of the premises, that is, to the possession *de facto* and not to the possession *de jure*. It does not even matter if a party's title to the property is questionable, or when both parties intruded into public land and their applications to own the land have yet to be approved by the proper government agency. *Regardless of the actual condition of the title to the property, the party in peaceable quiet possession shall not be thrown out by a strong hand, violence or terror. Neither is the unlawful withholding of property allowed. Courts will always uphold respect for prior possession.*

Thus, a party who can prove prior possession can recover such possession even against the owner himself. Whatever may be the character of his possession, if he has in his favor prior possession in time, he has the security that entitles him to remain on the property until a person with a better right lawfully ejects him. To repeat, the only issue that the court has to settle in an ejectment suit is the right to physical possession.[72] (Citations omitted; italics supplied)

Verily, the act of tolerance, which should have been present right from the very start of petitioner's possession, has not been effectively proven by respondent. Hence, there can be no basis for the action for unlawful detainer. Therefore, both the CA and the RTC erred in reversing the Decision of the MTC which dismissed the complaint and consequently, granting the reliefs prayed for by respondent in his complaint.

The ruling of the Court does not mean that the Court favors the occupant of the subject property over the person claiming a right of ownership by virtue of a title,[73] but rather, this ruling merely emphasizes an important fact that even a legal owner

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[72] *Id.* at 578-579.

[73] *Javelosa v. Tapus, supra* note 61.

of the subject property cannot simply oust a party who is in peaceable quiet possession thereof through a summary action for ejectment, without having established by a preponderance of evidence the essential requisites of the action.[74] Case law has it, in an action for unlawful detainer, the owner of a property should prove that the possession of the occupant is premised on his permission or tolerance, and failure in which, the owner could pursue other appropriate legal remedies granted to him by law.[75]

On a final note, the Court reiterates itself that "*the issue of possession between the parties will still remain. To finally resolve such issue, they should review their options and decide on their proper recourses. In the meantime, it is wise for the Court to leave the door open to them in that respect*."[76]

WHEREFORE, the petition is **GRANTED**. The Decision dated March 30, 2015 of the Court of Appeals in CA-G.R. SP No. 136811 is **REVERSED** and **SET ASIDE**. The Decision dated October 4, 2013 of the Municipal Trial Court, San Mateo, Rizal in SCA No. 106-2012 for ejectment with damages is **AFFIRMED** and **REINSTATED**.

SO ORDERED.

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

Baltazar-Padilla, J., on leave.

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[74] *Id.*

[75] *Id.*

[76] *Quijano v. Atty. Amante, supra* note 45 at 53 (2014).

THIRD DIVISION

[G.R. No. 231298. October 7, 2020]

ROBERTO A. ESTOCONING, *Petitioner, v.* **PEOPLE OF THE PHILIPPINES,** *Respondent*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PETITION FOR REVIEW ON *CERTIORARI*; QUESTIONS OF LAW DISTINGUISHED FROM QUESTIONS OF FACT; THE ISSUE OF WHICH BETWEEN TWO LAWS APPLIES TO A GIVEN CASE IS A QUESTION OF LAW, WHICH CAN BE RAISED IN A RULE 45 PETITION.— This Court's action on appeals filed before it is discretionary, as such review is "not a matter of right, but of sound judicial discretion[.]" Additionally, under the Rules of Court, only questions of law should be raised in a Rule 45 petition, as this Court is not a trier of facts.

…

Cheesman v. Intermediate Appellate Court distinguished questions of law from questions of fact:

> As distinguished from a question of law — which exists "when the doubt or difference arises as to what the law is on a certain state of facts" — "there is a question of fact when the doubt or difference arises as to the truth or the falsehood of alleged facts;" or when the "query necessarily invites the calibration of the whole evidence considering mainly the credibility of witnesses, existence and relevancy of specific surrounding circumstances, their relation to each other and to the whole and the probabilities of the situation."

Here, while petitioner continues to dispute the lower courts' designation of the Silliman University Cooperative as a restaurant, the more relevant issue for resolution is a question of law: which between the Expanded Senior Citizens Act and the Cooperative Code applies to purchases made from a cooperative by a senior citizen member. Hence, the Petition was properly filed under Rule 45 of the Rules of Court.

2. TAXATION; TAX CREDITS; THE SENIOR CITIZENS ACT (R.A. NO. 7432); PRIVATE ESTABLISHMENTS ARE ALLOWED UNDER R.A. NO. 7432 TO CLAIM THE COSTS OF SENIOR CITIZENS' DISCOUNTS AS TAX CREDITS.— Elderly people enjoy a revered status in our society, and we teach our children to treat them with utmost respect. The respect we accord to the elderly is reflected in the Constitution, which compels families and the State to care for their elderly members. Republic Act No. 7432, or the Senior Citizens Act, was passed into law on April 23, 1992 pursuant to the State's responsibility towards the elderly, social justice, and the right of the elderly to an integrated and comprehensive health delivery system.

Republic Act No. 7432 granted senior citizens, defined as "any resident citizen of the Philippines at least sixty (60) years old," the following privileges:

> SECTION 4. *Privileges for the Senior Citizens.*— The senior citizens shall be entitled to the following:
>
> a) the grant of twenty percent (20%) discount from all establishments relative to utilization of transportation services, hotels and similar lodging establishment, restaurants and recreation centers and purchase of medicine anywhere in the country . . . ;
>
> . . .

The law then allowed private establishments to claim the costs of the discounts they extended as tax credits.

3. ID.; TAX DEDUCTION; EXPANDED SENIOR CITIZENS ACT OF 2003 (R.A. NO. 9257); UNDER R.A. NO. 9257, THE DISCOUNTS GRANTED TO SENIOR CITIZENS MAY BE CLAIMED AS TAX DEDUCTIONS, AND NO LONGER AS TAX CREDITS.— On February 26, 2004, Republic Act No. 9257, or the Expanded Senior Citizens Act of 2003, amended Republic Act No. 7432 and increased the privileges received by senior citizens; . . .

Aside from increasing the privileges to be enjoyed by senior citizens, Republic Act No. 9257 also abandoned Republic Act No. 7432's provision for a tax credit. Instead, it provided that

establishments may claim the discounts they granted "as tax deduction based on the net cost of the goods sold or services rendered."

4. ID.; ID.; EXPANDED SENIOR CITIZENS ACT OF 2010 (R.A. NO. 9994); EXEMPTION OF SENIOR CITIZENS FROM VALUE-ADDED TAX; R.A. NO. 9994 MAINTAINS THE TAX DEDUCTION SCHEME.— On February 15, 2010, Republic Act No. 9994, or the Expanded Senior Citizens Act of 2010, further amended Republic Act No. 7432 by exempting senior citizens from value-added tax and according them a 5% discount on their monthly water and electricity bills, among other privileges. However, Republic Act No. 9994 maintained the entitlement of private establishments to a tax deduction instead of the tax credit earlier bestowed on them by Republic Act No. 7432.

5. ID.; PHILIPPINE COOPERATIVE CODE OF 2008 (R.A. NO. 6938 AS AMENDED BY R.A. NO. 9520); PREFERENTIAL TAX TREATMENT OF COOPERATIVES UNDER R.A. NO. 9520; THE LEGISLATURE DELIBERATELY OPTED NOT TO EXERCISE ITS POWER TO TAX WHEN IT COMES TO COOPERATIVES.— [T]o encourage the formation and growth of cooperatives, the State extended different types of privileges to them, and endowed them with a preferential tax treatment. In providing preferential tax treatment to cooperatives, Republic Act No. 9520 differentiated between cooperatives that transacted only with their members and those that transacted with both their members and the general public:

. . .

The clear intention of the Constitution to extend preferential tax treatment to cooperatives in recognition of their vital role in society was reiterated in *Dumaguete Cathedral Credit Cooperative v. Commissioner of Internal Revenue*: . . .

The scope of the legislative power to tax not only includes the power to determine the tax rate and its method of collection, but also whom to tax or to exclude from taxation. In this instance, the legislature deliberately opted not to exercise its power to tax when it came to cooperatives to encourage their formation and development.

6. ID.; STATE'S POWER TO TAX; LIMITATIONS THEREOF; THE POWER TO TAX IS NOT PLENARY.— The power to tax is the strongest of all the government's power, as "taxes are the lifeblood of the government." Nonetheless, the power to tax is not plenary. The Constitution provides that the "[t]he rule of taxation shall be uniform and equitable"; thus, "all taxable articles or kinds of property of the same class [shall] be taxed at the same rate."

Cooperatives were singled out by the legislature and accorded preferential treatment due to their constitutionally recognized vital role in the economic development of our society's marginalized sectors. Hence, a marked difference lies between cooperatives and other private establishments that do not enjoy the same tax exemption.

7. ID.; ID.; ID.; TAXATION MUST NOT AMOUNT TO A DEPRIVATION OF PROPERTY WITHOUT DUE PROCESS OF LAW; BUSINESS ESTABLISHMENTS ARE ENTITLED TO RECOUP SOME OF THE DISCOUNTS THEY ISSUED TO SENIOR CITIZENS.— Another constitutional limitation is that taxation must not amount to a "[deprivation] of property without due process of law[.]" . . .

Private establishments that issue senior citizen discounts are entitled to a return of the discounts they extended. However, the legislature, in the exercise of its police power, watered down their reimbursements to a tax deduction from what used to be a tax credit. Nonetheless, whether through a tax credit or a tax deduction, there is no arguing that business establishments are still entitled to recoup some of the discounts they issued to senior citizens.

8. ID.; ID.; ID.; ID.; A TAX-EXEMPT COOPERATIVE IS NOT MANDATED TO ISSUE 20% DISCOUNT TO SENIOR CITIZENS.— As a tax-exempt entity, the Silliman University Cooperative could not have availed of a tax deduction to offset a portion of the senior citizen discounts it issued to its clients, whether member or non-member. Thus, to insist that it was nevertheless mandated to issue a 20% discount would have been *confiscatory and a deprivation of private property without due process of law*.

9. ID.; TAX DEDUCTION OR TAX CREDIT; THE AVAILMENT OF A TAX BENEFIT IS MERELY PERMISSIVE, NOT IMPERATIVE.— It is true that a business establishment's availment of a tax benefit is "merely permissive, not imperative." A business establishment may even opt to ignore the tax credit or tax deduction altogether and consider its issuance of senior citizen discounts "as an act of beneficence, an expression of its social conscience." However, the option to avail of a tax benefit must still be available to the business establishment and not be rendered illusory. Being forced to act benevolently is antithetical to the entire concept of charitable giving.

10. ID.; ID.; POLITICAL LAW; POLICE POWER; SENIOR CITIZEN DISCOUNTS; THE IMPOSITION OF THE SENIOR CITIZEN DISCOUNT AND THE TAX DEDUCTION SCHEME ARE VALID EXERCISES OF THE STATE'S POLICE POWER.— [T]he imposition of the senior citizen discount is a valid exercise of the State's police power to address social justice and human rights. The tax deduction scheme emanates from the State's exercise of its police power, which empowers it to "regulate the acquisition, ownership, use, and disposition of property and its increments" and— not its power of eminent domain.

11. CRIMINAL LAW; EXPANDED SENIOR CITIZENS ACT OF 2010 (R.A. NO. 9994); WHERE THERE IS REASONABLE DOUBT THAT R.A. NO. 9994 IMPOSING SENIOR CITIZEN DISCOUNT APPLIES TO A COOPERATIVE, THE MANAGER THEREOF MUST BE ACQUITTED OF THE CRIME OF VIOLATION OF THE SAID LAW.— Given the possible ambiguity in the interpretation of the two laws [Expanded Senior Citizens Act and the Cooperative Code], we find that the prosecution was unable to support its claim beyond reasonable doubt that the Silliman University Cooperative, as a restaurant operator, was obligated to issue a 20% senior citizen discount to senior citizen members and non-members alike.

We sympathize with the senior citizen who claimed to be the offended party here. We understand how difficult it may

have been for him to be denied the senior citizen discount from his favorite watering hole for his favorite soft drink. Yet, we must take a larger view. It does not seem reasonable that cooperatives, favored by the State for social justice reasons, will be at a disadvantage vis-a-vis private commercial establishments. The latter are allowed by law to claim the senior citizen discount as a tax deduction, and the State is not compelling them to reduce the potential benefits they could give to their owners. We acquit petitioner on the ground of reasonable doubt that the law applies to him.

APPEARANCES OF COUNSEL

JBM Law Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

LEONEN, *J.*:

It appears that the senior citizen, the offended party in this case, was fond of soft drinks. Even having been denied the senior citizen discount by the cooperative, and in spite of the other possible establishments where he could have been provided the discount, he returned to the same cooperative seven more times, each time asking for discount. After his eighth soft drink, he decided to sue.

Laws enjoy a presumption of legality. When different laws seem to be in conflict with each other, this Court is tasked to harmonize their provisions and interpret them in such a way that "would provide a complete, consistent[,] and intelligible system to secure the rights of all persons affected."[1]

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[1] *Valencia v. Court of Appeals*, 449 Phil. 711, 726 (2003) [Per J. Bellosillo, Second Division].

This Court resolves a Petition for Review on Certiorari[2] assailing the Court of Appeals Decision[3] and Resolution,[4] which affirmed the Regional Trial Court Decision[5] convicting Roberto A. Estoconing (Estoconing) of violating Republic Act 7432, as amended by Republic Act No. 9994, or the Expanded Senior Citizens Act of 2010.

Estoconing is a professor at the Silliman University and the general manager of the Silliman University Cooperative.[6]

On January 9, 2012, an Information[7] was filed against Estoconing for violating the Expanded Senior Citizens Act. It reads:

That on or about the following dates:

1. March 30, 2011
2. April 30, 2011
3. May 16, 2011
4. June 14, 2011
5. July 7, 2011
6. July 16, 2011
7. July 18, 2011
8. September 22, 2011

in Dumaguete City, within the jurisdiction of the Honorable Court, the said accused ROBERTO A. ESTOCONING being the General Manager of the Silliman University Cooperative Canteen, did then and there willfully, unlawfully and criminally refuse to give discount to one MANUEL UTZURRUM, JR., a bonafide Senior Citizen of

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[2] *Rollo*, pp. 15-39.

[3] Id. at 420-439. The July 29, 2016 Decision in CA-G.R. CEB-CR No. 02477 was penned by Associate Justice Marilyn B. Lagura-Yap and concurred in by Associate Justices Gabriel T. Ingles and Geraldine C. Fiel-Macaraig of the Special Eighteenth Division, Court of Appeals, Cebu City.

[4] Id. at 449-450. The January 31, 2017 Resolution was penned by Associate Justice Marilyn B. Lagura-Yap and concurred in by Associate Justices Gabriel T. Ingles and Geraldine C. Fiel-Macaraig of the Former Special Eighteenth Division, Court of Appeals, Cebu City.

[5] Id. at 102-105. The December 18, 2014 Decision in APL. Case No. 0905-0041 was penned by Judge Roderick A. Maxino.

[6] Id. at 420-421, CA Decision.

[7] Id. at 77.

Dumaguete City with I.D. No. 1535115 of soft drinks he bought from said canteen, even after identifying himself as a senior citizen.

Contrary to law.[8]

Estoconing pleaded not guilty to the charge against him.[9]

Manuel Utzurrum (Utzurrum), the private complainant, testified that he was a member of the Silliman University Cooperative and that he regularly bought Mountain Dew soft drinks in the canteen managed by the cooperative. He identified himself and presented his Senior Citizen ID every time he bought his soft drink, but the cooperative refused to grant him a 20% senior citizen discount.[10]

Utzurrum further testified that he wrote Estoconing, as Silliman University Cooperative's general manager, several letters in 2011 about the senior citizen discount, but Estoconing never responded. He then filed a complaint with the Office of the Senior Citizen Affairs in Dumaguete, but Estoconing still did not respond. Finally, on August 10, 2011, Utzurrum filed a complaint with the barangay. He was able to talk to Estoconing, but they reached no settlement. The barangay instead issued a certificate to file action on October 8, 2011.[11]

In his defense, Estoconing testified that the Silliman University Cooperative, being a cooperative registered under the Cooperative Development Authority, was exempted by law from the coverage of the Expanded Senior Citizens Act. He also insisted that as a member-owner of the Silliman University Cooperative, Utzurrum received the annual patronage refund, so he was disqualified from demanding the 20% senior citizen discount under the law's no double discount provision.[12]

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[8] Id.

[9] Id. at 421.

[10] Id. at 422.

[11] Id. at 421-422.

[12] Id. at 423.

Estoconing further claimed that the Silliman University Cooperative's Board of Directors also opined that it was tax-exempt and not subject to the senior citizen discount:

> He points out two (2) legal basis for this: R.A. No. 9520, which provides for the exemption of cooperatives from taxes as well as the exemption from taxes on their transactions with members; and R.A. No. 9994 which specifies that the 20% senior citizen deduction can be charged as tax deduction of the entity. As the cooperative is already tax exempt, it cannot pass on the amount of discount for its tax exemption purposes. In the end, it is the cooperative that will bear that amount of discount which would lead to serious business losses.[13]

Finally, Estoconing insisted that the Expanded Senior Citizens Act should be read in conjunction with Republic Act No. 9520, or the Philippine Cooperative Code of 2008.[14]

On July 18, 2014, the Municipal Trial Court in Cities found[15] Estoconing guilty of the charge against him.

The Municipal Trial Court in Cities ruled that since the Silliman University Cooperative sold meals, drinks, and provided tables and chairs to its customers, it is considered a restaurant under Rule III, Article 5 of the Expanded Senior Citizen Act's Implementing Rules and Regulations.[16]

The Municipal Trial Court in Cities also pointed out that the defense failed to substantiate its claim of exemption:

> The defense persists and insists on its alleged exemption from the application of RA 9994 being a cooperative, yet it has not directly cited any provision of RA 9994 and even any provision of RA 9520, pointing to such exemption. On the contrary, Item No. 6 of the Terms and Conditions of the Certificate of Tax Exemption above-cited would

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[13] Id.

[14] Id. at 95, MTCC Decision.

[15] Id. at 94-101. The Decision in Criminal Case No. H-06 was penned by Presiding Judge Maria Corazon C. Gadugdug, Municipal Trial Court in Cities, Dumaguete City, Branch 2.

[16] Id. at 98-99.

support the non-exemption of SU Coop from the formulation of RA 9994 as it is clear that the tax exemption of a cooperative is not absolute by virtue of the fact that even as a cooperative, SU Coop can still be subject to "**taxes for which it is directly liable and not otherwise exempted by any law** x x x." Neither has the defense presented any proof that the operation by SU Coop of an establishment which engages in the selling of cooked food and short orders, coffee, beverages and drinks, and even in the catering services part of those covered by the Exemption from Income Tax on income from CDA-registered operations, or those covered by the Exemption from value-added tax on CDA-registered sales or transactions as provided for by the Tax Exemption Certificate.[17] (Emphasis in the original)

The dispositive portion of the Municipal Trial Court in Cities' Decision reads:

WHEREFORE, in view of the foregoing disquisition, the Court finds the accused GUILTY beyond reasonable doubt of the crime of Violation of RA 7432 as amended by RA 9994, and is hereby sentenced to suffer an indeterminate penalty of 2 years as minimum to 3 years as maximum, and a fine of ₱50,000.00.

SO ORDERED.[18] (Emphasis in the original)

Estoconing appealed[19] the adverse Decision against him.

On December 18, 2014, the Regional Trial Court denied[20] Estoconing's appeal. The dispositive portion of its Decision reads:

WHEREFORE, the conviction of the accused by the court *a quo* is **affirmed *in toto***, and to reiterate, accused-appellant is hereby sentenced to suffer an indeterminate penalty of two (2) years as minimum to three (3) years as maximum and a fine of Fifty Thousand Pesos (₱50,000.00).

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[17] Id. at 100.

[18] Id. at 101.

[19] Id. at 132-142.

[20] Id. at 102-105. The Decision in APL. Case No. 0905-0041 was penned by Judge Roderick A. Maxino of the Regional Trial Court of Dumaguete City, Branch 32.

The cash bond put up by the accused for his temporary liberty is ordered cancelled and released in favor of the bondsman.

SO ORDERED.[21] (Emphasis in the original)

Estoconing then filed a Petition before the Court of Appeals, which gave it due course and granted his motion to put up a new bail bond pending appeal.[22]

On July 29, 2016, the Court of Appeals dismissed[23] the Petition. It ruled that the Expanded Senior Citizens Act is applicable to cooperatives:

A reading of the Expanded Senior Citizen Act of 2010 under R.A. No. 9994, which amended R.A. No. 7432, would reveal that there is no specific provision exempting a cooperative from the mandatory 20% discount granted to a senior citizen. Neither is there any provision in the Cooperative Code of the Philippines which explicitly granted a cooperative to be exempt from the Senior Citizen Act. It is not for petitioner to rule on whether the Senior Citizen Act is applicable to Cooperatives. In the absence of a judicial decision declaring it to be so or a clarification from an authorized agency, petitioner should have presumed that the Senior Citizen Act is applicable to the SU Coop.[24]

The Court of Appeals then held that there was no violation of the double discount provision under the Expanded Senior Citizens Act. It pointed out that what was prohibited under that provision was the "senior citizen discount on top of a promotional discount and a senior citizen's discount on top of the PWD discount."[25] It explained that the double discount provision did not include patronage refund and interest on capital, which Utzurrum enjoyed as a member of the Silliman University Cooperative, not as a senior citizen.[26]

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[21] Id. at 105.

[22] Id. at 405-411.

[23] Id. at 420-439.

[24] Id. at 426-427.

[25] Id. at 431.

[26] Id.

The Court of Appeals also confirmed that despite its assertions to the contrary, the Silliman University Cooperative was a restaurant.[27]

The Court of Appeals then rejected Estoconing's claim that "[Department of Trade and Industry] Administrative Order No. 03-05 which exempts cooperatives from the scope of the 5% discount on basic necessities and prime commodities also includes an exemption of the 20% senior citizen discount."[28]

The Court of Appeals ruled that the Department of Trade and Industry's Administrative Order, which originated from Section 4 of the Expanded Senior Citizens Act, only applied to prime commodities and retailers who sell consumer products, while Utzurrum's claim for discount related to his purchase from the Silliman University Cooperative operating as a canteen or restaurant, not as a retailer. The Court of Appeals ruled that when there is a discrepancy between the law and an interpretative or administrative ruling, the law prevails.[29]

The Court of Appeals also rejected Estoconing's argument that the Silliman University Cooperative's tax-exempt status meant that it would not be able to avail of the tax deduction offered to retail establishments as an incentive. It reiterated the Metropolitan Trial Court in Cities' ruling that Estoconing failed to substantiate his claim that the cooperative was exempt from complying with the law. It also noted that the issue of its inability to take advantage of the tax deduction, being a tax-exempt entity, should be threshed out in a case before the Bureau of Internal Revenue. "The benefits granted to the senior citizens" under the law, the trial court added, "should not be held hostage to this alleged problem without violating the plain and categorical mandate of the law."[30]

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[27] Id. at 431-432.

[28] Id. at 433, CA Decision.

[29] Id. at 434-435.

[30] Id. at 437.

The dispositive portion of the Court of Appeals Decision reads:

> **WHEREFORE**, the instant petition is **DISMISSED**. The Decision dated December 18, 2014 rendered by the Regional Trial court, Branch 32 of Dumaguete City convicting the petitioner for violating the Expanded Senior Citizens Act of 2010 is **AFFIRMED *in toto***. The cash bond put up by the petitioner for his temporary liberty is ordered CANCELLED. Let a warrant for petitioner's arrest be issued.
>
> SO ORDERED.[31] (Emphasis in the original)

In his Petition,[32] petitioner Estoconing emphasizes that cooperatives registered with the Cooperative Development Authority and the Bureau of Internal Revenue were exempt from paying taxes. He then submits that the Silliman University Cooperative was exempted from extending a 20% senior citizen discount to its members, as the discount was ultimately chargeable to the government, not the business establishment, in the form of tax deductions. Thus, he posits that if the cooperative were forced to extend senior citizen discounts, it would have to shoulder the burden with no way to avail of the tax deductions, leading to financial losses and possible bankruptcy.[33]

Petitioner then points out that the intention to exclude cooperatives from extending senior citizen discounts was apparent in the Expanded Senior Citizens Act's Implementing Rules and Regulations, which incorporated a Department and Trade and Industry order granting a 5% discount to senior citizens for the purchase of basic necessities and prime commodities, but exempted cooperative stores from its coverage.[34] He insists that if a cooperative was exempted for basic necessities and prime commodities, then with more reason should it be exempted from issuing a discount for luxurious items like soft drinks.[35]

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[31] Id. at 438.

[32] Id. at 15-39.

[33] Id. at 25-26.

[34] Id. at 30-31.

[35] Id. at 31-32.

Petitioner then opines that the prohibition on double discount in the Expanded Senior Citizens Act applies to its member-owners who are senior citizens, because they already enjoy annual patronage refund and interest on capital, and are entitled to purchase goods on credit.[36]

In its Comment,[37] respondent asserts that petitioner primarily raises questions of fact in his Rule 45 petition and failed to provide any ground for this Court to recalibrate the lower courts' factual findings.[38]

Nonetheless, respondent insists that the lower courts did not err in convicting petitioner of violating the Expanded Senior Citizens Act as the law did not provide any exceptions for cooperatives.[39] Additionally, it maintains that Silliman University Cooperative was rightfully classified as a restaurant by the lower courts, obligated to extend a 20% senior citizen discount.[40]

Respondent also points out that the prohibition against double discount does not apply to the availment of the senior citizen discount and receiving patronage refund and interest on capital, which are privileges of a cooperative member.[41]

This Court directed petitioner to file a reply.[42] However, he manifested[43] that he would not be filing one and instead asked this Court to accept the May 24, 2019 opinion[44] submitted by the Cooperative Development Authority.

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[36] Id. at 32.

[37] Id. at 462-478.

[38] Id. at 468-469.

[39] Id. at 473-475.

[40] Id. at 475-476.

[41] Id. at 475.

[42] Id. at 485.

[43] Id. at 493-496.

[44] Id. at 497-503.

The sole issue for this Court's resolution is whether or not a cooperative selling hot meals and snacks is required to issue a 20% senior citizen discount to its member.

I

This Court's action on appeals filed before it is discretionary, as such review is "not a matter of right, but of sound judicial discretion[.]"[45] Additionally, under the Rules of Court, only questions of law should be raised in a Rule 45 petition, as this Court is not a trier of facts.[46]

Respondent asserts that the Petition should be promptly dismissed for raising the same questions of fact already resolved by the lower courts.

Respondent is mistaken.

Cheesman v. Intermediate Appellate Court[47] distinguished questions of law from questions of fact:

> As distinguished from a question of law — which exists "when the doubt or difference arises as to what the law is on a certain state of facts" — "there is a question of fact when the doubt or difference arises as to the truth or the falsehood of alleged facts;" or when the "query necessarily invites the calibration of the whole evidence considering mainly the credibility of witnesses, existence and relevancy of specific surrounding circumstances, their relation to each other and to the whole and the probabilities of the situation."[48] (Citations omitted)

Here, while petitioner continues to dispute the lower courts' designation of the Silliman University Cooperative as a restaurant,[49] the more relevant issue for resolution is a question

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[45] RULES OF COURT, Rule 45, sec. 6.

[46] RULES OF COURT, Rule 45, sec. 1.

[47] 271 Phil. 89 (1991) [Per J. Narvasa, First Division].

[48] Id. at 97-98.

[49] *Rollo*, pp. 498-499.

of law: which between the Expanded Senior Citizens Act and the Cooperative Code applies to purchases made from a cooperative by a senior citizen member. Hence, the Petition was properly filed under Rule 45 of the Rules of Court.

To uphold the presumption of legality inherent in every law, this Court is also tasked to harmonize the seemingly conflicting provisions, if any, between the Expanded Senior Citizens Act and the Cooperative Code on the obligation of cooperatives to issue a senior citizen discount. *Valencia v. Court of Appeals*[50] explains:

> Interpreting and harmonizing laws with laws is the best method of interpretation. *Interpretare et concordare leges legibus est optimus interpretandi modus*. This manner of construction would provide a complete, consistent and intelligible system to secure the rights of all persons affected by different legislative and quasi-legislative acts. Where two (2) rules on the same subject, or on related subjects, are apparently in conflict with each other, they are to be reconciled by construction, so far as may be, on any fair and reasonable hypothesis. Validity and legal effect should therefore be given to both, if this can be done without destroying the evident intent and meaning of the later act. Every statute should receive such a construction as will harmonize it with the pre-existing body of laws.[51] (Citation omitted)

Thus, before ruling on the issues for resolution, it is imperative to first briefly discuss the two separate laws involved here, as with the points of their intersection.

II

Elderly people enjoy a revered status in our society, and we teach our children to treat them with utmost respect.[52] The respect we accord to the elderly is reflected in the Constitution, which compels families and the State to care for their elderly members.[53]

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[50] 449 Phil. 711 (2003) [Per J. Bellosillo, Second Division].

[51] Id. at 726.

[52] *Canlapan v. Balayo*, 781 Phil. 63 (2016) [Per J. Leonen, Second Division].

[53] CONST., art. XV, sec. 4 provides:

Republic Act No. 7432,[54] or the Senior Citizens Act, was passed into law on April 23, 1992 pursuant to the State's responsibility towards the elderly, social justice,[55] and the right of the elderly to an integrated and comprehensive health delivery system.[56]

Republic Act No. 7432 granted senior citizens, defined as "any resident citizen of the Philippines at least sixty (60) years old,"[57] the following privileges:

SECTION 4. *Privileges for the Senior Citizens*. — The senior citizens shall be entitled to the following:

a) the grant of twenty percent (20%) discount from all establishments relative to utilization of transportation services, hotels and similar lodging establishment, restaurants and recreation centers and purchase of medicine anywhere in the country: *Provided*, That private establishments may claim the cost as tax credit;

b) a minimum of twenty percent (20%) discount on admission fees charged by theaters, cinema houses and concert halls, circuses, carnivals and other similar places of culture, leisure, and amusement;

c) exemption from the payment of individual income taxes: *Provided*, That their annual taxable income does not exceed the property level as determined by the National Economic and Development Authority (NEDA) for that year;

SECTION 4. The family has the duty to care for its elderly members but the State may also do so through just programs of social security.

[54] An Act to Maximize the Contribution of Senior Citizens to Nation Building, Grant Benefits and Special Privileges and for Other Purposes.

[55] CONST., art. II, sec. 10 provides:

SECTION 10. The State shall provide social justice in all phases of national development.

[56] CONST., art. XIII, sec. 11 provides:

SECTION 11. The State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost. There shall be priority for the needs of the underprivileged, sick, elderly, disabled, women and children.

[57] Republic Act No. 7432 (1992), sec. 2.

d) exemption from training fees for socioeconomic programs undertaken by the OSCA as part of its work;

e) free medical and dental services in government establishment anywhere in the country, subject to guidelines to be issued by the Department of Health, the Government Service Insurance System and the Social Security System;

f) to the extent practicable and feasible, the continuance of the same benefits and privileges given by the Government Service Insurance System (GSIS), Social Security System (SSS) and Pag-IBIG, as the case may be, as are enjoyed by those in actual service.

The law then allowed private establishments to claim the costs of the discounts they extended as tax credits.[58]

In *Commissioner of Internal Revenue v. Central Luzon Drug Corporation*,[59] Mercury Drug declared net losses from its operations in its annual income tax return for 1996. However, it also filed a claim for tax refund/credit of ₱904,769.00, which allegedly represented the actual discounts it extended to qualified senior citizens under the law. The Commissioner of Internal Revenue denied its claim, prompting it to elevate its claim to the Court of Tax Appeals. The Court of Tax Appeals initially denied Mercury Drug's claim, but later reversed its decision upon motion for reconsideration, ordering the Commissioner of Internal Revenue to issue Mercury Drug a tax credit certificate.[60]

The Court of Appeals upheld the Court of Tax Appeals' decision and ordered the Commissioner of Internal Revenue to issue Mercury Drug a tax credit certificate.[61]

In denying the Commissioner of Internal Revenue's petition, this Court affirmed that establishments are entitled to a tax credit representing the cost of senior citizen discounts they

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[58] Republic Act No. 7432 (1992), sec. 4 (a).

[59] 496 Phil. 307 (2005) [Per J. Panganiban, Third Division].

[60] Id. at 316-317.

[61] Id. at 318.

extended even if they operated at a loss, as the establishment may choose to use the tax credit on a future tax liability.[62] It then emphasized that Republic Act No. 7432 categorically allowed business establishments to claim as tax credit the senior citizen discounts they granted.[63] Given the discount's nature, it should be treated as a tax credit, not a sales discount or tax deduction:

> When the law says that the cost of the discount may be claimed as a *tax credit*, it means that the amount — when claimed — shall be treated as a reduction from any tax liability, plain and simple. The option to avail of the *tax credit* benefit depends upon the existence of a tax liability, but to limit the benefit to a *sales discount* — which is not even identical to the discount privilege that is granted by law — does not define it at all and serves no useful purpose. The definition must, therefore, be stricken down.[64] (Emphasis in the original)

Commissioner of Internal Revenue added that the tax credit benefit was to be considered as "just compensation for private property taken by the State for public use."[65] This Court pointed out that the concept of public use has evolved from the "traditional notion of use by the public,"[66] and now also includes "public interest, public benefit, public welfare, and public convenience."[67] It elaborated:

> As a result of the 20 percent discount imposed by RA 7432, respondent becomes entitled to a *just compensation*. This term refers not only to the issuance of a *tax credit* certificate indicating the correct amount of the discounts given, but also to the promptness in its release. Equivalent to the payment of property taken by the State, such issuance

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[62] Id. at 319-325.

[63] Id. at 325.

[64] Id. at 331-332.

[65] Id. at 335.

[66] Id.

[67] Id. citing *Reyes v. National Housing Authority*, 443 Phil. 603 (2003) [Per J. Puno, Third Division].

— when not done within a *reasonable time* from the grant of the discounts — cannot be considered as *just compensation*. In effect, respondent is made to suffer the consequences of being immediately deprived of its revenues while awaiting actual receipt, through the certificate, of the equivalent amount it needs to cope with the reduction in its revenues.[68] (Emphasis in the original, citation omitted)

On February 26, 2004, Republic Act No. 9257, or the Expanded Senior Citizens Act of 2003, amended Republic Act No. 7432 and increased the privileges received by senior citizens, as follows:

SECTION 4. *Privileges for the Senior Citizens*. — The senior citizens shall be entitled to the following:

(a) the grant of twenty percent (20%) discount from all establishments relative to the utilization of services in hotels and similar lodging establishments, restaurants and recreation centers, and purchase of medicines in all establishments for the exclusive use or enjoyment of senior citizens, including funeral and burial services for the death of senior citizens;

(b) a minimum of twenty percent (20%) discount on admission fees charged by theaters, cinema houses and concert halls, circuses, carnivals, and other similar places of culture, leisure and amusement for the exclusive use or enjoyment of senior citizens;

(c) exemption from the payment of individual income taxes; *Provided*, That their annual taxable income does not exceed the poverty level as determined by the National Economic and Development Authority (NEDA) for that year;

(d) exemption from training fees for socio-economic programs;

(e) free medical and dental services, diagnostic and laboratory fees such as, but not limited to, x-rays, computerized tomography scans and blood tests, in all government facilities, subject to the guidelines to be issued by the Department of Health in coordination with the Philippine Health Insurance Corporation (PHILHEALTH);

(f) the grant of twenty percent (20%) discount on medical and dental services, and diagnostic and laboratory fees provided

[68] Id. at 335-336.

under Section 4 (e) hereof, including professional fees of attending doctors in all private hospitals and medical facilities, in accordance with the rules and regulations to be issued by the Department of Health, in coordination with the Philippine Health Insurance Corporation;

(g) the grant of twenty percent (20%) discount in fare for domestic air and sea travel for the exclusive use or enjoyment of senior citizens;

(h) the grant of twenty percent (20%) discount in public railways, skyways[,] and bus fare for the exclusive use and enjoyment of senior citizens;

(i) educational assistance to senior citizens to pursue post secondary, tertiary, post tertiary, as well as vocational or technical education in both public and private schools through provision of scholarship, grants, financial aid, subsidies and other incentives to qualified senior citizens, including support for books, learning materials, and uniform allowance, to the extent feasible: *Provided*, That senior citizens shall meet minimum admission requirements;

(j) to the extent practicable and feasible, the continuance of the same benefits and privileges given by the Government Service Insurance System (GSIS), Social Security System (SSS)[,] and Pag-IBIG, as the case may be, as are enjoyed by those in actual service;

(k) retirement benefits of retirees from both the government and private sector shall be regularly reviewed to ensure their continuing responsiveness and sustainability, and to the extent practicable and feasible, shall be upgraded to be at par with the current scale enjoyed by those in actual service;

(l) to the extent possible, the government may grant special discounts in special programs for senior citizens on purchase of basic commodities, subject to the guidelines to be issued for the purpose by the Department of Trade and Industry (DTI) and the Department of Agriculture (DA); and

(m) provision of express lanes for senior citizens in all commercial and government establishments; in the absence thereof, priority shall be given to them.

> In the availment of the privileges mentioned above, the senior citizen or elderly person may submit as proof of his/her entitlement thereto any of the following:
>
> (a) an ID issued by the city or municipal mayor or of the barangay captain of the place where the senior citizen or the elderly resides;
>
> (b) the passport of the elderly person or senior citizen concerned; and
>
> (c) other documents that establish that the senior citizen or elderly person is a citizen of the Republic and is at least sixty (60) years of age.
>
> The establishment may claim the discounts granted under (a), (f), (g)[,] and (h) as tax deduction based on the net cost of the goods sold or services rendered: *Provided*, That the cost of the discount shall be allowed as deduction from gross income for the same taxable year that the discount is granted. *Provided, further*, That the total amount of the claimed tax deduction net of value added tax if applicable, shall be included in their gross sales receipts for tax purposes and shall be subject to proper documentation and to the provisions of the National Internal Revenue Code, as amended.

Aside from increasing the privileges to be enjoyed by senior citizens, Republic Act No. 9257 also abandoned Republic Act No. 7432's provision for a tax credit. Instead, it provided that establishments may claim the discounts they granted "as tax deduction based on the net cost of the goods sold or services rendered."[69]

In *Carlos Superdrug Corporation v. Department of Social Welfare and Development*,[70] a group of drugstore operators and owners assailed the constitutionality of Section 4 (a) of Republic Act No. 9257 for being confiscatory as it purportedly failed to provide a scheme where drugstores can be justly compensated for the senior citizen discounts they granted.

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[69] Republic Act No. 9257 (2003), sec. 4.

[70] 553 Phil. 120 (2007) [Per J. Azcuna, En Banc].

This Court in *Carlos Superdrug* clarified that by virtue of its police power, the State, "in promoting the health and welfare of a special group of citizens"[71] can validly compel private establishments to partly subsidize a government program. *Carlos Superdrug* stated that although a tax deduction did not offer a full reimbursement of the extended senior citizen discount, as it "does not reduce taxes owed on a peso for peso basis but merely offers a fractional reduction in taxes owed[,]"[72] the taking was still valid for being an exercise of the State's police power:

> The law is a legitimate exercise of police power which, similar to the power of eminent domain, has general welfare for its object. Police power is not capable of an exact definition, but has been purposely veiled in general terms to underscore its comprehensiveness to meet all exigencies and provide enough room for an efficient and flexible response to conditions and circumstances, thus assuring the greatest benefits. Accordingly, it has been described as "the most essential, insistent[,] and the least inimitable of powers, extending as it does to all the great public needs. It is "[t]he power vested in the legislature by the constitution to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinances, either with penalties or without, not repugnant to the constitution, as they shall judge to be for the good and welfare of the commonwealth, and of the subjects of the same."
>
> For this reason, when the conditions so demand as determined by legislature, property rights must bow to the primacy of police power because property rights, though sheltered by due process, must yield to the general welfare.[73] (Citations omitted)

Moreover, *Carlos Superdrug* highlighted that the petitioners failed to substantiate their claim that granting a senior citizen discount was unduly oppressive. The petitioners, this Court held, failed to include a financial statement supporting their assertions that the law led to their operating at a great loss.[74]

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[71] Id. at 130.

[72] Id. at 129.

[73] Id. at 132.

[74] Id. at 133.

On February 15, 2010, Republic Act No. 9994, or the Expanded Senior Citizens Act of 2010, further amended Republic Act No. 7432 by exempting senior citizens from value-added tax and according them a 5% discount on their monthly water and electricity bills, among other privileges.[75] However, Republic

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[75] Republic Act No. 7432 (1992), sec. 4, as amended by Republic Act No. 9257 (2003), Expanded Senior Citizens Act of 2003.

SECTION 4. Privileges for the Senior Citizens. — The senior citizens shall be entitled to the following:

(a) the grant of twenty percent (20%) discount and exemption from the value-added tax (VAT), if applicable, on the sale of the following goods and services from all establishments, for the exclusive use and enjoyment or availment of the senior citizen

(1) on the purchase of medicines, including the purchase of influenza and pneumococcal vaccines, and such other essential medical supplies, accessories and equipment to be determined by the Department of Health (DOH).

The DOH shall establish guidelines and mechanism of compulsory rebates in the sharing of burden of discounts among retailers, manufacturers and distributors, taking into consideration their respective margins;

(2) on the professional fees of attending physician/s in all private hospitals, medical facilities, outpatient clinics and home health care services;

(3) on the professional fees of licensed professional health providing home health care services as endorsed by private hospitals or employed through home health care employment agencies;

(4) on medical and dental services, diagnostic and laboratory fees in all private hospitals, medical facilities, outpatient clinics, and home health care services, in accordance with the rules and regulations to be issued by the DOH, in coordination with the Philippine Health Insurance Corporation (PhilHealth);

(5) in actual fare for land transportation travel in public utility buses (PUBs), public utility jeepneys (PUJs), taxis, Asian utility vehicles (AUVs), shuttle services and public railways, including Light Rail Transit (LRT), Mass Rail Transit (MRT), and Philippine National Railways (PNR);

(6) in actual transportation fare for domestic air transport services and sea shipping vessels and the like, based on the actual fare and advanced booking;

(7) on the utilization of services in hotels and similar lodging establishments, restaurants and recreation centers;

(8) on admission fees charged by theaters, cinema houses and concert halls, circuses, leisure and amusement; and

Act No. 9994 maintained the entitlement of private establishments to a tax deduction instead of the tax credit earlier bestowed on them by Republic Act No. 7432.

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(9) on funeral and burial services for the death of senior citizens;

(b) exemption from the payment of individual income taxes of senior citizens who are considered to be minimum wage earners in accordance with Republic Act No. 9504;

(c) the grant of a minimum of five percent (5%) discount relative to the monthly utilization of water and electricity supplied by the public utilities: *Provided*, That the individual meters for the foregoing utilities are registered in the name of the senior citizen residing therein: *Provided, further*, That the monthly consumption does not exceed one hundred kilowatt hours (100 kWh) of electricity and thirty cubic meters (30 m3) of water: *Provided, furthermore*, That the privilege is granted per household regardless of the number of senior citizens residing therein;

(d) exemption from training fees for socioeconomic programs;

(e) free medical and dental services, diagnostic and laboratory fees such as, but not limited to, x-rays, computerized tomography scans and blood tests, in all government facilities, subject to the guidelines to be issued by the DOH in coordination with the PhilHealth;

(f) the DOH shall administer free vaccination against the influenza virus and pneumococcal disease for indigent senior citizen patients;

(g) educational assistance to senior citizens to pursue pot secondary, tertiary, post tertiary, vocational and technical education, as well as short-term courses for retooling in both public and private schools through provision of scholarships, grants, financial aids, subsides and other incentives to qualified senior citizens, including support for books, learning materials, and uniform allowances, to the extent feasible: *Provided*, That senior citizens shall meet minimum admission requirements;

(h) to the extent practicable and feasible, the continuance of the same benefits and privileges given by the Government Service Insurance System (GSIS), the Social Security System (SSS) and the Pag-IBIG, as the case may be, as are enjoyed by those in actual service;

(i) retirement benefits of retirees from both the government and the private sector shall be regularly reviewed to ensure their continuing responsiveness and sustainability, and to the extent practicable and feasible, shall be upgraded to be at par with the current scale enjoyed by those in actual service;

(j) to the extent possible, the government may grant special discounts in special programs for senior citizens on purchase of basic commodities, subject to the guidelines to be issued for the purpose by the Department of Trade and Industry (DTI) and the Department of Agriculture (DA);

Manila Memorial Park v. Department of Social Welfare and Development,[76] affirmed the constitutionality of the tax deduction scheme adopted by Republic Act No. 9257 and the partial reimbursement to private establishments. It then reiterated[77] *Carlos Superdrug* that the tax deduction scheme was a legitimate exercise of police power. It also clarified that the pronouncement in *Commissioner of Internal Revenue* — that the tax credit was in the form of just compensation as a result of the State's power of eminent domain — was merely obiter. Hence, it was not a binding precedent.[78]

(k)provision of express lanes for senior citizens in all commercial and government establishments; in the absence thereof, priority shall be given to them; and

(l) death benefit assistance of a minimum of Two thousand pesos (Php2,000.00) shall be given to the nearest surviving relative of a deceased senior citizen which amount shall be subject to adjustments due to inflation in accordance with the guidelines to be issued by the DSWD.

In the availment of the privileges mentioned above, the senior citizen, or his/her duly authorized representative, may submit as proof of his/her entitled thereto any of the following:

(1) an identification card issued by the Office of the Senior Citizen Affairs (OSCA) of the place where the senior citizen resides: Provided, That the identification card issued by the particular OSCA shall be honored nationwide;

(2) the passport of the senior citizen concerned; and

(3) other documents that establish that the senior citizen is a citizen of the Republic and is at least sixty (60) years of age as further provided in the implementing rules and regulations.

In the purchase of goods and services which are on promotional discount, the senior citizen can avail of the promotional discount or the discount provided herein, whichever is higher.

The establishment may claim the discounts granted under subsections (a) and (c) of this section as tax deduction based on the cost of the goods sold or services rendered: Provided, That the cost of the discount shall be allowed as deduction from gross income for the same taxable year that the discount is granted: Provided, further, That the total amount of the claimed tax deduction net of VAT, if applicable, shall be included in their gross sales receipts for tax purposes and shall be subject to proper documentation and to the provisions of the National Internal Revenue Code (NIRC), as amended.

[76] 722 Phil. 538 (2013) [Per J. Del Castillo, En Banc].

[77] Id. at 565-568.

[78] Id. at 574.

As seen from this Court's previous rulings, whether through a peso-to-peso reimbursement in the form of a tax credit or a return of a part of the discounts given through a tax deduction scheme, it is clear that private establishments are entitled to recoup a portion of the senior citizen discounts that they have extended to eligible recipients.

III

On the other hand, Republic Act No. 6938, as amended by Republic Act No. 9520,[79] or the Philippine Cooperative Code of 2008, defines a cooperative as:

> . . . an autonomous and duly registered association of persons, with a common bond of interest, who have voluntarily joined together to achieve their social, economic, and cultural needs and aspirations by making equitable contributions to the capital required, patronizing their products and services and accepting a fair share of the risks and benefits of the undertaking in accordance with universally accepted cooperative principles.[80]

Recognizing cooperatives as legal personalities[81] with beneficial social and economic functions, the Constitution mandated the creation of "an agency to promote the viability and growth of cooperatives as instruments for social justice and economic development."[82] This paved the way for the

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[79] Republic Act No. 6938, or the Cooperative Code of the Philippines, was amended on February 17, 2009 by Republic Act No. 9520, or the Philippine Cooperative Code of 2008.

[80] Republic Act No. 9520 (2008), art. 3.

[81] CONST., art. XII, sec. 6 provides:

> SECTION 6. The use of property bears a social function, and all economic agents shall contribute to the common good. Individuals and private groups, including corporations, cooperatives, and similar collective organizations, shall have the right to own, establish, and operate economic enterprises, subject to the duty of the State to promote distributive justice and to intervene when the common good so demands.

[82] CONST., art. XII, sec. 15.

creation of the Cooperative Development Authority on March 10, 1990.[83]

In its May 24, 2019 opinion,[84] the Cooperative Development Authority explained that cooperatives do not operate for profit but to sustain its members, and whatever is earned reverts to their members:

> Therefore, cooperatives conduct their business activities not for profit but for the sustenance of its members. The purpose of gaining profit is only a consequence thereto in order to meet the need to serve the members which is the primary purpose of the cooperatives. Moreover, being community based, the services that their members expect from the government are given directly to them by their cooperative through [the] easiest, fastest[,] and most accessible way. Hence, cooperatives are but partner-instruments of the State in promoting equity, social justice and economic development.
>
> To reiterate, they are not organized for profit. Rather, they are established by people to provide them with products and services, or produce and dispose the fruits of their labor. They own the means of production and the distribution facilities in common. **Their existence is one of service to their members. Whatever is earned, the same revert[s] to the members.**[85] (Emphasis in the original)

Additionally, to encourage the formation and growth of cooperatives, the State extended different types of privileges[86]

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[83] Republic Act No. 6939 (1990). An Act Creating the Cooperative Development Authority to Promote the Viability and Growth of Cooperatives as Instruments of Equity, Social Justice and Economic Development, Defining its Powers, Functions and Responsibilities, Rationalizing Government Policies and Agencies with Cooperative Functions, Supporting Cooperative Development, Transferring the Registration and Regulation Functions of Existing Government Agencies on Cooperatives as Such and Consolidating the Same With the Authority, Appropriating Funds Therefor, and For Other Purposes.

[84] *Rollo*, pp. 497-503.

[85] Id. at 498-499.

[86] Republic Act No. 9520 (2008), art. 62.

to them, and endowed them with a preferential tax treatment.[87] In providing preferential tax treatment to cooperatives, Republic Act No. 9520 differentiated between cooperatives that transacted only with their members and those that transacted with both their members and the general public:

> ARTICLE 60. *Tax Treatment of Cooperative*. — Duly registered cooperatives under this Code which do not transact any business with non-members or the general public shall not be subject to any taxes and fees imposed under the internal revenue laws and other tax laws. Cooperatives not falling under this article shall be governed by the succeeding section.
>
> ARTICLE 61. *Tax and Other Exemptions*. — Cooperatives transacting business with both members and non-members shall not be subjected to tax on their transactions with members. In relation to this, the transactions of members with the cooperative shall not be subject to any taxes and fees, including not limited to final taxes on members' deposits and documentary tax. Notwithstanding the provisions of any law or regulation to the contrary, such cooperatives dealing with non[-]members shall enjoy the following tax exemptions:
>
> (1) Cooperatives with accumulated reserves and undivided net savings of not more than Ten million pesos (₱10,000,000.00) shall be exempt from all national, city, provincial, municipal or barangay taxes of whatever name and nature. Such cooperatives shall be exempt from customs duties, advance sales or compensating taxes on their importation of machineries, equipment and spare parts used by them and which are not available locally a certified by the department of trade and industry (DTI). All tax free importations shall not be sold nor the beneficial ownership thereof be transferred to any person until after five (5) years, otherwise, the cooperative and the transferee or assignee shall be solidarily liable to pay twice the amount of the imposed tax and/or duties.
>
> (2) Cooperatives with accumulated reserves and divided net savings of more than Ten million pesos (₱10,000,000.00) shall fee the following taxes at the full rate:

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[87] *Dumaguete Cathedral Credit Cooperative v. Commissioner of Internal Revenue*, 624 Phil. 650 (2010) [Per J. Del Castillo, Second Division].

(a)Income Tax — On the amount allocated for interest on capitals: Provided, That the same tax is not consequently imposed on interest individually received by members: Provided, further, That cooperatives regardless of classification, are exempt income tax from the date of registration with the Authority;

(b) Value-Added Tax On transactions with non-members: Provided, however, That cooperatives duly registered with the Authority; are exempt from the payment of value-added tax; subject to Sec. 109, sub-sections L, M and N of Republic Act No. 9337, the National Internal Revenue Code, as amended: Provided, That the exempt transaction under Sec. 109 (L) shall include sales made by cooperatives duly registered with the Authority organized and operated by its member to undertake the production and processing of raw materials or of goods produced by its members into finished or process products for sale by the cooperative to its members and non-members: Provided, further, That any processed product or its derivative arising from the raw materials produced by its members, sold in their name and for the account of the cooperative: Provided, finally, That at least twenty-five per centum (25%) of the net income of the cooperatives is returned to the members in the form of interest and/or patronage refunds;

(c) All other taxes unless otherwise provided herein; and

(d) Donations to charitable, research and educational institutions and reinvestment to socioeconomic projects within the area of operation of the cooperative may be tax deductible.

(3) All cooperatives, regardless of the amount of accumulated reserves and undivided net savings shall be exempt from payment of local taxes and taxes on transactions with banks and insurance companies: Provided, That all sales or services rendered for non-members shall be subject to the applicable percentage taxes sales made by producers, marketing or service cooperatives: Provided further, That nothing in this article shall preclude the examination of the books of accounts or other accounting records of the cooperative by duly authorized internal revenue officers for internal revenue tax purposes only, after previous authorization by the Authority.

(4) In areas where there are no available notaries public, the judge, exercising his ex officio capacity as notary public, shall render service, free of charge, to any person or group of persons requiring the administration of oath or the acknowledgment of articles of cooperation and instruments of loan from cooperatives not exceeding Five Hundred Thousand Pesos (₱500,000.00).

(5) Any register of deeds shall accept for registration, free of charge, any instrument relative to a loan made under this Code which does not exceed Two Hundred Fifty Thousand Pesos (₱250,000.00) or the deeds of title of any property acquired by the cooperative or any paper or document drawn in connection with any action brought by the cooperative or with any court judgment rendered in its favor or any instrument relative to a bond of any accountable officer of a cooperative for the faithful performance of his duties and obligations.

(6) Cooperatives shall be exempt from the payment of all court and sheriff's fees payable to the Philippine Government for and in connection with all actions brought under this Code, or where such actions is brought by the Authority before the court, to enforce the payment of obligations contracted in favor of the cooperative.

(7) All cooperatives shall be exempt from putting up a bond for bringing an appeal against the decision of an inferior court or for seeking to set aside any third party claim: Provided, That a certification of the Authority showing that the net assets of the cooperative are in excess of the amount of the bond required by the court in similar cases shall be accepted by the court as a sufficient bond.

(8) Any security issued by cooperatives shall be exempt from the provisions of the Securities Act provided such security shall not be speculative.

The clear intention of the Constitution to extend preferential tax treatment to cooperatives in recognition of their vital role in society was reiterated in *Dumaguete Cathedral Credit Cooperative v. Commissioner of Internal Revenue*:[88]

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[88] 624 Phil. 650 (2010) [Per J. Del Castillo, Second Division].

In closing, cooperatives, including their members, deserve a preferential tax treatment because of the vital role they play in the attainment of economic development and social justice. Thus, although taxes are the lifeblood of the government, the State's power to tax must give way to foster the creation and growth of cooperatives. To borrow the words of Justice Isagani A. Cruz: "The power of taxation, while indispensable, is not absolute and may be subordinated to the demands of social justice."[89] (Citation omitted)

The scope of the legislative power to tax not only includes the power to determine the tax rate and its method of collection, but also whom to tax or to exclude from taxation.[90] In this instance, the legislature deliberately opted not to exercise its power to tax when it came to cooperatives to encourage their formation and development.

IV

The Silliman University Cooperative is a primary multi-purpose cooperative duly registered with the Cooperative Development Authority on January 11, 2010.[91] It provides the following services to both its members and non-members alike:

a. Food and Catering Services
b. Dry Goods and Souvenir Items
c. Purchase Order System (PO)
d. Rental of Tables, Chairs and Catering Equipments (sic)
e. Vehicle and Appliance Credit Facility
f. Surety Loan Fund Credit Guarantee
g. Airline Ticketing Services for PAL and CEBU PACIFIC
h. Western Union Money Transfer Services[92]

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[89] Id. at 667.

[90] *Chamber of Real Estate and Builders' Associations, Inc. v. Executive Secretary Romulo*, 628 Phil. 508 (2010) [Per J. Corona, En Banc].

[91] *Rollo*, p. 294.

[92] Id. at 316.

The cooperative received its Certificate of Tax Exemption[93] from the Bureau of Internal Revenue on May 15, 2012:

No. COOP-00038-12-RR12-RDO 079

CERTIFICATE OF TAX EXEMPTION
(For Cooperatives registered under Republic Act No. 9520)

THIS IS TO CERTIFY THAT **SILLIMAN UNIVERSITY COOPERATIVE (SU COOP)**, a primary multi-purpose cooperative, with address at 21 Corner Hibbard and Silliman Avenue, Dumaguete City, is a duly-registered taxpayer of RDO No. 079 under Tax Identification No. 001-220-743 and is registered with the Cooperative Development Authority under Registration Certificate No. 9520-07006045 dated January 11, 2010.

As a **cooperative transacting with both members and non-members** with accumulated reserves and undivided net savings of **not more than Ten million pesos (₱10,000,000.00),** ***SU COOP*** is entitled to the following tax exemptions and incentives provided by Article 61 of Republic Act No. 9520, as implemented by Section 8 of the Joint Rules and Regulations Implementing Articles 60, 61 and 144 of RA No. 9520:

1. Exemption from Income tax on income from CDA-registered operations;
2. Exemption from Value-added tax on CDA-registered sales or transactions;
3. Exemption from other Percentage tax;
4. Exemption from Donor's tax on donations to duly accredited charitable, research and educational institutions, and reinvestment to socio-economic projects within the area of operation of the cooperative;
5. Exemption from Excise tax for which it is directly liable;
6. Exemption from Documentary stamp tax: *Provided, however*, that the other party to the taxable document/ transaction who is not exempt shall be the one directly liable for the tax;
7. Exemption from payment of Annual Registration Fee of Five hundred pesos (₱500.00); and

[93] Id. at 294-295.

8. Exemption from all taxes on transactions with insurance companies and banks, including but not limited to 20% final tax on interest deposits and 7.5% final income tax on interest income derived from a depositary bank under the expanded foreign currency deposit system.

This Certificate of Registration shall be valid for five (5) years or until May 15, 2017 unless sooner revoked by this Office for violation of any provisions of the Joint Revenue Regulations, the terms and conditions on the reverse side hereof or upon withdrawal of the Certificate of Registration by the CDA.[94] (Emphasis in the original)

The Certificate of Tax Exemption enumerates the tax exemptions and privileges granted to it under Section 61 of Republic Act No. 9520. Section 61 provides that cooperatives that transact "business with both members and non-members shall not be subject to tax on their transactions with members," while cooperatives that transact with non-members will only be taxable if their "accumulated reserves and undivided net savings" are more than ₱10,000,000.00.

The power to tax is the strongest of all the government's power,[95] as "taxes are the lifeblood of the government."[96] Nonetheless, the power to tax is not plenary. The Constitution provides that the "[t]he rule of taxation shall be uniform and equitable;"[97] thus, "all taxable articles or kinds of property of the same class [shall] be taxed at the same rate."[98]

Cooperatives were singled out by the legislature and accorded preferential treatment due to their constitutionally recognized vital role in the economic development of our society's marginalized sectors. Hence, a marked difference lies between

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[94] Id. at 294.

[95] *Reyes v. Almanzor*, 273 Phil. 558, 564 (1991) [Per J. Paras, En Banc].

[96] Id. at 566.

[97] CONST., art. VI, sec. 28 (1).

[98] *Tolentino v. Secretary of Finance*, 319 Phil. 755, 795 (1995) [Per J. Mendoza, En Banc].

cooperatives and other private establishments that do not enjoy the same tax exemption.

Another constitutional limitation is that taxation must not amount to a "[deprivation] of property without due process of law[.]"[99] *Chamber of Real Estate and Builders' Association, Inc. v. Executive Secretary Romulo*[100] discussed the due process limitation inherent in the power to tax:

> As a general rule, the power to tax is plenary and unlimited in its range, acknowledging in its very nature no limits, so that the principal check against its abuse is to be found only in the responsibility of the legislature (which imposes the tax) to its constituency who are to pay it. Nevertheless, it is circumscribed by constitutional limitations. At the same time, like any other statute, tax legislation carries a presumption of constitutionality.
>
> The constitutional safeguard of due process is embodied in the fiat "[no] person shall be deprived of life, liberty or property without due process of law." In *Sison, Jr. v. Ancheta, et al.*, we held that the due process clause may properly be invoked to invalidate, in appropriate cases, a revenue measure when it amounts to a confiscation of property. But in the same case, we also explained that we will not strike down a revenue measure as unconstitutional (for being violative of the due process clause) on the mere allegation of arbitrariness by the taxpayer. There must be a factual foundation to such an unconstitutional taint. This merely adheres to the authoritative doctrine that, where the due process clause is invoked, considering that it is not a fixed rule but rather a broad standard, there is a need for proof of such persuasive character.[101] (Citations omitted)

Private establishments that issue senior citizen discounts are entitled to a return of the discounts they extended. However, the legislature, in the exercise of its police power, watered down their reimbursements to a tax deduction from what used to be a tax credit. Nonetheless, whether through a tax credit or a tax

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[99] CONST., art. III, sec. 1.

[100] 628 Phil. 508 (2010) [Per J. Corona, En Banc].

[101] Id. at 530.

deduction, there is no arguing that business establishments are still entitled to recoup some of the discounts they issued to senior citizens.

As a tax-exempt entity, the Silliman University Cooperative could not have availed of a tax deduction to offset a portion of the senior citizen discounts it issued to its clients, whether member or non-member. Thus, to insist that it was nevertheless mandated to issue a 20% discount would have been *confiscatory and a deprivation of private property without due process of law.*

It is true that a business establishment's availment of a tax benefit is "merely permissive, not imperative."[102] A business establishment may even opt to ignore the tax credit or tax deduction altogether and consider its issuance of senior citizen discounts "as an act of beneficence, an expression of its social conscience."[103] However, the option to avail of a tax benefit must still be available to the business establishment and not be rendered illusory. Being forced to act benevolently is antithetical to the entire concept of charitable giving.

To reiterate, the imposition of the senior citizen discount is a valid exercise of the State's police power to address social justice and human rights. The tax deduction scheme emanates from the State's exercise of its police power, which empowers it to "regulate the acquisition, ownership, use, and disposition of property and its increments"[104] and — not its power of eminent domain.

"Profits are intangible personal property for which petitioners merely have an inchoate right. These are types of property which cannot be 'taken.'"[105] Hence, private establishments are not entitled to just compensation in the absence of an actual taking:

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[102] *Commissioner of Internal Revenue v. Central Luzon Drug*, 496 Phil. 307, 334 (2005) [Per J. Panganiban, Third Division].

[103] Id. at 334.

[104] CONST., art. XIII, sec. 1.

[105] J. Leonen, Concurring and Dissenting Opinion in *Manila Memorial Park, Inc. v. Secretary of Social Welfare and Development*, 722 Phil. 538, 640 (2013) [Per J. Del Castillo, En Banc].

When the 20% discount is given to customers who are senior citizens, there is a perceived loss for the establishment for that same amount at that precise moment. However, this moment is fleeting and the perceived loss can easily be recouped by sales to ordinary citizens at higher prices. The concern that more consumers will suffer as a result of a price increase is a matter better addressed to the wisdom of the Congress. As it stands, Republic Act No. 9257 does not establish a price control. For non-profit establishments, they may cut down on costs and make other business decisions to optimize performance. Business decisions like these have been made even before the 20% discount became law, and will continue to be made to adapt to the ever changing market. We cannot consider this fluid concept of possible loss and potential profit as private property belonging to private establishments. They are inchoate. They may or may not exist depending on many factors, some of which are within the control of the private establishments. There is nothing concrete, earmarked, actual or specific for taking in this scenario. Necessarily, there is nothing to compensate.[106] (Citation omitted)

Given the possible ambiguity in the interpretation of the two laws, we find that the prosecution was unable to support its claim beyond reasonable doubt that the Silliman University Cooperative, as a restaurant operator, was obligated to issue a 20% senior citizen discount to senior citizen members and non-members alike.

We sympathize with the senior citizen who claimed to be the offended party here. We understand how difficult it may have been for him to be denied the senior citizen discount from his favorite watering hole for his favorite soft drink. Yet, we must take a larger view. It does not seem reasonable that cooperatives, favored by the State for social justice reasons, will be at a disadvantage vis-à-vis private commercial establishments. The latter are allowed by law to claim the senior citizen discount as a tax deduction, and the State is not compelling them to reduce the potential benefits they could give to their owners. We acquit petitioner on the ground of reasonable doubt that the law applies to him.

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[106] Id. at 642-643.

In so doing, we earnestly suggest that the offended senior citizen make a choice: to continue with his habit of patronizing the cooperative, or to find a private establishment that will certainly sell him his favorite drink with a certain discount.

Life is full of choices; this is not the most difficult of them.

WHEREFORE, the Petition is **GRANTED**. The assailed Court of Appeals' July 29, 2016 Decision and January 31, 2017 Resolution in CA-G.R. CEB-CR No. 02477 are **REVERSED** and **SET ASIDE**.

Let a copy of this Decision be provided to the Senate and the House of Representatives, through the Senate President and the House Speaker, for remedial legislation, if necessary.

SO ORDERED.

Carandang, Lazaro-Javier,[*] *Zalameda,* and *Gaerlan, JJ.,* concur.

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[*] Designated additional Member per Raffle dated July 13, 2020 *vice* Gesmundo, J.

FIRST DIVISION

[G.R. No. 232308. October 7, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **XXX,**[1] *Accused-Appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; ELEMENTS.— Article 266-A, paragraph 1 of the RPC, as amended by RA No. 8353, defines rape x x x. To support a conviction for rape, the following elements must be proved: (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 to a moral certainty the elements of carnal knowledge and force or intimidation. Complainant positively identified appellant as the man who, through force or intimidation, had carnal knowledge of her against her will x x x.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONIES OF CHILD-VICTIMS ARE GIVEN FULL WEIGHT AND CREDIT.— Complainant made a clear, candid, and positive narration of how appellant suddenly embraced her from behind, forced her to lie down on the floor, undressed her, kissed her lips, neck, and vagina, forcefully inserted his penis into her vagina while preventing her from screaming by inserting his fingers into her mouth, and threatened that he was ready to die with her or go to jail. Complainant's allegation of rape conforms with the physical evidence through the testimony and medical findings of Dr. Diasen that complainant sustained "*hymenal area (+) multiple lacerations*

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[1] The real name of the victim, her personal circumstances and other information which tend to establish or compromise her identity, as well as those of her immediate family, or household members, shall not be disclosed to protect her privacy, and fictitious 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.

and Perihymenal area (+) abrasions on both sides of the erythematous looking — there is a 1 cm laceration from the fourchette downward to the anal verge." Dr. Diasen testified that the multiple abrasions strongly indicated that a sexual incident occurred within twenty-four (24) hours prior to the examination, thus, supporting complainant's disclosure that she was sexually abused the day before. It is settled that testimonies of child-victims are given full weight and credit. The same cannot be easily dismissed as mere concoction especially when it pertained to a young girl's story on how her own relative had sexually ravished her, as in this case. More so because the rape story here is supported no less by physical evidence.

3. **ID.; ID.; ID.; THE TRIAL COURT'S FACTUAL ASSESSMENT ON THE COMPLAINANT'S TESTIMONY IS ACCORDED RESPECT SINCE IT HAS THE OPPORTUNITY TO OBSERVE THE DEPORTMENT OF COMPLAINANT FIRST HAND.—** [T]he Court respects the trial court's factual assessment that complainant's testimony was credible and convincing since it had the opportunity to observe the deportment of complainant first hand and even carries the Court of Appeal's full concurrence.

4. **ID.; ID.; ID.; NOT ADVERSELY AFFECTED BY INCONSISTENCIES IN THE VICTIM'S TESTIMONY ON TRIVIAL MATTERS.—** [T]he alleged inconsistency or improbability in the victim's testimony pertaining to whether appellant's father was also inside the house when she got raped or whether there were also many people nearby since it was then the feast day of the barangay refer to trivial matters which do not affect the credibility of the victim's testimony. For another, the proximity of a number of people at the rape scene does not disprove the commission of rape. For lust is no respecter of time and place. Rape can be committed anywhere, even in places where people congregate.

5. **CRIMINAL LAW; RAPE; THE PRESENCE OR ABSENCE OF SPERMATOZOA IS IMMATERIAL BECAUSE PENETRATION OF THE WOMAN'S VAGINA, HOWEVER SLIGHT, CONSTITUTES RAPE.—** [I]n the prosecution of rape cases, the presence or absence of spermatozoa is immaterial. For it is well settled that penetration of the woman's

vagina, however slight, and not ejaculation constitutes rape. Thus, even if no spermatozoa was found in complainant's vaginal area despite her claim that appellant declared he would only pull out his penis after he had ejaculated inside her vagina, the same does not negate penile penetration and the commission of rape. Complainant's graphic account of the incident shows the element of penile penetration x x x.

6. REMEDIAL LAW; EVIDENCE; DENIAL AND ALIBI; CANNOT PREVAIL OVER COMPLAINANT'S CREDIBLE AND POSITIVE IDENTIFICATION OF THE ACCUSED AS THE PERSON WHO COMMITTED THE CRIME.— [A]ppellant's defenses consist of denial and alibi. These are the weakest of all defenses for they are easy to contrive but difficult to disprove. Appellant did not even present his friends and neighbors with whom he was allegedly drinking or his children who were allegedly at home during the rape incident, to corroborate his theories of denial and alibi. In any event, as between complainant's credible and positive identification of appellant as the person who, using force and intimidation, 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.

7. CRIMINAL LAW; QUALIFIED RAPE; MINORITY AND RELATIONSHIP; THE TWIN AGGRAVATING CIRCUMSTANCES OF THE VICTIM'S MINORITY AND HER RELATIONSHIP TO THE PERPETRATOR SHOULD BE ALLEGED AND PROVED.— The crime of qualified rape under Article 266-B (1) of the RPC requires the concurrence of the twin aggravating circumstances of the victim's minority and her relationship to the perpetrator. Both should be alleged and proved. Otherwise, the accused could only be held guilty of simple rape.

8. ID.; ID.; ID.; A PHOTOCOPY OF THE RAPE VICTIM'S BIRTH CERTIFICATE IS ADMISSIBLE TO PROVE HER MINORITY.— The prosecution here had sufficiently established complainant's minority. Apart from the testimonies of complainant and her mother, the prosecution also presented in evidence a photocopy of complainant's certificate of live birth to prove that complainant was only seventeen (17) years

old when appellant raped her. Under Rule 130, Section 3, paragraph (d) of the Revised Rules of Court, the presentation of the original document may be dispensed with when the same is a public record in the custody of a public officer or is recorded in a public office. In ***People v. Cayabyab,*** the Court ruled that a photocopy of the rape victim's birth certificate is admissible to prove her age because its original is a public record in the custody of the local civil registrar, a public officer. The trial court and the Court of Appeals, therefore, did not err in admitting in evidence the photocopy of complainant's certificate of live birth to prove her minority.

9. ID.; ID.; ID.; TO APPRECIATE RELATIONSHIP AS A QUALIFYING CIRCUMSTANCE, THE RELATIONSHIP BETWEEN THE VICTIM AND THE OFFENDER MUST BE WITHIN THE THIRD CIVIL DEGREE OF CONSANGUINITY OR AFFINITY.— As for the relationship between the victim and the offender, the same must be within the third civil degree of consanguinity or affinity in order to qualify rape under Article 266-B. In ***People v. Ugang,*** the Court did not appreciate relationship as a qualifying circumstance because the accused was the victim's relative within the fifth civil degree only, he being a cousin of the victim's father, as in here. Consequently, accused Ugang was convicted only of simple rape. Here, relationship cannot be appreciated as a qualifying/aggravating circumstance because appellant here, like ***Ugang*** is a cousin of complainant's father, hence, a relative within the fifth civil degree only. The Court of Appeals, thus, correctly modified appellant's conviction from qualified rape to simple rape.

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[2] seeks to reverse and set aside the Decision[3] dated June 22, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 06146 which affirmed, with modification the trial court's verdict of conviction[4] against appellant XXX for qualified rape. Its dispositive portion reads:

> **WHEREFORE**, the decision dated April 11, 2013 of the Regional Trial Court of Tuguegarao City, Cagayan, Branch 4 (RTC) in Criminal Case No. 12711 is AFFIRMED with MODIFICATION in that accused-appellant [XXX] is found GUILTY beyond reasonable doubt of the crime of rape defined under Article 266-A No. 1(a) and penalized under the first paragraph of Article 266-B of the Revised Penal Code, as amended by R.A. No. 8353, in relation to R.A. No. 7610. The award of Seventy-five Thousand Pesos (₱75,000.00) as civil indemnity, Thirty Thousand Pesos (₱30,000.00) as exemplary damages and Seventy-five Thousand Pesos (₱75,000.00) as moral damages is affirmed. Accused-appellant is ordered to pay the victim interest on all damages at the legal rate of six percent (6%) per annum from the date of finality of this judgment until full payment.
>
> **SO ORDERED**.[5]

The Information

Appellant was charged with qualified rape under the following Information, *viz.*:

> The undersigned City Prosecutor of Tuguegarao City accuses [XXX] for the crime of RAPE defined and penalized under Article 266-A

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[2] *Rollo*, pp. 22-23.

[3] Penned by Associate Justice Myra V. Garcia-Fernandez and concurred in by now Supreme Court Associate Justice Rosmari D. Carandang and Associate Justice Socorro B. Inting, *id.* at 2-21.

[4] Penned by Judge Pablo M. Agustin, CA *rollo*, pp. 91-100.

[5] *Rollo*, pp. 19-20.

No. 1(a) in relation to Article 266-B, 6th paragraph of the Revised Penal Code as amended by Republic Act 8353 in relation to R.A. 7610, committed as follows:

> That on August 4, 2009, in the City of Tuguegarao, Province of Cagayan, and within the jurisdiction of this Honorable Court, the accused [XXX], invited the private complainant [AAA][6] to go upstairs of his house to choose some package that was sent by his wife from Singapore, to which the private complainant politely acceded; that when the private complainant was already choosing some packages, the accused, with lewd design, and by means of force, threat and intimidation, did then and there, willfully, unlawfully and feloniously lift the uniform of the private complainant, lay her on the floor, and despite her resistance and struggle, he did lie and succeed in having sexual intercourse with the private complainant, against her will[,] that due to the incident, the accused was brought to the Cagayan Police Provincial Office, Camp Triso H. Gador, Tuguegarao City for proper disposition.
>
> That the acts of the accused were aggravated by the fact that the private complainant was a [17-year-old] minor at the time of the incident, and that accused is the uncle of the private complainant, he being the first cousin of the father of the private complainant.
>
> That the acts of the accused debased, degraded, and demeaned the intrinsic worth and dignity of the private complainant and which is prejudicial to her normal growth and development as a minor.
>
> CONTRARY TO LAW.[7]

The case was raffled to the Regional Trial Court-Tuguegarao City, Cagayan, Branch 4 and docketed as Criminal Case No. 12711.

The Proceedings Before the Trial Court

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

During the trial, complainant AAA, her mother and her aunt, and Dr. Marriane Rowena Diasen (Dr. Diasen) testified for the prosecution while appellant alone testified for the defense.

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[6] Supra note 1.

[7] Record, p. 1; CA *rollo*, pp. 90-91.

[8] *Rollo*, p. 4.

The prosecution too presented in evidence complainant's sworn statement, joint affidavit of SPO2 William M. Guzman (SPO2 Guzman) and PO2 Robert Rivero (PO2 Rivero), complainant's mother's affidavit, complainant's certificate of live birth, and complainant's medico-legal certificate.[9]

The Prosecution's Version

Complainant testified that she was born on May 3, 1992. Appellant is her uncle, being her father's first cousin. Appellant lives in Cataggaman Pardo, which is only two (2) streets or two to three (3) minute walk away from her house.[10]

On August 4, 2009, around 1 o'clock in the afternoon, she went to the house of her cousin in Cataggaman Pardo, but the latter was not around. She proceeded to her grandfather's house located in the same barangay, but no one was there either. She then decided to take a rest inside appellant's tricycle parked in front of his house, near her grandfather's house.[11]

Appellant later arrived from a drinking spree and invited her into his house to choose some clothes sent by his wife from Singapore. She obliged and went upstairs for the clothes. As she was sorting through them, appellant lifted her skirt and embraced her from behind. She tried to shout but appellant inserted his fingers into her mouth. Appellant forced her to lie down on the floor, undressed her, and kissed her lips, neck, and vagina. Appellant then forcefully inserted his penis into her vagina, which caused her pain.[12] He told her he would only remove his penis after he shall have already ejaculated.[13] She did not shout anymore because appellant told her he was ready to go to jail and even die with her. Each time she tried to get

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[9] *Id.* at 4.

[10] TSN dated March 8, 2011, p. 4.

[11] TSN dated November 26, 2009, pp. 2-8.

[12] *Id.* at 5.

[13] *Id.* at 3-4.

up and run away, appellant pulled her feet to prevent her from escaping.[14]

After ravishing her, appellant told her to take a bath, change her clothes, and go home. Crying, she headed straight to her grandfather's house but still no one was there. She proceeded to the school of her aunt and told the latter she wanted to commit suicide because appellant had raped her. She was scared to go home as appellant might rape her again since he earlier told her to come back in the evening. She, thus, spent the night in a boarding house in Caritan, Tuguegarao City.[15]

Complainant's mother testified that on August 4, 2009, she got home from work around 7 o'clock in the evening. As complainant was still not home, she went to Cataggaman Pardo to look for her, but she did not find her there. The next day, she saw complainant crying in front of Otto Shoe Department Store in Centro, Tuguegarao. Complainant told her that appellant raped her and she was scared of him. They went to the Provincial Philippine Command to report the rape. Thereafter, they proceeded to Cagayan Valley Medical Center (CVMC), where complainant underwent a medico-legal examination.[16]

Complainant's aunt testified that on August 4, 2009, complainant sent her a text message saying she had a problem. During her break around 2:30 o'clock in the afternoon, she waited for complainant in front of her school. Complainant came to her crying. Complainant told her that appellant raped her and she wanted to commit suicide.

Dr. Diasen testified that she examined complainant. She found multiple fresh lacerations, abrasions, and some blood stains in and around complainant's hymenal and peri-hymenal area which strongly indicated that a sexual incident occurred within twenty-four (24) hours prior to the examination.[17] She testified that

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

[15] *Id.* at 5-5.

[16] TSN dated March 8, 2011, pp. 4-5; TSN dated August 13, 2010, pp. 2-4; TSN dated November 26, 2009, p. 7.

[17] TSN dated August 13, 2010, pp. 2-4; Record, p. 9; *rollo*, p. 32.

her findings supported complainant's revelation that she had been sexually abused the day before the physical examination.[18]

The Defense's Version

Appellant denied the charge. He testified that in the morning of August 4, 2009, he and his two (2) children were cleaning their house while their neighbors were preparing food for the barangay fiesta.[19] In the afternoon, he went for a drinking spree with his friends Angel Pattad, Jesus Bacud, Nestor Olivo, Rogelio Lattao, Eusebio Chato and Ninoy Bucayu in his neighbor's house, about thirty (30) to forty (40) meters away from his house. He did not see complainant that day.[20]

On cross, appellant testified that he left his house as early as 6:30 o'clock in the morning when his friend picked him up for a drinking spree in their neighbor's house. He stayed there until noon time, then returned home to check on his two (2) children.[21] He was quite close to complainant's father. He, complainant, and her father had no ill-feelings against each other.[22]

The Trial Court's Ruling

By Decision dated April 11, 2013,[23] the trial court convicted appellant of the offense charged, *i.e.*, rape, qualified by minority and relationship under Article 266-A No. 1(a) in relation to Article 266-B 6th paragraph of the RPC, as amended. It gave greater weight to complainant's positive testimony over appellant's denial and alibi. It ruled that the presence of other people in the crime scene did not negate the commission of rape. Thus:

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[18] TSN dated August 13, 2010, pp. 4-5.

[19] TSN dated October 20, 2011, p. 2.

[20] TSN dated January 31, 2012, p. 2.

[21] *Id.* at 3.

[22] *Id.* at 4.

[23] Penned by Judge Pablo M. Agustin, record, pp. 91-100.

From the evidence on hand, this court is convinced that the accused [XXX] raped [AAA] as stated in the information.

x x x x x x x x x

WHEREFORE, PREMISES CONSIDERED, finding accused **XXX "GUILTY"** beyond reasonable doubt for the crime of RAPE defined and penalized under Article 266-A No. 1(a) in relation to Article 266-B, 6th paragraph of the Revised Penal Code as amended by Republic Act 8353, in relation to R.A. No. 7610, this Court hereby sentences him to reclusion perpetua and to suffer the accessory penalties provided by law, particularly Article 41 of the Revised Penal Code. For the civil liability, he is condemned to pay the amount of P75,000.00 as actual, P30,000.00 as exemplary damages and P75,000.00 as moral damages.

The accused who is a detained prisoner is hereby credited in full of the period of his preventive imprisonment in accordance with Article 29 of the Revised Penal Code, as amended.

SO DECIDED.[24]

The Proceedings before the Court of Appeals

On appeal, appellant faulted the trial court for finding him guilty of qualified rape despite the prosecution's purported failure to prove his guilt beyond reasonable doubt and for appreciating the aggravating circumstance of minority, albeit without competent proof thereof. Appellant essentially argued: (1) the conflicting factual narration of complainant rendered her credibility questionable. In her sworn statement, complainant alleged that his father heard her pleas and went upstairs when he was molesting her. But at the trial, complainant testified that no one else was present in his house; and (2) a mere photocopy of complainant's certificate of live birth was not sufficient to establish her minority.[25]

On the other hand, the Office of the Solicitor General (OSG)[26] maintained that the prosecution was able to establish appellant's

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[24] Record, p. 100; CA *rollo*, p. 98.

[25] CA *rollo*, pp. 16-27.

[26] Represented by Assistant Solicitor General Karl B. Miranda and Associate Solicitors Michael G.R. Gomez and Gabriel S. Villanueva.

guilt beyond reasonable doubt. Too, the trial court did not err in admitting in evidence a photocopy of complainant's certificate of live birth to establish the aggravating circumstance of minority.[27]

The Court of Appeals' Ruling

In its assailed Decision dated June 22, 2016,[28] the Court of Appeals affirmed, with modification. It ruled that appellant's conviction ought to be for simple rape only instead of qualified rape. It explained that paragraph 6 of Article 266-B of the Revised Penal Code (RPC) cannot be applied to qualify the rape because the relationship between appellant and complainant is beyond the third civil degree. Thus:

> Based on the foregoing discussion, this Court affirms the conviction of accused-appellant of rape under Article 266-A No. 1(a) of the Revised Penal Code, as amended by R.A. 8353, in relation to R.A. No. 7610. However, this Court finds that the dispositive portion of the RTC's decision, which includes the application of the 6th paragraph of Article 266-B, should be modified. The aggravating circumstance of relationship alleged in the information cannot be appreciated because accused-appellant is the first cousin of AAA's father. The relationship between AAA and accused-appellant is beyond the 3rd civil degree of relationship that is considered under No. 1 of the 6th paragraph of Article 266-B. Nevertheless, this Court affirms the penalty of *reclusion perpetua* imposed upon accused-appellant pursuant to Article 266-B, paragraph 1 of the Revised Penal Code, with the accessory penalties provided by law.
>
> x x x x x x x x x
>
> **WHEREFORE**, the Decision dated April 11, 2013 of the Regional Trial Court of Tuguegarao City, Cagayan, Branch 4 (RTC) in Criminal Case No. 12711 is AFFIRMED with MODIFICATION in that accused-appellant [XXX] is found GUILTY beyond reasonable doubt of the crime of rape defined under Article 266-A No. 1(a) and penalized

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[27] CA *rollo*, pp. 69-80.

[28] Penned by Associate Justice Myra V. Garcia-Fernandez and concurred in by now Supreme Court Associate Justice Rosmari D. Carandang and Associate Justice Socorro B. Inting, *rollo*, pp. 2-21.

under the first paragraph of Article 266-B of the Revised Penal Code, as amended by R.A. No. 8353, in relation to R.A. No. 7610. The award of Seventy-five Thousand Pesos (₱75,000.00) as civil indemnity, Thirty Thousand Pesos (₱30,000.00) as exemplary damages and Seventy-five Thousand Pesos (₱75,000.00) as moral damages is affirmed. Accused-appellant is ordered to pay the victim interest on all damages at the legal rate of six percent (6%) per annum from the date of finality of this judgment until full payment.

SO ORDERED.[29]

The Present Appeal

Appellant now seeks affirmative relief from the Court and prays anew for his acquittal. In compliance with the Court's Resolution[30] dated October 2, 2017, both appellant and the OSG manifested that, in lieu of supplemental briefs, they were adopting their respective briefs filed before the Court of Appeals.[31]

Issue

Did the Court of Appeals err in convicting appellant of simple rape?

Ruling

The prosecution was able to establish to a moral certainty that through force or intimidation, appellant succeeded in having carnal knowledge of the victim against her will

Article 266-A, paragraph 1 of the RPC, as amended by RA No. 8353, defines rape, *viz.*:

Art. 266-A. *Rape: When and How Committed*. — Rape is committed —

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[29] *Id.* at 19-20.

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

[31] *Id.* at 29-30, 33-35.

> 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.

To support a conviction for rape, the following elements must be proved: (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 to a moral certainty the elements of carnal knowledge and force or intimidation. Complainant positively identified appellant as the man who, through force or intimidation, had carnal knowledge of her against her will, thus:

> Q. And While you were choosing pieces of clothes for you and your siblings, what happened?
> A. He pulled up my skirt, sir.
>
> Q. And other than pulling your skirt, what else did [XXX] did to you?
> A. He suddenly embraced me and forced me, I tried to shout but he put his hands on my mouth so that I cannot shout.
>
> Q. Where was [XXX] in relation to you when he embraced you?
> A. He was at my back sir.
>
> Q. And after embracing you and putting his fingers into your mouth and prevent you from shouting, what else did [XXX] do to you?
> A. He forced me to lie down and he undressed me, sir.

Q. Where did he force you to lie down?
A. At the floor, sir?

Q. And when you were already in the floor, what did [XXX] do to you?
A. When I was on the floor I am trying to shout but still he put his fingers on my mouth to prevent me from shouting and he started pushing me and undressed me.

Q. What part of your body did he kiss you?
A. My lips, neck[,] and my vagina, sir.

Q. You said that he undressed you, what were you wearing at that time?
A. A school uniform.

Q. Of what school?
A. Cagayan State University, sir.

Q. You are enrolled in what department?
A. Medical Technology Department, sir.

Q. Was he able to remove all your clothing?
A. No sir, he was only able to remove my lower garments, sir.

Q. After taking over your lower garments, what did [XXX] do to you?
A. He was forcing to insert his penis into my vagina, sir.

Q. And was he able to insert his penis into your vagina?
A. Yes sir.

Q. When his penis was already inserted into your vagina, what did [XXX] do?
A. He said he will only remove his penis after he withdrawn. *"Sabi niya magpapalabas muna siya bago niya tatanggalin."*

Q. And did you estimate how long did he take, [XXX] to stay on top of you, taking his penis from your vagina?
A. I cannot remember, sir.

Q. Let's go back [AAA] to that very moment when [XXX] inserted his penis into your vagina, how did you feel when [XXX] inserted his penis into your vagina?
A. I felt pain, sir.

Q. Why?
A. Because it is my first time to have sex, sir.[32]

x x x x x x x x x

Q. Will you agree with me that not all the time this accused put his palm in your mouth?
A. Yes sir.

Q. And there [was an] opportunity for you to shout again?
A. Yes sir.

Q. But you never shouted again?
A. He told me that he was ready to die with me and he was ready to go to jail.[33]

x x x x x x x x x

Q. Was the accused armed with a gun or knife at that time?
A. He was not armed but I was afraid because of his big body built.[34]

Complainant made a clear, candid, and positive narration of how appellant suddenly embraced her from behind, forced her to lie down on the floor, undressed her, kissed her lips, neck, and vagina, forcefully inserted his penis into her vagina while preventing her from screaming by inserting his fingers into her mouth, and threatened that he was ready to die with her or go to jail. Complainant's allegation of rape conforms with the physical evidence through the testimony and medical findings of Dr. Diasen that complainant sustained *"hymenal area (+) multiple lacerations and Perihymenal area (+) abrasions on both sides of the erythematous looking — there is a 1 cm laceration from the fourchette downward to the anal verge."* Dr. Diasen testified that the multiple abrasions strongly indicated that a sexual incident occurred within twenty-four (24) hours prior to the examination, thus, supporting complainant's disclosure that she was sexually abused the day before.

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[32] TSN dated November 26, 2009, pp. 4-5.

[33] *Id.* at 10.

[34] *Id.* at 11.

It is settled that testimonies of child-victims are given full weight and credit.[35] The same cannot be easily dismissed as mere concoction especially when it pertained to a young girl's story on how her own relative had sexually ravished her, as in this case. More so because the rape story here is supported no less by physical evidence. ***People v. Rupal***[36] is in point:

> It is emphasized that when a rape victim's allegation is corroborated by a physician's finding of penetration, "there is sufficient foundation to conclude the existence of the essential requisite of carnal knowledge." Such medico-legal findings bolster the prosecution's testimonial evidence. Together, these pieces of evidence produce a moral certainty that the accused-appellant indeed raped the victim. The "[p]hysical evidence is evidence of the highest order. It speaks more eloquently than a hundred witnesses." Moreover, a young girl's revelation that she had been raped, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give out the details of an assault on her dignity, cannot be so easily dismissed as mere concoction.

Indeed, the Court respects the trial court's factual assessment that complainant's testimony was credible and convincing[37] since it had the opportunity to observe the deportment of complainant first hand and even carries the Court of Appeal's full concurrence.[38]

On this score, the alleged inconsistency or improbability in the victim's testimony pertaining to whether appellant's father was also inside the house when she got raped or whether there were also many people nearby since it was then the feast day of the barangay refer to trivial matters which do not affect the credibility of the victim's testimony. For another, the proximity of a number of people at the rape scene does not disprove the commission of rape. For lust is no respecter of time and place.

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[35] *People v. Mayola*, 802 Phil. 756, 764 (2016).

[36] G.R. No. 222497, June 27, 2018.

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

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

Rape can be committed anywhere, even in places where people congregate. ***People v. Balora***[39] decrees:

> The court has time and again held that "the evil in man has no conscience. The beast in him bears no respect for time and place, driving him to commit rape anywhere — even in places where people congregate such as in parks, along the roadside, within school premises and inside a house where there are other occupants." "Rape does not necessarily have to be committed in an isolated place and can in fact be committed in places which to many would appear to be unlikely and high-risk venues for sexual advances." Indeed, no one would think that rape could happen in a public place like the comfort room of a movie house and in broad daylight.

Finally, in the prosecution of rape cases, the presence or absence of spermatozoa is immaterial. For it is well settled that penetration of the woman's vagina, however slight, and not ejaculation constitutes rape.[40] Thus, even if no spermatozoa was found in complainant's vaginal area despite her claim that appellant declared he would only pull out his penis after he had ejaculated inside her vagina, the same does not negate penile penetration and the commission of rape.

Complainant's graphic account of the incident shows the element of penile penetration, *viz.*: *"he (appellant) was only able to remove my lower garments, sir." "He (appellant) was forcing to insert his penis into my vagina." "Yes sir,"* appellant was able to insert his penis into her vagina. *"I felt pain, sir."* When appellant's penis was already inside her vagina, *"Sabi niya magpapalabas muna siya bago niya tatanggalin."* Her story is supported by the doctor's finding of multiple lacerations and abrasions in her hymenal and perihymenal area which strongly indicated sexual intercourse.

On the other hand, appellant's defenses consist of denial and alibi. These are the weakest of all defenses for they are easy to contrive but difficult to disprove. Appellant did not

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[39] 388 Phil. 193, 203 (2000).

[40] *People v. Balora*, *id.* at 206.

even present his friends and neighbors with whom he was allegedly drinking or his children who were allegedly at home during the rape incident, to corroborate his theories of denial and alibi.

In any event, as between complainant's credible and positive identification of appellant as the person who, using force and intimidation, 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.[41]

The crime committed is simple rape

The crime of qualified rape under Article 266-B (1)[42] of the RPC requires the concurrence of the twin aggravating circumstances of the victim's minority and her relationship to the perpetrator. Both should be alleged and proved.[43] Otherwise, the accused could only be held guilty of simple rape.[44]

The prosecution here had sufficiently established complainant's minority. Apart from the testimonies of complainant and her mother,[45] the prosecution also presented in evidence a photocopy of complainant's certificate of live birth to prove that complainant was only seventeen (17) years old when appellant raped her.

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[41] *Etino v. People*, 826 Phil. 32, 48 (2018); *People v. Candellada*, 713 Phil. 623, 45 (2013).

[42] Article 266-B. *Penalties.* —

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 x x x x x

[43] *People v. Armodia*, 810 Phil. 822, 832-833 (2017).

[44] *People v. Gallano*, 755 Phil. 120, 131 (2015).

[45] TSN dated October 20, 2011, p. 2; TSN dated January 31, 2012, pp. 2-6.

Under Rule 130, Section 3, paragraph (d) of the Revised Rules of Court,[46] the presentation of the original document may be dispensed with when the same is a public record in the custody of a public officer or is recorded in a public office. In ***People v. Cayabyab***,[47] the Court ruled that a photocopy of the rape victim's birth certificate is admissible to prove her age because its original is a public record in the custody of the local civil registrar, a public officer. The trial court and the Court of Appeals, therefore, did not err in admitting in evidence the photocopy of complainant's certificate of live birth to prove her minority.

As for the relationship between the victim and the offender, the same must be within the third civil degree of consanguinity or affinity in order to qualify rape under Article 266-B. In ***People v. Ugang***,[48] the Court did not appreciate relationship as a qualifying circumstance because the accused was the victim's relative within the fifth civil degree only, he being a cousin of the victim's father, as in here. Consequently, accused Ugang was convicted only of simple rape.

Here, relationship cannot be appreciated as a qualifying/aggravating circumstance because appellant here, like ***Ugang*** is a cousin of complainant's father, hence, a relative within the fifth civil degree only. The Court of Appeals, thus, correctly modified appellant's conviction from qualified rape to simple rape.

The Penalty

Article 266-B of the Revised Penal Code, as amended by RA 8353, prescribes the penalty of *reclusion perpetua* for simple rape.

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[46] Sec. 3. Original document must be produced; exceptions. — When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

x x x x x x x x x

(d) When the original is a public record in the custody of a public officer or is recorded in a public office.

[47] 503 Phil. 606, 619-620 (2005).

[48] 431 Phil. 552, 567-569 (2002).

All told, the Court of Appeals did not err in convicting appellant of simple rape and sentencing him to *reclusion perpetua*. In accordance with prevailing jurisprudence,[49] the award of exemplary damages should be increased from Thirty Thousand Pesos (₱30,000.00) to Seventy-Five Thousand Pesos (₱75,000.00). On the other hand, we affirm the award of civil indemnity and moral damages in the amount of Seventy-Five Thousand Pesos (₱75,000.00) each and the imposition of six percent (6%) interest on all the monetary awards from finality of decision until fully paid.

ACCORDINGLY, the appeal is **DENIED**. The Decision dated June 22, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 06146 is **AFFIRMED**. Appellant XXX is found **GUILTY** of **SIMPLE RAPE** as defined and penalized under Article 266-A, paragraph 1 (a), in relation to Article 266-B of the Revised Penal Code, and sentenced to **RECLUSION PERPETUA**.

He is further ordered to **PAY** complainant **AAA** ₱75,000.00 as civil indemnity, P75,000.00 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.

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[49] *People v. Dumdum*, G.R. No. 221436, June 26, 2019; *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:

a. Civil indemnity — P75,000.00

b. Moral damages — P75,000.00

c. Exemplary damages — P75,000.00;

FIRST DIVISION

[G.R. No. 244843. October 7, 2020]

THE PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, *v.* **RONALD LAGUDA *y* RODIBISO a.k.a. "BOKAY,"** *Accused-Appellant*.

SYLLABUS

1. CRIMINAL LAW; ROBBERY WITH HOMICIDE; IN SUCH CRIME, THE OFFENDER'S ORIGINAL INTENT IS TO COMMIT ROBBERY, AND HOMICIDE MUST ONLY BE INCIDENTAL.— Robbery with homicide is a composite crime with its own definition and special penalty. . . .

In this kind of crime, the offender's original intent is to commit robbery and the homicide must only be incidental. The killing may occur before, during, or even after the robbery. It is only the result obtained, without reference or distinction as to the circumstances, causes, modes or persons intervening in the commission of the crime, that has to be taken into consideration. It is immaterial that the death would supervene by mere accident; or that the victim of homicide is other than the victim of robbery, or that two or more persons are killed or that aside from the homicide, rape, intentional mutilation, or usurpation of authority, is committed by reason or, on the occasion of the crime. It is also of no moment that the victim of homicide is one of the robbers. The word "homicide" is used in its generic sense and includes murder, parricide, and infanticide. As such, the crime is robbery with homicide when the killing was committed to facilitate the taking of the property, or the escape of the culprit, to preserve the possession of the loot, to prevent the discovery of robbery, or, to eliminate witnesses in the commission of the crime.

2. ID.; ID.; ELEMENTS OF ROBBERY WITH HOMICIDE; WHERE THE PRIMARY OBJECTIVE WAS TO ROB THE VICTIMS, AND THE KILLING WAS COMMITTED TO PREVENT THE APPREHENSION OF THE ROBBERS AND FACILITATE THEIR ESCAPE, THE CRIME IS

ROBBERY WITH HOMICIDE.— [T]he special complex crime of robbery with homicide has the following elements, to wit:

1. the taking of personal property with the use of violence or intimidation against the person; 2. the property taken belongs to another; 3. The taking is characterized by intent to gain or animus lucrandi; and 4. on the occasion of the robbery or by reason thereof the crime of homicide was committed.

All the elements are present in this case. . . . Ronald's primary objective was to rob the jeepney passengers. The killing of PO2 Magno was only incidental to prevent the apprehension of the robbers and facilitate their escape.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY; THE ASSESSMENT OF THE COURT OF APPEALS AND THE TRIAL COURT ON THE CREDIBILITY OF WITNESSES AND THE VERACITY OF THEIR TESTIMONIES ARE GIVEN THE HIGHEST DEGREE OF RESPECT.— [T]he CA and the RTC's assessment on the credibility of the prosecution witnesses and the veracity of their testimonies are given the highest degree of respect, especially if there is no fact or circumstance of weight or substance that was overlooked, misunderstood or misapplied, which could affect the result of the case.

4. ID.; ID.; CREDIBILITY OF WITNESSES; DENIAL AND ALIBI; DENIAL AND ALIBI ARE NEGATIVE DEFENSES, WHICH ARE SELF-SERVING AND UNDESERVING OF WEIGHT IN LAW.— Ronald's uncorroborated denial and alibi cannot prevail over the positive declarations of the prosecution witnesses. These negative defenses are self-serving and undeserving of weight in law absent clear and convincing proof. Notably, Ronald did not adduce evidence that he was somewhere else when the crime was committed and that it was physically impossible for him to be present at the crime scene or its immediate vicinity at the time of its commission.

5. ID.; ID.; CRIMINAL LAW; CONSPIRACY; PROOF OF ACTUAL AGREEMENT TO COMMIT THE CRIME NEED NOT BE DIRECT BECAUSE CONSPIRACY MAY BE

IMPLIED OR INFERRED FROM THE ACTS OF THE CONSPIRATORS.— There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Proof of the actual agreement to commit the crime need not be direct because conspiracy may be implied or inferred from their acts. Further, to be a conspirator, one need not have to participate in every detail of the execution; neither did he have to know the exact part performed by his co-conspirator in the execution of the criminal acts. In this case, the implied conspiracy between Ronald and his three companions is evident from the mode and manner in which they perpetrated the crime.

6. ID.; CRIMINAL PROCEDURE; WARRANTLESS ARREST; ANY OBJECTION TO THE LEGALITY OF A WARRANTLESS ARREST MUST BE MADE BEFORE THE ACCUSED ENTERS A PLEA.— [I]t is too late for Ronald to question the legality of his warrantless arrest in view of his arraignment and active participation at the trial. Neither did he move to quash the information, hence, any supposed defect in his arrest was deemed waived. It is settled that the legality of an arrest affects only the jurisdiction of the court over the person of the accused. Any objection must be made before the accused enters his plea. Otherwise, the defect is deemed cured. In *People v. Torres*, *Lapi v. People*, and *Dacanay v. People*, the accused were precluded from questioning the legality of their arrest for failure to timely object before arraignment.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LOPEZ, *J.*:

The existence of conspiracy in the commission of robbery with homicide is the main issue in this appeal assailing the Court of Appeal's (CA) Decision[1] dated January 10, 2018 in CA-G.R. CR HC No. 07969.

ANTECEDENTS

On April 19, 2012, at about 9:20 p.m., Herminia Sonon *y* Bolantes (Herminia) and Marieta Dela Rosa *y* Apelado (Marieta) were in a jeepney traversing along Dimasalang Road, Sampaloc, Manila. Suddenly, a man boarded the jeepney, wielded an ice pick and declared a hold-up. The man forcibly took Herminia and Marieta's bags containing cash and personal items. Thereafter, the man disembarked from the jeepney and proceeded to the driver's seat of a nearby tricycle where three other men were waiting. The man then started to drive the tricycle away. One of the three men pointed a gun at the jeepney and said "*[a]no, hindi pa kayo aalis?*" The passengers alighted from the jeepney and shouted for help.[2] PO2 Joel Magno *y* Rivera (PO2 Magno) and Carlo Mijares *y* Zamora (Carlo) heard the pleas and approached the jeepney. Immediately, the man drove the tricycle back to the scene and one of his companions shot PO2 Magno in the forehead causing his death.[3] The four robbers fled the scene.[4]

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[1] CA *rollo*, pp. 115-122; penned by Associate Justice Eduardo B. Peralta, Jr., with the concurrence of Associate Justices Ricardo R. Rosario and Maria Elisa Sempio Diy.

[2] *Rollo*, pp. 7 and 15.

[3] *Id.* at 33-34; Records, pp. 251 and 253. As per Medico-Legal Report No. A12-292, Dr. Shanne Lore Dettabali concluded that PO2 Magno died of a "gunshot wound, head (face)." *Id.* at 253. The report reads in part: EVIDENCE OF INJURIES: x x x 2. Gunshot wound, circular, point of entry at the left eyebrow region, measuring 1 x 1 cm, 3 cm from the anterior, 11 cm from the vertex with a contusion collar located uniformly measuring

In a follow-up investigation, the Manila Police District received an information that one of the suspects was seen at Blumentritt Street, Sampaloc, Manila.[5] The authorities went to the target area and the informant pointed to one of the men sitting on the street who was identified as Ronald Laguda *y* Robidiso @ "Bokay" (Ronald).[6] The police arrested Ronald. At the station, Herminia and Marieta confirmed that Ronald was the one who wielded an ice pick and robbed them.[7] Also, Carlo identified Ronald as the companion of the person who shot PO2 Magno.[8] Accordingly, Ronald was charged with the complex crime of robbery with homicide before the Regional Trial Court (RTC), to wit:

> That on or about April 19, 2012, in the City of Manila, Philippines, the said accused, conspiring and confederating with others, whose true names, real identities and present whereabouts are still unknown and helping one another, did then and there willfully, unlawfully and feloniously, with intent to gain and by means of force, violence and intimidation upon the person of HERMINIA SONON y BOLANTES and MARIETA DELA ROSA y APELADO, by then and there boarding a passenger jeepney, which was travelling at the corner of Marzan and Dimasalang Streets, Sampaloc, this City, announcing a hold-up at knifepoint and poking a gun upon them, and divesting from the latter the following:
>
> From HERMINIA SONON y BOLANTES:
>
> ₱4,000.00 cash
> Nokia 7210-₱7,000.00
> ATM Card Veterans Bank

0.3 cm, directed posteriorly, lacerating the scalp and causing scalp hematoma, creating a hole in the frontal bone, causing subdural hematoma, lacerating the dura, the left frontal, temporal, occipital lobes of the brain, brain stem cerebellum. No singing of hair. No soot. No tattooing. *Id.*

[4] *Rollo*, p. 17.

[5] Records, p. 25.

[6] *Id.* See also TSN, December 11, 2013, pp. 3-8.

[7] *Id.* at 11; TSN, February 26, 2014, pp. 3-17.

[8] *Id.* at 19; TSN, November 26, 2014, pp. 3-8.

GSIS Card, PS-Bank, Avon Card
Blue Book
Reading glass and assorted important documents

From MARIETA DELA ROSA y APELADO:

Two (2) cellular phones, Galaxy Y and Nokia 1280 worth ₱500.00 more or less
Two (2) BDO cheques
₱800.00 cash and
Assorted personal belongings

or all in the total amount of P12,300.00, belonging to HERMINIA SONON y BOLANTES and MARIETA DELA ROSA y APELADO against their will, and that on the occasion or by reason of said the [*sic*] robbery, the said accused, in pursuance of their conspiracy, with intent to kill, with the qualifying circumstances of abuse of superior strength and treachery, upon one PO2 JOEL MAGNO, by then and there shooting the latter with a caliber .38, thereby inflicting upon him mortal gunshot wound, which was the direct and immediate cause of his death thereafter.

Contrary to law.[9]

Ronald pleaded not guilty.[10] At the trial, Ronald denied the accusation and claimed that on the night of April 19, 2012, he accompanied his common-law wife to her workplace and stayed at a computer shop until 3:00 a.m. the following day.[11]

On November 16, 2015, the RTC convicted Ronald of the crime charged. It held that Ronald forcibly took personal properties from Herminia and Marieta and that he conspired in killing PO2 Magno,[12] thus:

WHEREFORE, all premises considered, accused Ronald Laguda y Rodibiso is hereby found guilty beyond reasonable doubt of robbery

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[9] *Id.* at 1.

[10] *Id.* at 53.

[11] TSN, June 3, 2015, pp. 3-5.

[12] Records, pp. 307-316; penned by Presiding Judge Maria Paz R. Reyes-Yson.

with homicide and is sentenced to suffer the penalty of *reclusion perpetua* and to indemnify the heirs of PO2 Joel Magno the amounts of Fifty Thousand Pesos (₱50,000.00) as civil indemnity, Fifty Thousand Pesos (₱50,000.00) as moral damages, Thirty Thousand Pesos (₱30,000.00) as exemplary damages and Fifty Four Thousand Pesos (₱54,000.00) as actual damages and the amount of Four Million Thirty Two Thousand Pesos and Ninety Nine Centavos (₱4,032,000.99) as damages for lost income plus legal interest on all damages awarded at the rate of 6% from the date of the finality of this decision.

Furnish the Public Prosecutor, the heirs of PO2 Joel Magno represented by Mary Ann Magno, the accused and his counsel copies of this decision.

SO ORDERED.[13]

Ronald elevated the case to the CA docketed as CA-G.R. CR HC No. 07969. Ronald questioned his warrantless arrest and maintained that he did not conspire in killing the responding police officer. Ronald explained that he drove the tricycle away from the scene after the hold-up. For unknown reason, they turned around and his companion shot PO2 Magno. Lastly, Ronald invoked the ruling in *People v. Illescas*,[14] where the driver's participation was only that of an accomplice.[15] In contrast, the Office of the Solicitor General argued that Ronald can no longer assail the validity of arrest after his arraignment. Moreover, Ronald is liable as a principal and not an accomplice. It was Ronald who drove the tricycle and purposely turned around to give his cohort a chance to shoot PO2 Magno.[16]

On January 10, 2018, the CA affirmed the RTC's findings that Ronald conspired with his companions in perpetrating the crime of robbery with homicide,[17] to wit:

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[13] *Id.* at 315-316.

[14] 396 Phil. 200 (2000).

[15] CA *rollo*, pp. 52-67, Brief for the Accused-Appellant.

[16] *Id.* at 82-95, Appellee's Brief.

[17] *Supra* note 1.

Prosecution witnesses testified that appellant, armed with an icepick [*sic*], robbed the jeepney passengers of their belongings while his gun wielding companion served as guard outside the jeepney and their two (2) other cohorts guarded the getaway vehicle. Appellant brought the loot to the getaway vehicle while their gun toting companion threatened the jeepney driver to drive away. Thereafter, when PO2 Magno came to the rescue, appellant, who sat on the driver's seat of the tricycle, maneuvered the vehicle in order to enable his gun wielding companion to have a clear shot of PO2 Magno who could have impeded their escape.

Under the given facts, the appellant assisted his gun wielding companion to have a vantage point of PO2 Magno to facilitate their escape and to preserve their possession of the stolen items. Clearly, the appellant and his companions acted in concert to attain a common criminal purpose.

x x x x

WHEREFORE, premises considered, the APPEAL is DENIED for lack of merit.

SO ORDERED.[18]

Hence, this appeal.[19] Ronald insists on the illegality of his arrest, the absence of conspiracy, the failure to prove the elements of the special complex crime, and the credibility of the prosecution witnesses. Ronald also claims that the CA and the RTC erred in not giving credit to his defenses of denial and alibi.[20]

RULING

The appeal is unmeritorious.

Robbery with homicide is a composite crime with its own definition and special penalty. Apropos is Article (Art.) 294, paragraph 1 of the Revised Penal Code (RPC), *viz.*:

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[18] *Supra* at 120-122.

[19] CA *rollo*, pp. 127-129.

[20] *Rollo*, pp. 25-27. In his Manifestation, Laguda dispensed with the filing of his Supplemental Brief and adopts the Appellant's Brief filed before the CA as his Supplemental Brief. See also CA *rollo*, pp. 52-53.

ART. 294. *Robbery with violence against or intimidation of persons; Penalties*. — Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

1. The penalty of *reclusion perpetua* to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed[.]

In this kind of crime, the offender's original intent is to commit robbery and the homicide must only be incidental. The killing may occur before, during, or even after the robbery.[21] It is only the result obtained, without reference or distinction as to the circumstances, causes, modes or persons intervening in the commission of the crime, that has to be taken into consideration.[22] It is immaterial that the death would supervene by mere accident; or that the victim of homicide is other than the victim of robbery, or that two or more persons are killed or that aside from the homicide, rape, intentional mutilation, or usurpation of authority, is committed by reason or, on the occasion of the crime. It is also of no moment that the victim of homicide is one of the robbers. The word "homicide" is used in its generic sense and includes murder, parricide, and infanticide.[23] As such, the crime is robbery with homicide when the killing was committed to facilitate the taking of the property, or the escape of the culprit, to preserve the possession of the loot, to prevent the discovery of robbery, or, to eliminate witnesses in the commission of the crime.[24] Specifically, the special complex crime of robbery with homicide has the following elements, to wit:

1. the taking of personal property with the use of violence or intimidation against the person;
2. the property taken belongs to another;

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[21] *People v. Mancao*, G.R. No. 228951, July 17, 2019, citing *People v. Ngano Sugan*, 661 Phil. 749, 754 (2011). See also *People v. Palema*, G.R. No. 228000, July 10, 2019, citing *People v. De Jesus*, 473 Phil. 405, 427 (2004).

[22] *People v. Mangulabnan*, 99 Phil. 992, 999 (1956).

[23] *People v. Ebet*, 649 Phil. 181, 189 (2010).

[24] *People v. Ibanez*, 718 Phil. 370 (2013), citing *People v. De Leon*, 608 Phil. 701, 718 (2009).

3. the taking is characterized by intent to gain or animus lucrandi; and,
4. on the occasion of the robbery or by reason thereof the crime of homicide was committed.[25]

All the elements are present in this case. Herminia and Marieta were certain that it was Ronald who boarded the jeepney, wielded an ice pick and declared a hold-up. They also narrated how Ronald forcibly divested them of their personal belongings. Thereafter, Ronald alighted from the jeepney and drove the tricycle where his three companions were waiting.[26] Evidently, the taking was with intent to gain and was accomplished with intimidation against persons. Also, Carlo recounted that he was talking with PO2 Magno when they heard someone shouting "*[t]ulong, may hold-up*." They approached the scene and it was then that Ronald maneuvered the tricycle and his companion shot PO2 Magno in the head.[27] Verily, Ronald's primary objective was to rob the jeepney passengers. The killing of PO2 Magno was only incidental to prevent the apprehension of the robbers and facilitate their escape.

On this point, we stress that the CA and the RTC's assessment on the credibility of the prosecution witnesses and the veracity of their testimonies are given the highest degree of respect,[28] especially if there is no fact or circumstance of weight or substance that was overlooked, misunderstood or misapplied, which could affect the result of the case.[29] To be sure, the prosecution witnesses vividly recalled the incident and harbored

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[25] *People v. Madrelejos*, 828 Phil. 732, 737 (2018), citing *People v. Obedo*, 451 Phil. 529, 538 (2003).

[26] TSN, February 26, 2014, pp. 3-9.

[27] TSN, November 26, 2014, pp. 4-8.

[28] *People v. Matignas*, 428 Phil. 834, 868-869 (2002), citing *People v. Basquez*, 418 Phil. 426, 439 (2001); *People v. Jaberto*, 366 Phil. 556, 566 (1999); *People v. Deleverio*, 352 Phil. 382, 401 (1998).

[29] *People v. Orosco*, 757 Phil. 299, 310 (2015), citing *People v. De Leon*, 608 Phil. 701, 721 (2009).

no ill motive to falsely testify against Ronald.[30] Corollarily, Ronald's uncorroborated denial and alibi cannot prevail over the positive declarations of the prosecution witnesses. These negative defenses are self-serving and undeserving of weight in law absent clear and convincing proof.[31] Notably, Ronald did not adduce evidence that he was somewhere else when the crime was committed and that it was physically impossible for him to be present at the crime scene or its immediate vicinity at the time of its commission.[32]

At any rate, Ronald abandoned his alibi. On appeal, Ronald admitted driving the tricycle and claimed that he is only liable as an accomplice. We do not agree. Roland's reliance in *Illescas* is misplaced. In that case, the accused-appellant's participation in the crime was limited to driving the motorcycle in the company of his co-accused immediately before and after the shooting incident. The acts of the accused-appellant, *vis-à-vis* those of his co-accused failed to establish the presence of conspiracy. Quite the contrary, Ronald's participation here was not only to drive the getaway vehicle. As discussed earlier, Ronald was the person who robbed the passengers. Also, he played a crucial role in the homicide when he drove the tricycle back to the crime scene to give his companion a better vantage point to shoot PO2 Magno. If he had no intention to harm the policeman, Ronald could have continued to drive away from the scene. More importantly, the CA and the RTC properly appreciated the existence of conspiracy.

There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[33] Proof of the actual agreement to commit the

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[30] *People v. Togahan*, 551 Phil. 997, 1013-1014 (2007).

[31] *People v. Togahan*, 551 Phil. 997, 1013-1014 (2007).

[32] *People v. Espina*, 383 Phil. 656, 668 (2000), citing *People v. Francisco*, 373 Phil. 733, 747 (1999); *People v. Baniel*, 341 Phil. 471, 481 (1997); *People v. Patawaran*, 340 Phil. 259, 266 (1997); *People v. Henson*, 337 Phil. 318, 324 (1997).

[33] REVISED PENAL CODE, Art. 8, par. 2. See also *Aradillos v. CA*, 464 Phil. 650, 668 (2004); and *People v. Bucol*, 160 Phil. 897, 904 (1975).

crime need not be direct because conspiracy may be implied or inferred from their acts.[34] Further, to be a conspirator, one need not have to participate in every detail of the execution; neither did he have to know the exact part performed by his co-conspirator in the execution of the criminal acts.[35] In this case, the implied conspiracy between Ronald and his three companions is evident from the mode and manner in which they perpetrated the crime.

First, Ronald and the three other men were shown to have acted in concert not only in going together at the crime scene but also in purposely following the jeepney. It was Ronald who robbed the passengers while his companions stood guard outside. Likewise, Ronald was armed with an ice pick and his cohort carried a gun who pointed it at the jeepney. *Second*, the spontaneity of the attack and the simultaneous actions of Ronald and his companions show that they had one objective in mind — to commit robbery. *Third*, as soon as they achieved their common purpose, Ronald fled together with the three other men.[36] *Fourth*, Ronald maneuvered the tricycle around so that his companion can shoot the police officer to ensure their escape. *Fifth*, Ronald did nothing after the incident. Ronald did not alert the authorities about the crime which behavior certainly does not speak of innocence. Further, Ronald's presence at the

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[34] *People v. Cabrera*, 311 Phil. 33, 40-41 (1995). See also *People v. Monadi*, 97 Phil. 575, 584 (1955); *People v. Yu*, 170 Phil. 402, 413-414 (1977); *People v. Binasing*, 98 Phil. 902, 908 (1956); *People v. San Luis*, 86 Phil. 485, 497-498 (1950); *People v. Malilay*, 159-A Phil. 10, 20 (1975); *People v. Cruz*, 114 Phil. 1055, 1061-1062 (1962); *People v. Molleda*, 176 Phil. 297, 333 (1978).

[35] *People v. De Jesus*, 473 Phil. 405, 429 (2004). See also *People v. Masagnay*, 475 Phil. 525, 535-536 (2004); and *People v. Geronimo*, 153 Phil. 1, 14-15 (1973).

[36] *People v. Cruza*, 307 Phil. 423, 429 (1994), where the Supreme Court held that togetherness in the escape of the malefactors is proof of conspiracy. See also *People v. Monadi*, 97 Phil. 575, 584 (1955).

crime scene with his companions is not a mere coincidence or a casual and unintended meeting.[37] Ostensibly, they were there for a common purpose. All these acts point to the conclusion that Ronald and the three other men are co-principals who conspired to commit the crime.

Lastly, it is too late for Ronald to question the legality of his warrantless arrest in view of his arraignment[38] and active participation at the trial. Neither did he move to quash the information, hence, any supposed defect in his arrest was deemed waived.[39] It is settled that the legality of an arrest affects only the jurisdiction of the court over the person of the accused. Any objection must be made before the accused enters his plea. Otherwise, the defect is deemed cured.[40] In *People v. Torres*,[41] *Lapi v. People*,[42] and *Dacanay v. People*,[43] the accused were

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[37] *People v. Landicho*, G.R. No. 116600, July 3, 1996, 258 SCRA 1, 31; *People v. Vda. De Quijano*, 292-A Phil. 157, 164 (1993), *People v. Berroya*, 347 Phil. 410, 431 (1997).

[38] *People v. Tumaneng*, 347 Phil. 56, 74-75 (1997); and *People v. Mahusay*, 346 Phil. 762, 769 (1997).

[39] *Dolera v. People*, 614 Phil. 655, 665-666 (2009), citing *People v. Timon*, 346 Phil. 572, 593 (1997); and *People v. Nazareno*, 329 Phil. 16, 22 (1996).

[40] *People v. Alunday*, 586 Phil. 120, 133 (2008).

[41] G.R. No. 241012, August 28, 2019. In this case, the accused was precluded from questioning legality of his arrest considering that he pleaded not guilty to the charge *sans* any objection surrounding his arrest or motion to quash the information on the ground of lack of jurisdiction.

[42] G.R. No. 210731, February 13, 2019. In this case, the right of the accused to challenge the validity of his arrest was also deemed waived when the accused, assisted by counsel, failed to object before arraignment, and belatedly raised the issue of irregularity of the arrest only during the appeal to this Court.

[43] 818 Phil. 885, 910 (2017). In this case, the accused was deemed to have voluntarily submitted himself to the jurisdiction of the trial court and waived any objection to his arrest because he failed to raise any objection before entering a plea of not guilty and later, actively participated in the proceedings before the trial court.

precluded from questioning the legality of their arrest for failure to timely object before arraignment.

To conclude, the crime of robbery with homicide carries the penalty of *reclusion perpetua* to death. Absent any aggravating circumstance, the CA and the RTC correctly imposed the penalty of *reclusion perpetua* in accordance with Art. 63[44] of the RPC. In line with current jurisprudence, we deem it proper to increase the amount of civil indemnity, moral damages, and exemplary damages to ₱75,000.00 each.[45]

FOR THESE REASONS, the appeal is **DISMISSED**. The Court of Appeal's Decision dated January 10, 2018 in CA-G.R. CR HC No. 07969 is **AFFIRMED** with **MODIFICATIONS**. The accused-appellant Ronald Laguda *y* Rodibiso a.k.a. "Bokay" is found **GUILTY** of robbery with homicide, and is sentenced to suffer the penalty of *reclusion perpetua*. The accused-appellant is also **DIRECTED** to pay the heirs of PO2 Joel Magno *y* Rivera the amounts of ₱75,000.00 as civil indemnity, ₱54,000.00 as actual damages, ₱4,032,000.99 for loss of earning capacity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages, all with legal interest at the rate of six percent (6%) *per annum* from the finality of judgment until full payment.[46]

SO ORDERED.

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

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[44] ART. 63. *Rules for the application of indivisible penalties.* — In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

[45] *People v. Jugueta*, 783 Phil. 806, 849 (2016).

[46] *Nacar v. Gallery Frames*, 716 Phil. 267, 283 (2013).

THIRD DIVISION

[G.R. No. 246836. October 7, 2020]

SPOUSES TEODULO BAYUDAN AND FILIPINA BAYUDAN, *Petitioners, v.* **RODEL H. DACAYAN,** *Respondent.*

SYLLABUS

1. CIVIL LAW; R.A. NO. 6552; SALES; SALE OF REAL ESTATE BY INSTALLMENT; REQUISITES FOR THE CANCELLATION OF CONTRACT TO SELL UPON FAILURE OF THE BUYER TO PAY INSTALLMENTS; CASE AT BAR.— R.A. 6552 governs all kinds of sales of real estate by installment except industrial lots, commercial buildings, and sales to tenants under R.A. 3844, as amended by R.A. 6389. . . .

R.A. 6552 recognizes the right of the seller to cancel the contract upon failure of the buyer to pay in installments the purchase price of the real estate. However, to be valid, the cancellation must comply with Sections 3 and 4 of the law. Specifically, in this case, Section 4 must apply, . . .

Based on the above-mentioned provision, in order to validly cancel the Contract to Sell, Dacayan must have: (1) given Sps. Bayudan a grace period of not less than 60 days from the date of default; and (2) sent a notarized notice of cancellation or demand for rescission of the Contract to Sell upon the expiration of the grace period without payment.

2. ID.; ID.; ID.; ID.; REMEDIAL LAW; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; THE SELLER CANNOT FILE UNLAWFUL DETAINER CASE IF THE CONTRACT TO SELL IS NOT VALIDLY CANCELLED.— For an unlawful detainer case to prosper, the following requisites must concur: . . .

The second element requires that the possession of Sps. Bayudan of the subject property should have become illegal. Here, the parties do not dispute that on January 9, 2013, they executed a Contract to Sell, on which Sps. Bayudan based their

> continued possession of the property. The question, therefore, is whether the Contract to Sell was validly cancelled by Dacayan which would make Sps. Bayudan's possession of the subject property, illegal.
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> . . .
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> . . . This payment scheme involving the Contract to Sell the 40-square meter lot subject of this case is covered by R.A. No. 6552.
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> . . . [T]he records of this case do not show that Dacayan complied with Section 4 of R.A. 6552. In fact, the first demand letter dated November 29, 2014 was sent by Dacayan even before the lapse of the two-year period given to Sps. Bayudan to pay the full purchase price of the subject property which was due on January 2015. In addition, the final demand letter sent by Dacayan on March 31, 2015 is not the same as the notarized notice of cancellation required by R.A. No. 6552.
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> . . .
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> Given the foregoing, there is no basis for the illegality of Sps. Bayudan's possession of the property.

APPEARANCES OF COUNSEL

Arthur C. Coroza for petitioners.
Principe and Associates Law Firm 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 Decision[2] dated November 22, 2018 and the Resolution[3] dated April 25,

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[1] *Rollo,* pp. 8-18.

[2] Penned by Associate Justice Henri Jean Paul B. Inting (now a member of this Court), with the concurrence of Associate Justices Japar B. Dimaampao and Manuel M. Barrios; id. at pp. 22-31.

[3] Id. at pp. 40-41.

2019 of the Court of Appeals (CA) in CA-G.R. SP No. 153541. The CA reinstated the Decision[4] of the Metropolitan Trial Court (MeTC) of Valenzuela City, Branch 81, in an Unlawful Detainer case rendered in favor of Rodel Dacayan (Dacayan) and ordered Teodulo Bayudan and Filipina Bayudan (Sps. Bayudan) to vacate the subject property, pay the rentals, attorney's fees, and costs of suit.

Facts of the Case

On May 6, 2015, Dacayan filed a complaint for unlawful detainer against Sps. Bayudan. According to Dacayan, he is a co-owner of a parcel of land located at 329 Rocio Street, Wawang Pulo, Valenzuela City on which a store was constructed. Based on an oral contract of lease, Dacayan leased the store to Sps. Bayudan for ₱3,000.00 rental payment per month.[5] However, Sps. Bayudan failed to pay the monthly rental since September 2012. On November 29, 2014, Dacayan sent a demand letter to Sps. Bayudan for the unpaid rents but Sps. Bayudan refused to pay alleging that they are already the owners of the subject property by virtue of the "*Kasunduang Magbilhan ng Bahagi ng Lupa*"[6] they executed with Dacayan as the seller, for his 40-square meter portion thereof. Due to this issue, Dacayan referred the matter to Barangay conciliation but no agreement was reached by the parties. Dacayan sent a final demand letter dated March 31, 2015 ordering Sps. Bayudan to pay and vacate the property within 15 days from receipt thereof.[7]

In their Answer, Sps. Bayudan claimed that initially, they were renting the subject property from Dacayan. However, on January 9, 2013, the parties entered into a Contract to Sell. Pursuant to the Contract to Sell, Sps. Bayudan agreed to buy the subject property in the amount of ₱300,000.00 payable in

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[4] Penned by Presiding Judge Teresita Asuncion M. Lacandula-Rodriguez; id. at 46-54.

[5] Id. at 46.

[6] Id. at 123-124.

[7] Id. at 46.

the following manner: (a) ₱91,000.00 upon signing of the Contract to Sell; and (b) the balance of ₱209,000.00 to be paid within two years or until January 2015.[8]

According to Sps. Bayudan, they already paid a total of ₱190,000.00 as of June 8, 2014 and as early as November 2014, they informed Dacayan that they are ready to pay the balance of ₱110,000.00. It was in fact Dacayan who has not yet secured the title in his name of the undivided share of the property, contrary to their agreement.[9] On December 29, 2014, Sps. Bayudan tendered the ₱190,000.00 balance of the purchase price to Dacayan but Dacayan refused to accept the same. Hence, on March 26, 2015, two months before the filing of the unlawful detainer case against them, Sps. Bayudan filed a complaint for specific performance against Dacayan to enforce their right over the property pursuant to the Contract to Sell.[10]

On November 28, 2016, the MeTC of Valenzuela City, Branch 81, rendered its Decision[11] in favor of Dacayan. The MeTC held that all the requisites constituting a cause of action for unlawful detainer are present in the case. According to the MeTC, while Sps. Bayudan's possession of the subject property was initially lawful, nevertheless, it became unlawful when they failed to pay the installments due pursuant to the Contract to Sell.[12] Since Dacayan served the final demand to Sps. Bayudan on March 31, 2015 and the complaint for unlawful detainer case was filed on May 6, 2015, then the case was properly and timely filed.[13]

Sps. Bayudan elevated the case to the RTC. In its Decision[14] dated August 14, 2017, the RTC of Valenzuela City, Branch

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[8] Id. at 47.

[9] Id.

[10] Id. at 48.

[11] Supra note 4.

[12] *Rollo*, p. 52.

[13] Id. at 53.

[14] Penned by Presiding Judge Elena A. Amigo-Amano; id. at 56-63.

282 reversed the ruling of the MeTC. The RTC held that the center of the controversy lies on whether the Contract to Sell involving the parties was validly cancelled, which will determine whether the possession of Sps. Bayudan of the subject property became unlawful. The RTC discussed that a sale of real estate on installment payments is governed by Republic Act No. (R.A.) 6552, otherwise known as the "*Realty Installment Buyer Protection Act*."[15] Section 4 of R.A. 6552 provides for the requisites before the contract to sell may be validly cancelled, such as the granting of grace period of not less than 60 days and the sending of notarized notice of cancellation or demand for rescission. Here, the RTC found that the conditions under R.A. 6552 were not complied with. Thus, the contract to sell was not validly cancelled and the possession of Sps. Bayudan never became unlawful.[16]

Dacayan's motion for reconsideration was denied in a Resolution[17] dated November 3, 2017. Dacayan filed a Petition for Review to the CA. In its Decision[18] dated November 22, 2018, the CA reversed the ruling of the RTC and reinstated that of the MeTC. As explained by the CA, the only issue to be resolved in an unlawful detainer case is physical or material possession. The Contract to Sell, which is the basis of Sps. Bayudan's possession, does not show any right in their favor because there is no stipulation giving them the right to keep the property pending the full payment of the purchase price.[19] The CA concluded that since the purchase price under the Contract to Sell was not fully paid and Sps. Bayudan stopped paying the monthly rent, their possession of the subject property was by mere tolerance. Hence, when Dacayan asked them to

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[15] Id. at 61.

[16] Id. at 62-63.

[17] Penned by Presiding Judge Elena A. Amigo-Amano; id. at 69-71.

[18] Supra note 2.

[19] *Rollo*, p. 29.

vacate the property and they refused, their possession became unlawful.[20]

Sps. Bayudan moved for reconsideration but the same was denied in a Resolution[21] dated April 25, 2019. On June 20, 2019, Sps. Bayudan filed this Petition for Review on *Certiorari*.[22] Sps. Bayudan insists that contrary to the finding of the CA, their stay in the subject property was on the basis of the Contract to Sell they executed with Dacayan.[23] Sps. Bayudan argues that they have no obligation to pay the monthly rent because upon the execution of the Contract to Sell, the parties became buyers and sellers to each other and their obligation is to pay the balance of the purchase price within two years.[24] Further, Sps. Bayudan reiterates that in November 2014, when Dacayan cancelled the Contract to Sell, they still have time to pay the balance of the purchase price since under the contract, they had until January 2015 to complete the payment. Hence, the Contract to Sell was invalidly cancelled.[25]

In his Comment,[26] Dacayan counters that Sps. Bayudan are permitted to occupy the subject property not on the basis of the Contract to Sell but by virtue of the earlier oral contract of lease. Hence, when Sps. Bayudan failed to pay the monthly rentals since September 2012, their possession of the subject property became unlawful.[27]

Issue

The issue in this case is whether the possession of Sps. Bayudan of the property became unlawful giving rise to a cause of action for unlawful detainer.

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[20] Id. at 30.

[21] Supra note 3.

[22] *Rollo*, pp. 8-18.

[23] Id. at 14.

[24] Id. at 15.

[25] Id.

[26] Id. at 182-193.

[27] Id. at 188-189.

Ruling of the Court

The petition is meritorious.

For an unlawful detainer case to prosper, the following requisites must concur:

(1) The defendant originally had lawful possession of the property, either by virtue of a contract or by tolerance of the plaintiff;

(2) Eventually, the defendant's possession of the property became illegal or unlawful upon notice by the plaintiff to defendant of the expiration or the termination of the defendant's right of possession;

(3) Thereafter, the defendant remained in possession of the property and deprived the plaintiff the enjoyment thereof; and

(4) Within one year from the unlawful deprivation or withholding of possession, the plaintiff instituted the complaint for ejectment.[28]

The second element requires that the possession of Sps. Bayudan of the subject property should have become illegal. Here, the parties do not dispute that on January 9, 2013, they executed a Contract to Sell, on which Sps. Bayudan based their continued possession of the property. The question, therefore, is whether the Contract to Sell was validly cancelled by Dacayan which would make Sps. Bayudan's possession of the subject property, illegal.

We answer in the negative.

R.A. 6552 governs all kinds of sales of real estate by installment except industrial lots, commercial buildings, and sales to tenants under R.A. 3844, as amended by R.A. 6389.[29]

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[28] *Union Bank of the Philippines v. Philippine Rabbit Bus Lines, Inc.*, 789 Phil. 56, 67-68 (2016).

[29] Section 3. In all transactions or contracts involving the sale or financing of real estate on installment payments, including residential condominium apartments but excluding industrial lots, commercial buildings and sales to tenants under Republic Act Numbered Thirty-eight hundred forty-four, as amended by Republic Act Numbered Sixty-three hundred eighty-nine, where the buyer has paid at least two years of installments, the buyer is entitled to the following rights in case he defaults in the payment of succeeding installments:

x x x x x x x x x

In this case, under the Contract to Sell entered into by the parties, Sps. Bayudan obligated themselves to pay the amount of ₱91,000.00 in lump sum at the time of the execution of the contract while the balance of ₱209,000.00 was to be paid in installments within two years, but with no definite schedule of payment. This payment scheme involving the Contract to Sell the 40-square meter lot subject of this case is covered by R.A. No. 6552.

R.A. 6552 recognizes the right of the seller to cancel the contract upon failure of the buyer to pay in installments the purchase price of the real estate. However, to be valid, the cancellation must comply with Sections 3 and 4 of the law. Specifically, in this case, Section 4 must apply, to wit:

> Section 4. In case where less than two years of installments were paid, the seller shall give the buyer a grace period of not less than sixty days from the date the installment became due. If the buyer fails to pay the installments due at the expiration of the grace period, the seller may cancel the contract after thirty days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by a notarial act.

Based on the above-mentioned provision, in order to validly cancel the Contract to Sell, Dacayan must have: (1) given Sps. Bayudan a grace period of not less than 60 days from the date of default; and (2) sent a notarized notice of cancellation or demand for rescission of the Contract to Sell upon the expiration of the grace period without payment. However, the records of this case do not show that Dacayan complied with Section 4 of R.A. 6552. In fact, the first demand letter dated November 29, 2014 was sent by Dacayan even before the lapse of the two-year period given to Sps. Bayudan to pay the full purchase price of the subject property which was due on January 2015. In addition, the final demand letter sent by Dacayan on March 31, 2015 is not the same as the notarized notice of cancellation required by R.A. No. 6552.

In the parallel case of *Pagtalunan v. Vda. De Manzano,*[30] which likewise originated as an action for unlawful detainer involving two private individual buyer and seller, We concluded that the seller cannot file an unlawful detainer case against the buyer if the contract to sell is not validly cancelled pursuant to the provisions of R.A. 6552.

Given the foregoing, there is no basis for the illegality of Sps. Bayudan's possession of the property.

WHEREFORE, the Decision dated November 22, 2018 and the Resolution dated April 25, 2019 of the Court of Appeals in CA-G.R. SP No. 153541 are hereby **REVERSED** and **SET ASIDE**. The Decision dated August 14, 2017 of the Regional Trial Court of Valenzuela City, Branch 282 in Civil Case No. 184-V-16 is hereby **REINSTATED**.

SO ORDERED.

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

[30] 559 Phil. 659 (2007).

SECOND DIVISION

[G.R. No. 247956. October 7, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **PRINCESS GINE C. SAN MIGUEL,** *Accused-Appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT WHICH INVOLVE THE CREDIBILITY OF WITNESSES ARE GENERALLY ACCORDED WITH RESPECT, IF NOT FINALITY BY THE APPELLATE COURT.— Well-settled is the rule that findings of the trial court which are factual in nature and which involve the credibility of witnesses are accorded with respect, if not finality by the appellate court, when no glaring errors, gross misapprehension of facts, and speculative, arbitrary, and unsupported conclusions can be gathered from such findings. The reason is quite simple: the trial judge is in a better position to ascertain the conflicting testimonies of witnesses after having heard them and observed their deportment and mode of testifying during the trial. Thus, generally, the Court will not reexamine evidence that had been analyzed and ruled upon by the RTC.

2. CRIMINAL LAW; ENTRAPMENT; THERE IS A VALID ENTRAPMENT OPERATION WHEN THE ACCUSED HAS THE PREDISPOSITION TO COMMIT THE OFFENSE EVEN BEFORE HER EXPOSURE TO THE LAW ENFORCERS; INSTIGATION AND ENTRAPMENT, DISTINGUISHED.— The Court finds that accused-appellant was apprehended through a valid entrapment operation conducted by the NBI-AHTRAD. The Court had explained the distinction between an instigation and entrapment, to wit: . . .

> . . . Instigation presupposes that the criminal intent to commit an offense originated from the inducer and not the accused who had no intention to commit the crime and would not have committed it were it not for the initiatives by the inducer. In entrapment, the criminal intent or design to commit the offense charged originates in the

> mind of the accused; the law enforcement officials merely facilitate the apprehension of the criminal by employing ruses and schemes. In instigation, the law enforcers act as active co-principals. Instigation leads to the acquittal of the accused, while entrapment does not bar prosecution and conviction.

In *People v. Doria*, the court extensively discussed the objective test and the subjective test to determine whether there was a valid entrapment operation:

> Initially, an accused has the burden of providing sufficient evidence that the government induced him to commit the offense. Once established, the burden shifts to the government to show otherwise. When entrapment is raised as a defense, American federal courts and a majority of state courts use the "subjective" or "origin of intent" test laid down in *Sorrells v. United States* to determine whether entrapment actually occurred. The focus of the inquiry is on the accused's predisposition to commit the offense charged, his state of mind and inclination before his initial exposure to government agents. . . . Some states, however, have adopted the "objective" test. This test was first authoritatively laid down in the case of *Grossman v. State* rendered by the Supreme Court of Alaska. Several other states have subsequently adopted the test by judicial pronouncement or legislation. Here, the court considers the nature of the police activity involved and the propriety of police conduct. The inquiry is focused on the inducements used by government agents, on police conduct, not on the accused and his predisposition to commit the crime. . . .

Using both tests, the Court finds that the NBI-AHTRAD conducted a valid entrapment operation. Accused-appellant, as a prostitute, has the predisposition to commit the offense even before she met the NBI agents. It is likewise worthy to emphasize the statements of AAA and BBB that accused-appellant had the history of engaging in human trafficking and exploiting young women for prostitution. AAA and BBB testified that for the last six months, before the entrapment operation, they were peddled by accused-appellant to perform sexual activities with various men in exchange for money.

In addition, records reveal that during a police surveillance, it was accused-appellant who approached the NBI agents and offered the services of AAA, BBB, and other girls in exchange for money. It was accused-appellant who commenced the transaction with Agent Follosco by calling his attention and asking him whether he and his companions wanted girls. When the NBI agents told her that they did not have money, it was accused-appellant who gave her number so that the agents can contact her in case they needed the sexual services of the girls. During the entrapment, accused-appellant brought the girls to a nearby hotel, asked for ₱600.00 for the payment of rooms, and reminded the NBI agents to pay her for the services of the girls. When the pre-arranged signal was sent, accused-appellant was arrested.

3. ID.; REPUBLIC ACT NO. 9208 (THE ANTI-TRAFFICKING IN PERSONS ACT OF 2003), AS AMENDED; TRAFFICKING IN PERSONS; ELEMENTS.— . . . The elements of Trafficking in Persons can be derived from its definition under Section 3(a) of RA 9208, as amended, thus: (1) the act of "recruitment, transportation, transfer or harbouring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders"; (2) the means used which include "threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another"; and (3) the purpose of trafficking is exploitation which includes "exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs."

On January 28, 2013, RA 10364, otherwise known as the Expanded Anti-Trafficking in Persons Act of 2012 was approved. Section 3(a) of RA 9208 was amended by RA 10364. . . .

. . .

Under RA 10364, the elements of Trafficking in Persons have been expanded to include the following acts:

(1) The act of "recruitment, obtaining, hiring, providing, offering, transportation, transfer, maintaining, harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders";

(2) The means used include "by means of threat, or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person";

(3) The purpose of trafficking includes "the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs."

4. REMEDIAL LAW; EVIDENCE; DENIAL AND ALIBI; DENIAL IS AN INTRINSICALLY WEAK DEFENSE WHICH MUST BE SUPPORTED BY STRONG EVIDENCE OF NON-CULPABILITY TO MERIT CREDIBILITY, AND ALIBI IS THE WEAKEST OF ALL DEFENSES FOR IT IS EASY TO CONTRIVE AND DIFFICULT TO DISPROVE AND FOR WHICH REASON IT IS GENERALLY REJECTED.— In contrast to AAA and BBB's direct, positive, and categorical testimony and identification of accused-appellant as their pimp, accused-appellant's bare denial will not prevail.

Accused-appellant failed to substantiate her denial by any act that bolstered her credibility. Hence, the Court cannot accord the denial any credence.

No jurisprudence in criminal law is more settled than that denial is an intrinsically weak defense which must be supported by strong evidence of non-culpability to merit credibility and that alibi, on the other hand, is the "weakest of all defenses, for it is easy to contrive and difficult to disprove and for which reason it is generally rejected."

5. CRIMINAL LAW; REPUBLIC ACT NO. 9208 (THE ANTI-TRAFFICKING IN PERSONS ACT OF 2003), AS AMENDED; QUALIFIED TRAFFICKING IN PERSONS; COMMITTED WHEN THE QUALIFYING CIRCUMSTANCE OF MINORITY IS ALLEGED AND PROVEN DURING TRIAL; PENALTY.— Considering that

> the qualifying circumstances of minority were alleged and proven during trial, the RTC and the CA did not err in convicting accused-appellant for Qualified Trafficking in Persons . . . [, pursuant to]
>
> Section 10(c) of RA 9208 . . . .
>
> . . .
>
> Thus, the RTC and the CA correctly imposed the penalty of life imprisonment, and a fine of ₱2,000,000.00 against accused-appellant.

APPEARANCES OF COUNSEL

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

D E C I S I O N

INTING, *J.*:

This is an appeal[1] from the Decision[2] dated December 17, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09504. The assailed CA Decision affirmed the Decision[3] dated May 17, 2017 of Branch 4, Regional Trial Court (RTC), Manila finding Princess Gine C. San Miguel (accused-appellant) guilty beyond reasonable doubt of Trafficking in Persons defined under Section 4 (a) and (e) in relation to Section 6 (a) and (c) of Republic Act No. (RA) 9208,[4] as amended by RA 10364.[5]

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[1] See Notice of Appeal dated January 21, 2019, *rollo*, pp. 12-13.

[2] *Id.* at 3-11; penned by Associate Justice Mario V. Lopez (now a member of the Court) with Associate Justices Zenaida T. Galapate-Laguilles and Ronaldo Roberto B. Martin, concurring.

[3] CA *rollo*, pp. 45-57; penned by Presiding Judge Jose Lorenzo R. Dela Rosa.

[4] Anti-Trafficking in Persons Act of 2003.

[5] Expanded Anti-Trafficking in Persons Act of 2012.

The Antecedents

The case stemmed from an Information filed before the RTC charging accused-appellant with trafficking minors: AAA[6] (14 years old), BBB (15 years old), and adults, CCC and DDD. The Information reads:

> That on or about the 26th day of March 2015, at Broadway Lodge located at the corners of C.M. Recto and Calero Streets in the City of Manila, which is within the jurisdiction of this Honorable Court, the above-named accused did then and there, willfully, knowingly, unlawfully and feloniously hire and/or recruit [CCC], [DDD] and minors [AAA], 14 years old, and [BBB], 15 years old, and offer them to customers, by acting as their procurer, for the purpose of prostitution and other forms of sexual exploitation for money, profit or any other consideration, to the damage and prejudice of said persons.
>
> CONTRARY TO LAW.[7]

Upon arraignment, accused-appellant pleaded not guilty to the charge.[8] Trial on the merits ensued.

Version of the Prosecution

On March 24, 2015, the National Bureau of Investigation (NBI)-Anti Human Trafficking Division (AHTRAD) received

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[6] The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. (RA) 7610, "An Act Providing for Stronger Deterrence and Special Protection against Child Abuse, Exploitation and Discrimination, Providing Penalties for its Violation and For Other Purposes"; RA 9262, "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and For Other Purposes"; Section 40 of Administrative Matter No. 04-10-11-SC, known as the "Rule on Violence against Women and Their Children," effective November 15, 2004; *People v. Cabalquinto*, 533 Phil. 703 (2006); and Amended Administrative Circular No. 83-2015 dated September 5, 2017, Subject: Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Personal Circumstances.

[7] *Rollo*, pp. 3-4.

[8] *Id.* at 4.

a report about human trafficking activities outside Isetann Mall located at Recto corner Evangelista Street, Manila. This prompted the Intelligence Agents (IA) of NBI-ATHRAD to conduct police surveillance in the area to verify the report. IA John Rolex Follosco (Agent Follosco) alleged that when their team arrived in Isetann Mall, they positioned themselves at the entrance of the mall. While they were at the entrance, accused-appellant approached them and particularly offered to Agent Follosco a "*gimik*." Agent Follosco replied by saying, "*sige patingin*." Accused-appellant then pointed to the girls seated at the sidewalk, and said that each girl costs ₱800.00. When Agent Follosco told accused-appellant that they do not have money, accused-appellant gave him her cellphone number. The team left thereafter.[9]

On March 26, 2015, NBI-AHTRAD Chief Atty. Czar Eric M. Nuqui (Chief Nuqui) organized an entrapment operation against accused-appellant. During the meeting, Chief Nuqui formed a team wherein he designated Agents Follosco, Eduardo Collegio (Agent Collegio), William France and Glenn Melodillar as *poseur*-customers. One of the team members informed accused-appellant, through a text message, to meet them at Isetann Mall at about 7:00 p.m. In the meantime, the team prepared the coordination form with the Manila Police District and the Department of Social Welfare and Development (DSWD). The team also prepared 12 pieces of ₱500-bills as marked money.[10]

The team then proceeded to the target area. There, they met accused-appellant, who told them to wait because she needed to call the girls. After a few minutes, two girls arrived. Thereafter, she invited the team to Broadway Lodge where two other girls were already waiting at the lobby. Accused-appellant asked ₱600.00 from them for the payment of four rooms. At that point, Agent Collegio handed the marked money. As accused-appellant was giving the room keys to Agent Collegio, she reminded the

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[9] *Id.*

[10] *Id.* at 4-5.

poseur-customers of the payment for the girls. At that point, Agent Follosco executed the pre-arranged signal by sending a text message to the other police officers who served as back-up: "*kumpleto na ang mga babae*." In no time, the police officers, together with the NBI-AHTRAD agents, arrived at the area and arrested accused-appellant. The team then brought accused-appellant to the office of NBI-AHTRAD where she was later identified.[11]

The DSWD took custody of the four girls: AAA, BBB, CCC, and DDD. The four executed their respective sworn affidavits. However, only the minors AAA and BBB were presented in court to testify. Their statements revealed that for the last six months, they were peddled by accused-appellant to perform sexual activities with various men in exchange for money.[12]

Version of the Defense

Accused-appellant denied the accusation. She averred that she was not a pimp, but one of the prostitutes who was rescued from the operation; and that as a prostitute, she avoided coursing her transaction with pimps because she did not want to pay commission fees.[13]

The Ruling of the RTC

In the Decision[14] dated May 17, 2017, the RTC found accused-appellant guilty beyond reasonable doubt of the offense of Qualified Trafficking in Persons as defined under RA 9208, as amended. The RTC sentenced accused-appellant to suffer the penalty of life imprisonment. It likewise ordered her to pay the fine of ₱2,000,000.00. Moreover, the RTC ordered accused-appellant to pay AAA and BBB ₱500,000.00 each as moral damages, and ₱100,000.00 each as exemplary damages.

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[11] *Id.* at 5.

[12] *Id.*

[13] *Id.* at 6.

[14] CA *rollo*, pp. 45-57.

The Ruling of the CA

On December 17, 2018, the CA affirmed accused-appellant's conviction for the offense of Qualified Trafficking in Persons, the penalty of life imprisonment, fine of ₱2,000,000.00 imposed upon her, the award of ₱500,000.00 for moral damages, and ₱100,000.00 for exemplary damages each to AAA and BBB.[15]

Hence, the instant appeal.

The parties adopted their respective Appellant's and Appellee's Briefs filed before the CA as their Supplemental Briefs in the Court.[16]

Accused-appellant insists that there was no valid entrapment operation that was conducted, and that she was only instigated into committing the offense by the NBI agents. Likewise, she claims that both the RTC and the CA erred in not giving credence to her defense of denial.

On the other hand, the Office of the Solicitor General (OSG) argues that all the elements of the offense are present. According to the OSG, AAA and BBB positively identified accused-appellant as the person who recruited and offered them for prostitution. Moreover, the OSG maintains that the NBI operation was a valid entrapment against accused-appellant.

The Court's Ruling

The appeal has no merit.

Well-settled is the rule that findings of the trial court which are factual in nature and which involve the credibility of witnesses are accorded with respect, if not finality by the appellate court, when no glaring errors, gross misapprehension of facts, and speculative, arbitrary, and unsupported conclusions can be

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[15] *Rollo*, p. 11.

[16] See Manifestation in lieu of Supplemental Brief for the accused-appellant, *id.* at 23-25. See Resolution dated November 27, 2019 of the Court for the plaintiff-appellee, *id.* at 21.

gathered from such findings.[17] The reason is quite simple: the trial judge is in a better position to ascertain the conflicting testimonies of witnesses after having heard them and observed their deportment and mode of testifying during the trial.[18] Thus, generally, the Court will not reexamine evidence that had been analyzed and ruled upon by the RTC.

After a judicious perusal of the records of the instant appeal, the Court finds no compelling reason to depart from the RTC and CA's uniform factual findings. The Court affirms accused-appellant's conviction.

The NBI agents conducted a valid entrapment operation.

The Court finds that accused-appellant was apprehended through a valid entrapment operation conducted by the NBI-AHTRAD. The Court had explained the distinction between an instigation and entrapment, to wit:

> x x x Instigation means luring the accused into a crime that he, otherwise, had no intention to commit, in order to prosecute him. On the other hand, entrapment is the employment of ways and means in order to trap or capture a lawbreaker. Instigation presupposes that the criminal intent to commit an offense originated from the inducer and not the accused who had no intention to commit the crime and would not have committed it were it not for the initiatives by the inducer. In entrapment, the criminal intent or design to commit the offense charged originates in the mind of the accused; the law enforcement officials merely facilitate the apprehension of the criminal by employing ruses and schemes. In instigation, the law enforcers act as active co-principals. Instigation leads to the acquittal of the accused, while entrapment does not bar prosecution and conviction.[19]

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[17] *People v. Aspa, Jr.*, G.R. No. 229507, August 6, 2018, citing *People v. De Guzman*, 564 Phil. 282, 290 (2017).

[18] *Id.*, citing *People v. Villamin*, 625 Phil. 698, 713 (2010).

[19] *People v. Mendoza*, 814 Phil. 31, 42 (2017), citing *People v. Dansico, et al.*, 659 Phil. 216, 225-226 (2011).

In *People v. Doria*,[20] the court extensively discussed the objective test and the subjective test to determine whether there was a valid entrapment operation:

> Initially, an accused has the burden of providing sufficient evidence that the government induced him to commit the offense. Once established, the burden shifts to the government to show otherwise. When entrapment is raised as a defense, American federal courts and a majority of state courts use the "subjective" or "origin of intent" test laid down in *Sorrells v. United States* to determine whether entrapment actually occurred. The focus of the inquiry is on the accused's predisposition to commit the offense charged, his state of mind and inclination before his initial exposure to government agents. All relevant facts such as the accused's mental and character traits, his past offenses, activities, his eagerness in committing the crime, his reputation, etc., are considered to assess his state of mind before the crime. The predisposition test emphasizes the accused's propensity to commit the offense rather than the officer's misconduct and reflects an attempt to draw a line between a "trap for the unwary innocent and the trap for the unwary criminal." x x x Some states, however, have adopted the "objective" test. This test was first authoritatively laid down in the case of *Grossman v. State* rendered by the Supreme Court of Alaska. Several other states have subsequently adopted the test by judicial pronouncement or legislation. Here, the court considers the nature of the police activity involved and the propriety of police conduct. The inquiry is focused on the inducements used by government agents, on police conduct, not on the accused and his predisposition to commit the crime. For the goal of the defense is to deter unlawful police conduct. The test of entrapment is whether the conduct of the law enforcement agent was likely to induce a normally law-abiding person, other than one who is ready and willing to commit the offense; for purposes of this test, it is presumed that a law-abiding person would normally resist the temptation to commit a crime that is presented by the simple opportunity to act unlawfully.[21]

Using both tests, the Court finds that the NBI-AHTRAD conducted a valid entrapment operation. Accused-appellant, as a prostitute, has the predisposition to commit the offense even

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[20] 361 Phil. 595 (1999).

[21] *Id.* at 610-612. Citations omitted.

before she met the NBI agents. It is likewise worthy to emphasize the statements of AAA and BBB that accused-appellant had the history of engaging in human trafficking and exploiting young women for prostitution. AAA and BBB testified that for the last six months, before the entrapment operation, they were peddled by accused-appellant to perform sexual activities with various men in exchange for money.

In addition, records reveal that during a police surveillance, it was accused-appellant who approached the NBI agents and offered the services of AAA, BBB, and other girls in exchange for money. It was accused-appellant who commenced the transaction with Agent Follosco by calling his attention and asking him whether he and his companions wanted girls. When the NBI agents told her that they did not have money, it was accused-appellant who gave her number so that the agents can contact her in case they needed the sexual services of the girls. During the entrapment, accused-appellant brought the girls to a nearby hotel, asked for ₱600.00 for the payment of rooms, and reminded the NBI agents to pay her for the services of the girls. When the pre-arranged signal was sent, accused-appellant was arrested.

All the elements of the offense are present.

All the elements of the offense are present. The elements of Trafficking in Persons can be derived from its definition under Section 3 (a) of RA 9208, as amended, thus: (1) the act of "recruitment, transportation, transfer or harbouring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders"; (2) the means used which include "threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another"; and (3) the purpose of trafficking is exploitation which includes "exploitation or the prostitution of others or other forms of sexual exploitation, forced

labor or services, slavery, servitude or the removal or sale of organs."[22]

On January 28, 2013, RA 10364, otherwise known as the Expanded Anti-Trafficking in Persons Act of 2012 was approved. Section 3 (a) of RA 9208 was amended by RA 10364 as follows:

> "SEC. 3. Definition of Terms. — As used in this Act:
>
> "(a) *Trafficking in Persons* — refers to the recruitment, obtaining, hiring, providing, offering, transportation, transfer, maintaining, harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders by means of threat, or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs.
>
> "The recruitment, transportation, transfer, harboring, adoption or receipt of a child for the purpose of exploitation *or when the adoption is induced by any form of consideration for exploitative purposes* shall also be considered as 'trafficking in persons' even if it does not involve any of the means set forth in the preceding paragraph. (Italics supplied.)

Under RA 10364, the elements of Trafficking in Persons have been expanded to include the following acts:

(1) The act of "recruitment, obtaining, hiring, providing, offering, transportation, transfer, maintaining, harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders";

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[22] *People v. Casio*, 749 Phil. 458, 473 (2014), citing Section 3(a) of Republic Act No. (RA) 9208. It was noted in this case that the definition is the original definition, considering that the crime was committed prior to the enactment of RA 10364.

(2) The means used include "by means of threat, or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person";

(3) The purpose of trafficking includes "the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs."[23]

The prosecution satisfactorily established the presence of the elements of the offense. Both the RTC and the CA found that AAA and BBB were recruited and offered for sexual exploitation in exchange for money to the NBI agents who merely acted as *poseur*-customers. Accused-appellant was engaged in the business of providing women to customers for money. The actions of accused-appellant established beyond reasonable doubt that she recruited AAA and BBB for purposes of prostitution.

Under Section 6 (a) of RA 9208, as amended, the offense of Trafficking In Person is qualified "when the person trafficked is a child." The prosecution was able to prove that both AAA and BBB were children[24] at the time of the commission of the offense. The minority of AAA and BBB has been sufficiently alleged in the Information and proven by their respective birth certificates.[25] Evidently, accused-appellant committed Qualified Trafficking in Persons.

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[23] *People v. Ramirez*, G.R. No. 217978, January 30, 2019.

[24] Section 3(b), RA 9208, as amended, provides:

SEC. 3. *Definition of Terms*. — As used in this Act:

x x x x x x x x x

"(b) *Child* — refers to a person below eighteen (18) years of age or one who is over eighteen (18) but is unable to fully take care of or protect himself/herself from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition.

[25] *Rollo*, p. 10.

Accused-appellant's denial is a weak defense.

In contrast to AAA and BBB's direct, positive, and categorical testimony and identification of accused-appellant as their pimp, accused-appellant's bare denial will not prevail.

Accused-appellant failed to substantiate her denial by any act that bolstered her credibility. Hence, the Court cannot accord the denial any credence.

No jurisprudence in criminal law is more settled than that denial is an intrinsically weak defense which must be supported by strong evidence of non-culpability to merit credibility and that alibi, on the other hand, is the "weakest of all defenses, for it is easy to contrive and difficult to disprove and for which reason it is generally rejected."[26]

Here, accused-appellant's bare denial that she sold AAA and BBB for prostitution to the *poseur*-customer is bereft of merit. Notably, accused-appellant admitted that she is a prostitute. Accused-appellant however, denied that she is the pimp of AAA and BBB. The denial is clearly weak, as it contravenes the evidence presented and the statements of AAA and BBB. Prosecution's evidence discloses that she offered to the NBI agents the sexual services of AAA, BBB, and two other girls in exchange for money. And the evidence is consistent with the straightforward testimonies of AAA and BBB that accused-appellant peddled them to various men for sexual services in exchange for money.

Penalty and Damages.

Considering that the qualifying circumstances of minority were alleged and proven during trial, the RTC and the CA did not err in convicting accused-appellant for Qualified Trafficking in Persons.

Section 10 (c) of RA 9208 provides:

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[26] *People v. Baguion*, G.R. No. 223553, July 4, 2018, 871 SCRA 1, 14.

Section 10. Penalties and Sanctions. — The following penalties and sanctions are hereby established for the offenses enumerated in this Act:

x x x x

(c) Any person found guilty of qualified trafficking under Section 6 shall suffer the penalty of life imprisonment and a fine of not less than Two million pesos (₱2,000,000.00) but not more than Five million pesos (₱5,000,000.00);

Thus, the RTC and the CA correctly imposed the penalty of life imprisonment, and a fine of ₱2,000,000.00 against accused-appellant.

Finally, the awards of moral damages of ₱500,000.00, and exemplary damages of ₱100,000.00 each to AAA and BBB, are consistent with the prevailing jurisprudence.[27] However, the Court deems it proper to impose on all monetary awards due to the victims legal interest of 6% *per annum* from the finality of judgment until full payment.[28]

WHEREFORE, the appeal is **DISMISSED**. The Decision dated December 17, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 09504 is **AFFIRMED** with **MODIFICATION** in that the award of damages shall bear an interest of 6% *per annum* from the finality of the Decision until full payment.

SO ORDERED.

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

Baltazar-Padilla, J., on leave.

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[27] *People v. Aguirre, et al.*, 820 Phil. 1085, 1105 (2017), citing *People v. Lalli, et al.*, 675 Phil. 126, 158 (2011); *People v. Casio*, 749 Phil. 458, 482 (2014); and *People v. Hirang*, 803 Phil. 277, 292-293 (2017).

[28] *People v. XXX*, G.R. No. 235652, July 9, 2018, 871 SCRA 424, 437, citing *People v. Jugueta*, 783 Phil. 806, 854 (2016).

SECOND DIVISION

[G.R. No. 250671. October 7, 2020]

LINA TALOCOD, *Petitioner, v.* **PEOPLE OF THE PHILIPPINES,** *Respondent.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; APPEAL; AN APPEAL IN CRIMINAL CASES OPENS THE ENTIRE CASE FOR REVIEW, CONFERS THE APPELLATE COURT FULL JURISDICTION OVER THE CASE AND RENDERS SUCH COURT COMPETENT TO EXAMINE THE RECORDS, REVISE THE JUDGMENT APPEALED FROM, INCREASE THE PENALTY, AND CITE THE PROPER PROVISION OF THE PENAL LAW.—** . . . [A]n appeal in criminal cases opens the entire case for review, and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment, whether they are assigned or unassigned. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine the records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.

2. **CRIMINAL LAW; REPUBLIC ACT NO. 7610 (THE SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION ACT); CHILD ABUSE; FOR ONE TO BE HELD CRIMINALLY LIABLE FOR THE COMMISSION OF ACTS OF CHILD ABUSE, THE PROSECUTION MUST PROVE A SPECIFIC INTENT TO DEBASE, DEGRADE, OR DEMEAN THE INTRINSIC WORTH OF THE CHILD.—** . . . [T]he enactment of RA 7610 "was meant to advance the state policy of affording 'special protection to children from all forms of abuse, neglect, cruelty, exploitation[,] discrimination[,] and other conditions prejudicial to their development' and in such regard, 'provide sanctions for their commission.' It also furthers the 'best interests of children' and as such, its provisions are guided by this standard." The term "child abuse" is defined under Section 3 (b), Article I of the same law. . . .

. . .

RA 7610 defines and penalizes various acts constituting child abuse as defined in the aforementioned provision. It further provides a "catch-all" provision which penalizes other acts of child abuse not specifically addressed by the law, particularly Section 10 (a), Article VI thereof . . . .

. . .

Notably, case law qualifies that for one to be held criminally liable for the commission of acts of Child Abuse under Section 10 (a), Article VI of RA 7610, "the prosecution [must] prove a **specific intent to debase, degrade, or demean the intrinsic worth of the child**; otherwise, the accused cannot be convicted [for the said offense]." The foregoing requirement was first established in the case of *Bongalon v. People* (*Bongalon*), where it was held that the laying of hands against a child, ***when done in the spur of the moment and in anger***, cannot be deemed as an act of child abuse under Section 10 (a) of RA 7610, ***absent the essential element of intent to debase, degrade, or demean the intrinsic worth and dignity of the child*** as a human being on the part of the offender . . . .

. . .

The *Bongalon* ruling was then reiterated and applied in the subsequent cases of *Jabalde v. People* and *Calaoagan v. People*, wherein the Court emphasized that "when the infliction of physical injuries against a minor is done at the spur of the moment, ***it is imperative for the prosecution to prove a specific intent to debase, degrade, or demean the intrinsic worth of the child*** x x x." "*Debasement* is defined as the act of reducing the value, quality, or purity of something; *degradation*, on the other hand, is a lessening of a person's or thing's character or quality; while *demean* means to lower in status, condition, reputation, or character." "[Such] intention x x x can be inferred from the manner in which [the offender] committed the act complained of[,]" as when the offender's use of force against the child was calculated, violent, excessive, or done without any provocation.

While the aforementioned cases pertain to the commission of child abuse by physical deeds, *i.e.*, the laying of hands against a child, the same treatment has also been extended to the utterance

of harsh words, invectives, or expletives against minors. In *Escolano v. People*, which involved facts similar to the instant case, the Court held that the **mere shouting of invectives at a child, when carelessly done out of anger, frustration, or annoyance, does not constitute Child Abuse under Section 10 (a) of RA 7610, absent evidence that the utterance of such words were *specifically intended to debase, degrade, or demean* the victim's intrinsic worth and dignity** . . . .

. . .

In this case, the records are bereft of any evidence showing that petitioner's utterance of the phrase: "*Huwag mong pansinin yan. At putang ina yan. Mga walang kwenta yan. Mana-mana lang yan!*" was specifically intended to debase, degrade, or demean AAA's intrinsic worth and dignity as a human being. To the contrary, it appears that petitioner's harsh utterances were brought about by the spur of the moment, particularly, out of her anger and annoyance at AAA's reprimand of EEE. This may be gathered from the testimony of the victim himself on direct and cross-examination . . . .

. . .

. . . [T]here appears no indication that petitioner deliberately intended to shame or humiliate AAA's dignity in front of his playmates. On the contrary, it is rather apparent that petitioner merely voiced the alleged utterances as offhand remarks out of parental concern for her child. Hence, in view of the absence of a specific intent to debase, degrade, or demean the victim's intrinsic worth and dignity in this case, the Court finds that petitioner cannot be held criminally liable for committing acts of Child Abuse under Section 10 (a), Article VI of RA 7610.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated July 30, 2019 and the Resolution[3] dated November 28, 2019 of the Court of Appeals (CA) in CA-G.R. CR No. 40871, which affirmed the Decision[4] dated October 6, 2017 of the Regional Trial Court of [redacted] (RTC) in Criminal Case No. 1169-V-12 finding petitioner Lina Talocod (petitioner) guilty beyond reasonable doubt of violating Section 10 (a), Article VI of Republic Act No. (RA) 7610,[5] otherwise known as the "Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act."

The Facts

This case stemmed from an Information[6] dated October 23, 2012 filed before the RTC accusing petitioner of committing acts of child abuse, defined and penalized under Section 10 (a), Article VI of RA 7610, the accusatory portion of which states:

> That on or about November 5, 2011, in [redacted] and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully committed (sic) acts of child abuse against one [AAA], 11 years old (DOB: September 9, 2000), by uttering the following words ***"Huwag Mong Pansinin***

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[1] Dated January 17, 2020. *Rollo*, pp. 10-23.

[2] Id. at 30-49. Penned by Associate Justice Rafael Antonio M. Santos with Associate Justices Remedios A. Salazar-Fernando and Manuel M. Barrios, concurring.

[3] Id. at 52-54.

[4] Id. at 71-77. Penned by Judge Nancy Rivas-Palmones.

[5] Entitled "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES," approved on June 17, 1992.

[6] Records, p. 1.

Yan . . . At Putang Ina Yan **(while angrily pointing her finger at him)** ***. . . Mga Walang Kwenta Yan, Mana-Mana Lang Yan!"***, thereby subjecting said minor to psychological abuse, cruelty and emotional maltreatment prejudicial to his natural development.

CONTRARY TO LAW.[7] (Emphasis in the original)

The prosecution alleged that, in the morning of November 5, 2011, AAA,[8] an 11-year old child, was playing with other children along the road near his residence in [redacted]. As his playmates were bothering passing motorists by throwing sand and gravel on the road, AAA berated and told them to stop. Upset by AAA's reprimand, one of the children, EEE, reported the incident to her mother, herein petitioner. Together with EEE, petitioner immediately confronted AAA about his behavior, and while pointing a finger at the latter, furiously shouted: "*Huwag mong pansinin yan. At putang ina yan. Mga walang kwenta yan. Mana-mana lang yan!*" Upset by what petitioner said, AAA ran home and cried, later relaying the incident to his mother, BBB. Allegedly, AAA was traumatized as a result of petitioner's utterance of harsh words and expletives, since after the purported incident, he no longer went out to play with other children and started to suffer from nightmares.[9]

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[7] Id.

[8] The identity of the minor victim or any information which could establish or compromise his identity, as well as those of his immediate family or household members, shall be withheld pursuant to RA 7610; RA 9262, entitled "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFOR, AND FOR OTHER PURPOSES," approved on March 8, 2004; and Section 40 of A.M. No. 04-10-11-SC, otherwise known as the "RULE ON VIOLENCE AGAINST WOMEN AND THEIR CHILDREN" (November 15, 2004). (See footnote 4 in *People v. Cadano, Jr.*, 729 Phil. 576, 578 [2014], citing *People v. Lomaque*, 710 Phil. 338, 342 [2013]. See also Amended Administrative Circular No. 83-2015, entitled "PROTOCOLS AND PROCEDURES IN THE PROMULGATION, PUBLICATION, AND POSTING ON THE WEBSITES OF DECISIONS, FINAL RESOLUTIONS, AND FINAL ORDERS USING FICTITIOUS NAMES/PERSONAL CIRCUMSTANCES," dated September 5, 2017.) See further *People v. Ejercito*, G.R. No. 229861, July 2, 2018.

[9] See *rollo*, pp. 31-33. See also id. at 72-74.

In defense, petitioner claimed that the words she actually uttered were: "*anak wag mo na patulan yan walang kwenta makipag-away*," and that the same were addressed to EEE, not to AAA.[10]

The RTC Ruling

In a Decision[11] dated October 6, 2017, the RTC found petitioner **guilty** beyond reasonable doubt of the crime charged, and accordingly, sentenced her to suffer the penalty of imprisonment for an indeterminate period of four (4) years, nine (9) months, and eleven (11) days of *prision correccional*, as minimum, to six (6) years, eight (8) months, and one (1) day of *prision mayor*, as maximum. The RTC also ordered petitioner to pay AAA the amount of ₱20,000.00 as moral damages, with legal interest at the rate of six percent (6%) per annum from the finality of its decision until full payment.[12] The trial court ruled that the prosecution had successfully established all the elements of Section 10 (a), Article VI of RA 7610, as it was shown that petitioner's harsh words and expletives caused AAA, an 11-year-old child, to suffer from nightmares and compulsive fear.[13]

Aggrieved, petitioner appealed to the CA, arguing that she should be acquitted on account of: *(a)* her lack of specific intent to debase, degrade, or demean the intrinsic worth and dignity of AAA as a human being, as the words she allegedly uttered were mere expressions of common usage; and *(b)* the absence of evidence showing that AAA suffered psychological injury, since an expert witness was not presented in court.[14]

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[10] See id. at 33. See also id. at 74-75.

[11] Id. at 71-77.

[12] Id. at 77.

[13] Id. at 76-77.

[14] See Brief of the Accused-Appellant dated January 21, 2019; id. at 55-70.

The CA Ruling

In a Decision[15] dated July 30, 2019, the CA **affirmed** the conviction of petitioner *in toto*.[16] The CA ruled that petitioner's utterance of harsh words and expletives at AAA, while simultaneously pointing a finger at him, were indicative of an intent to debase, degrade, or demean the latter's intrinsic worth and dignity as a child. In any case, the CA found petitioner's intent immaterial, observing that the crime of Child Abuse under Section 10 (a), Article VI of RA 7610 is considered *malum prohibitum* and thus, mere acts or words which debase, degrade, or demean a minor were already constitutive of the offense. Moreover, it found the presentation of an expert witness to prove the existence of psychological injury unnecessary, holding that such element had been sufficiently established by the testimony of AAA himself.[17]

Undaunted, petitioner moved for reconsideration,[18] which was denied in a Resolution[19] dated November 28, 2019.

Hence, the instant petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA erred in affirming petitioner's conviction for violation of Section 10 (a), Article VI of RA 7610.

The Court's Ruling

The petition is meritorious.

At the outset, it must be stressed that an appeal in criminal cases opens the entire case for review, and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the

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[15] Id. at 30-49.

[16] Id. at 48.

[17] See id. at 36-48.

[18] See motion for reconsideration dated August 23, 2019; id. at 99-103.

[19] Id. at 52-54.

appealed judgment, whether they are assigned or unassigned.[20] The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine the records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.[21] Guided by the foregoing considerations, and as will be explained hereunder, the Court finds that the acquittal of petitioner for the crime charged is in order.

It is well to point out that the enactment of RA 7610 "was meant to advance the state policy of affording 'special protection to children from all forms of abuse, neglect, cruelty, exploitation[,] discrimination[,] and other conditions prejudicial to their development' and in such regard, 'provide sanctions for their commission.' It also furthers the 'best interests of children' and as such, its provisions are guided by this standard."[22] The term "child abuse" is defined under Section 3 (b), Article I of the same law, as follows:

Section 3. *Definition of terms.* —

x x x x

(b) **"Child Abuse" refers to the maltreatment, whether habitual or not, of the child** which includes any of the following:

(1) Psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment;

(2) Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;

(3) Unreasonable deprivation of his basic needs for survival, such as food and shelter; or

(4) Failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death.

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[20] See *People v. Dahil*, 750 Phil. 212, 225 (2015).

[21] *People v. Comboy*, 782 Phil. 187, 196 (2016).

[22] *Caballo v. People*, 710 Phil. 792, 801-802 (2013).

x x x x (Emphasis supplied)

RA 7610 defines and penalizes various acts constituting child abuse as defined in the aforementioned provision. It further provides a "catch-all" provision which penalizes other acts of child abuse not specifically addressed by the law, particularly Section 10 (a), Article VI[23] thereof, to wit:

> Section 10. *Other Acts of Neglect, Abuse, Cruelty or Exploitation and other Conditions Prejudicial to the Child's Development. —*
>
> (a) Any person who shall commit **any other acts of child abuse**, cruelty or exploitation or to be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of *prision mayor* in its minimum period.
>
> x x x x (Emphasis and underscoring supplied)

Notably, case law qualifies that for one to be held criminally liable for the commission of acts of Child Abuse under Section 10 (a), Article VI of RA 7610, "the prosecution [must] prove a **specific intent to debase, degrade, or demean the intrinsic worth of the child**; otherwise, the accused cannot be convicted [for the said offense]."[24] The foregoing requirement was first established in the case of *Bongalon v. People*[25] *(Bongalon)*, where it was held that the laying of hands against a child, ***when done in the spur of the moment and in anger***, cannot be deemed as an act of child abuse under Section 10 (a) of RA 7610, ***absent the essential element of intent to debase, degrade, or demean the intrinsic worth and dignity of the child*** as a human being on the part of the offender, *viz.*:

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[23] Section 10 (a) of RA 7610 punishes "four distinct acts, *i.e.*, (a) **child abuse**, (b) child cruelty, (c) child exploitation, and (d) being responsible for conditions prejudicial to the child's development." (*Araneta v. People*, 578 Phil. 876, 885 [2008]; emphasis supplied.)

[24] *Calaoagan v. People*, G.R. No. 222974, March 20, 2019.

[25] 707 Phil. 11 (2013).

Not every instance of the laying of hands on a child constitutes the crime of child abuse under Section 10 (a) of Republic Act No. 7610. Only when the laying of hands is shown beyond reasonable doubt to be **intended by the accused to debase, degrade or demean the intrinsic worth and dignity of the child as a human being should it be punished as child abuse**. x x x

x x x x

x x x The records did not establish beyond reasonable doubt that his laying of hands on Jayson had been intended to debase the "intrinsic worth and dignity" of Jayson as a human being, or that he had thereby intended to humiliate or embarrass Jayson. The records showed the laying of hands on Jayson to have been done at the **spur of the moment and in anger, indicative of his being then overwhelmed by his fatherly concern** for the personal safety of his own minor daughters who had just suffered harm at the hands of Jayson and Roldan. **With the loss of his self-control, he lacked that specific intent to debase, degrade or demean the intrinsic worth and dignity of a child as a human being that was so essential in the crime of child abuse**.[26] (Emphasis and underscoring supplied)

The *Bongalon* ruling was then reiterated and applied in the subsequent cases of *Jabalde v. People*[27] and *Calaoagan v. People*,[28] wherein the Court emphasized that "when the infliction of physical injuries against a minor is done at the spur of the moment, ***it is imperative for the prosecution to prove a specific intent to debase, degrade, or demean the intrinsic worth of the child*** x x x."[29] "*Debasement* is defined as the act of reducing the value, quality, or purity of something; *degradation*, on the other hand, is a lessening of a person's or thing's character or quality; while *demean* means to lower in status, condition, reputation, or character."[30] "[Such] intention x x x can be inferred

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[26] Id. at 14 and 20-21.

[27] 787 Phil. 255 (2016).

[28] Supra note 24.

[29] See id.; emphasis and underscoring supplied.

[30] See id., citing *Jabalde v. People*, supra note 27, at 270.

from the manner in which [the offender] committed the act complained of[,]"[31] as when the offender's use of force against the child was calculated, violent, excessive, or done without any provocation.[32]

While the aforementioned cases pertain to the commission of child abuse by physical deeds, *i.e.*, the laying of hands against a child, the same treatment has also been extended to the utterance of harsh words, invectives, or expletives against minors. In *Escolano v. People*,[33] which involved facts similar to the instant case,[34] the Court held that the **mere shouting of invectives at a child, when carelessly done out of anger, frustration, or annoyance, does not constitute Child Abuse under Section 10 (a) of RA 7610, absent evidence that the utterance of such words were *specifically intended to debase, degrade, or demean* the victim's intrinsic worth and dignity**, to wit:

> [T]he Court finds that the **act of petitioner in shouting invectives against private complainants does not constitute child abuse** under the foregoing provisions of R.A. No. 7610. Petitioner had **no intention to debase the intrinsic worth and dignity of the child**. It was rather an **act carelessly done out of anger**. The circumstances surrounding the incident proved that petitioner's act of uttering invectives against the minors AAA, BBB, and CCC was **done in the heat of anger**.
>
> x x x **Evidently, petitioner's statements "*bobo, walang utak, putang ina*" and the threat to "*ipahabol*" and "*ipakagat sa aso*" were all said out of frustration or annoyance**. Petitioner merely intended that the children stop their unruly behavior.
>
> On the other hand, the prosecution **failed to present any iota of evidence to prove petitioner's intention to debase, degrade or**

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[31] *Torres v. People*, 803 Phil. 480, 490-491 (2017).

[32] See *Torres v. People*, id.; *Rosaldes v. People*, 745 Phil. 77 (2014); and *De Vega v. People*, G.R. No. 240476, October 3, 2018.

[33] G.R. No. 226991, December 10, 2018.

[34] The accused therein shouted the phrase *"[p]utang ina ninyo, gago kayo, wala kayong pinag-aralan, wala kayong utak, subukan ninyong bumaba dito, pakakawalan ko ang aso ko, pakakagat ko kayo sa aso ko"* at children. (See id.)

demean the child victims. The record does not show that petitioner's act of threatening the private complainants was intended to place the latter in an embarrassing and shameful situation before the public. There was **no indication that petitioner had any specific intent** to humiliate AAA, BBB, and CCC; her threats resulted from the private complainants' vexation.[35] (Emphasis and underscoring supplied)

In this case, the records are bereft of any evidence showing that petitioner's utterance of the phrase: "*Huwag mong pansinin yan. At putang ina yan. Mga walang kwenta yan. Mana-mana lang yan!*" was specifically intended to debase, degrade, or demean AAA's intrinsic worth and dignity as a human being. To the contrary, it appears that petitioner's harsh utterances were brought about by the spur of the moment, particularly, out of her anger and annoyance at AAA's reprimand of EEE. This may be gathered from the testimony of the victim himself on direct and cross-examination, where it was recounted that:

Direct Examination

[Atty. Arthur Coroza]: Now, on November 5, 2011 in the morning, do you recall where were you?
[AAA]: I was outside and we were playing with my friends.

Q: Please tell us the names of your friends.
A: x x x, [EEE].

x x x x

Q: Now, while playing with [EEE] and [another friend], do you recall if anything happened?
A: [EEE] and [another friend] were playing with gravel and sand and they were scattering it, so I just berated them *(pinagsabihan ko sila)*.

x x x x

Q: Then after that what happened, Mr. Witness?
A: [EEE] told the incident to [his] mother.

Q: And who is the mother?
A: Lina Talocod.

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[35] See id.

Q: Then after that what happened, Mr. Witness?
A: She told me ["]*wag nyong pansinin yan, walang kwenta yan, mga putang-ina yan, mana-mana lang yan*.["]

Q: Who told you that?
A: Lina Talocod.

x x x x

Q: x x x Now, what did you notice on Lina Talocod when she uttered those words?
A: She was very angry.[36]

Cross-Examination

[Atty. Ma. Cristina Favis]: On November 5, 2011 how old were you?
[AAA]: 11 years old, ma'am.

Q: And you were then playing with 3 children, am I right?
A: Yes, ma'am.

x x x x

Q: You mentioned that you reprimanded them for playing [with] the gravel and sand? How did you reprimand them?
A: I was telling them not to scatter the gravel and sand because it was scattered on the road.

Q: You testified that [EEE] went to his mother to tell her that you reprimanded them, is that correct?
A: Yes, ma'am.

Q: Could you demonstrate how you reprimanded them?
A: I just did a "*simpleng pasaway*."

Q: But [EEE] was offended at that time?
A: Yes, ma'am.

Q: Aside from the 4 of you playing at the time who were the persons present?
A: The mother of [EEE].

x x x x

Q: How long did it take for Lina Talocod to confront you?
A: Right after [EEE] told his mother.

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[36] TSN, June 7, 2013, pp. 12-16.

Q: Am I correct to say that Lina Talocod confronted you immediately after [EEE] ran to her?
A: Yes, ma'am.

Q: And what did Lina Talocod tell you?
A: She cursed me "*Putang-Ina Mo*" and she was very angry and told me, "*nagmana daw talaga ako sa magulang ko*."

Q: Didn't she say "*Huwag mong pansinin 'yan, Putang-Ina 'yan. Mga walang kuwenta 'yan, Manamana lang 'yan.*"? Is that what she told you exactly?
A: Yes, ma'am and she was very angry.[37]

Verily, based on the foregoing narration, there appears no indication that petitioner deliberately intended to shame or humiliate AAA's dignity in front of his playmates. On the contrary, it is rather apparent that petitioner merely voiced the alleged utterances as offhand remarks out of parental concern for her child. Hence, in view of the absence of a specific intent to debase, degrade, or demean the victim's intrinsic worth and dignity in this case, the Court finds that petitioner cannot be held criminally liable for committing acts of Child Abuse under Section 10 (a), Article VI of RA 7610.

WHEREFORE, the petition is **GRANTED**. The Decision dated July 30, 2019 and the Resolution dated November 28, 2019 of the Court of Appeals in CA-G.R. CR No. 40871 are hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioner Lina Talocod is **ACQUITTED** of the crime charged.

SO ORDERED.

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

Baltazar-Padilla, J., on leave.

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[37] TSN, April 4, 2014, pp. 3-4.

SECOND DIVISION

[A.C. No. 10636. October 12, 2020]

MANUEL B. TABLIZO, *Complainant, v.* **ATTYS. JOYRICH M. GOLANGCO, ADORACION A. AGBADA, ELBERT L. BUNAGAN, and JOAQUIN F. SALAZAR,** *Respondents*.

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; A LAWYER WHO HOLDS A GOVERNMENT OFFICE MAY NOT BE DISCIPLINED AS A MEMBER OF THE BAR FOR MISCONDUCT IN THE DISCHARGE OF HIS DUTIES AS A GOVERNMENT OFFICIAL, BUT IF SAID MISCONDUCT AS A GOVERNMENT OFFICIAL ALSO CONSTITUTES A VIOLATION OF HIS OATH AS A LAWYER, THEN HE MAY BE DISCIPLINED BY THE SUPREME COURT AS A MEMBER OF THE BAR.— Complainant herein charges respondents with Gross Misconduct in relation to the performance of their official duties as officers of the Office of the Ombudsman. In *Vitriolo v. Dasig*, the Court laid down that as a general rule, "a lawyer who holds a government office may not be disciplined as a member of the Bar for misconduct in the discharge of his duties as a government official. However, if said misconduct as a government official also constitutes a violation of his oath as a lawyer, then he may be disciplined by this Court as a member of the Bar."

2. REMEDIAL LAW; RULES OF COURT; DISCIPLINE OF LAWYERS; GROSS MISCONDUCT; DEFINED AS ANY INEXCUSABLE, SHAMEFUL OR FLAGRANT UNLAWFUL CONDUCT ON THE PART OF THE PERSON CONCERNED WITH THE ADMINISTRATION OF JUSTICE AND IS PUNISHABLE BY EITHER DISBARMENT OR SUSPENSION FROM THE PRACTICE OF LAW.— In his Complaint-Affidavit herein, complainant was essentially challenging the Consolidated Resolution and Consolidated Resolution — MR in the OMB Cases in which respondents dismissed complainant's criminal and administrative charges against Zafe and Alberto. He averred that respondents

maliciously refused or failed to conduct proper investigation of the charges in the OMB Cases to complainant's detriment and, hence, eroding his trust and confidence in the Office of the Ombudsman.

Gross misconduct is punishable by either disbarment or suspension from the practice of law, as provided under Section 27, Rule 138 of the Rules of Court. It has been defined as "any inexcusable, shameful or flagrant unlawful conduct on the part of a person concerned with the administration of justice; *i.e.,* conduct prejudicial to the rights of the parties or to the right determination of the cause. The motive behind this conduct is generally a premeditated, obstinate or intentional purpose." . . .

. . .

In the case at bar, there is an absolute dearth of evidence of the respondents' alleged Gross Misconduct. Other than his bare allegations, complainant was unable to present proof to substantiate his grave charges against respondents. That the Consolidated Resolution and Consolidated Resolution — MR issued by the respondents in the OMB Cases were adverse to complainant does not, by itself, establish malice or prejudice against him.

In contrast, respondents enjoy, absent any evidence to the contrary, the presumption that they had regularly performed their official duties . . . .

Furthermore, a perusal of the Consolidated Resolution and Consolidated Resolution — MR issued by respondents readily shows that they sufficiently presented the factual and legal bases for the dismissal of complainant's charges against Zafe and Alberto. Therefore, it cannot be argued that the subject Resolutions were completely arbitrary, capricious, or groundless.

3. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; AN ADMINISTRATIVE COMPLAINT AGAINST A LAWYER HOLDING A GOVERNMENT OFFICE FOR ALLEGED REVERSIBLE ERRORS IN JUDGMENT OF GRAVE ABUSE OF DISCRETION IS NOT AN APPROPRIATE REMEDY WHERE JUDICIAL RECOURSE IS STILL AVAILABLE.— . . . [I]f complainant really believed that

respondents committed reversible errors in judgment or grave abuse of discretion in rendering the Consolidated Resolution and Consolidated Resolution — MR, then his remedy would have been to seek judicial review of the same, and not through a disciplinary case against the respondents. The following declaration of the Court in administrative matters involving judges may be applied by analogy herein: "An administrative complaint is not an appropriate remedy where judicial recourse is still available, such as a motion for reconsideration, an appeal, or a petition for *certiorari,* unless the assailed order or decision is tainted with bad faith, fraud, malice or dishonesty."

D E C I S I O N

HERNANDO, *J.*:

Before the Court is an administrative case for Grave Misconduct initiated by complainant Manuel Bajaro Tablizo against the following respondents, all officials of the Office of the Deputy Ombudsman for Luzon:

(a) Respondent Atty. Elbert L. Bunagan (Bunagan), Graft Investigation & Prosecution Officer (GIPO) I—Bureau A;

(b) Respondent Atty. Joaquin F. Salazar (Salazar), Director, Evaluation & Investigation Office (EIO)—Bureau A;

(c) Respondent Atty. Joyrich M. Golangco (Golangco), GIPO I—Bureau B; and

(d) Respondent Atty. Adoracion A. Agbada (Agbada), Director, EIO—Bureau B.

It arose from the following factual antecedents:

Through separate Complaint-Affidavits filed before the Provincial Prosecutor Office of Virac, Catanduanes, complainant averred that Santos V. Zafe (Zafe) and Jose U. Alberto II (Alberto), then former and incumbent Mayors, respectively, of the Municipality of Virac, Catanduanes, violated Republic

Act (RA) Nos. 3019[1] and 6713[2] when they failed to sign each and every page of certain municipal tax ordinances[3] as required by Section 54 of the Local Government Code (LGC) and for still implementing them in the said Municipality, despite their defect and nullity. The Complaint-Affidavits were indorsed to the Office of the Ombudsman for Luzon where they were docketed as OMB-L-C-12-0531/OMB-L-A-12-06-13 and OMB-L-C-12-0532/OMB-L-A-0614 (OMB Cases) and raffled to respondent Atty. Bunagan, GIPO I—Bureau A. After an exchange of pleadings by the parties, respondent Atty. Bunagan issued a Consolidated Resolution[4] dated October 18, 2013 (Consolidated Resolution), reviewed by respondent Atty. Salazar, EIO Director—Bureau A, with the following recommendations:

WHEREFORE, premises considered, it is respectfully recommended that:

1. In ***OMB-L-C-12-0531***, the complaint for violation of Section 3(e) of R.A. No. 3019 against respondents former Municipal Mayors **JOSE U. ALBERTO II** and **SANTOS V. ZAFE**, both of the Local Government of Virac, Catanduanes, be **DISMISSED** for lack of merit;

2. In ***OMB-L-C-12-0532***, the complaint for violation of Section 3(e) of R.A. No. 3019 against respondent former Municipal Mayor **JOSE U. ALBERTO II** of the Local Government of Virac, Catanduanes, be **DISMISSED** for lack of merit; and

3. In ***OMB-L-A-12-0613*** and ***OMB-L-A-12-0614***, the administrative complaints against respondents former Municipal Mayors **JOSE U. ALBERTO II** and **SANTOS V. ZAFE**, both of the Local Government of Virac, Catanduanes, be **DISMISSED** for the reasons discussed above. However, respondents are admonished that similar omission in the future shall be dealt with severely.[5]

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[1] The Anti-Graft and Corrupt Practices Act.

[2] Code of Conduct and Ethical Standards for Public Officials and Employees.

[3] Municipal Tax Ordinance (MTO) No. 2008-14 in the case of Zafe and MTO No. 99-014 in the case of Alberto.

[4] *Rollo*, pp. 36-49.

[5] Id. at 47-48.

The Consolidated Resolution was approved by Ombudsman Conchita Carpio Morales (Carpio Morales) on December 26, 2013.[6]

Complainant filed a Motion for Reconsideration of the Consolidated Resolution on the ground that grave errors of facts and violation of law had been committed prejudicial to his interest and rights. He also included in his Motion for Reconsideration a prayer that respondents Atty. Bunagan and Atty. Salazar inhibit themselves from the resolution of said motion to avoid any suspicion of partiality.

Acting on complainant's prayer for the inhibition of respondents Atty. Bunagan and Atty. Salazar, Deputy Ombudsman for Luzon Gerard A. Mosquera (Mosquera) reassigned the OMB Cases to EIO—Bureau B.

On April 8, 2014, a Consolidated Resolution (on Complainant's Motion for Reconsideration)[7] (Consolidated Resolution—MR) was issued by respondent Atty. Golangco, GIPO I—Bureau B, and reviewed by respondent Atty. Agbada, EIO Director—Bureau B, recommending that complainant's Motion for Reconsideration be denied for lack of merit. The Consolidated Resolution—MR was approved by Ombudsman Carpio Morales on June 9, 2014.[8]

Thereafter, complainant filed the instant Complaint-Affidavit dated July 9, 2014 against respondents before the Office of the Court Administrator (OCA), docketed as A.C. No. 10636. He averred that "respondents maliciously failed to follow/observe the standards of personal conduct provided under R.A. No. 6713 and R.A. No. 6770 in the discharge and execution of their official duties for failing and/or refusing to investigate in the real sense of the word, the charges against Alberto and Zafe."[9] After receipt

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[6] Id. at 49.

[7] Id. at 59-65.

[8] Id. at 64.

[9] Id. at 9.

of respondents' Joint Comments, the Court, in a Resolution[10] dated July 29, 2015, referred the administrative case to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation. It was docketed as CBD Case No. 15-4788 before the Commission on Bar Discipline (CBD) of the IBP.

Complainant also subsequently filed a letter-complaint dated August 13, 2014 before the Internal Affairs Board (IAB) of the Office of the Ombudsman charging respondents with Grave Misconduct based on the very same allegations. The Evaluation Report[11] dated October 10, 2014 submitted by the IAB Investigator and approved on January 23, 2015 by Deputy Ombudsman for Luzon Mosquera, dismissed the complaint outright.

In the meantime, Investigating Commissioner Dominica L. Dumangeng-Rosario (Dumangeng-Rosario) scheduled and facilitated mandatory conferences among the parties in CBD Case No. 15-4788 on December 14, 2015, February 18, 2016, and July 22, 2016. Respondents attended all the mandatory conferences[12] and duly submitted their respective mandatory conference briefs and subsequently, their Joint Position Paper.

In contrast, complainant failed to appear in any of the mandatory conferences. For the mandatory conference scheduled on February 18, 2016, he filed a Manifestation and Motion requesting the appointment of a suitable member of the Bar to act as his counsel and assist him during the hearing, citing Sections 2 and 7 of Rule 139-B of the Rules of Court. His Manifestation and Motion was forwarded by the IBP Board of Governors to the National Center for Legal Aid (NCLA). However, Atty. Jonas Florentino D.L. Cabochan (Cabochan),

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[10] Id. at 99.

[11] Id. at 75-78.

[12] Except respondent Atty. Golangco who was unable to attend the mandatory conference on July 22, 2016 because he was conducting a pre-bar review.

NCLA National Director, replied through a letter[13] dated May 16, 2016 that the NCLA does not represent parties in disbarment proceedings. In an Order[14] dated June 27, 2016, Investigating Commissioner Dumangeng-Rosario informed complainant of Atty. Cabochan's reply to his Manifestation and Motion; advised complainant to engage the services of counsel and to submit his mandatory conference brief within 10 days from notice; and directed the parties to attend the next mandatory conference on July 22, 2016. Once again, complainant failed to attend the mandatory conference on July 22, 2016, submitting instead another Manifestation and Motion in which he maintained that:

> 2. x x x Simply put, my trust and confidence in respondents herein as Ombudsman lawyers, have really eroded. Their resolutions dismissing and exonerating the respondents in my ombudsman case against the two (2) mayors of Virac, Catanduanes are the reasons why I filed a case against them at the Supreme Court because up to this point and time the people of Virac are made to pay their taxes computed based on the unsigned revenue code. x x x[15]

After stating that his financial and health predicaments rendered him permanently unable to attend the mandatory conferences and that he needed the services of a counsel as he had no training and skill to prosecute the case by himself, he moved and prayed that Investigating Commissioner Dumangeng-Rosario pursue and continue the investigation of the instant administrative case in the interest of justice, equity, and fair play. Complainant then already submitted the case for resolution.[16]

Report and Recommendation of the IBP:

In her Report and Recommendation dated January 27, 2017, Investigating Commissioner Dumangeng-Rosario concluded, thus:

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[13] *Rollo*, p. 100.

[14] Id. at 99.

[15] Id. at 165.

[16] Id.

As discussed above, it is not sufficiently shown that the respondents, Atty. Golangco, Atty. Agbada, Atty. Bunagan, and Atty. Salazar [have] violated any of their professional duties as a lawyer and therefore it is RECOMMENDED that the complaint against them be DISMISSED.[17]

The IBP Board of Governors then passed a Resolution dated April 20, 2017 adopting the findings of fact and recommendation of the Investigating Commissioner to dismiss the complaint against the respondents.

Our Ruling

The Court adopts and approves the aforementioned Resolution of the IBP.

Complainant herein charges respondents with Gross Misconduct in relation to the performance of their official duties as officers of the Office of the Ombudsman. In *Vitriolo v. Dasig*,[18] the Court laid down that as a general rule, "a lawyer who holds a government office may not be disciplined as a member of the Bar for misconduct in the discharge of his duties as a government official. However, if said misconduct as a government official also constitutes a violation of his oath as a lawyer, then he may be disciplined by this Court as a member of the Bar."[19]

In his Complaint-Affidavit herein, complainant was essentially challenging the Consolidated Resolution and Consolidated Resolution—MR in the OMB Cases in which respondents dismissed complainant's criminal and administrative charges against Zafe and Alberto. He averred that respondents maliciously refused or failed to conduct proper investigation of the charges in the OMB Cases to complainant's detriment and, hence, eroding his trust and confidence in the Office of the Ombudsman.

Gross misconduct is punishable by either disbarment or suspension from the practice of law, as provided under Section

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[17] Id. at 214.

[18] 448 Phil. 199 (2003).

[19] Id. at 207.

27,[20] Rule 138 of the Rules of Court. It has been defined as "any inexcusable, shameful or flagrant unlawful conduct on the part of a person concerned with the administration of justice; *i.e.*, conduct prejudicial to the rights of the parties or to the right determination of the cause. The motive behind this conduct is generally a premeditated, obstinate or intentional purpose."[21]

In *Rico v. Madrazo, Jr.*,[22] the Court pronounced:

> It is settled that in disbarment and suspension proceedings against lawyers in this jurisdiction, the burden of proof rests upon the complainant. Thus, this Court has held that "in consideration of the gravity of the consequences of the disbarment or suspension of a member of the bar, we have consistently held that a lawyer enjoys the presumption of innocence, and the burden of proof rests upon the complainant to satisfactorily prove the allegations in his complaint through substantial evidence." A complainant's failure to dispense the same standard of proof requires no other conclusion than that which stays the hand of the Court from meting out a disbarment or suspension order.

In the case at bar, there is an absolute dearth of evidence of the respondents' alleged Gross Misconduct. Other than his bare allegations, complainant was unable to present proof to substantiate his grave charges against respondents. That the Consolidated Resolution and Consolidated Resolution—MR issued by the respondents in the OMB Cases were adverse to

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[20] Section 27. *Attorneys removed or suspended by Supreme Court on what grounds.* — A member of the bar may be removed or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before the admission to practice, or for a wilfull disobedience of any lawful order of a superior court, or for corruptly or willful appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.

[21] *Santiago v. Santiago*, A.C. No. 3921, June 11, 2018.

[22] A.C. No. 7231, October 1, 2019.

complainant does not, by itself, establish malice or prejudice against him.

In contrast, respondents enjoy, absent any evidence to the contrary, the presumption that they had regularly performed their official duties[23] as GIPOs and Directors of the EIO, Office of the Ombudsman, when they resolved the OMB Cases. All parties were accorded the opportunity to be heard following the rules of procedure before the Office of the Ombudsman. In fact, Deputy Ombudsman for Luzon Mosquera effectively granted complainant's prayer for the inhibition of respondents Atty. Bunagan and Atty. Salazar of EIO—Bureau A by re-assigning complainant's Motion for Reconsideration of the Consolidated Resolution to respondents Atty. Golangco and Atty. Agbada of EIO—Bureau B for resolution. It is also noteworthy that both the Consolidated Resolution and Consolidated Resolution—MR were reviewed and ultimately approved by Ombudsman Carpio Morales.

Furthermore, a perusal of the Consolidated Resolution and Consolidated Resolution—MR issued by respondents readily shows that they sufficiently presented the factual and legal bases for the dismissal of complainant's charges against Zafe and Alberto. Therefore, it cannot be argued that the subject Resolutions were completely arbitrary, capricious, or groundless.

More importantly, if complainant really believed that respondents committed reversible errors in judgment or grave abuse of discretion in rendering the Consolidated Resolution and Consolidated Resolution—MR, then his remedy would have been to seek judicial review[24] of the same, and not through a disciplinary case against the respondents. The following

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[23] RULES OF COURT, Rule 131, Section 3 (m).

[24] Decisions of the Ombudsman in Criminal Cases may be challenged before this Court through a petition for *certiorari* under Rule 65 of the Rules of Court; while Decisions of the Ombudsman in Administrative Cases may be appealed to the Court of Appeals under Rule 43. (See *Gatchalian v. Office of the Ombudsman*, G.R. No. 229288, August 1, 2018).

declaration of the Court in administrative matters involving judges may be applied by analogy herein: "An administrative complaint is not an appropriate remedy where judicial recourse is still available, such as a motion for reconsideration, an appeal, or a petition for *certiorari*, unless the assailed order or decision is tainted with bad faith, fraud, malice or dishonesty."[25]

WHEREFORE, the present administrative case for Grave Misconduct against respondents Atty. Elbert L. Bunagan, Atty. Joaquin F. Salazar, Atty. Joyrich M. Golangco, and Atty. Adoracion A. Agbada, in their respective capacities as officials of the Office of the Deputy Ombudsman for Luzon, is **DISMISSED** for lack of merit.

SO ORDERED.

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

Baltazar-Padilla, J., on leave.

[25] *Spouses De Guzman v. Pamintuan*, 452 Phil. 963, 966 (2003).

FIRST DIVISION

[A.C. No. 11087. October 12, 2020]
(Formerly CBD Case No. 16-5112)

PASTOR ABARACOSO MACAVENTA, *Complainant, v.* **ATTORNEY ANTHONY C. NUYDA,** *Respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; THE QUANTUM OF PROOF NECESSARY FOR A FINDING OF GUILT IN ADMINISTRATIVE PROCEEDINGS IS SUBSTANTIAL EVIDENCE, AND THE COMPLAINANT HAS THE BURDEN OF PROVING BY SUBSTANTIAL EVIDENCE THE ALLEGATIONS IN HIS COMPLAINT.— In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence, *i.e.*, 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. Charges based on mere suspicion and speculation likewise cannot be given credence. In the present case, there is no sufficient, clear and convincing evidence to hold Atty. Nuyda administratively liable for Gross Neglect of Duty.

2. ID.; ID.; ID.; GROSS NEGLECT OF DUTY OR GROSS NEGLIGENCE; DENOTES A FLAGRANT AND CULPABLE REFUSAL OR UNWILLINGNESS OF A PERSON TO PERFORM A DUTY, AND IN CASES INVOLVING PUBLIC OFFICIALS, GROSS NEGLIGENCE OCCURS WHEN A BREACH OF DUTY IS FLAGRANT AND PALPABLE.— Gross neglect of duty or gross negligence 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 willfully 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. As noted by the IBP, Atty. Nuyda simply followed the directive given to him by his superior at the DILG to await further advice on the dismissal of Governor Tanco. In addition, there was never any intentional or willful disobedience to the decision of the OMB, as the latter, in fact, eventually confirmed that its order dismissing Governor Tanco from service can no longer be implemented. Thus, there is no gross neglect of duty on the part of Atty. Nuyda. In order to be guilty of gross neglect of duty, it must be shown that respondent manifested flagrant and culpable refusal or unwillingness to perform a duty. However, in the instant case, there is no evidence to show that respondent did not exercise the slightest care or indifference to the consequences or any flagrant and palpable breach of duty. In fact, Atty. Nuyda followed to the letter directives given to him by higher authorities.

3. LEGAL ETHICS; ATTORNEYS; DISBARMENT; THE COURT EXERCISES ITS DISCIPLINARY POWER ONLY IF THE COMPLAINANT ESTABLISHES THE COMPLAINT BY CLEAR AND PREPONDERANT EVIDENCE THAT WARRANTS THE IMPOSITION OF THE HARSH PENALTY, FOR AS A RULE, AN ATTORNEY ENJOYS THE LEGAL PRESUMPTION THAT HE IS INNOCENT OF THE CHARGES MADE AGAINST HIM UNTIL THE CONTRARY IS PROVED AND HE IS FURTHER PRESUMED AS AN OFFICER OF THE COURT TO HAVE PERFORMED HIS DUTIES IN ACCORDANCE WITH HIS OATH.— The burden of proof in disbarment and suspension proceedings always rests on the complainant. The Court exercises its disciplinary power only if the complainant establishes the complaint by clear preponderant evidence that warrants the imposition of the harsh penalty. As a rule, an attorney enjoys the legal presumption that he is innocent of the charges made against him until the contrary is proved. An attorney is further presumed as an officer of the Court to have performed his duties in accordance with his oath. In the present case, the herein complainant was clearly misguided and

did not even present a valid argument. Even without the presumption that an attorney as an officer of the Court have performed his duties in accordance with his oath, it is plain and logical that the respondent only followed the protocol in implementing the subject Decision of the OMB.

D E C I S I O N

PERALTA, *C.J.*:

Before us is an Administrative Complaint[1] filed by Pastor Abaracoso Macaventa *(Macaventa)* before the Integrated Bar of the Philippines-Commission on Bar Discipline *(IBP-CBD)* against the respondent Atty. Anthony Nuyda *(Atty. Nuyda)*, the Regional Director *(RD)* of the Department of the Interior and Local Government *(DILG)* Regional Office VI, for gross neglect of duty for delaying or refusing to comply with a referral or directive of the Ombudsman, allegedly violating Canon 1, Rules 1.02 and 1.03 of the Code of Professional Responsibility *(CPR)*.

The facts are as follows.

On December 14, 2015, Macaventa filed the present Administrative Complaint[2] against Atty. Nuyda. The complainant alleged that, the respondent committed gross neglect of duty as the latter delayed or refused to comply with a referral directed by the Ombudsman or any of its deputies against the office or employee to whom it was addressed. On October 19, 2015, a Dismissal Order against Capiz Governor Victor Tanco, Sr. *(Governor Tanco)* and his son Vladimir Tanco *(Vladimir)* was received by the DILG Central Office. According to the complainant, the Dismissal Order[3] was served against Mr. Vladimir Tanco on October 28, 2015, but not to his father and co-accused Governor Tanco.

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[1] *Rollo*, pp. 2-6.

[2] *Id.*

[3] *Id.* at 38-39.

In its official website, the DILG justified the delay of the implementation of the said order against Governor Tanco. It reasoned that it will seek first a clarification from the Office of the Ombudsman *(OMB)* regarding the application of the *Aguinaldo Doctrine*. Due to this, the complainant claims that it is the duty of the DILG, as an implementing agency of the order of the Office of the Ombudsman, to implement the order and not to question it.

For the above reasons, the complainant concluded that it is very clear that Atty. Nuyda as the RD of the DILG Regional Office VI, committed a Gross Neglect of Duty as he vehemently delayed and refused to comply with the directive of the OMB.

On the other hand, the respondent filed his Comment[4] on June 2, 2016. According to the respondent, he was just following the orders of his superior, Undersecretary Austere A. Panadero *(Usec. Panadero)* of the DILG to await further advice on the implementation of the dismissal of Governor Tanco of Capiz. On October 22, 2015, Usec. Panadero wrote a Letter[5] dated October 22, 2015 to Assistant Ombudsman Jennifer J. Manalili seeking clarification as to the applicability of the Aguinaldo doctrine in relation to the decision of the OMB dismissing Governor Tanco from service. The move by Usec. Panadero was in accordance with the standing arrangement between the DILG and the OMB where officials of the DILG were advised to seek prior clarification with the OMB should there be issues that arise on the implementation of the latter's decisions.

In addition, Usec. Panadero issued a Memorandum[6] dated October 22, 2015 directing the respondent to cause immediate implementation of the OMB Decision[7] only against Vladimir. The said Memorandum was received by the respondent on October 23, 2015 and, on the same day, he immediately issued a

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[4] *Id.* at 9-47.

[5] *Id.* at 41-42.

[6] *Id.* at 22-23.

[7] *Id.* at 25-35.

Memorandum addressed to Clyne B. Deocampo, Provincial Director of the DILG in Capiz, directing her, in turn, to immediately implement the dismissal of Vladimir from the service.

Likewise, the respondent issued two (2) other Memoranda,[8] both dated October 23, 2015, one issued to Vladimir directing him to cease and desist from performing the functions of the Office of the Security Officer III immediately upon receipt of the Memorandum, and the other issued to Governor Tanco to abide by the decision of the OMB in the dismissal of his son Vladimir from office.

Further, the OMB subsequently confirmed that the action taken by the DILG was correct through a Letter[9] dated November 16, 2015 by Atty. M.A. Christian O. Uy of the OMB, advising the DILG that the re-election of Governor Tanco operated "as a condonation of his misconduct to the extent of cutting off the right to remove him from office," pursuant to *Aguinaldo v. Hon. Santos*.[10] Afterwards, Usec. Panadero issued a Memorandum[11] dated December 11, 2015 directed to the respondent stating that because of the Aguinaldo doctrine and the advice from the OMB, the decision of dismissal meted on Governor Tanco can no longer be implemented. Accordingly the respondent filed his Compliance Report[12] on the Implementation of the Decision of the OMB dated June 1, 2015.

Verily, for Atty. Nuyda, he was just following orders from his superior and the subsequent confirmation by the OMB that the action taken by the DILG was correct only show that he did not violate any law or rule more so the CPR.

On December 6, 2016, the case was set for mandatory conference wherein only the counsel of Atty. Nuyda was present.

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

[9] *Id.* at 45.

[10] 287 Phil. 851, 858 (1992).

[11] *Rollo*, pp. 43-44.

[12] *Id.* at 47.

The mandatory conference was reset on January 9, 2016 to give an opportunity for the complainant to appear. However, at the said mandatory conference, the complainant once again failed to appear. Meanwhile, Atty. Nuyda, together with his counsel, was present. This prompted the Investigating Commissioner to terminate the mandatory conference and order the parties to submit their respective position papers, attaching thereto their supporting documents and the affidavits of their witnesses.

Atty. Nuyda filed his Position Paper[13] on February 6, 2017, while the complainant did not. After reviewing the records of the case, the IBP-CBD decided not to conduct any further clarificatory hearing and considered the matter submitted for report and recommendation.

Upon a thorough evaluation of the evidence presented by the parties in their respective pleadings, the IBP-CBD submitted its Report and Recommendation[14] dated July 28, 2017, dismissing the complaint of Macaventa for lack of merit. Thus, the IBP Investigating Commissioner found that there was no gross neglect of duty on the part of Atty. Nuyda. This ruling is based on the fact that Atty. Nuyda simply followed the directive given to him by his superior at the DILG and there was never any intentional or willful disobedience to the Decision of the OMB, as the latter eventually confirmed that its order dismissing Governor Tanco from the service can no longer be implemented.

In a Resolution[15] dated October 4, 2018, the IBP Board of Governors *(IBP-BOG)* resolved to adopt the aforesaid Report and Recommendation dismissing the complaint.

On December 17, 2019, the IBP-CBD transmitted to the Court the Notices of Resolution and records of the case for appropriate action.

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[13] *Id.* at 82-94.

[14] *Id.* at 162-165.

[15] *Id.* at 160.

The Issue Before the Court

The essential issue in this case is whether or not respondent should be held administratively liable for violating the Code of Professional Responsibility.

Our Ruling

The Court resolves to adopt the findings of fact of the IBP.

In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence, *i.e.*, 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. Charges based on mere suspicion and speculation likewise cannot be given credence.[16] In the present case, there is no sufficient, clear and convincing evidence to hold Atty. Nuyda administratively liable for Gross Neglect of Duty.

Gross neglect of duty or gross negligence 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 willfully 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.[17]

As noted by the IBP, Atty. Nuyda simply followed the directive given to him by his superior at the DILG to await further advice on the dismissal of Governor Tanco. In addition, there was never any intentional or willful disobedience to the decision

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[16] *Cabas v. Atty. Sususco, et al.*, 787 Phil. 167, 174 (2016).

[17] *Id.* at 173-174.

of the OMB, as the latter, in fact, eventually confirmed that its order dismissing Governor Tanco from service can no longer be implemented. Thus, there is no gross neglect of duty on the part of Atty. Nuyda.

In order to be guilty of gross neglect of duty, it must be shown that respondent manifested flagrant and culpable refusal or unwillingness to perform a duty.[18] However, in the instant case, there is no evidence to show that respondent did not exercise the slightest care or indifference to the consequences or any flagrant and palpable breach of duty. In fact, Atty. Nuyda followed to the letter directives given to him by higher authorities.

The burden of proof in disbarment and suspension proceedings always rests on the complainant. The Court exercises its disciplinary power only if the complainant establishes the complaint by clear preponderant evidence that warrants the imposition of the harsh penalty. As a rule, an attorney enjoys the legal presumption that he is innocent of the charges made against him until the contrary is proved. An attorney is further presumed as an officer of the Court to have performed his duties in accordance with his oath.[19]

In the present case, the herein complainant was clearly misguided and did not even present a valid argument. Even without the presumption that an attorney as an officer of the Court have performed his duties in accordance with his oath, it is plain and logical that the respondent only followed the protocol in implementing the subject Decision of the OMB. The said protocol is pursuant to the standing arrangement between the DILG and the OMB where officials of the DILG were advised to seek prior clarification with the OMB should there be issues that arise on the implementation of the latter's decisions. Thus, his actions were done within the authority granted to him and the laws.

While the Court will not avoid its responsibility in meting out the proper disciplinary punishment upon lawyers who fail

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[18] *Id.* at 174.

[19] *Lanuza v. Atty. Magsalin III, et al.*, 749 Phil. 104, 112 (2014).

to live up to their sworn duties, the Court will not wield its axe against those the accusations against whom are not indubitably proven.[20] Much less, in this case where the accusations are obviously baseless.

In view of the foregoing, the Court finds no cogent reason to depart from the resolution of the IBP-BOG to dismiss the complaint against Atty. Nuyda.

WHEREFORE, the Court **AFFIRMS** the Resolution of the Board of Governors of the Integrated Bar of the Philippines, adopting the Report and Recommendation of the Investigating Commissioner, and **DISMISSES** the charge against Atty. Anthony Nuyda for lack of merit.

SO ORDERED.

Caguioa, Lazaro-Javier, Lopez, and *Rosario, JJ.*, concur.

[20] *Id.* at 113.

SECOND DIVISION

[G.R. No. 197389. October 12, 2020]

REPUBLIC OF THE PHILIPPINES, *Petitioner, v.* **MANUEL M. CARAIG,** *Respondent*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEAL BY *CERTIORARI*; ONLY QUESTIONS OF LAW SHOULD BE RAISED THEREIN FOR THE COURT IS NOT A TRIER OF FACTS.— Rule 45 of the Rules of Court prescribes that only questions of law should be raised in petitions filed under the said rule since factual questions are not the proper subject of an appeal by *certiorari*. The Court is not a trier of facts. Thus, We will not entertain questions of fact as factual findings of the appellate court are considered final, binding, or conclusive on the parties and upon this Court especially when supported by substantial evidence.

2. CIVIL LAW; LAND REGISTRATION; PRESIDENTIAL DECREE NO. 1529 (THE PROPERTY REGISTRATION DECREE); SECTION 14(1); REQUIREMENTS.— No less than the Constitution prescribes under the Regalian Doctrine that all lands which do not appear to be within private ownership are public domain and hence presumed to belong to the State. As such, a person applying for registration has the burden of proof that the land sought to be registered is alienable or disposable. He must present incontrovertible evidence that the land subject of the application has been reclassified or released as alienable agricultural land, or alienated to a private person by the State and no longer remains a part of the inalienable public domain.

> [Pursuant to] Section 14(1) of Presidential Decree (P.D.) No. 1529, otherwise known as the Property Registration Decree . . . [and]
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> . . .
>
> . . . Section 48(b) of the Public Land Act (Commonwealth Act No. 141), as amended by P.D. No. 1073, . . . the applicant must prove the following requirements for the application for

registration of a land under Section 14(1) to prosper: (1) that the subject land forms part of the disposable and alienable lands of the public domain; (2) that the applicants by themselves and their predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation thereof; and (3) that the possession is under a bona fide claim of ownership since June 12, 1945, or earlier.

3. ID.; ID.; ID.; ID.; ID.; DISPOSABLE AND ALIENABLE LANDS OF THE PUBLIC DOMAIN; AN APPLICANT MUST ESTABLISH THE EXISTENCE OF A POSITIVE ACT OF THE GOVERNMENT TO PROVE THAT THE LAND SUBJECT OF THE APPLICATION FOR REGISTRATION IS ALIENABLE.— *Republic v. Court of Appeals* held that to prove that the land subject of the application for registration is alienable, an applicant must establish the existence of a positive act of the government such as a presidential proclamation or an executive order; an administrative action; investigation reports of Bureau of Lands investigators; and a legislative act or a statute.

Here, Manuel presented the February 11, 2003 and March 21, 2003 Certificates from the CENRO stating that . . .

. . .

. . . Lot No. 5525-B is an alienable and disposable land of the public domain. The CENRO Certificates . . . sufficiently showed that the government executed a positive act of declaration that Lot No. 5525-B is alienable and disposable land of public domain as of December 31, 1925. . . . [T]he certificates enjoy the presumption of regularity in the absence of contradictory evidence.

Thus, with the presentation of the CENRO certificates as evidence, together with the documentary evidence, Manuel substantially complied with the legal requirement that the land must be proved to be an alienable and disposable part of the public domain.

4. ID.; ID.; ID.; ID.; ID.; THE GRANT OF AN APPLICATION FOR LAND REGISTRATION ON THE BASIS OF SUBSTANTIAL COMPLIANCE MAY BE APPLIED SUBJECT TO THE DISCRETION OF THE COURTS AND ONLY IF THE TRIAL COURT RENDERED ITS

DECISION ON THE APPLICATION PRIOR TO JUNE 26, 2008.— We are not unaware that in *Republic v. T.A.N. Properties, Inc*. (*Tan Properties*), the Court has already declared that a certification from the PENRO or CENRO is not enough identification that a land has been declared alienable and disposable . . . .

. . .

Simply put, an applicant must present both the certification and approval from the DENR Secretary as proofs that the land is alienable and disposable. Otherwise, the application must be denied.

However, in our subsequent pronouncement in *Republic v. Serrano (Serrano)*, We ruled that the DENR Regional Technical Director's certification annotated on the subdivision plan which the applicant submitted in evidence substantially complies with the legal requirement that the subject land must be proved to be alienable and disposable. Similarly, in *Republic v. Vega* (*Vega*), the applicants therein were found to have substantially complied with the legal requirement despite the absence of an approval from the DENR Secretary of the CENRO certification.

These pronouncements in *Serrano* and *Vega* did not do away with our ruling in *T.A.N. Properties* on strict requirements of proof that the land applied for registration is alienable and disposable since our pronouncements in *Serrano and Vega* are mere *pro hac vice*. . . .

. . .

The grant of an application for land registration on the basis of substantial compliance may be applied subject to the discretion of the courts and only if the trial court rendered its decision on the application prior to June 26, 2008, the date of the promulgation of *T.A.N. Properties*. In *Espiritu v. Republic*, citing *Republic v. Mateo*, the Court shed enlightenment behind Our subsequent decisions granting applications for land registration on the basis of substantial compliance . . . .

. . .

Manuel filed his application for original registration on September 2, 2002. The MTC granted the same on February

28, 2007 or **15 months before the promulgation of *T.A.N. Properties***. Substantial compliance on the legal requirements should therefore be applied in this case. Thus, Manuel duly proved that Lot No. 5525-B is alienable and disposable.

5. ID.; ID.; ID.; ID.; ID.; AN APPLICANT FOR REGISTRATION OF A SUBJECT LAND MUST PROFFER PROOF OF SPECIFIC ACTS OF OWNERSHIP TO SUBTANTIATE HIS CLAIM AND PROVE THAT HE EXERCISED ACTS OF DOMINION OVER THE LOT UNDER A *BONA FIDE* CLAIM OF OWNERSHIP SINCE JUNE 12, 1945 OR EARLIER.— Settled is the rule that an applicant for registration of a subject land must proffer proof of specific acts of ownership to substantiate his claim. In other words, he should prove that he exercised acts of dominion over the lot under a *bona fide* claim of ownership since June 12, 1945 or earlier. "The applicant must present specific acts of ownership to substantiate the claim and cannot just offer general statements which are mere conclusions of law than factual evidence of possession."

In *Republic v. Alconaba*, the Court explained what constitutes open, continuous, exclusive and notorious possession and occupation . . . .

. . .

Further, *Republic v. Estate of Santos* discussed when possession is considered open, continuous, exclusive, and notorious . . . .

. . .

Manuel had sufficiently established his possession in the concept of owner of the property since June 12, 1945, or earlier.

The testimonies of the witnesses are credible enough to support Manuel's claim of possession.

6. ID.; ID.; ID.; ID.; ID.; TAX DECLARATIONS OR TAX RECEIPTS ARE GOOD *INDICIA* OF POSSESSION IN THE CONCEPT OF AN OWNER, BUT IT DOES NOT FOLLOW THAT BELATED DECLARATION OF THE SAME FOR TAX PURPOSES NEGATES THE FACT OF POSSESSION.— The fact that the earliest tax declaration on record is 1955 does not necessarily show that the predecessors

were not in possession of Lot No. 5525 since 1945. Indeed, the Court in a long line of cases has stated that tax declarations or tax receipts are good *indicia* of possession in the concept of owner. However, it does not follow that belated declaration of the same for tax purposes negates the fact of possession. This remains true especially in the instant case where there are no other persons claiming any interest in Lot No. 5525 or, in particular, Lot No. 5525-B.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Elsa T. Villapando-Kasilag for respondent.

D E C I S I O N

HERNANDO, *J.*:

This Petition for Review on *Certiorari*[1] assails the January 31, 2011 Decision[2] and the June 15, 2011 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 89686. The CA affirmed the February 28, 2007 Decision[4] of the Municipal Trial Court (MTC) of Sto. Tomas, Batangas in LRA MTC Case No. 2002-028 (LRA Record No. N-75008) granting the Application for Original Registration of Title of Lot No. 5525-B filed by respondent Manuel M. Caraig (Manuel).

The Antecedent Facts

On September 2, 2002, Manuel, through his attorney-in-fact,[5] Nelson N. Guevarra (Nelson) filed an Application for Original

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[1] *Rollo*, pp. 112-147.

[2] Id. at 51-58; penned by Associate Justice Isaias Dicdican and concurred in by Associate Justices Stephen C. Cruz and Jane Aurora C. Lantion.

[3] Id. at 60-61.

[4] Id. at 171-174.

[5] Id. at 166.

Registration of Title[6] over a 40,000-square meter portion of Lot 5525, known as Lot No. 5525-B, which is located at Brgy. San Luis, Sto. Tomas, Batangas. Lot No. 5525-B is described as follows:

> A parcel of land (Lot 5525-B of the subdivision plan, Csd-04-024208-D, being a portion of Lot 5525, Cad-424, Sto. Tomas Cadastre, L.R.C. Record No.), situated in the Barangay of San Luis, Municipality of Sto. Tomas, Province of Batangas, Bounded on the SW., along line 1-2 by Barangay Road (10.00 m. wide); on the NW., along line 2-3 by Lot 5664, Cad-424, Sto. Tomas Cadastre; on the NE., N., & SE., along lines 3-4-5-6-7-8-9-10 by Creek; on the SE., along lines 10-11-12 by Lot 5526, Cad-424, Sto. Tomas Cadastre; on the SW., & SE., along lines 12-13-1 by Lot 5525-A, of the subdivision plan. x x x containing an area of FORTY THOUSAND (40,000) SQUARE METERS. x x x[7]

Manuel alleged that he bought Lot No. 5525-B from Reynaldo S. Navarro (Reynaldo) as evidenced by a Deed of Absolute Sale[8] dated September 25, 1989. Reynaldo and his predecessors-in-interest had been in open, peaceful, continuous, and exclusive possession of the land prior to June 12, 1945 under a *bona fide* claim of ownership.

Manuel attached the following documents in his application: (a) Tax Declaration No. 017-00991[9] in his name; (b) Deed of Absolute Sale[10] dated September 25, 1989 executed by Reynaldo in his favor; (c) Subdivision Plan[11] of Lot No. 5525-B which was approved on July 3, 2002, together with its blue print, showing that it is a portion of Lot No. 5525; (d) Technical

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[6] Id. at 161-165.

[7] Id. at 161-162.

[8] Records, pp. 8-9.

[9] Id. at 7.

[10] Id. at 8-9.

[11] Id. at 10-11.

Description of Lot 5525-B;[12] and (e) Certification in lieu of Geodetic Engineer's Certificate for registration purposes.[13]

The Office of the Solicitor General (OSG), representing the Republic of the Philippines, filed its Opposition[14] to the application. It sought the denial of Manuel's application based on the following grounds: (a) the land is inalienable and part of the public domain owned by the Republic; (b) Manuel and his predecessors-in-interest were not in continuous, exclusive and notorious possession and occupation of the land since June 12, 1945 or prior thereto; and (c) the evidence attached to the application insufficiently and incompetently proved his acquisition of the land or his continuous, exclusive and notorious possession and occupation thereof.

Only the OSG interposed its opposition to the application. As a result, an Order of General Default was issued against the whole world with the exception of OSG.

During the trial, Manuel presented the following witnesses: (a) Nelson; (b) Arcadio Arcillas (Arcadio); (c) Epifanio Guevarra (Epifanio); (d) Miguel Jaurigue Libot (Miguel); (e) Francisco Malleon (Francisco); and (f) Fermin Angeles (Fermin).

Nelson attested that Manuel could not personally testify as he was working in Italy. They have known each other since they were children and before Manuel married Maribel F. Cabus.

Nelson testified that Lot No. 5525 was previously owned by Evaristo Navarro (Evaristo). In support of his claim, he presented the March 10, 2003 Certification[15] issued by the Office of the Municipal Assessor of Sto. Tomas, Batangas showing that Evaristo was the first declared owner of the said land as reflected in Tax Declaration Nos. 20386/20387 issued in 1955. On November 11, 1958, Evaristo and his wife, Flora Sangalang,

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[12] Id. at 12.

[13] Id. at 14.

[14] *Rollo*, pp. 167-168.

[15] Records, p. 222.

donated Lot No. 5525 to their son Reynaldo as evidenced by a Deed of Donation.[16] Reynaldo then took possession of the entire land until he sold to Manuel a portion thereof, which is Lot No. 5525-B, the land subject of the application for registration.

Nelson further averred that Lot No. 5525-B is alienable and disposable land of public domain. He then submitted the February 11, 2003 Certification[17] issued by the Department of Environment and Natural Resources (DENR) Region IV- Community Environment and Natural Resources Office (CENRO) of Batangas City, which states that Lot No. 5525-B is not covered by any public land application or patent. Nelson also presented another Certification[18] dated March 21, 2003 from the CENRO which declared Lot No. 5525-B to be within the alienable and disposable zone under "Project No. 30, Land Classification Map No. 582 certified on December 31, 1925" except for the three meters strip of land along the creek bounding on the northwestern portion which was for bank protection.[19]

Fermin, a long-time resident of Brgy. San Luis and neighbor of Manuel and his predecessors-in-interest, was also presented as a witness during the trial.[20] He narrated that his and Evaristo's families were neighbors.[21] Fermin used to accompany his mother who would bring food to his father who was tilling their land adjacent to Evaristo's.[22] Each time, he would see Evaristo supervising the farm workers in his land in planting coffee and banana, harvesting the produce and selling the crops afterwards.

Arcadio, another long-time resident of Brgy. San Luis, testified that as early as 1942, the residents of the community knew

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[16] Id. at 236-237.

[17] Id. at 240.

[18] Id. at 238.

[19] Id.

[20] TSN, June 1, 2004, p. 2.

[21] Id. at 3.

[22] Id.

that Evaristo was the owner.[23] Arcadio, who was then 12 years old, would often see Evaristo giving instruction to the workers tilling the land.[24] In the early years, Evaristo's workers planted and harvested banana and coffee. Lot No. 5525 was subsequently owned by Reynaldo, Evaristo's son, who remained in peaceful and continuous possession and ownership of the entire land until he sold a portion thereof, Lot No. 5525-B, to Manuel.[25] After his acquisition of Lot No. 5525-B, Manuel constructed his house and a corner stone on the property.[26] He also planted black pepper, lanzones, and coffee thereon.[27]

Arcadio further recalled that nobody, other than Reynaldo and his predecessors-in-interest, claimed ownership and possession over the said land.

Epifanio, Miguel, and Francisco all corroborated Nelson, Fermin and Arcadio's testimonies that Evaristo was the owner of Lot No. 5525 who used the land for planting crops. It was then inherited by Reynaldo who sold a portion thereof to Manuel. Further, they all recalled that as early as the 1940s, the residents of Brgy. San Luis knew that it was Reynaldo and his predecessors-in-interest who owned the entire land including Lot No. 5525-B before it was sold to Manuel.

Ruling of the Municipal Trial Court:

In its February 28, 2007 Decision,[28] the MTC granted Manuel's application for original registration after it was sufficiently established that he is the owner of Lot No. 5525-B. The *fallo* of the MTC Decision reads:

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[23] TSN, August 18, 2004, pp. 2-4.

[24] Id. at 3-4.

[25] Id. at 6-8.

[26] Id. at 8.

[27] Id.

[28] *Rollo*, pp. 171-174.

WHEREFORE, and upon confirmation of the Order of General Default, the Court hereby adjudicates and decrees Lot No. 5525-B of the subdivision plan, Csd-04-024208-D, being portion of Lot No. 5525, Cad 424, Santo Tomas Cadastre, situated in the Barangay of San Luis, Municipality of Santo Tomas, Province of Batangas, containing an area of Forty Thousand (40,000) Square Meters, in the name of the applicant, Manuel M. Caraig, of legal age, Filipino citizen, married to Maribel F. Cabus and a resident of Barangay San Luis, Santo Tomas, Batangas, as the true and absolute owner thereof.

Once this Decision shall have become final, let the corresponding decree of registration of title be issued in the instant case.

SO ORDERED.[29]

Aggrieved, the OSG appealed to the CA.[30] In its Oppositor-Appellant's Brief, [31] the OSG argued that there was no competent proof that Manuel was in possession of the land for at least 30 years to allow the same to be registered under his name. The MTC erred in giving weight and credit to the testimonies of the witnesses which were purely hearsay. The OSG further insisted that Nelson was incompetent to identify the contents of the Deed of Absolute Sale and the Deed of Donation.

Ruling of the Court of Appeals:

In its January 31, 2011 Decision,[32] the CA affirmed the MTC Decision. It opined that Nelson, as the attorney-in-fact, was authorized to file the application in behalf of Manuel, to represent him in the proceedings, to testify and to present documentary evidence during the trial, and to do any acts in furtherance thereof. Further, Manuel's witnesses sufficiently proved that Manuel, and his predecessors-in-interest were in open, continuous, exclusive, peaceful and adverse possession in the concept of an owner prior to June 12, 1945.

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[29] Id. at 174.

[30] Id. at 175-176.

[31] Id. at 178-197.

[32] Id. at 112-147.

The OSG filed a Motion for Reconsideration[33] which the CA denied in its June 15, 2011 Resolution.[34]

Hence, this Petition for Review on *Certiorari*.

Issues

The OSG raised the following errors to support its petition:

I.

THE COURT *A QUO* ERRED IN GIVING PROBATIVE VALUE TO HEARSAY EVIDENCE.

II.

NO COMPETENT EVIDENCE EXISTS TO SHOW THAT RESPONDENT WAS IN POSSESSION OF THE LAND FOR AT LEAST THIRTY (30) YEARS.

III.

THE CERTIFICATION THAT THE SUBJECT PROPERTY IS ALIENABLE AND DISPOSABLE IS INSUFFICIENT SANS AN EXPRESS GOVERNMENT MANIFESTATION THAT THE PROPERTY IS ALREADY PATRIMONIAL OR NO LONGER RETAINED FOR PUBLIC SERVICE OR THE DEVELOPMENT OF NATIONAL WEALTH, UNDER ARTICLE 422 OF THE CIVIL CODE.[35]

In fine, the issues to be resolved are as follows: (a) whether or not the CENRO Certificates are sufficient proofs that Lot No. 5525-B is alienable and disposable; and (b) whether or not Manuel sufficiently proved that he and his predecessors-in-interest were in continuous, peaceful, notorious and exclusive possession in the concept of an owner of the subject land.

The Court's Ruling

The Petition is bereft of merit.

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[33] Id. at 201-209.

[34] Id. at 60-61.

[35] Id. at 29.

The arguments raised in the instant petition involve a mixed question of facts and of law.

Rule 45 of the Rules of Court prescribes that only questions of law should be raised in petitions filed under the said rule since factual questions are not the proper subject of an appeal by *certiorari*.[36] The Court is not a trier of facts. Thus, We will not entertain questions of fact as factual findings of the appellate court are considered final, binding, or conclusive on the parties and upon this Court especially when supported by substantial evidence.[37]

The Court, in *Leoncio v. De Vera*,[38] differentiated a question of law from a question of fact in this wise:

> A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.

Here, the OSG is not only raising a question of law, *i.e.*, on whether the evidence presented by Manuel was sufficient to prove that the subject land is alienable and disposable. It is

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[36] See *Pascual v. Burgos*, 776 Phil. 167, 182 (2016).

[37] Id.

[38] 569 Phil. 512, 516 (2008), citing *Binay v. Odeña*, 551 Phil. 681, 689 (2007).

also raising a question of fact as it seeks the Court's determination as to the veracity and truthfulness of the testimonies of the witnesses presented by Manuel in support of his claim that he and his predecessors-in-interest were in actual, continuous, exclusive and notorious possession and ownership of the land even before June 12, 1945. Consequently, the Court is constrained to exercise its jurisdiction in the case since the errors raised by the OSG in its Petition, being mixed questions of fact and of law, are not proper subjects of an appeal by *certiorari*.

In any case, the Petition is still dismissible for utter lack of merit.

The requirements under Section 14 (1) of Presidential Decree (P.D.) No. 1529 were duly met.

No less than the Constitution prescribes under the Regalian Doctrine that all lands which do not appear to be within private ownership are public domain and hence presumed to belong to the State.[39] As such, a person applying for registration has the burden of proof that the land sought to be registered is alienable or disposable.[40] He must present incontrovertible evidence that the land subject of the application has been reclassified or released as alienable agricultural land, or alienated to a private person by the State and no longer remains a part of the inalienable public domain.[41]

Section 14 (1) of Presidential Decree (P.D.) No. 1529, otherwise known as the Property Registration Decree, provides:

Sec. 14. Who may apply. The following persons may file in the proper Court of First Instance an application for registration of title

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[39] See Section 2, Article XII of the 1987 Philippine Constitution.

[40] See *Espiritu v. Republic*, 811 Phil. 506, 519 (2017), citing *People of the Philippines v. De Tensuan*, 720 Phil. 326, 339 (2013).

[41] See *Republic v. Medida*, 692 Phil. 454, 463 (2012), citing *Republic v. Dela Paz*, 649 Phil. 106, 115 (2010).

to land, whether personally or through their duly authorized representatives:

(1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a bona fide claim of ownership since June 12, 1945, or earlier.

In the same way, Section 48 (b) of the Public Land Act (Commonwealth Act No. 141), as amended by P.D. No. 1073, states:

SECTION 48. The following-described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title thereof, under the Land Registration Act, to wit:

x x x x

(b) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of agricultural lands of the public domain, under a bona fide claim of acquisition of ownership, since June 12, 1945, immediately preceding the filing of the application for confirmation of title except when prevented by war or *force majeure*. These shall be conclusively presumed to have performed all the conditions essential to a government grant and shall be entitled to a certificate of title under the provisions of this chapter.

Pursuant to the above-mentioned provisions, the applicant must prove the following requirements for the application for registration of a land under Section 14 (1) to prosper: (1) that the subject land forms part of the disposable and alienable lands of the public domain; (2) that the applicants by themselves and their predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation thereof; and (3) that the possession is under a bona fide claim of ownership since June 12, 1945, or earlier.[42]

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[42] *Republic v. Estate of Santos*, 802 Phil. 801, 812 (2016).

Manuel adequately met all these requirements.

There is substantial proof that the subject land is disposable and alienable.

The OSG averred in its Petition that the CENRO Certificates dated February 11, 2003 and March 21, 2003 are insufficient proofs that Lot No. 5525-B is an alienable and disposable land. We disagree.

Republic v. Court of Appeals[43] held that to prove that the land subject of the application for registration is alienable, an applicant must establish the existence of a positive act of the government such as a presidential proclamation or an executive order; an administrative action; investigation reports of Bureau of Lands investigators; and a legislative act or a statute.

Here, Manuel presented the February 11, 2003 and March 21, 2003 Certificates from the CENRO stating that Lot No. 5525-B is disposable and alienable. The CENRO Certificate[44] dated February 11, 2003 stated that Lot No. 5525-B is not covered by any public land application or patent. The March 21, 2003 CENRO Certificate[45] likewise declared Lot No. 5525-B to be within the alienable and disposable zone under "Project No. 30, Land Classification Map No. 582 certified on December 31, 1925" except for the three-meter strip of land along the creek bounding on the northwestern portion which was for bank protection.

Noticeably, neither the Land Registration Authority nor the DENR opposed Manuel's application on the ground that Lot No. 5525-B is inalienable. Hence, since no substantive rights stand to be prejudiced, the benefit of the Certifications should therefore be equitably extended in favor of Manuel.[46]

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[43] 440 Phil. 697, 710-711 (2002).

[44] *Records*, p. 240.

[45] Id. at 238.

[46] *Republic v. Serrano*, 627 Phil. 350, 360 (2010).

Clearly, Lot No. 5525-B is an alienable and disposable land of the public domain. The CENRO Certificates dated February 11, 2003 and March 21, 2003 sufficiently showed that the government executed a positive act of declaration that Lot No. 5525-B is alienable and disposable land of public domain as of December 31, 1925. Remarkably, the OSG failed to controvert the said act of the government. Hence, the certificates enjoy the presumption of regularity in the absence of contradictory evidence.[47]

Thus, with the presentation of the CENRO certificates as evidence, together with the documentary evidence, Manuel substantially complied with the legal requirement that the land must be proved to be an alienable and disposable part of the public domain.

Strict requirements to prove that a land is disposable and alienable as set forth in Republic v. T.A.N. Properties, Inc. is inapplicable in the instant case.

We are not unaware that in *Republic v. T.A.N. Properties, Inc. (Tan Properties)*,[48] the Court has already declared that a certification from the PENRO or CENRO is not enough identification that a land has been declared alienable and disposable, *viz.*:

> The applicant for land registration must prove that the DENR Secretary had approved the land classification and released the land of the public domain as alienable and disposable, and that the land subject of the application for registration falls within the approved area per verification through survey by the PENRO or CENRO. In addition, the applicant for land registration must present a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records.

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[47] *Republic v. Consunji*, 559 Phil. 683, 699-700 (2007).

[48] 578 Phil. 441, 452-453 (2008).

These facts must be established to prove that the land is alienable and disposable.

Simply put, an applicant must present both the certification and approval from the DENR Secretary as proofs that the land is alienable and disposable.[49] Otherwise, the application must be denied.[50]

However, in our subsequent pronouncement in *Republic v. Serrano (Serrano)*,[51] We ruled that the DENR Regional Technical Director's certification annotated on the subdivision plan which the applicant submitted in evidence substantially complies with the legal requirement that the subject land must be proved to be alienable and disposable. Similarly, in *Republic v. Vega (Vega)*,[52] the applicants therein were found to have substantially complied with the legal requirement despite the absence of an approval from the DENR Secretary of the CENRO certification.

These pronouncements in *Serrano* and *Vega* did not do away with our ruling in *T.A.N. Properties* on strict requirements of proof that the land applied for registration is alienable and disposable since our pronouncements in *Serrano and Vega* are mere *pro hac vice*. This We have elucidated in *Vega*:

> It must be emphasized that the present ruling on substantial compliance applies *pro hac vice*. It does not in any way detract from our rulings in *Republic v. T.A.N Properties, Inc.*, and similar cases which impose a strict requirement to prove that the public land is alienable and disposable, especially in this case when the Decisions of the lower court and the Court of Appeals were rendered prior to these rulings. To establish that the land subject of the application is alienable and disposable public land, the general rule remains: all applications for original registration under the Property Registration Decree must include both (1) a CENRO or PENRO certification and (2) a certified true copy of the original classification made by the DENR Secretary.

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[49] See *Republic v. San Mateo*, 746 Phil. 394, 403 (2014).

[50] Id.

[51] *Supra* note 46.

[52] 654 Phil. 511 (2011).

As an exception, however, the courts — in their sound discretion and based solely on the evidence presented on record — may approve the application, *pro hac vice*, on the ground of substantial compliance showing that there has been a positive act of government to show the nature and character of the land and an absence of effective opposition from the government. **This exception shall only apply to applications for registration currently pending before the trial court prior to this Decision and shall be inapplicable to all future applications.** [Citations Omitted.] (Emphasis Supplied.)

The grant of an application for land registration on the basis of substantial compliance may be applied subject to the discretion of the courts and only if the trial court rendered its decision on the application prior to June 26, 2008, the date of the promulgation of *T.A.N. Properties*.[53] In *Espiritu v. Republic*,[54] citing *Republic v. Mateo*,[55] the Court shed enlightenment behind Our subsequent decisions granting applications for land registration on the basis of substantial compliance in this wise:

In *Vega*, the Court was mindful of the fact that the trial court rendered its decision on November 13, 2003, way before the rule on strict compliance was laid down in *T.A.N. Properties* on June 26, 2008. Thus, the trial court was merely applying the rule prevailing at the time, which was substantial compliance. Thus, even if the case reached the Supreme Court after the promulgation of *T.A.N. Properties*, the Court allowed the application of substantial compliance, because there was no opportunity for the registrant to comply with the Court's ruling in *T.A.N. Properties*, the trial court and the CA already having decided the case prior to the promulgation of *T.A.N. Properties*.[56] [Citations Omitted.]

Manuel filed his application for original registration on September 2, 2002. The MTC granted the same on February 28, 2007 or **15 months before the promulgation of *T.A.N.***

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[53] *Supra* note 48 at 520.

[54] Id.

[55] *Supra* note 40.

[56] Id. at 405.

Properties. Substantial compliance on the legal requirements should therefore be applied in this case. Thus, Manuel duly proved that Lot No. 5525-B is alienable and disposable.

Manuel has proved possession and occupation of the property under a bona fide claim of ownership.

Settled is the rule that an applicant for registration of a subject land must proffer proof of specific acts of ownership to substantiate his claim. In other words, he should prove that he exercised acts of dominion over the lot under a *bona fide* claim of ownership since June 12, 1945 or earlier.[57] "The applicant must present specific acts of ownership to substantiate the claim and cannot just offer general statements which are mere conclusions of law than factual evidence of possession."[58]

In *Republic v. Alconaba*,[59] the Court explained what constitutes open, continuous, exclusive and notorious possession and occupation, to wit:

> The law speaks of *possession* and *occupation*. Since these words are separated by the conjunction and, the clear intention of the law is not to make one synonymous with the other. Possession is broader than occupation because it includes constructive possession. When, therefore, the law adds the word *occupation*, it seeks to delimit the all encompassing effect of constructive possession. Taken together with the words open, continuous, exclusive and notorious, the word *occupation* serves to highlight the fact that for an applicant to qualify, his possession must not be a mere fiction. Actual possession of a land consists in the manifestation of acts of dominion over it of such a nature as a party would naturally exercise over his own property.[60] [Citations Omitted.]

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[57] *Republic v. Serrano, supra* note 46.

[58] *Republic v. Court of Appeals*, 249 Phil. 148, 154 (1988).

[59] 471 Phil. 607 (2004).

[60] Id. at 620.

Further, *Republic v. Estate of Santos*[61] discussed when possession is considered open, continuous, exclusive, and notorious as follows:

> Possession is open when it is patent, visible, apparent, notorious, and not clandestine. It is continuous when uninterrupted, unbroken and not intermittent or occasional. It is exclusive when the adverse possessor can show exclusive dominion over the land and an appropriation of it to his own use and benefit. And it is notorious when it is so conspicuous that it is generally known and talked of by the public or the people in the neighborhood.[62] [Citation Omitted.]

Manuel had sufficiently established his possession in the concept of owner of the property since June 12, 1945, or earlier.

The testimonies of the witnesses are credible enough to support Manuel's claim of possession. Worthy to note that the witnesses unswervingly declared that Evaristo, in the concept of an owner, occupied and possessed Lot No. 5525 even before June 12, 1945. Remarkably, Arcadio, who frequented the land since he was a child, categorically testified that it was Evaristo who possessed and owned Lot No. 5525 as early as 1942. Evaristo performed specific acts of ownership such as planting banana and coffee in the land, and hiring the services of other workers to help him till the soil. Thereafter, Lot No. 5525 was transferred to Reynaldo, Evaristo's son, who continued to cultivate the same.

The testimony of Arcadio was in confluence with the testimonies of other witnesses. It is important to note the testimony of Fermin who, despite his old age, clearly remembered and firmly stated that their land which was tilled by his father is adjacent to Lot No. 5525 owned by Evaristo. As the owner, Evaristo would direct his workers to plant banana and coffee in his land, harvest the crops, and sell them thereafter. Fermin also vividly recalled that Evaristo donated Lot No. 5525 to Reynaldo in 1958 who continued cultivating the land. Reynaldo

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[61] *Supra* note 42.

[62] Id. at 814.

then sold a portion thereof, i.e., Lot No. 5525-B, to Manuel who constructed his house and planted various crops therein.

The possession and occupation as *bona fide* owner of Evaristo and Reynaldo can be tacked to the possession of Manuel who acquired Lot No. 5525-B by virtue of a Deed of Absolute Sale dated September 25, 1989 executed by Reynaldo in his favor. Notably, Lot No. 5525-B, which is the land subject of the application for registration, is a portion of Lot No. 5525 as evidenced by the Subdivision Plan and the Technical Description of Lot No. 5525-B. Hence, Reynaldo and his predecessors-in-interest's possession of Lot No. 5525 can be transferred to Manuel but only as regards to Lot No. 5525-B, the sold portion and land subject of the application for registration.

The fact that the earliest tax declaration on record is 1955 does not necessarily show that the predecessors were not in possession of Lot No. 5525 since 1945. Indeed, the Court in a long line of cases has stated that tax declarations or tax receipts are good *indicia* of possession in the concept of owner.[63] However, it does not follow that belated declaration of the same for tax purposes negates the fact of possession.[64] This remains true especially in the instant case where there are no other persons claiming any interest in Lot No. 5525 or, in particular, Lot No. 5525-B.[65]

All told, there is no sufficient reason to reverse the findings of the MTC as affirmed by the CA. Lot No. 5525-B is duly proven to be alienable and disposable land of public domain. Further, Manuel has been in continuous, open, notorious and exclusive possession and occupation thereof even before June 12, 1945.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. The January 31, 2011 Decision and the June 15, 2011 Resolution of the Court of Appeals in CA-G.R. CV No.

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[63] *Recto v. Republic*, 483 Phil. 81, 90 (2004).

[64] Id.

[65] Id.

89686, which in turn affirmed the February 28, 2007 Decision of the Municipal Trial Court of Sto. Tomas, Batangas in LRA MTC Case No. 2002-028 (LRA Record No. N-75008) granting Manuel's application for original registration of title over Lot No. 5525-B, are **AFFIRMED**.

No costs.

SO ORDERED.

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

Baltazar-Padilla, J., on leave.

SECOND DIVISION

[G.R. No. 197593. October 12, 2020]

BANK OF THE PHILIPPINE ISLANDS, *Petitioner*, *v.* **CENTRAL BANK OF THE PHILIPPINES (NOW BANGKO SENTRAL NG PILIPINAS) and CITIBANK, N.A.,** *Respondents*.

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTION; STATE IMMUNITY; MAY BE WAIVED EXPRESSLY OR IMPLIEDLY.— One of the generally accepted principles of international law, which we have adopted in our Constitution under Article XVI, Section 3 is the principle that a state may not be sued without its consent, which principle is also embodied in the 1935 and 1973 Constitutions. However, state immunity may be waived expressly or impliedly. Express consent may be embodied in a general or special law. On the other hand, consent is implied when the state enters into a contract or it itself commences litigation.

2. ID.; ID.; ID.; ID.; GOVERNMENT AGENCIES; THE QUESTION OF A GOVERNMENT AGENCY'S SUABILITY DEPENDS ON WHETHER IT IS INCORPORATED OR UNINCORPORATED.— In the case of government agencies, the question of its suability depends on whether it is incorporated or unincorporated. An incorporated agency has a Charter of its own with a separate juridical personality while an unincorporated agency has none. In addition, the Charter of an incorporated agency shall explicitly provide that it has waived its immunity from suit by granting it with the authority to sue and be sued. This applies regardless of whether its functions are governmental or proprietary in nature.

3. ID.; ID.; ID.; ID.; GOVERNMENT CORPORATIONS; CENTRAL BANK OF THE PHILIPPINES (CBP); REGARDED AS A GOVERNMENT CORPORATION WITH SEPARATE JURIDICAL PERSONALITY AND ITS FUNCTION AS THE CENTRAL MONETARY AUTHORITY IS A PURELY GOVERNMENTAL

FUNCTION.— . . . [T]he CBP, which was created under RA 265 as amended by Presidential Decree No. 72 (PD 72), is a government corporation with separate juridical personality and not a mere agency of the government. Specifically, Sections 1 and 4 of RA 265, as amended, provided for the creation of the CBP, a corporate body with certain corporate powers which include the authority to sue and be sued. Its main function is to administer the monetary, banking and credit system of the Philippines which is primarily governmental in nature. It has the following duties: (a) to primarily maintain internal and external monetary stability in the Philippines, and to preserve the international value of the peso and the convertibility of the peso into other freely convertible currencies; and (b) to foster monetary, credit and exchange conditions conducive to a balanced and sustainable growth of the economy.

Undoubtedly, the function of the CBP as the central monetary authority is a purely governmental function. . . .

. . .

In 1948, the CBP was created under RA 265, as amended, with a separate and distinct juridical personality. Undeniably, the function of the CBP and its predecessors of supervising the monetary and the banking systems of the Philippines is a governmental function. In fact, both the 1973 and 1987 Constitutions provide for the establishment of a central monetary authority which shall provide policy direction in the areas of money, banking, and credit; and supervise the operations of banks and exercise regulatory authority over the operations of finance companies and other institutions.

4. ID.; ID.; ID.; ID.; THE CBP PERFORMS A GOVERNMENTAL FUNCTION BUT IT IS NOT IMMUNE FROM SUIT AS ITS CHARTER BY EXPRESS PROVISION, WAIVED ITS IMMUNITY FROM SUIT, BUT THIS DOES NOT NECESSARILY MEAN THAT IT CONCEDED ITS LIABILITY.— . . . [I]ncidental to its main function and duties, Section 107 of RA 265, as amended by Section 54 of PD 72, mandated CBP to establish nationwide facilities to provide interbank clearing . . . .

. . .

. . . CBP's clearing house facility for regional checks is within its functions and duties as the central monetary authority mandated in its Charter. This is true despite the existence of the Philippine Clearing House Corporation (PCHC), a private corporation incorporated in July 1977, which also provides clearing services for checks issued within Metro Manila during the time of petitioner BPI's defraudation. While at present, the PCHC handles the clearing of all checks issued by its member banks, this does not necessarily mean that CBP was performing a proprietary function during that time by providing a clearing house facility for regional checks. It bears stressing that establishing clearing house facilities for the member banks is a necessary incident to its primary governmental function of administering monetary, banking and credit system of the Philippines as per Section 107 of RA 265, as amended. The subsequent privatization of the clearing of checks did not negate the fact that it was CBP's duty to establish nationwide facilities to provide interbank clearing at no cost to the banks as per RA 265 as amended. . . .

. . . [W]hile the CBP performed a governmental function in providing clearing house facilities, it is not immune from suit as its Charter, by express provision, waived its immunity from suit. However, although the CBP allowed itself to be sued, it did not necessarily mean that it conceded its liability. Petitioner BPI had been given the right to bring suit against CBP, such as in this case, to obtain compensation in damages arising from torts, subject, however, to the right of CBP to interpose any lawful defense.

5. ID.; ID.; ID.; ID.; GOVERNMENTAL FUNCTIONS; THE STATE IN THE PERFORMANCE OF ITS GOVERNMENTAL FUNCTIONS IS LIABLE ONLY TO THE TORTUOUS ACTS OF ITS SPECIAL AGENTS.— Anent the issue of whether CBP is liable for the torts committed by its employees Valentino and Estacio, the test of liability depends on whether or not the employees, acting in behalf of CBP, were performing governmental or proprietary functions. The State in the performance of its governmental functions is liable only for the tortuous acts of its special agents. On the other hand, the State becomes liable as an ordinary employer when performing its proprietary functions. . . .

. . .

. . . CBP's establishment of clearing house facilities for its member banks to which Valentino and Estacio were assigned as Bookkeeper and Janitor-Messenger, respectively, is a governmental function. As such, the State or CBP in this case, is liable only for the torts committed by its employee when the latter acts as a special agent but not when the said employee or official performs his or her functions that naturally pertain to his or her office. A special agent is defined as one who receives a definite and fixed order or commission, foreign to the exercise of the duties of his office. Evidently, both Valentino and Estacio are not considered as special agents of CBP during their commission of the fraudulent acts against petitioner BPI as they were regular employees performing tasks pertaining to their offices, namely, bookkeeping and janitorial-messenger. Thus, CBP cannot be held liable for any damage caused to petitioner BPI by reason of Valentino and Estacio's unlawful acts.

6. ID.; ADMINISTRATIVE LAW; PUBLIC OFFICERS; WHERE A PUBLIC OFFICER ACTS WITHOUT OR IN EXCESS OF JURISDICTION, ANY INJURY OR DAMAGE CAUSED BY SUCH ACTS IS HIS OWN PERSONAL LIABILITY AND CANNOT BE IMPUTED TO THE STATE.— . . . [E]ven assuming that CBP is an ordinary employer, it still cannot be held liable. Article 2180 of the Civil Code provides that an employer shall be liable for the damages caused by their employees acting within the scope of their assigned tasks. An act is deemed an assigned task if it is "done by an employee, in furtherance of the interests of the employer or for the account of the employer at the time of the infliction of the injury or damage." Obviously, Valentino and Estacio's fraudulent acts of tampering with and pilfering of documents are not in furtherance of CBP's interests nor done for its account as the said acts were unauthorized and unlawful. Also, petitioner BPI has the burden to prove that Valentino and Estacio's fraudulent acts were performed within the scope of their assigned tasks, which it failed to do. It is only then that the presumption that CBP, as employer, was negligent would arise which then compels CBP to show evidence that it exercised due diligence in the selection and supervision of its employees.

Thus, where a public officer acts without or in excess of jurisdiction, any injury or damage caused by such acts is his or

her own personal liability and cannot be imputed to the State. . . . [T]he fraudulent acts of CBP's employees Valentino and Estacio, were evidently not pursuant to their functions and were in excess of or without authority; therefore, any injury or damage caused by such acts to petitioner BPI shall be Valentino's and Estacio's own personal liabilities which should not be imputed to CBP as their employer.

APPEARANCES OF COUNSEL

Padilla Law Office for petitioner.
Agcaoili & Associates for respondent Citibank, N.A.

D E C I S I O N

HERNANDO, *J.*:

Challenged in this Petition for Review on *Certiorari*[1] are the January 26, 2011 Decision[2] and July 8, 2011 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 70699, which reversed and set aside the April 24, 2001 Decision[4] of the Regional Trial Court (RTC), Branch 64 of Makati City, in Civil Case No. 18793. The appellate court dismissed the complaint filed by petitioner Bank of the Philippine Islands (BPI) against respondent Central Bank of the Philippines (CBP), now Bangko Sentral ng Pilipinas, and ordered the cancellation of payment made by CBP in the amount of ₱4.5 million earlier credited to BPI's "Suspense Account."

The Antecedents

Petitioner BPI and respondent Citibank, N.A. (Citibank) are both members of the Clearing House established and supervised

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[1] *Rollo*, pp. 9-47.

[2] CA *rollo*, pp. 373-391; penned by Associate Justice Ricardo R. Rosario and concurred in by Associate Justices Hakim S. Abdulwahid and Samuel H. Gaerlan (now a member of this Court).

[3] Id. at 462-463.

[4] Records, pp. 489-515; penned by Judge Delia H. Panganiban.

by the CBP. Both banks maintained demand deposit balances with the CBP for their clearing transactions with other commercial banks coursed through the said clearing facilities.

On January 28, 1982, BPI Laoag City Branch discovered outstanding discrepancies in its inter-bank reconciliation statements in CBP in the amount of ₱9 million. Hence, on February 9, 1982, petitioner BPI filed a letter-complaint before the CBP on the latter's irregular charging of its demand deposit account in the amount of ₱9 million.[5] It also requested CBP to conduct the necessary investigation of the matter. In addition, both CBP and petitioner BPI agreed to refer the matter to the National Bureau of Investigation (NBI) to conduct a separate investigation.[6]

The results of the NBI Investigation Report[7] showed that an organized criminal syndicate using a scheme known as "pilferage scheme" committed the bank fraud in the following manner: (a) the infiltration of the Clearing Division of the CBP with the connivance of some personnel of the CBP Clearing House; (b) the pilferage of "out-of-town" checks; (c) the tampering of vital banking documents, such as clearing manifests and clearing statements; (d) the opening of Current Accounts by members of the syndicate with the BPI Laoag City Branch and Citibank, Greenhills Branch in Mandaluyong City; and (e) the withdrawal of funds through checks deposited with Citibank and drawn against BPI.

It was further disclosed that on October 14, 1981, two accounts were opened at BPI Laoag City Branch and another at Citibank Greenhills Branch.[8] A Savings Account in BPI Laoag City Branch was opened by Mariano Bustamante (Bustamante) with an initial deposit of ₱3,000.00, ₱2,000.00 of which was in check and ₱1,000.00 in cash.[9] On the same day, Bustamante also opened

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[5] Id. at 911-918.

[6] Id.

[7] Id. at 781-786.

[8] Id. at 782.

[9] Id.

a Current Account with the BPI Laoag City Branch with an initial deposit of ₱1,000 with which he was given a checkbook.[10] On the other hand, Marcelo Desiderio (Desiderio) opened a Current Account under Magna Management Consultant (MMC) with Citibank Greenhills Branch with an initial deposit of ₱10,000.00 and with Rolando San Pedro as the authorized signatory or owner of the account.[11]

Thereafter, Citibank Greenhills Branch received by way of deposit to the Current Account of MMC various checks drawn against BPI Laoag City Branch: (a) two checks dated October 9 and 15, 1981 in the amounts of ₱498,719.70 and ₱501,260.30, respectively, deposited on October 16, 1981; (b) two checks dated October 26 and 28, 1981 in the total amount of ₱3 million deposited on October 30, 1981; and (c) various checks in the total amount of ₱5 million deposited on November 20, 1981. All these checks were sent by Citibank Greenhills Branch to the CBP Clearing House for clearing purposes.[12]

Upon arrival of the checks at the CBP Clearing House, Manuel Valentino (Valentino), CBP's Bookkeeper, with the assistance of Janitor-Messenger Jesus Estacio (Estacio), intercepted and pilfered the BPI Laoag City Branch checks, and tampered the clearing envelope. They reduced the amounts appearing on the clearing manifest, the BPI clearing statement and the CBP manifest to conceal the fact that the BPI Laoag City Branch checks showing the original amounts were deposited with Citibank Greenhills Branch.[13] Thereafter, the altered CBP manifest and clearing statement, together with the clearing envelope which contained the checks intended for BPI Laoag City Branch but without the pilfered checks deposited with the Citibank Greenhills Branch in the account of MMC and drawn against Bustamante's BPI Laoag City Branch account, were forwarded to CBP Laoag Clearing Center.[14]

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[10] Id. at 500.

[11] Id. at 782.

[12] Id. at 784.

[13] Id. at 783.

[14] Id. at 501.

As a standard operating procedure, the CBP Laoag Clearing Center forwarded the said documents to the drawee bank, BPI Laoag City Branch, which would then process the same by either honoring or dishonoring the checks received by it. However, BPI Laoag City Branch could neither honor nor dishonor the pilfered checks as they were not included in the clearing envelope or in the tampered CBP manifest and clearing statement. BPI Laoag City Branch was not given the chance to dishonor the pilfered checks as they were not presented for payment. Thereafter, upon receipt of the original clearing manifest from CBP Laoag Clearing Center with BPI's acknowledgement, Valentino added back the amount of the pilfered checks so that the original manifest would tally with all the records in CBP.[15]

On the other hand, the sending bank, Citibank Greenhills Branch, did not receive any notice of dishonor within the period provided under the CBP regulations, thus, it presumed that the checks deposited in MMC's Current Account had been presented in due course to the drawee bank, BPI Laoag City Branch, and were consequently honored by the latter. Thereafter, Citibank Greenhills Branch allowed the withdrawal of the checks in the total amount of ₱9 million.[16]

As a result of the aforesaid fraud committed against petitioner BPI, Desiderio and Estacio, together with other personalities, were convicted of three (3) counts of *Estafa* thru Falsification of Public Documents by the *Sandiganbayan* (SB). On the other hand, Valentino was discharged and utilized as the main witness for the prosecution.[17]

In addition, Carlita Bondoc, the former Assistant Manager of Citibank Greenhills Branch and Rogelio Vicente (Vicente), Assistant Manager of BPI Laoag City Branch, were charged as co-conspirators in the bank fraud against petitioner BPI. However, the case against Vicente was dismissed without prejudice by

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[15] Id. at 783.

[16] Id. at 502.

[17] Id. at 789-891.

the SB after Valentino recanted his earlier statement implicating Vicente and for insufficiency of evidence to support his conviction.[18]

Thereafter, petitioner BPI requested CBP, through a letter dated June 15, 1982, to credit back to its demand deposit account the amount of ₱9 million with interest.[19] However, CBP credited only the amount of ₱4.5 million to BPI's demand deposit account.[20] Despite several requests made by BPI, CBP refused to credit back the remaining amount of ₱4.5 million plus interest.[21] Hence, on January 21, 1988, petitioner BPI filed a complaint[22] for sum of money against CBP.

In its Answer,[23] CBP denied any liability to BPI and demanded the latter to return the ₱4.5 million it earlier credited to BPI as the said amount was allegedly held under a "suspense account" pending the final outcome of the NBI investigation. CBP likewise filed a third-party complaint against Citibank for the latter's negligence which caused the perpetration of the fraud.[24] Citibank, on its part, denied any negligence in the supervision of its employees.[25] CBP further alleged, in its Amended Answer,[26] that the fraud could not have been committed without the connivance and collusion of certain employees of both petitioner BPI and respondent Citibank.

Ruling of the Regional Trial Court:

On April 24, 2001, the RTC rendered its Decision[27] in favor of petitioner BPI. It gave credence to the NBI Investigation

[18] Id. at 495.

[19] Id. at 893.

[20] Id. at 895.

[21] Id. at 897-910.

[22] Id. at 1-12.

[23] Id. at 32-38.

[24] Id. at 45-48.

[25] Id. at 70-74.

[26] Id. at 700-706.

[27] Id. at 489-515.

Report that the immediate and proximate cause of the defraudation were the criminal acts of CBP employees, Valentino and Estacio. The lower court ruled that CBP, as employer, shall be liable for the damage caused by its employees, Valentino and Estacio, to petitioner BPI under Articles 2176 and 2180 of the Civil Code.The dispositive portion of the judgment reads:

> WHEREFORE, in view of the foregoing, the following judgment is rendered:
>
> 1. Ordering defendant Central Bank of the Philippines now Bangko Sentral ng Pilipinas (BSP) to credit the demand deposit account of plaintiff, Bank of the Philippine Islands the sum of P4.5 Million plus six (6) percent interest per annum from September 23, 1986 until full payment is made;
>
> 2. Ordering the defendant Central Bank now BSP to delete the words "Suspense Account'' from the P4.5 Million earlier credited to the account of BPI, thus restoring fully the P9 Million to demand deposit account of BPI;
>
> 3. Ordering defendant Central Bank, now BSP to pay BPI the amount corresponding to 10% of the amount due as attorney's fees;
>
> 4. Ordering defendant Central Bank to pay the cost of suit; and
>
> 5. Dismissing the third-party complaint against third-party defendant Citibank, N.A. for lack of merit.[28]

Ruling of the Court of Appeals:

Both petitioner BPI and respondent CBP filed their respective appeals before the CA. In its January 26, 2011 Decision,[29] the CA reversed and set aside the RTC's April 24, 2001 Decision.[30] The appellate court dismissed the complaint filed by petitioner BPI and ordered the cancellation of the payment made by CBP in the amount of ₱4.5 million to BPI. It reasoned that under Article 2180 of the Civil Code, the State is generally liable only for *quasi-delicts* in case the act complained of was performed

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[28] Id. at 515.

[29] CA *rollo*, pp. 373-391.

[30] *Rollo*, pp. 82-108.

by a special agent. Both Valentino and Estacio were not special agents as neither of them was duly empowered by a definite order or commission to perform some act or were charged with some definite purpose which gives rise to the claim. They were employed in accordance with ordinary rules and regulations governing civil service and assigned to carry out tasks naturally related to their employment.

The appellate court clarified that the State may be held liable for *quasi-delicts* as an ordinary employer when it is performing proprietary acts, citing *Fontanilla v. Maliaman*.[31] Even assuming that CBP, in operating and administering the clearing house is performing proprietary functions, it still cannot be held liable for the acts of its employees as both Valentino and Estacio were not acting within the scope of their employment when they committed the fraud against petitioner BPI.

Finally, the appellate court held that Article 2180 provides that diligence of a good father of a family or ordinary diligence absolves the employer or master from any liability committed by their employees. The CA found that the CBP met the standard of ordinary diligence in determining both Valentino's and Estacio's respective qualifications prior to their employment through the conduct of mental, psychological, and physical examinations as required by the Civil Service Commission. They were also required to obtain National Intelligence and Security Authority (NISA) and NBI clearances prior to their employment.

A motion for reconsideration was filed by petitioner BPI which was denied by the appellate court in its July 8, 2011 Resolution.[32] Hence, petitioner BPI filed a Petition for Review on *Certiorari*[33] under Rule 45 before this Court.

Issues

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

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[31] 259 Phil. 302, 309 (1989).

[32] CA *rollo*, pp. 462-463.

[33] *Rollo*, pp. 9-47.

1. Whether or not CBP may be sued on its governmental and/or proprietary functions.

2. Whether or not CBP is performing a proprietary function when it entered into clearing operations of regional checks of its member institutions.

3. Whether or not CBP exercised the diligence of a good father of a family in supervising the two employees involved in the bank fraud.

4. Whether or not Citibank as the sending bank shall bear the damage caused to petitioner BPI as per Central Bank Circular No. 580, Series of 1977, as amended.

Arguments of BPI:

Petitioner BPI argues that CBP's function of operating clearing house facilities for regional checks is proprietary in character as the same may be assigned to, and exercised by private entities. During that time, all Metro Manila checks in the banking system were being cleared through the Philippine Clearing House Corporation (PCHC), a private corporation, while the regional checks were coursed through the CBP's clearing facilities. At present, all regional checks are now being cleared in the PCHC. The CBP also collected fees as per the Central Bank Manual of Regulations for its supervision of its employees, including those in the Clearing Division. Thus, petitioner BPI contends that as a corporate entity, CBP shall be held liable for the acts of its employees just like any other employer.

Moreover, petitioner BPI claims that Section 4 of Republic Act No. 265 (RA 265) or the Central Bank Act (CBA) provides that the CBP is authorized to sue and be sued, without any qualification that it may only be sued in performance of its proprietary functions. In addition, the clearing of checks is not essential to the main purpose for which CBP was established as per Section 2 of the CBA; neither is it incidental to CBP's governmental function as the clearing of checks has no relevance in CBP's duty to foster a balanced and sustainable growth in the economy.

Petitioner BPI further argues that both CBP's employees, Bookkeeper Valentino and Janitor-Messenger Estacio, acted within the scope of their functions when they committed the bank fraud. The fact that CBP required its employees to undergo mental, psychological and physical examinations as well as to procure the necessary NISA and NBI clearances before their employment are not sufficient to prove that CBP exercised the required diligence in supervising its employees.

Also, petitioner BPI claims that although CBP invoked the provisions of Central Bank Circular No. 580, Series of 1977, as amended, which was incorporated in the Central Bank Manual of Regulations, and provides that "Loss of clearing items: Any loss or damage arising from theft, pilferage, or other causes affecting items in transit shall be for the account of the sending bank/branch concerned," it nonetheless refused to apply the same. Despite petitioner BPI's repeated demands, CBP refused to credit the remaining ₱4.5 million to petitioner BPI's account to be charged against Citibank, the sending bank.

Lastly, petitioner BPI demands that the interest due should be computed from June 15, 1982, the date of the extrajudicial demand, pursuant to Article 1169 of the Civil Code and *Eastern Shipping Lines, Inc. v. Court of Appeals*.[34] In addition, the monetary award shall earn interest at the rate of 12% per *annum* from the time of judicial demand, that is, January 21, 1988 until payment is actually made.

Arguments of Citibank:

Respondent Citibank supports petitioner BPI's contention that CBP can be sued under Section 4 of RA 265. It argues that CBP waived its non-suability when it commenced litigation by filing a third-party complaint against Citibank. Moreover, in providing clearing facilities for regional checks and collecting fees therefor, CBP is performing proprietary functions which made it vulnerable to suit.

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[34] 304 Phil. 236, 253 (1994).

It further argues that the fraudulent acts of CBP's employees, Valentino and Estacio, were the proximate cause of BPI's defraudation, which fact was not disturbed by the appellate court in its assailed ruling. Also, no sufficient evidence was offered to prove that petitioner BPI and Citibank's employees contributed to the said fraudulent acts.

On its alleged negligence, Citibank contends that it complied with all the banking requirements by sending the six (6) checks to BPI Laoag City Branch for clearing purposes through the clearing facilities of CBP. In fact, the clearing statements sent by Citibank Greenhills Branch to BPI Laoag City Branch were free from any erasures or alterations. Also, it did not allow the withdrawal of the said checks from the account of MMC until after the lapse of three (3) business days and until after the said checks were not returned or dishonored by BPI Laoag City Branch. Hence, the said checks in the total amount of ₱9 million were deemed cleared and withdrawable after the lapse of the mandatory three (3)-day period.

Also, Citibank claims that CBP cannot invoke Central Bank Circular No. 580, Series of 1977 as it applies only to those clearing items lost "in transit." The subject checks were not lost "in transit" but were tampered, altered and falsified upon its arrival at the CBP Clearing Center. Moreover, it was duly proved that CBP's employees, Valentino and Estacio, pilfered the subject checks, thus, there was no more need to impute presumption of liability on Citibank as the sending bank with respect to any loss or damage arising from the said pilferage. Lastly, Citibank argues that CBP failed to prove that it exercised the proper diligence required in supervising its employees in the performance of their functions.

Arguments of the CBP:

On the other hand, CBP argues that its operation of the clearing facility was purely governmental in nature. Under Section 107[35]

[35] Section 107. Interbank Settlements. — The Central Bank shall provide facilities for interbank clearing.

of RA 265, the establishment of a clearing facility was CBP's responsibility and mandate. It was erroneous for petitioner BPI to claim that providing clearing house facilities for regional checks is proprietary in character since it may be assigned to, and exercised by, private entities. Following petitioner BPI's reasoning, the construction and maintenance of public roads, the establishment and maintenance of hospitals, schools and post offices are to be considered proprietary in character as they may be assigned to, and exercised by, private entities. However, that is not the case as those functions are evidently governmental.

Moreover, CBP's capacity to sue and be sued does not necessarily mean that it is generally liable for torts committed in the discharge of its governmental functions. It may only be held answerable for acts committed in its proprietary capacity. In allowing CBP to be sued, the State merely gives the claimant the right to show that it was not acting in any governmental capacity when the injury was committed or that the case comes under the exceptions recognized by law.[36]

Furthermore, CBP contends that under its Charter, it is tasked to administer the monetary, banking and credit system of the Philippines. Hence, it is duty bound to use the powers granted to it to achieve its objectives, namely: (a) primarily to maintain internal and external monetary value of the peso and convertibility of the peso into other freely convertible currencies; and (b) to foster monetary, credit and exchange conditions conducive to a balanced and sustainable growth of the economy. It argues that providing facilities for clearing operations falls within the second objective which is governmental or sovereign in nature.

The deposit reserves maintained by the banks in the Central Bank, in accordance with the provisions of Section 100, shall serve as a basis for the clearing of checks and the settlement of interbank balances, subject to such rules and regulations as the Monetary Board may issue with respect to such operations.

[36] *Spouses Jayme v. Apostol*, 592 Phil. 424, 437 (2008) citing *Municipality of San Fernando, La Union v. Firme*, 273 Phil. 56, 63 (1991).

Also, CBP maintains that when the State consents to be sued, it does not necessarily concede its liability. By consenting to be sued, CBP waives its immunity from suit. However, it does not waive its lawful defenses to the action. Hence, applying Article 1280 of the Civil Code, CBP in its performance of governmental functions may be held liable only for tort committed by its employees when it acts through a special agent which is not the case here. Thus, CBP cannot be held liable for the damages caused by the alleged tortuous acts of its officers and employees.

To make CBP liable under paragraphs 5 and 6 of Article 2180, it must be established that the injurious or tortuous act was committed while the employee was performing his or her functions. However, Valentino and Estacio were not acting within the scope of their duties when they committed the bank fraud. Moreover, CBP has sufficiently proved that it exercised the proper diligence in the selection and supervision of Valentino and Estacio. On the other hand, CBP argues that the negligence of petitioner BPI's employees and the connivance of the employees of both BPI and Citibank with the syndicate contributed to petitioner BPI's defraudation.

Assuming that CBP was negligent, it claims that it shall be liable only for the interest due from the date of the RTC's Decision, that is, April 24, 2001, and that the monetary award shall not earn interest at the rate of twelve percent (12%) per *annum* from the time of finality until its satisfaction. CBP claims that petitioner BPI's demands were reasonably established only from the date of the RTC's Decision on April 24, 2001, hence, the interest due should begin to run only on such date.

Also, no interest shall be due on the monetary award from its finality until satisfaction thereof as CBP's liability is not based on a contractual obligation. Therefore, there is no reason for petitioner BPI to demand compounding of interest from the time payment was judicially demanded as there was no stipulated interest. Moreover, CBP's liability is not based on a forbearance of money, goods or credit but on quasi-delict. Hence, there is no requirement for the RTC to state in its judgment

that the rate of legal interest applicable to their monetary judgments is twelve percent (12%) per *annum*. Nonetheless, the applicable interest rate provided under Article 2209 of the Civil Code is six percent (6%) per *annum*.

Lastly, CBP argues that it cannot be held liable for attorney's fees and cost of suit as there was no showing that it acted in bad faith when it refused to accede to petitioner BPI's demands.

The Court's Ruling

CBP is a corporate body performing governmental functions. Operating a clearing house facility for regional checks is within CBP's governmental functions and duties as the central monetary authority.

One of the generally accepted principles of international law, which we have adopted in our Constitution under Article XVI, Section 3 is the principle that a state may not be sued without its consent, which principle is also embodied in the 1935 and 1973 Constitutions.[37] However, state immunity may be waived expressly or impliedly. Express consent may be embodied in a general or special law. On the other hand, consent is implied when the state enters into a contract or it itself commences litigation.[38]

In the case of government agencies, the question of its suability depends on whether it is incorporated or unincorporated. An incorporated agency has a Charter of its own with a separate juridical personality while an unincorporated agency has none. In addition, the Charter of an incorporated agency shall explicitly provide that it has waived its immunity from suit by granting it with the authority to sue and be sued. This applies regardless of whether its functions are governmental or proprietary in nature.[39]

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[37] *United States of America v. Guinto*, 261 Phil. 777, 790-791 (1990).

[38] Id. at 792.

[39] *Deutsche Gesellschaft Für Technische Zusammenarbeit v. Court of Appeals*, 603 Phil. 150, 166 (2009).

Indubitably, the CBP, which was created under RA 265 as amended by Presidential Decree No. 72 (PD 72), is a government corporation with separate juridical personality and not a mere agency of the government. Specifically, Sections 1 and 4 of RA 265, as amended, provided for the creation of the CBP, a corporate body with certain corporate powers which include the authority to sue and be sued. Its main function is to administer the monetary, banking and credit system of the Philippines which is primarily governmental in nature. It has the following duties: (a) to primarily maintain internal and external monetary stability in the Philippines, and to preserve the international value of the peso and the convertibility of the peso into other freely convertible currencies; and (b) to foster monetary, credit and exchange conditions conducive to a balanced and sustainable growth of the economy.

Undoubtedly, the function of the CBP as the central monetary authority is a purely governmental function. Prior to its creation, the supervision of banks, banking and currency, and the administration of laws relating to coinage and currency of the Philippines was lodged with the Bureau of Treasury under the immediate supervision of the Executive Bureau (EB), to wit:

> SECTION 1761. *Functions of Bureau of Treasury*. — The Bureau of the Treasury shall be charged with the safekeeping of governmental funds, the supervision of banks, banking, and currency, and generally with the administration of the laws of the United States and of the Philippine Islands relating to coinage and currency in said Islands, and any other laws or parts of laws that may be expressly placed within its jurisdiction.[40]

Thereafter, still under the immediate supervision of the Executive Bureau, the Bureau of Banking was created to supervise and inspect banks and banking institutions, to wit:

> SECTION 1634. Chief Official of the Bureau of Banking; His Duties, Powers and Jurisdiction. — The Bureau of Banking shall have one chief to be known as Bank Commissioner and shall be charged with the supervision and inspection of banks and banking

[40] Act No. 2657, Administrative Code, Approved: December 31, 1916.

institutions. The terms "bank" and "banking institution" as used in this chapter shall include banker, banks, mortgage banks, savings banks, commercial banks, trust companies, building and loan associations, and all other corporations, companies, partnerships, and associations performing banking functions.[41]

In 1948, the CBP was created under RA 265, as amended, with a separate and distinct juridical personality. Undeniably, the function of the CBP and its predecessors of supervising the monetary and the banking systems of the Philippines is a governmental function. In fact, both the 1973 and 1987 Constitutions provide for the establishment of a central monetary authority which shall provide policy direction in the areas of money, banking, and credit; and supervise the operations of banks and exercise regulatory authority over the operations of finance companies and other institutions.

Thus, incidental to its main function and duties, Section 107 of RA 265, as amended by Section 54 of PD 72, mandated CBP to establish nationwide facilities to provide interbank clearing, to wit:

SECTION 54. Section one hundred seven of the same Act is hereby amended to read as follows:

SEC. 107. *Interbank settlements.* — The Central Bank shall establish nationwide facilities to provide interbank clearing at no cost to the banks.

The deposit reserves maintained by the banks in the Central Bank, in accordance with the provisions of Section 100, shall serve as a basis for the clearing of checks and the settlement of interbank balances, subject to such rules and regulations as the Monetary Board may issue with respect to such operations.

Contrary to the contention of petitioner BPI, CBP's clearing house facility for regional checks is within its functions and duties as the central monetary authority mandated in its Charter. This is true despite the existence of the Philippine Clearing

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[41] Act No. 2711, Revised Administrative Code, Approved: March 10, 1917.

House Corporation (PCHC), a private corporation incorporated in July 1977, which also provides clearing services for checks issued within Metro Manila during the time of petitioner BPI's defraudation. While at present, the PCHC handles the clearing of all checks issued by its member banks, this does not necessarily mean that CBP was performing a proprietary function during that time by providing a clearing house facility for regional checks. It bears stressing that establishing clearing house facilities for the member banks is a necessary incident to its primary governmental function of administering monetary, banking and credit system of the Philippines as per Section 107 of RA 265, as amended. The subsequent privatization of the clearing of checks did not negate the fact that it was CBP's duty to establish nationwide facilities to provide interbank clearing at no cost to the banks as per RA 265 as amended.

CBP is not immune to suit although it performed governmental functions.

Nonetheless, while the CBP performed a governmental function in providing clearing house facilities, it is not immune from suit as its Charter, by express provision, waived its immunity from suit. However, although the CBP allowed itself to be sued, it did not necessarily mean that it conceded its liability. Petitioner BPI had been given the right to bring suit against CBP, such as in this case, to obtain compensation in damages arising from torts, subject, however, to the right of CBP to interpose any lawful defense.

CBP is not liable for the acts of its employees because Valentino and Estacio were not "special agents."

Anent the issue of whether CBP is liable for the torts committed by its employees Valentino and Estacio, the test of liability depends on whether or not the employees, acting in behalf of CBP, were performing governmental or proprietary functions. The State in the performance of its governmental functions is liable only for the tortuous acts of its special agents. On the other hand, the State becomes liable as an ordinary employer

when performing its proprietary functions.[42] Thus, Articles 2176 and 2180 of the Civil Code provide that:

> Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.
>
> Art. 2180. The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.
>
> x x x x x x x x x
>
> Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.
>
> The State is responsible in like manner when it acts through a special agent; but not when the damage has been caused by the official to whom the task done properly pertains, in which case what is provided in Article 2176 shall be applicable.
>
> x x x x x x x x x
>
> The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage.

To reiterate, CBP's establishment of clearing house facilities for its member banks to which Valentino and Estacio were assigned as Bookkeeper and Janitor-Messenger, respectively, is a governmental function. As such, the State or CBP in this case, is liable only for the torts committed by its employee when the latter acts as a special agent but not when the said employee or official performs his or her functions that naturally pertain to his or her office. A special agent is defined as one who receives a definite and fixed order or commission, foreign to the exercise of the duties of his office.[43] Evidently, both

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[42] *Fontanilla v. Maliaman*, supra note 31 citing p. 961, Civil Code of the Philippines; Annotated, Paras, 1986 Ed.

[43] *Merritt v. Government of the Philippine Islands*, 34 Phil. 311, 322 (1916).

Valentino and Estacio are not considered as special agents of CBP during their commission of the fraudulent acts against petitioner BPI as they were regular employees performing tasks pertaining to their offices, namely, bookkeeping and janitorial-messenger. Thus, CBP cannot be held liable for any damage caused to petitioner BPI by reason of Valentino and Estacio's unlawful acts.

Even on the assumption that CBP is performing proprietary functions, still, it cannot be held liable because Valentino and Estacio acted beyond the scope of their duties.

Nonetheless, even assuming that CBP is an ordinary employer, it still cannot be held liable. Article 2180 of the Civil Code provides that an employer shall be liable for the damages caused by their employees acting within the scope of their assigned tasks. An act is deemed an assigned task if it is "done by an employee, in furtherance of the interests of the employer or for the account of the employer at the time of the infliction of the injury or damage."[44] Obviously, Valentino and Estacio's fraudulent acts of tampering with and pilfering of documents are not in furtherance of CBP's interests nor done for its account as the said acts were unauthorized and unlawful. Also, petitioner BPI has the burden to prove that Valentino and Estacio's fraudulent acts were performed within the scope of their assigned tasks,[45] which it failed to do. It is only then that the presumption that CBP, as employer, was negligent would arise which then compels CBP to show evidence that it exercised due diligence in the selection and supervision of its employees.

Thus, where a public officer acts without or in excess of jurisdiction, any injury or damage caused by such acts is his or her own personal liability and cannot be imputed to the State.[46]

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[44] *Imperial v. Heirs of Spouses Bayaban*, G.R. No. 197626, October 3, 2018.

[45] Id.

[46] Philippine Political Law; Annotated, Cruz, 2002 Ed., p. 34.

In *Festejo v. Fernando*,[47] we ruled that the acts of the Director of Public Works in taking over a private property and constructing thereon an irrigation canal were without authority, hence, the action for the recovery of land or its value filed by the property owner was in his own personal capacity. Applying analogously our ruling in *Festejo v. Fernando*, the fraudulent acts of CBP's employees Valentino and Estacio, were evidently not pursuant to their functions and were in excess of or without authority; therefore, any injury or damage caused by such acts to petitioner BPI shall be Valentino's and Estacio's own personal liabilities which should not be imputed to CBP as their employer.

Finally, anent the issue of Citibank's liability as the collecting bank, we affirm the trial court's dismissal of the third-party complaint against it. In this case, the subject checks were not returned to Citibank before the lapse of the clearing period.[48] Thus, Citibank acted within its authority in allowing the withdrawal of said checks after the lapse of the clearing period without any notice of dishonor from the drawee bank, petitioner BPI. The remedy, therefore, of petitioner BPI lies against the parties responsible for the tampering with and pilfering of the subject checks and other bank documents which resulted in the total damage of ₱9 million.

WHEREFORE, the Petition for Review on *Certiorari* is hereby **DENIED**. The assailed January 26, 2011 Decision and July 8, 2011 Resolution of the Court of Appeals in CA-G.R. CV No. 70699 are **AFFIRMED**.

SO ORDERED.

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

Baltazar-Padilla, J., on leave.

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[47] Id., citing *Festejo v. Fernando*, 94 Phil. 504, 507 (1954).

[48] *Metropolitan Bank and Trust Co. v. First National City Bank*, 204 Phil. 172, 178-179 (1982).

SECOND DIVISION

[G.R. No. 212024. October 12, 2020]

BANCO DE ORO UNIBANK, INC. (now BDO UNIBANK, INC.), *Petitioner*, *v.* **EDGARDO C. YPIL, SR., CEBU SUREWAY TRADING CORPORATION, AND LEOPOLDO KHO,** *Respondents*.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY; THE FINDINGS OF THE COURT OF APPEALS ARE CONCLUSIVE ON THE PARTIES ESPECIALLY WHEN THEY COINCIDE WITH THE FACTUAL FINDINGS OF THE TRIAL COURT.— [T]he Court affirms the findings and conclusions of the CA which are supported by the evidence on record. Accordingly, We need not interfere with the same. To stress, "[f]actual findings of the CA, especially if they coincide with those of the RTC, as in the instant case, is generally binding on us. In a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, this Court, may not review the findings of facts all over again. It must be stressed that this Court is not a trier of facts, and it is not its function to re-examine and weigh anew the respective evidence of the parties. The jurisprudential doctrine that findings of the Court of Appeals are conclusive on the parties and carry even more weight when these coincide with the factual findings of the trial court, must remain undisturbed, unless the factual findings are not supported by the evidence on record."

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATIONS; COMPENSATION; OBJECT THEREOF; REQUISITES FOR COMPENSATION TO TAKE EFFECT BY OPERATION OF LAW.— It is settled that "[c]ompensation is a mode of extinguishing to the concurrent amount the debts of persons who in their own right are creditors and debtors of each other. The object of compensation is the prevention of unnecessary suits and payments thru the mutual extinction by operation of law of concurring debts." The said mode of payment is encapsulated in Article 1279 of the Civil Code, *viz.*:

> ARTICLE 1279. In order that compensation may be proper, it is necessary: (1)That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other; (2) That both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated; (3)That the two debts be due; (4) That they be liquidated and demandable; (5) That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor.

In relation to this, Article 1290 of the Civil Code states that "[w]hen all the requisites mentioned in Article 1279 are present, compensation takes effect by operation of law, and extinguishes both debts to the concurrent amount, even though the creditors and debtors are not aware of the compensation."

3. ID.; ID.; ID.; ID.; FOR A CLAIM TO BE TREATED AS DUE, DEMANDABLE AND LIQUIDATED, THE TIME OF DEFAULT AND THE AMOUNT DUE MUST BE FIXED AND CONFIRMED.— CSTC's indebtedness cannot be considered as due and liquidated. It should be emphasized that "[a] claim is liquidated when the amount and time of payment is fixed. If acknowledged by the debtor, although not in writing, the claim must be treated as liquidated." In this case, the time of default and the amount due were not specific and particular. Without this information, a simple arithmetic computation cannot possibly be done without risking errors especially with regard to the application of interest and penalties. Similarly, despite CSTC's failure to contest the Bank's computation, its debt still cannot be considered as liquidated. Further confirmation is necessary in order to treat CSTC's debt as due, demandable and liquidated, which the Bank unfortunately did not bother to elaborate on.

4. ID.; ID.; ID.; ID.; LEGAL COMPENSATION DOES NOT TAKE PLACE BY OPERATION OF LAW WHEN THE DEBT IS NOT YET DUE AND PROPERLY LIQUIDATED AND THERE IS AN EXISTING CONTROVERSY COMMENCED BY A THIRD PARTY OVER THE SAME PROPERTY.— [G]iven our finding that CSTC's debt cannot be considered as due and liquidated, thereby legal compensation

did not take place by operation of law, it follows that the Notice of Garnishment served as proof of an existing controversy commenced by a third person, particularly Ypil, which likewise negated the application of legal compensation.

It is the Bank's position that "[l]egal compensation operates even against the will of the interested parties and *even without the consent of them*. Since this compensation takes place *ipso jure*, its effects arise on the very day on which all its requisites concur. When used as a defense, it retroacts to the date when its requisites are fulfilled." There is no debate about the effects of legal compensation when applicable. However, as already discussed, the Court finds that CSTC's debt was not due and liquidated properly, and that there is an existing controversy involving CSTC's funds with the Bank.

5. ID.; ID.; REMEDIAL LAW; PROVISIONAL REMEDIES; WRIT OF ATTACHMENT; GARNISHMENT; A NOTICE OF GARNISHMENT PLACES THE ATTACHED PROPERTIES IN *CUSTODIA LEGIS*, UNDER THE SOLE CONTROL OF THE COURT UNTIL SUCH TIME THAT THE GARNISHMENT IS DISCHARGED.— "[G]arnishment has been defined as a specie of attachment for reaching credits belonging to the judgment debtor and owing to him from a stranger to the litigation. A writ of attachment is substantially a writ of execution except that it emanates at the beginning, instead of at the termination, of a suit. It places the attached properties in *custodia legis*, obtaining *pendente lite* a lien until the judgment of the proper tribunal on the plaintiff's claim is established, when the lien becomes effective as of the date of the levy."

Hence, after service and receipt of the Notice of Garnishment, contrary to the Bank's view, the deposits of CSTC were placed under *custodia legis*, under the sole control of the trial court and remained subject to its orders "until such time that the garnishment is discharged, or the judgment in favor of [Ypil] is satisfied or the credit or deposit is delivered to the proper officer of the court."In the case at bench, the RTC already issued a Judgment Based on Compromise Agreement which ordered the Bank to tender the garnished amount of ₱300,000.00 to Ypil, effectively discharging the said amount from the effects of garnishment.

6. MERCANTILE LAW; BANKS; BANKS ARE REQUIRED TO EXERCISE THE HIGHEST DEGREE OF DILIGENCE IN ITS DEALINGS WITH ITS CLIENTS, ESPECIALLY WITH REGARD TO LOANS AND CREDITS.— As a final reminder, jurisprudence states that "the diligence required of banks is more than that of a good father of a family. Banks are required to exercise the highest degree of diligence in its banking transactions." In view of this, BDO Unibank, Inc. should recognize that it should be diligent and circumspect in its dealings with its clients, especially with regard to transactions that involve loans and credits. If only it had properly monitored the accounts of its clients, BDO Unibank, Inc. would not have been remiss in assuring that CSTC fulfills its end of the loan or even in exercising its option to offset the company's deposits with that of its outstanding obligations in order to protect the Bank's interests. Unfortunately, it has to face the consequences of its inattention to detail.

APPEARANCES OF COUNSEL

Martinez Vergara Gonzalez & Serrano for petitioner.

Gica Del Socorro Espinoza Villarmia Fernandez & Tan for respondent Ypil, Sr.

Astillero Law Office for respondents Cebu Sureway Trading Corp. and Leopoldo Kho.

D E C I S I O N

HERNANDO, *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court challenging the January 15, 2014 Decision[2] and the March 26, 2014 Resolution[3] of the Court of Appeals

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[1] *Rollo*, pp. 39-67.

[2] Id. at 13-24; penned by Associate Justice Gabriel T. Ingles and concurred in by Associate Justices Marilyn B. Lagura-Yap and Ma. Luisa C. Quijano-Padilla.

[3] Id. at 36-37.

(CA) in CA-G.R. SP No. 06217, affirming the August 11, 2008[4] and May 20, 2011[5] Orders of the Regional Trial Court (RTC) of Cebu City, Branch 16, in Civil Case No. CEB-29462 which directed the petitioner, BDO Unibank, Inc. (Bank), to guarantee the availability of the garnished amount of ₱300,000.00 from the account of respondent Cebu Sureway Trading Corporation (CSTC), represented by its Executive Vice-President, respondent Leopoldo Kho (Kho).

The Antecedents

On August 20, 2002, Kho, representing CSTC, offered a proposal to respondent Edgardo C. Ypil, Sr. (Ypil) to invest in the Prudentialife Plan — Millionaires in Business scheme. Ypil acquiesced and Kho was able to solicit the total amount of ₱300,000.00 from him. Eventually, though, Ypil opted to get a refund of the amounts he paid and manifested such intent through a letter dated February 11, 2003. However, CSTC or Kho did not answer. Ypil likewise made several oral demands but to no avail. Subsequently, Ypil's lawyer sent a demand letter dated May 19, 2003 to Kho but it was never answered.[6]

Ypil thus filed a Complaint[7] for Specific Performance with Attachment, Damages and Attorney's fees against CSTC and Kho before the RTC of Cebu City which was docketed as Civil Case No. CEB-29462.[8] Ypil asked for the sum of ₱300,000.00 as principal payment plus interest of two percent (2%) per month and two percent (2%) collection fee compounded monthly, as well as damages and attorney's fees.[9]

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[4] Id. at 143-147; penned by Judge Sylva G. Aguirre-Paderanga.

[5] Id. at 156.

[6] Id. at 113-115.

[7] Id. at 112-119.

[8] "*Edgardo C. Ypil, Sr. v. Cebu Sureway Trading Corporation and Leopoldo Kho*."

[9] *Rollo*, p. 118.

In an Order[10] dated October 15, 2003, the RTC granted Ypil's prayer for the *ex-parte* issuance of an attachment order. Afterwards, the trial court issued a Writ of Preliminary Attachment[11] on October 29, 2003.

Relevantly, on February 4, 2004, Pascual M. Guaren, Sheriff IV (Sheriff Guaren) of the RTC of Cebu City, Branch 7, issued a Notice of Garnishment[12] of the amount of ₱300,000.00 plus lawful expenses from the accounts of CSTC and/or Kho addressed to the Manager and/or Cashier of the Bank's North Mandaue Branch. The Bank received the said notice on the same day. Yet, on February 10, 2004, the Bank, through its North Mandaue Branch Head Cyrus M. Polloso (Polloso), sent its Reply[13] to Sheriff Guaren informing him that CSTC and/or Kho have no available garnishable funds.

On March 5, 2004, Kho filed his Answer[14] to Ypil's Complaint.

During the scheduled pre-trial conference, the trial court noted that Polloso failed to appear. Consequently, the pre-trial conference was deferred to October 24, 2007. Additionally, in an Order[15] dated September 19, 2007, the RTC directed the issuance of subpoenas *duces tecum* and *ad testificandum* for Polloso to appear in court and to bring the documents related to the bank accounts of CSTC and Kho.

Nonetheless, Polloso still failed to appear on October 24, 2007. Hence, the trial court issued another Order[16] dated October 24, 2007 directing Polloso to show cause why he should not be cited for contempt. The trial court again directed the issuance

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[10] Id. at 120.

[11] Id. at 121.

[12] Id. at 122.

[13] Id. at 123.

[14] Id. at 124-127.

[15] Id. at 128-129.

[16] Id. at 130.

of the subpoenas to Polloso for him to testify on November 28, 2007 and to bring the pertinent documents. On February 1, 2008, Polloso was finally called to testify.[17]

Notably, the RTC discovered that the Bank already debited from CSTC's savings and current accounts some amounts to offset its (CSTC's) outstanding obligation with the Bank under a loan agreement. In view of this, the trial court issued an Order[18] dated May 9, 2008 directing the Bank, through Polloso, to show cause why it should not be held guilty of indirect contempt for debiting the money from the accounts of CSTC and Kho which was under *custodia legis*.

The Bank filed its Compliance/Explanation[19] on June 16, 2008 as a forced intervenor to the trial court's May 9, 2008 Order. Essentially, it averred that since CSTC defaulted in its obligations to the Bank as embodied in a Credit Agreement[20] and Promissory Note No. 3660195103[21] dated October 13, 2003, its entire obligation immediately became due and demandable without need of demand or notice. In other words, it asserted that since the Bank and CSTC were creditors and debtors of each other, legal compensation already took effect.

CSTC and Kho then filed their Comment[22] stating that the provisions of the Promissory Note should not affect third parties and court processes such as garnishment. They alleged that the Bank resorted to legal compensation to frustrate the order of garnishment. Moreover, they averred that legal compensation cannot take effect because CSTC's loan was not yet due and

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[17] Id. at 15.

[18] Id. at 131.

[19] Id. at 132-136.

[20] This was not attached in the records but mentioned in the instant Petition for Review on *Certiorari*; *rollo*, p. 54.

[21] *Rollo*, pp. 179-180.

[22] CA *rollo*, pp. 56-58.

demandable.[23] Subsequently, Ypil filed his Memorandum[24] insisting that the trial court acquired jurisdiction over the Bank which in turn became a forced intervenor upon receipt of the Notice of Garnishment. Withal, he posited that the subject deposit was brought into *custodia legis* which the Bank cannot debit in its favor.[25]

Ruling of the Regional Trial Court:

The RTC issued an Order[26] dated August 11, 2008 absolving Polloso from the charge of indirect contempt but ordering the Bank's North Mandaue Branch to make available the garnished deposits of CSTC and Kho pursuant to the Notice of Garnishment. It ruled that "[t]he bank, cannot, however, unilaterally debit the defendants' [CSTC and Kho] accounts which are already in *custodia legis*, even assuming for argument[']s sake that legal compensation ensued *ipso jure*. If the bank has any claims against the defendants [CSTC and Kho], it must file the proper pleading for intervention to protect whatever it claims to be its rights to include the right of legal compensation."[27] The dispositive portion of the said Order reads:

> WHEREFORE, in view of the foregoing, this court absolves, as he is hereby absolved, Mr. Polloso from the charge of indirect contempt against this Court, but orders, as it is hereby ordered, Banco de Oro, North Mandaue Branch to make available the garnished amount in Exhibit "N" to be held by it for the court by virtue of the writ of garnishment to secure whatever amounts that this Court may award against herein defendants [CSTC and Kho].
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> SO ORDERED.[28]

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[23] Id. at 56-57.

[24] *Rollo*, pp. 137-142.

[25] Id. at 139-141.

[26] Id. at 143-147.

[27] Id. at 146.

[28] Id. at 147.

The Bank filed a Partial Motion for Reconsideration[29] insisting that legal compensation took place *ipso jure* and retroacted to the date when all the requisites were fulfilled. Kho also filed a Comment.[30] However, the trial court denied the Bank's motion for consideration in its Order[31] dated May 20, 2011. Thus, the Bank filed a Petition for *Certiorari*[32] with application for issuance of Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction before the CA.

Meanwhile, the RTC rendered a Judgment Based on Compromise Agreement[33] dated November 23, 2012. Apparently, Ypil and Kho submitted a Compromise Agreement[34] wherein Kho, in behalf of CSTC, agreed to pay the garnished amount of ₱300,000.00 as full and final settlement of CSTC's obligation, given that the said amount is more or less the same amount it owes Ypil. Moreover, Ypil and Kho agreed to waive any other claims and counterclaims in the specific performance case. Withal, the trial court, after finding that the Compromise Agreement did not appear to be contrary to any law, morals, good customs, public policy or public order, ordered the Bank to tender the garnished amount of ₱300,000.00 to Ypil.

Aggrieved, the Bank filed a Manifestation[35] dated January 30, 2013 before the RTC stating that the garnished amount is the subject of its pending *certiorari* petition with the CA. As such, it requested the trial court to suspend any attempt to implement the Judgment Based on Compromise Agreement insofar as the garnished amount is concerned, at least until the CA resolves its *certiorari* petition.

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[29] Id. at 148-152.

[30] Id. at 153-155.

[31] Id. at 156.

[32] Id. at 157-177.

[33] Id. at 186-188.

[34] This was not attached in the records but was quoted in the Judgment Based on Compromise Agreement.

[35] *Rollo*, pp. 189-193.

Nevertheless, considering that the CA did not issue any injunctive order, the RTC issued an Order[36] dated March 12, 2013 denying the Bank's prayer for the suspension of the execution of the assailed Order dated August 11, 2008 which directed the Bank to make available the garnished amount of ₱300,000.00.

Subsequently, in a Resolution[37] dated May 6, 2013, the CA denied the Bank's application for a writ of injunction.

In its *certiorari* petition, the Bank contended that when the Notice of Garnishment was served upon it on February 4, 2004, CSTC had existing obligations with the Bank amounting to ₱3,823,000.00 which was in excess of its (CSTC's) deposit balance in the amount of ₱294,436.68. It argued that since CSTC's obligation with the Bank became due and demandable even before the Notice of Garnishment was served upon it, there could not have been any amount which could be garnished from CSTC's accounts.[38] This is because legal compensation took place by operation of law in accordance with Article 1279 of the Civil Code as apparently, CSTC defaulted in its monthly amortizations. As a consequence, CSTC's entire obligation with the Bank immediately became due and demandable even without demand pursuant to the stipulations in the Promissory Note.[39] Withal, the Bank claimed that the RTC committed grave abuse of discretion because it failed to affirm that the Bank correctly applied legal compensation.[40]

Conversely, Ypil contended that the RTC did not commit grave abuse of discretion. He maintained that when the Complaint was filed and when the Notice of Garnishment was served, CSTC and Kho had sufficient funds in their existing accounts with

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[36] Id. at 197-199.

[37] Id. at 210-211.

[38] Id. at 80-81, 126.

[39] Id. at 81.

[40] Id. at 80-81, 130-132.

the Bank. He posited that the amounts in the savings and checking accounts of CSTC were immediately put under *custodia legis* and that the Bank cannot automatically and unilaterally debit the money in its favor especially after service of the Notice of Garnishment. He opined that according to Section 7 (d), Rule 57 of the Rules of Court, the trial court which issued the Notice of Garnishment already acquired jurisdiction over the Bank, which in turn became a forced intervenor immediately upon service and receipt of the said notice.[41]

The Ruling of the Court of Appeals:

The CA, in its assailed January 15, 2014 Decision,[42] declared that the RTC did not commit grave abuse of discretion when it issued the assailed Orders as it correctly held that the service of the Notice of Garnishment upon the Bank on February 4, 2004 effectively placed CSTC's deposits under *custodia legis*, notwithstanding the debiting of CSTC's accounts by the Bank on February 10, 2004.[43]

Moreover, the CA ruled that legal compensation takes place when two persons, in their own right, are debtors and creditors of each other. On one hand, CSTC is a depositor of the Bank in the amount of ₱301,838.27. On the other hand, CSTC owes the Bank purportedly in the amount of ₱3,823,000.00. Simply put, CSTC and the Bank are, in their own right, creditors and debtors of each other.[44] However, the appellate court found that not all the elements of legal compensation pursuant to Article 1279 of the Civil Code are present in this case. This is because notwithstanding CSTC's indebtedness to the Bank, there is no proof as to when the obligation became due, liquidated and demandable. While the Bank relied on the Promissory Note executed by CSTC in its favor, it (Bank) however failed to prove the exact date of the default which supposedly rendered

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[41] Id. at 81-82, 114-115.

[42] Id. at 13-24.

[43] Id. at 87.

[44] Id. at 83.

CSTC's obligations due and demandable.[45] The CA additionally noted the following:

> 1. That the writ of garnishment was duly served on the petitioner bank on February 4, 2004;
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> 2. That the bank debited the respondent corporation's [CSTC's] account as a legal set-off and compensation against their outstanding obligations with the bank on February 10, 2004;
>
> 3. That the petitioner bank, through its branch manager, Cyrus Polloso, sent a reply letter dated February 10, 2003 [2004] to Sheriff Pascual M. Guaren informing the latter that respondent corporation [CSTC] had no garnishable funds with petitioner bank.[46]

Significantly, the CA found that the Bank debited CSTC's account only on February 10, 2004 or six days after the Notice of Garnishment.[47] It added that the Bank conveniently failed to mention that there was a stipulation in the Promissory Note giving it the option to offset or not to offset the deposits of CSTC. The fact that CSTC had ₱301,838.27 in its savings and checking accounts when the Notice of Garnishment was served showed that the Bank had not yet opted to offset CSTC's deposits to pay for its obligations.[48] The appellate court explained that:

> [b]y the time the petitioner [Bank] received the Notice of Garnishment on February 4, 2004, the petitioner bank's belated reliance on the retroactive effect of legal compensation necessarily failed because the service of said Notice of Garnishment had effectively put petitioner [Bank] on notice regarding the existing controversy commenced by respondent Edgardo C. Ypil, Sr., a third person, against the respondent corporation [CSTC]. Consequently, legal compensation could no longer take place since the fifth requisite[49] under Article 1279 of the Civil Code could no longer be complied with x x x.[50]

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[45] Id. at 83-84.

[46] Id. at 84-85.

[47] Id. at 85.

[48] Id. at 86.

[49] (5) That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor.

[50] *Rollo*, p. 86.

Hence, the CA declared that the Bank became a forced intervenor in Civil Case No. CEB-29462 (the specific performance case) after the service of the Notice of Garnishment upon it on February 4, 2004.[51] The dispositive portion of the CA's assailed Decision reads:

> **WHEREFORE**, foregoing premises considered, and after finding no grave abuse of discretion amounting to lack or excess of jurisdiction in the issuance of the Orders dated August 11, 2008 and May 20, 2011 in Civil Case No. CEB-29462 pending before the Regional Trial Court of Cebu City Branch 16, the petition is hereby **DISMISSED** for lack of merit. Let the records of this case be removed from the docket of this Court.
>
> **SO ORDERED.**[52]

The Bank filed a motion for reconsideration[53] which the CA denied in a Resolution[54] dated March 26, 2014. Discontented, the Bank filed a Petition for Review on *Certiorari*[55] before the Court and raised the following issues:

Issues:

A.

THE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR IN NOT HOLDING THAT THE DISPUTED DEPOSIT IN THIS CASE HAD BEEN THE SUBJECT OF LEGAL COMPENSATION PRIOR TO THE SERVICE OF THE NOTICE OF GARNISHMENT TO PETITIONER [BANK] AND THAT SUCH SERVICE OF THE NOTICE, THEREFORE, DID NOT PUT THE SAID DEPOSIT IN *CUSTODIA LEGIS*.

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[51] Id. at 87.

[52] Id. at 88.

[53] Id. at 25-32.

[54] Id. at 36-37.

[55] Id. at 39-67.

B.

THE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR IN NOT HOLDING THAT RESPONDENTS ARE IN BAD FAITH IN MAKING THE SUBJECT DEPOSIT A PART OF THEIR COMPROMISE AGREEMENT, THUS LEADING TO ITS ERRONEOUS INCLUSION IN THE TRIAL COURT'S JUDGMENT BASED ON COMPROMISE AGREEMENT.[56]

Thus, the pivotal issue in this case is whether or not legal compensation took place *ipso jure* as between the Bank and CSTC when CSTC defaulted in its obligations to the Bank.

Our Ruling

The Petition is unmeritorious.

The Bank insists that all the requisites of legal compensation under Article 1279 of the Civil Code are present in this case. It highlights that the Promissory Note stipulated that in the event of default, CSTC's remaining obligations with the Bank will immediately become due and payable even without a demand notice. It points out that CSTC had already defaulted on its obligations under the Promissory when the Notice of Garnishment was served to the Bank.[57] Hence, the Bank asserts that it acted correctly when it formally debited CSTC's deposit to reflect the legal compensation which automatically took place even prior to the service of the Notice of Garnishment on February 4, 2004.[58] Moreover, the Bank contends that since legal compensation occurs by operation of law, the deposits could not have been the proper subject of the Notice of Garnishment and could not be placed in *custodia legis*.[59]

Additionally, the Bank argues that the respondents acted in bad faith when they included the subject deposit a part of their

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[56] Id. at 52.

[57] Id. at 54-58.

[58] Id. at 58-59.

[59] Id. at 59-60.

Compromise Agreement which in turn became the trial court's basis in issuing the Judgment Based on Compromise Agreement. Respondents knew that the Bank has a valid claim on the deposit in view of the automatic application of legal compensation and that the ownership of the said deposit was under dispute.[60]

Ypil counters that the Bank unilaterally withdrew ₱301,838.27 from CSTC's account six days after the Notice of Garnishment was served upon it[61] and that it (Bank) failed to provide the exact date when CSTC allegedly defaulted on its obligation to pay the Bank.[62]

For its part, CSTC avers that when the Notice of Garnishment was served upon the Bank on February 4, 2004, it has an existing deposit since its checking account has not yet been closed by the Bank. It alleges that on February 10, 2004, the Bank belatedly informed the trial court that there was no available garnishable amount. Thus, it can be inferred that on or before February 4, 2004, the Bank did not initiate the application of legal compensation and only invoked this option after receipt of the Notice of Garnishment. CSTC additionally asserts that the Bank did not present any document to prove the date when CSTC's loan obligation became due and demandable. Furthermore, when the Notice of Garnishment was served, it placed the Bank on notice regarding the case filed by Ypil against CSTC. Lastly, it contends that the Compromise Agreement was valid and approved by the trial court and that there was no bad faith in entering into the said contract.[63]

The Bank reiterates that prior to the service of the Notice of Garnishment upon it, CSTC had already defaulted on its obligation pursuant to the provisions of the Promissory Note. Withal, it properly debited CSTC's deposit to reflect the legal

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[60] Id. at 61-63.

[61] Id. at 232.

[62] Id. at 236.

[63] Id. at 265-267.

compensation that took place by operation of law.[64] Moreover, it maintains that even without notice or any positive act on its part, legal compensation occurred anyway. It likewise insists that the respondents were in bad faith when they made the subject deposit a part of their Compromise Agreement.[65]

It is settled that "[c]ompensation is a mode of extinguishing to the concurrent amount the debts of persons who in their own right are creditors and debtors of each other.[66] The object of compensation is the prevention of unnecessary suits and payments thru the mutual extinction by operation of law of concurring debts."[67] The said mode of payment is encapsulated in Article 1279 of the Civil Code, *viz.*:

ARTICLE 1279. In order that compensation may be proper, it is necessary:

(1) That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other;

(2) That both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated;

(3) That the two debts be due;

(4) That they be liquidated and demandable;

(5) That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor.

In relation to this, Article 1290 of the Civil Code states that "[w]hen all the requisites mentioned in Article 1279 are present, compensation takes effect by operation of law, and extinguishes

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[64] Id. at 249-250, 297.

[65] Id. at 302.

[66] *Nadela v. Engineering and Construction Corp. of Asia*, 510 Phil. 653, 666 (2005) citing *PNB MADECOR v. Uy*, 415 Phil. 348 (2001) and CIVIL CODE, Art. 1278.

[67] Id., citing *Compania General de Tabacos v. French and Unson*, 39 Phil. 34 (1918).

both debts to the concurrent amount, even though the creditors and debtors are not aware of the compensation." Relevantly, this is the Bank's main contention.

Before proceeding to a further discussion on the main issue, the Court affirms the findings and conclusions of the CA which are supported by the evidence on record. Accordingly, We need not interfere with the same. To stress, "[f]actual findings of the CA, especially if they coincide with those of the RTC, as in the instant case, is generally binding on us. In a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, this Court, may not review the findings of facts all over again. It must be stressed that this Court is not a trier of facts, and it is not its function to re-examine and weigh anew the respective evidence of the parties. The jurisprudential doctrine that findings of the Court of Appeals are conclusive on the parties and carry even more weight when these coincide with the factual findings of the trial court, must remain undisturbed, unless the factual findings are not supported by the evidence on record."[68]

In any case, guided by the conditions stated in Article 1279 of the Civil Code and to supplement the findings of the CA, We reiterate that there is no dispute that the Bank and CSTC are both creditors and debtors of each other. Moreover, the debts consist in or involve a sum of money, particularly CSTC's loan and its deposit with the Bank. Notably, the Bank argues that CSTC's debts became due given that it defaulted in its loan obligations even without need of demand pursuant to the Promissory Note. Neither CSTC nor Kho categorically refuted that CSTC indeed defaulted.

However, similar to the CA's ruling, the flaw in the Bank's argument is its failure to specify the date when CSTC actually defaulted in its obligation or particularly pinpoint which installment it failed to pay. The Bank merely revealed that CSTC

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[68] *Cortez v. Cortez*, G.R. No. 224638, April 10, 2019 citing *Villanueva v. Court of Appeals*, 536 Phil. 404, 408 (2006) and *Valdez v. Reyes*, 530 Phil. 605, 608 (2006).

owed it the amount of ₱3,823,000.00 without presenting a detailed computation or proof thereof except for the Promissory Note. Although CSTC and Kho did not question the computation made by the Bank, the fact remains that the actual date of default was not disclosed and verified with corroborating preponderant proof.[69] The Bank only stated that CSTC has not been paying its monthly obligations prior to February 4, 2004 which is not particular enough, even if the Promissory Note indicates that CSTC's obligation will immediately become due after default and without need of notice.[70]

Thus, CSTC's indebtedness cannot be considered as due and liquidated. It should be emphasized that "[a] claim is liquidated when the amount and time of payment is fixed. If acknowledged by the debtor, although not in writing, the claim must be treated as liquidated."[71] In this case, the time of default and the amount due were not specific and particular. Without this information, a simple arithmetic computation cannot possibly be done without risking errors especially with regard to the application of interest and penalties. Similarly, despite CSTC's failure to contest the Bank's computation, its debt still cannot be considered as liquidated. Further confirmation is necessary in order to treat CSTC's debt as due, demandable and liquidated, which the Bank unfortunately did not bother to elaborate on.

As regards respondents' claim that there exists a controversy commenced by a third person thereby negating legal compensation from taking place, the Bank insists that this did not bar the legal compensation from taking place by operation of law since CSTC's default happened even before it was served the Notice of Garnishment. Again, CSTC and Kho did not challenge this allegation. Nonetheless, given our finding that

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[69] RULES OF COURT, Rule 133, § 1.

[70] *Rollo*, p. 46.

[71] *Lao v. Special Plans, Inc.*, 636 Phil. 28, 37 (2010) citing Sentence Spanish Supr. Trib. March 21, 1898, 83 Jur. Civ. 679, *Ogden v. Cain*, 5 La. Ann. 160; *Reynaud v. His Creditors*, 4 Rob. (La.) 514.

CSTC's debt cannot be considered as due and liquidated, thereby legal compensation did not take place by operation of law, it follows that the Notice of Garnishment served as proof of an existing controversy commenced by a third person, particularly Ypil, which likewise negated the application of legal compensation.

It is the Bank's position that "[l]egal compensation operates even against the will of the interested parties and *even without the consent of them*. Since this compensation takes place *ipso jure*, its effects arise on the very day on which all its requisites concur. When used as a defense, it retroacts to the date when its requisites are fulfilled."[72] There is no debate about the effects of legal compensation when applicable. However, as already discussed, the Court finds that CSTC's debt was not due and liquidated properly, and that there is an existing controversy involving CSTC's funds with the Bank. Stated differently, the subject of the Notice of Garnishment is likewise the object of the existing controversy.

The Bank should take note that "[g]arnishment has been defined as a specie of attachment for reaching credits belonging to the judgment debtor and owing to him from a stranger to the litigation. A writ of attachment is substantially a writ of execution except that it emanates at the beginning, instead of at the termination, of a suit. It places the attached properties in *custodia legis*, obtaining *pendente lite* a lien until the judgment of the proper tribunal on the plaintiff's claim is established, when the lien becomes effective as of the date of the levy."[73]

Hence, after service and receipt of the Notice of Garnishment, contrary to the Bank's view, the deposits of CSTC were placed

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[72] *Bank of the Philippine Islands v. Court of Appeals*, 325 Phil. 930 (1996) citing Padilla, Ambrosio, Civil Law, Civil Code Annotated, Vol. IV, 1987 ed., pp. 612-613; Tolentino, Arturo M., Commentaries and Jurisprudence on the Civil Code of the Philippines, Vol. IV, 1991 ed., p. 379; *Republic v. CA*, 160 Phil. 192 (1975).

[73] *Bank of the Philippine Islands v. Lee*, 692 Phil. 311, 323 (2012), citing *National Power Corporation v. Philippine Commercial and Industrial Bank*, 614 Phil. 506 (2009); *Santos v. Aquino, Jr.*, 282 Phil. 134 (1992).

under *custodia legis*, under the sole control of the trial court and remained subject to its orders "until such time that the garnishment is discharged, or the judgment in favor of [Ypil] is satisfied or the credit or deposit is delivered to the proper officer of the court."[74] In the case at bench, the RTC already issued a Judgment Based on Compromise Agreement which ordered the Bank to tender the garnished amount of ₱300,000.00 to Ypil, effectively discharging the said amount from the effects of garnishment.

On a related note, there is no dispute that Kho, in behalf of CSTC, and Ypil entered into a Compromise Agreement which the trial court approved through a Judgment Based on Compromise Agreement. The Bank claims that the agreement was tainted with bad faith due to the existing contest regarding the garnished funds. We do not agree. The funds were validly garnished through an order of the trial court with competent jurisdiction. More importantly, no legal compensation took place which could have rendered CSTC's deposits unavailable for garnishment. If, as the Bank claims, CSTC's deposits amounted to only ₱294,436.68 and not ₱300,000.00[75] as provided in the Compromise Agreement, then such is a matter which Ypil has to settle with CSTC and Kho, and necessarily, the Bank. Nonetheless, this should likewise be considered in view of Ypil's assertion that on the day the Notice of Garnishment was served upon the Bank, CSTC had a deposit of more than ₱300,000.00 (based on bank records marked as exhibits) which was more than enough to cover the subject amount of the garnishment.[76]

As a final reminder, jurisprudence states that "the diligence required of banks is more than that of a good father of a family.[77]

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[74] Id., citing the RULES OF COURT, Rule 57, § 8.

[75] *Rollo*, p. 63.

[76] Id. at 138.

[77] *Bank of the Philippine Islands v. Spouses Quiaoit*, G.R. No. 199562, January 16, 2019 citing *Philippine National Bank v. Spouses Cheah*, 686 Phil. 760 (2012).

Banks are required to exercise the highest degree of diligence in its banking transactions."[78] In view of this, BDO Unibank, Inc. should recognize that it should be diligent and circumspect in its dealings with its clients, especially with regard to transactions that involve loans and credits. If only it had properly monitored the accounts of its clients, BDO Unibank, Inc. would not have been remiss in assuring that CSTC fulfills its end of the loan or even in exercising its option to offset the company's deposits with that of its outstanding obligations in order to protect the Bank's interests. Unfortunately, it has to face the consequences of its inattention to detail.

WHEREFORE, the Petition for Review is **DENIED**. The assailed January 15, 2014 Decision and the March 26, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 06217 are **AFFIRMED**.

SO ORDERED.

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

Baltazar-Padilla, J., on leave.

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[78] *Id.*

SECOND DIVISION

[G.R. No. 237423. October 12, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **NEIL DEJOS *y* PINILI,** *Accused-Appellant*.

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT); ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS THEREOF; ABSENT AN EXPLANATION OF POSSESSION OF DANGEROUS DRUGS, AN ACCUSED CAUGHT *IN FLAGRANTE* POSSESSING SUCH DRUG IS LIABLE FOR THE SAID OFFENSE.— The elements of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 are: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug.

In this case, the RTC and the CA correctly found that accused-appellant committed the offense of Illegal Possession of Dangerous Drugs as the records clearly show that he was caught *in flagrante* possessing *shabu* following a buy-bust operation conducted by PAIDSOTG. They also aptly deemed accused-appellant to have knowledge of the possession as he failed to discharge the burden of explaining why he was in possession of the dangerous drug.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY; FINDINGS OF FACT OF LOWER COURTS ARE RESPECTED ON APPEAL.— [A]s there is no indication that lower courts overlooked, misunderstood, or misapplied the surrounding facts and circumstances of the case, the Court finds no reason to deviate from their factual findings. It should be emphasized that the trial court is in the best position to assess and determine the credibility of the witnesses presented by both parties.

3. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT);

ILLEGAL POSSESSION OF DANGEROUS DRUGS; EVEN IF THERE WAS AN AGREEMENT OF SALE OF ILLEGAL DRUGS BETWEEN THE PARTIES, THE OFFENSE COMMITTED IS ONLY ILLEGAL POSSESSION OF DANGEROUS DRUGS IF THE ACCUSED WAS NOT ABLE TO RECEIVE THE CONSIDERATION OF THE SALE DUE TO HIS SUDDEN ARREST.— [T]he Court agrees with the conclusion of the trial court that the planned buy-bust operation against accused-appellant was not consummated. In *People v. Dasigan*,therein accused-appellant Amy Dasigan *y* Oliva had already handed the *shabu* to the *poseur*-buyer. However, prior to her receipt of the money, she was suddenly arrested and not able to take the consideration. It was held that although accused-appellant was shown the money, such was not sufficient to consummate the illegal sale of dangerous drugs. However, although illegal sale of dangerous drugs was not proven, the Court ruled that accused-appellant should be found criminally liable for Illegal Possession of Dangerous Drugs. . . .

In this case, while there was an agreement of sale of illegal drugs between accused-appellant and the *poseur*-buyer, accused-appellant was suddenly arrested before having accepted the consideration of the sale. . . . This is in keeping with the settled rule that possession of dangerous drugs is necessarily included in the sale of prohibited drugs.

4. ID.; ID.; ID.; CHAIN OF CUSTODY PROCEDURE; REQUIREMENT ON MARKING, PHYSICAL INVENTORY AND PHOTOGRAPHY OF THE SEIZED ITEMS; PURPOSE THEREOF.— To establish the identity of the dangerous drugs with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the offense. As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the seized drugs[.] What is more, the inventory and photography must be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (a) if *prior* to the amendment of RA 9165 by RA 10640, a representative from the media *and* the

DOJ, and any elected public official; or (b) if after the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service *or* the media. The law requires the presence of these witnesses primarily to "ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."

5. REMEDIAL LAW; EVIDENCE; DISPUTABLE PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES; IN THE ABSENCE OF AN ADEQUATE SHOWING OF BAD FAITH, THIS PRESUMPTION PREVAILS OVER THE ACCUSED'S SELF-SERVING AND UNCORROBORATED DENIAL AND ALIBI.— Against the overwhelming evidence of the prosecution, it must be pointed out that accused-appellant merely interposed an alibi and denied the accusations against him. However, in prosecutions for violations of RA 9165, credence is given to the testimonies of the prosecution witnesses, especially when they are police officers presumed to have properly performed their official duties. In the absence of an adequate showing of bad faith, the presumption of regularity in the performance of official duty prevails over the accused's self-serving and uncorroborated denial and alibi.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Allan Martinez for accused-appellant.

R E S O L U T I O N

INTING, *J.*:

It is beyond dispute that the illicit distribution of drugs is one of the most serious problems of our society. The stern penalties prescribed by the law are intended to deter the aggravation of the problem which has already prejudiced the lives and future of our citizens. The persons who peddle

prohibited drugs are evil merchants of misery and death.[1] *Indeed, the strong arm of the law must never weaken against the onslaughts of this terrible affliction.*[2]

On appeal[3] is the Decision[4] dated July 31, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 02269 which affirmed the Decision[5] dated March 30, 2016 of Branch 36, Regional Trial Court (RTC), Dumaguete City in Criminal Case No. 21267 finding Neil Dejos *y* Pinili (accused-appellant) guilty beyond reasonable doubt of violating Section 11, Article II instead of Section 5, Article II of Republic Act No. (RA) 9165.[6]

In an Information[7] dated July 26, 2012, accused-appellant was charged with the offense of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of RA 9165.

> That on or about the 17th day of July, 2012, in the City of Dumaguete, Philippines, and within the jurisdiction of the Honorable Court, the said accused, not being then authorized by law, did, then and there willfully, unlawfully and criminally sell and/or deliver to a poseur buyer seven (7) heat-sealed transparent plastic sachets containing a total net weight of 31.75 grams of Methamphetamine Hydrochloride, otherwise known as "SHABU", a dangerous drug.
>
> Contrary to Sec. 5, in relation to Sec. 26 (b), Art. II of R.A. 9165.[8]

Version of the Prosecution

The prosecution alleged that at around 11:30 p.m. of July 17, 2012, operatives from the Provincial Anti-Illegal Drugs

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[1] *People v. Alejandro*, 296 Phil. 348, 354-355 (1993). Citations omitted.

[2] See *People v. Kalubiran*, 274 Phil. 45, 51 (1991).

[3] See Notice of Appeal dated September 28, 2017, *rollo*, p. 20.

[4] *Id.* at 4-19; penned by Associate Justice Edgardo L. Delos Santos (now a Member of the Court) with Associate Justices Edward B. Contreras and Gabriel T. Robeniol, concurring.

[5] CA *rollo*, pp. 51-70; penned by Presiding Judge Joseph A. Elmaco.

[6] Comprehensive Dangerous Drugs Act of 2002.

[7] Records, pp. 3-4.

[8] *Id.* at 3.

Special Operations Task Group (PAIDSOTG), led by Police Officer I Julmar J. Berdejo (PO1 Berdejo) and PO3 Serito C. Ongy (PO3 Ongy), successfully conducted a buy-bust operation against accused-appellant in the interior part of Colon Extension, Taclobo, Dumaguete City. During the operation, the operatives recovered seven *bultos* of *shabu*, with a total net weight of 31.75 grams, from accused-appellant. After the operation, PO1 Berdejo marked the seized items. Realizing that the place of arrest was not well-lighted and safe, the operatives discussed among themselves on whether to conduct the inventory and photography instead at the National Bureau of Investigation (NBI) office.[9]

In the middle of the discussion, accused-appellant's phone rang. The operatives instructed accused-appellant to answer the call with the loudspeaker on. The operatives heard a female voice on the other line, later identified as belonging to one May Flor Saraña *y* Buncalan a.k.a. Darlene (May Flor). May Flor asked accused-appellant of his whereabouts and the money. At that point, PO3 Ongy talked to May Flor and signified his intention to buy three *bultos* of *shabu*. May Flor agreed to meet them at her place. Consequently, the operatives hatched an entrapment.[10]

After a successful operation against May Flor, the operatives recovered from her three *bultos* of *shabu*. After marking the seized items from May Flor, the operatives decided to finally hold the inventory of the seized items from accused-appellant and May Flor at the NBI office considering that the place of arrest of May Flor was not well-lighted.

The seized 10 *bultos* of *shabu* (seven *bultos* from accused-appellant and three *bultos* from May Flor) were then inventoried[11] and photographed[12] in the presence of accused-appellant, May

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

[10] *Id.* at 6-7.

[11] See Receipt/Inventory of Property Seized, records, p. 22.

[12] *Id.* at 34.

Flor, *Barangay* Captain Gregorio Suasin, Jr. (Brgy. Captain Suasin), Department of Justice (DOJ) representative Ramonito Astillero (Astillero), and media representative Neil Rio (Rio). Later, the operatives brought the seized items to the crime laboratory[13] where, after examination by Police Chief Inspector Josephine S. Llena (PCI Llena), the contents tested positive[14] for methamphetamine hydrochloride or *shabu*, a dangerous drug.[15]

Version of the Defense

In his defense, accused-appellant denied the charge against him. He asserted that on July 17, 2012, at around 8:00 p.m., after he stopped at about 30 meters away from the house of his girlfriend at Colon Extension in Dumaguete City, a person who was running passed by him. Then, five to six men approached him; one of them kicked him. When he struggled, the men punched him.[16] The men, who he later came to know as police officers, never told him of any wrongdoing on his part. They just told him that he was the companion of that person who was running away.

Ruling of the RTC

On March 30, 2016, the RTC ruled that the charge against accused-appellant for Illegal Sale of Dangerous Drugs defined and punished under Section 5, Article II of RA 9165 is wanting. However, it found him instead guilty of the offense of Illegal Possession of Dangerous Drugs, sentenced him to suffer the penalty of life imprisonment, and ordered him to pay a fine of ₱400,000.00. It observed that while the prosecution failed to establish with moral certainty all the elements of the purported illegal sale, there is nevertheless glaring evidence to prove that

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[13] See Letter Request for Forensic Examination dated July 18, 2012, *id.* at p. 25.

[14] See Chemistry Report No. D-107-12, *id.* at 28.

[15] *Rollo*, pp. 7-8.

[16] *Id.* at 9.

accused-appellant had in his possession seven heat-sealed transparent plastic sachets of *shabu*. It said:

> By his testimony, PO1 Julmar Berdejo was able to establish that accused was in possession of the dangerous drugs. The court lends credence to his testimony that accused had in his possession the seven (7) bultos of *shabu* which was handed over to him, the poseur-buyer, by the accused. They were the very same seven (7) bultos of *shabu* which subsequently gave positive result for methamphetamine hydrochloride when it was subjected to laboratory examination, x x x.
>
> Meanwhile, the accused failed to show that he has authority to possess the said dangerous drugs. It was even admitted during the pre-trial proceedings of the instant case, that there is absence of authority on the part of the accused to possess dangerous drugs. Well-settled is the rule that possession of dangerous drugs constitutes prima facie evidence of knowledge or *animus possidendi*, which is sufficient to convict an accused in the absence of a satisfactory explanation of such possession.
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> x x x x x x x x x
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> The defense failed to establish any justification nor explanation why the accused was in possession of a dangerous drug. Having simply denied the allegations hurled against him, a weak defense, they failed miserably in overturning the positive testimonies of the prosecution witnesses, not to mention the presentation in court of the *corpus delicti*.[17]

Not satisfied, accused-appellant appealed to the CA.

Ruling of the CA

In the assailed Decision, the CA affirmed the RTC Decision. It agreed with the RTC's findings that immediately after accused-appellant's arrest, PO1 Berdejo marked the seized plastic sachets of *shabu* at the place of arrest, in the presence of accused-appellant himself, Police Inspector Janelito J. Marquez (P/Insp. Marquez), and the back-up team; and that PO1 Berdejo marked the seized items with the markings NPD-D1 to D7-07-17-12, which pertain to accused-appellant's initials.[18]

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

[18] *Rollo*, p. 15.

The CA also ruled that the prosecution established the succeeding links in the handling and disposition of the seized items. After the marking, the arresting officer continued the inventory at the NBI office because the place of arrest was not well-lighted. PO1 Berdejo remained in possession of the seized items when the operatives left and proceeded to the NBI office. At the NBI office, he conducted the inventory in the presence of accused-appellant and the required witnesses. After the inventory was completed, PO1 Berdejo kept all the pieces of evidence to be brought to the crime laboratory. The next day, at around 5:10 a.m., he personally turned over the specimens to the crime laboratory for examination and submitted them to PO1 Robert John Pama (PO1 Pama), the officer on duty at that time.[19] Upon receiving the evidence, PO1 Pama placed the specimens in his locker and then submitted them to PCI Llena for examination. Thereafter, PCI Llena sealed the specimens and placed her markings thereon. She also placed the specimens in the evidence vault before she retrieved them for presentation in court.[20] The CA decreed:

> WHEREFORE, the appeal is hereby DENIED. The decision of the Regional Trial Court, Branch 36, Dumaguete City dated March 30, 2016 finding appellant NEIL DEJOS y PINILI guilty beyond reasonable doubt of violation of Section 11, Article II of R.A. 9165 is AFFIRMED.
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> SO ORDERED.[21]

Hence, the present appeal seeking accused-appellant's acquittal.

Before the Court, the People[22] and accused-appellant[23] manifested that they would no longer file their respective

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[19] *Id.* at 16.

[20] *Id.* at 17.

[21] *Id.* at 18.

[22] See Manifestation and Motion dated October 1, 2018, *id.* at 27-29.

[23] See Manifestation with Motion dated December 10, 2018, *id.* at 41-42.

Supplemental Briefs, taking into account the thorough and substantial discussions of the issues in their respective appeal briefs before the CA.

Issue

In the main, accused-appellant maintains his position that there is no moral certainty on the identity and integrity of the *corpus delicti*; and that his warrantless arrest was invalid as he was not doing anything illegal at the time of his arrest.

Ruling of the Court

The appeal is without merit.

The elements of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 are: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug.[24]

In this case, the RTC and the CA correctly found that accused-appellant committed the offense of Illegal Possession of Dangerous Drugs as the records clearly show that he was caught *in flagrante* possessing *shabu* following a buy-bust operation conducted by PAIDSOTG. They also aptly deemed accused-appellant to have knowledge of the possession as he failed to discharge the burden of explaining why he was in possession of the dangerous drug.[25]

Moreover, as there is no indication that lower courts overlooked, misunderstood, or misapplied the surrounding facts and circumstances of the case, the Court finds no reason to deviate from their factual findings. It should be emphasized that the trial court is in the best position to assess and determine the credibility of the witnesses presented by both parties.[26] Thus:

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[24] *People v. Leon, Jr.*, G.R. No. 238523, December 2, 2019, citing *People v. Manalo*, 703 Phil. 101, 114 (2013).

[25] *Id.*

[26] *People v. De Dios*, G.R. No. 243664, January 22, 2020. Citations omitted.

To begin with, it is a fundamental principle that findings of the trial courts which are factual in nature and which involve the credibility of witnesses are accorded respect when no glaring errors; gross misapprehension of facts; and speculative, arbitrary and unsupported conclusions can be gathered from such findings. This is so because the trial court is in a unique position to observe the witnesses' demeanor on the witness stand. The above rule finds an even more stringent application where said findings are sustained by the Court of Appeals, like in the case under consideration.[27]

Hence, the Court will respect the trial court's findings that accused-appellant was validly arrested without a warrant of arrest. The trial court found credible the testimonies of the prosecution witnesses that accused-appellant was caught *in flagrante* possessing *shabu*.

Moreover, the Court agrees with the conclusion of the trial court that the planned buy-bust operation against accused-appellant was not consummated. In *People v. Dasigan*,[28] therein accused-appellant Amy Dasigan *y* Oliva had already handed the *shabu* to the *poseur*-buyer. However, prior to her receipt of the money, she was suddenly arrested and not able to take the consideration. It was held that although accused-appellant was shown the money, such was not sufficient to consummate the illegal sale of dangerous drugs. However, although illegal sale of dangerous drugs was not proven, the Court ruled that accused-appellant should be found criminally liable for Illegal Possession of Dangerous Drugs. Citing *People v. Hong Yeng E, et al.*,[29] the Court ratiocinated:

[W]here the marked money was also shown to accused-appellant but it was not actually given to her as she was immediately arrested when the shabu was handed over to the poseur-buyer, the Court held that it is material in illegal sale of dangerous drugs that the sale actually took place, and what consummates the buy-bust transaction is the delivery of the drugs to the poseur-buyer and, in turn, the

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[27] *People v. Torres*, 710 Phil. 398, 407 (2013). Citations omitted.

[28] 753 Phil. 288 (2015).

[29] 701 Phil. 280, 285 (2013).

seller's receipt of the marked money. While the parties may have agreed on the selling price of the shabu and delivery of payment was intended, these do not prove consummated sale. Receipt of the marked money, whether done before delivery of the drugs or after, is required.[30]

In this case, while there was an agreement of sale of illegal drugs between accused-appellant and the *poseur*-buyer, accused-appellant was suddenly arrested before having accepted the consideration of the sale. Conformably with *People v. Dasigan* and *People v. Hong Yeng E, et al.*, the Court agrees with the trial court that the offense committed is Illegal Possession of Dangerous Drugs. This is in keeping with the settled rule that possession of dangerous drugs is necessarily included in the sale of prohibited drugs.[31]

Still, with the arrest of the accused-appellant for illegal possession of drugs and the confiscation of the illegal drugs from him, it is apparent that the police operatives had sufficiently complied with the chain of custody rule under Section 21, Article II of RA 9165.

To establish the identity of the dangerous drugs with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the offense. As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the seized drugs: What is more, the inventory and photography must be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (a) if *prior* to the amendment of RA 9165 by RA 10640, a representative from the media *and* the DOJ, and any elected public official; or (b) if after the amendment of RA 9165 by RA 10640, an elected public official and a representative of

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[30] *People v. Dasigan, supra* note 28 at 306.

[31] *People v. Bulawan*, 786 Phil. 655, 671 (2016).

the National Prosecution Service *or* the media. The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence":[32]

In accused-appellant's case, after his arrest, the buy-bust team immediately took custody of the seized items and marked them. As the place of arrest was not well-lighted, the buy-bust team decided to conduct the inventory and the photography of the seized items at the NBI office in the presence of accused-appellant, media representative Rio, DOJ representative Astillero, and Brgy. Captain Suasin. PO1 Berdejo personally delivered all the seized items to PO1 Pama, the officer on duty at the crime laboratory. Soon after, PO1 Pama submitted them to PCI Llena, who performed the necessary tests thereon. After the examination, PCI Llena placed the specimens in the evidence vault of the crime laboratory prior to their presentation to the court, where they were duly presented, identified, and admitted as evidence.

Evidently, there were no lapses in the disposition and handling of the seized items to even prompt the relaxation of the procedure outlined in Section 21, Article II of RA 9165. The prosecution complied with the standard in handling the evidence and in establishing the chain of custody. Indeed, it proved beyond reasonable doubt that accused-appellant is guilty of illegally possessing 31.75 grams of *shabu*.

Against the overwhelming evidence of the prosecution, it must be pointed out that accused-appellant merely interposed an alibi and denied the accusations against him. However, in prosecutions for violations of RA 9165, credence is given to the testimonies of the prosecution witnesses, especially when they are police officers presumed to have properly performed their official duties. In the absence of an adequate showing of bad faith, the presumption of regularity in the performance of official duty prevails over the accused's self-serving and uncorroborated denial and alibi.[33]

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[32] *People v. De Dios*, *supra* note 26, citing *People v. Mendoza*, 736 Phil. 749, 764 (2014).

[33] *People v. Leon, Jr.*, *supra* note 24, citing *People v. Arago*, G.R. No. 233833, February 20, 2019.

In sum, the Court holds that there is sufficient compliance with the chain of custody rule, and thus, the integrity and evidentiary value of the *corpus delicti* have been properly preserved. The testimonies and the evidence offered by the prosecution were the basis of the CA in affirming the conviction of accused-appellant, whose defense of denial and frame-up had remained uncorroborated. Perforce, his conviction must stand. Section 11, Article II of RA 9165 provides the penalty of life imprisonment and a fine ranging from ₱400,000.00 to ₱500,000.00 for 10 grams or more but less than 50 grams of *shabu*. In this case, accused-appellant was found with an aggregate weight of 31.75 grams of *shabu*. Thus, the penalty imposed on accused-appellant by the RTC, as affirmed by the CA, is proper.

WHEREFORE, the appeal is **DISMISSED**. The Decision dated July 31, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 02269 is hereby **AFFIRMED**. Accused-appellant Neil Dejos *y* Pinili is found **GUILTY** beyond reasonable doubt of the offense of Illegal Possession of Dangerous Drugs under Section 11, Article II of Republic Act No. 9165, and is sentenced to suffer the penalty of life imprisonment and a fine of ₱400,000.00.

SO ORDERED.

Perlas-Bernabe, S.A.J. (*Chairperson*), *Carandang,*[*] and *Hernando, JJ.*, concur.

Baltazar-Padilla, J., on leave.

[*] Designated additional member per Raffle dated March 2, 2020.

SECOND DIVISION

[G.R. No. 239418. October 12, 2020]

DANILO DECENA and CRISTINA CASTILLO (formerly DECENA), *Petitioners*, *v.* **ASSET POOL A (SPV-AMC), INC.,** *Respondent*.

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATIONS; PAYMENT; REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; ONE WHO PLEADS PAYMENT HAS THE BURDEN OF PROVING IT.— The records of the case show that two promissory notes signed by petitioners were duly presented in the RTC: . . . Petitioners then contend that the two aforementioned promissory notes had already been settled or paid by them. In *Royal Cargo Corporation v. DFS Sports Unlimited, Inc.*, the Court held that in civil cases, the one who pleads payment has the burden of proving payment. The burden of proving payment, thus, rests on the defendant once proof of indebtedness is established. In fact, in a long line of cases, the Court has consistently held that the party alleging payment must necessarily prove his or her claim of payment.

2. ID.; ID.; ID.; ID.; WHEN THE CREDITOR IS IN POSSESSION OF A PROMISSORY NOTE OR A DOCUMENT OF CREDIT, PROOF OF NON-PAYMENT IS NOT NEEDED.— When the creditor is in possession of the document of credit, proof of non-payment is not needed for it is presumed. In *Bank of the Philippine Islands v. Spouses Royeca,* the Court held that a promissory note in the hands of the creditor is proof of indebtedness and not of payment. Verily, the creditor's possession of an evidence of indebtedness is proof that the debt has not been discharged by payment. . . . [T]he Court finds that petitioners remain liable for the two promissory notes because they had failed to discharge the burden of proving their payment.

3. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; RELIEFS; COURTS CAN GRANT A RELIEF NOT

PRAYED FOR IN THE PLEADINGS OR IN EXCESS OF WHAT IS BEING SOUGHT BY THE PARTY IF THE OPPOSING PARTY WAS AFFORDED AN OPPORTUNITY TO BE HEARD WITH RESPECT TO THE PROPOSED RELIEF.— The principle that the "courts cannot grant a relief not prayed for in the pleadings or in excess of what is being sought by the party" is generally a principle of law founded on due process. Due process, thus, requires that judgments must conform to and be supported by the pleadings and evidence presented in court. Notwithstanding, in *Development Bank of the Philippines v. Teston*, the Court explained that the foregoing due process requirement is satisfied when the opposing party is given notice and opportunity to be heard with respect to the proposed relief.

. . .

In the present case, respondent specifically averred in its complaint that its cause of action was based on the two promissory notes issued by petitioners for a total amount of ₱12,500,000.00. Both the due execution and the non-payment thereof were sufficiently proven during trial with petitioners' active participation. Petitioners were, thus, not unduly deprived of their opportunity to be heard with respect to the total amount of the promissory notes of ₱12,500,000.00. Hence, it cannot be said that petitioners will be unduly surprised since petitioners actively participated and were given due notice during the whole proceedings. Accordingly, the CA erred when it reduced the principal amount to ₱10,000,000.00 only.

4. CIVIL LAW; OBLIGATIONS AND CONTRACTS; OBLIGATIONS; INTERESTS; TWO TYPES OF INTERESTS; RULES IN THE DETERMINATION OF THE AMOUNT OF INTEREST IN CASES OF BREACHES OF OBLIGATIONS OF A PAYMENT OF A SUM OF MONEY; CASE AT BAR.—As regards the computation of interest, in *Nacar v. Gallery Frames*, the Court pronounced the rules in determining the amount of interest during breaches of obligations of a payment of a sum of money including a loan or forbearance of money, 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 . . . but will now be six percent (6%) per annum effective July 1, 2013.

> 1. When the obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. **In the absence of stipulation, the rate of interest shall be 6% per annum to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.**
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> **2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum.** . . .

There are two types of interest, namely: (1) monetary interest, which is the compensation fixed by the parties for the use or forbearance of money; and (2) compensatory interest, which is that imposed by law or by the courts as penalty or indemnity for damages. Accordingly, the right to recover interest rates arises either by virtue of a contract or monetary interest, or as damages for delay or failure to pay the principal loan which is demanded or compensatory interest.

. . .

Applying the foregoing Decisions of the Court in the present case, the principal amount of ₱12,500,000.00, thus, should earn the straight monetary interest of 12% per annum reckoned from the date of extrajudicial demand or, in the present case, on September 19, 2006 until finality of the ruling. Further, in accordance with Article 2212 of the Civil Code, the stipulated monetary interest should also earn compensatory interest at the rate of 12% per annum from the time of judicial demand or, in the present case, on January 14, 2008 until June 30, 2013, and 6% per annum from July 1, 2013 until finality of the ruling. Finally, all monetary awards will earn interest at the rate of 6% per annum from finality of the ruling until full payment.

5. ID.; ID.; ID.; ID.; WHEN THE PARTIES' STIPULATED INTEREST RATE IS STRUCK DOWN FOR BEING EXCESSIVE AND UNCONSCIONABLE, THE LEGAL RATE OF INTEREST PREVAILING AT THE TIME THE AGREEMENT WAS ENTERED INTO WILL BE APPLIED BY THE COURT.— In the present case, it was established that petitioners' principal loan obligation to respondent was ₱12,500,000.00. The original monetary interest was then struck down by the RTC as unconscionable. In *Isla v. Estorga*, the Court ruled that when the parties' stipulated interest rate is struck down for being excessive and unconscionable, the unconscionable interest rate is nullified and deemed not written in the contract. In *Isla*, the Court held that in cases where the interest rate is struck down as unconscionable[,] the legal rate of interest prevailing at the time the agreement was entered into will be applied by the Court.

APPEARANCES OF COUNSEL

Ricardo J.M. Rivera Law Office for petitioners.
HM Ramos and Associates for respondent.

D E C I S I O N

DELOS SANTOS, *J.*:

The Case

Before the Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated August 25, 2017 and the Resolution[3] dated May 15, 2018 of the Court of Appeals (CA) in CA-G.R. CV No. 107364 which ordered petitioners Danilo Decena (Danilo) and Cristina Castillo

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[1] *Rollo*, pp. 9-23.

[2] Penned by Associate Justice Mariflor P. Punzalan Castillo, with Associate Justices Rodil V. Zalameda (now a Member of the Court) and Ma. Luisa C. Quijano-Padilla, concurring; id. at 24-38.

[3] Id. at 56-57.

(Cristina; petitioners) to pay respondent Asset Pool A (SPV-AMC), Inc. (respondent) the amount of ₱10,000,000.00 plus interest of 12% per annum from September 19, 2006 to June 30, 2013 and 6% interest per annum from July 1, 2013 until the obligation is fully paid.

The Facts

On January 14, 2008, respondent filed a Complaint for Sum of Money and Damages[4] against petitioners before the Regional Trial Court (RTC) of Makati City.[5] Respondent alleged that petitioners applied for and were granted loans in the total amount of ₱20,000,000.00 by Prudential Bank. Prudential Bank then merged with the Bank of the Philippine Islands (BPI) and BPI became the surviving corporation. Respondent alleged that petitioners defaulted in their contractual obligations and left an unpaid obligation of ₱10,000,000.00 evidenced by Promissory Note dated January 21, 1998 and ₱2,500,000.00 evidenced by Promissory Note dated October 6, 1997.[6]

On May 12, 2006, BPI assigned petitioners' indebtedness to respondent through a deed of assignment and BPI's rights and interest over the said receivables were then ceded to respondent. On September 19, 2006, respondent sent a notice to petitioners directing them to pay their unpaid obligation. On May 17, 2007, respondent sent petitioners another demand letter to settle their outstanding obligation. Having failed to heed respondent's repeated demands, respondent filed a complaint with the RTC against petitioners.[7]

In petitioners' Answer, petitioners admitted that they loaned from Prudential Bank. However, as far as they knew, that loan obligation had already been substantially paid. Petitioners claimed that respondent had the burden of proving its claim

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[4] Id. at 58-63.

[5] Docketed as Civil Case No. 08-034.

[6] *Rollo*, p. 25.

[7] Id.

and that no comprehensive records were ever presented to them. Petitioners also averred that the complaint should have been dismissed outright on the ground of laches since the complaint was filed only after almost 10 years from the maturity dates of the two loans.[8]

During trial, Isabelita Martinez Ciabal (Ciabal) testified that she was a Director and Remedial Account Officer for respondent since 2009. Ciabal testified that she was in charge of collection of bad and non-performing loans and that petitioners' loan account was one of the numerous accounts that was conveyed to respondent by BPI through a deed of assignment. Ciabal testified that respondent tried to contact petitioners and even sent them demand letters. Unfortunately, respondent did not receive any reply prompting it to refer the matter to their legal counsel for legal action. On cross-examination, Ciabal testified that she was not an employee of BPI and Prudential Bank. Ciabal explained that the principal obligation of petitioners was ₱12,500,000.00 and that based on the promissory notes, the total chargeable interest was 15%. Ciabal claimed that petitioners were duly informed and that respondent's counsel sent petitioners a demand letter dated May 17, 2007 which was received by Ramon Polangco.[9]

Danilo testified that Cristina, his co-petitioner in the present case, was his former wife and that he merely learned of the existence of the loan after he suddenly received a notice. Danilo claimed that Cristina called him and discussed the said transaction with the bank which he testified he could not fully remember the exact details. Danilo claimed that he recalled that sometime in 1996 and 1998, they both obtained loans in the amount of ₱19,600,000.00, ₱3,000,000.00 and ₱6,800,000.00 from Prudential Bank. Danilo claimed that they were able to pay substantial amounts and the loans were settled in 2004 when Prudential Bank foreclosed their properties that were offered as collateral.[10] Danilo claimed that he was surprised when

[8] Id. at 26.

[9] Id. at 27.

[10] Id.

respondent filed the instant collection case since all their debts with Prudential Bank had already been paid in full. Danilo also testified that he could not remember the two promissory notes presented by respondent as basis for their unpaid indebtedness.

The Ruling of the RTC

In a Decision[11] dated December 11, 2015, the RTC of Makati City, Branch 150, held that petitioners were liable for the loan obligation to respondents. The RTC held that respondents proved their claim by preponderance of evidence which clearly outweighs the bare assertions and denial of petitioners. The dispositive portion of the RTC Decision provides:

> WHEREFORE, premises considered, plaintiff having proved its claim by preponderance of evidence against defendants Danilo Decena and Cristina Decena, judgment is hereby rendered ordering them to pay plaintiff Asset Pool A (SPV-AMC) jointly and severally the following:
>
> 1. the principal amount of Php12,500,000.00 plus 12% interest and 6% penalty charges per annum from September 19, 2006 until finality of the Decision;
> 2. 6% interest per annum on the principal from finality of the Decision until the obligation is fully paid;
> 3. Php25,000.00 as Attorney's Fees; and
> 4. costs of suit.
>
> The counterclaim of defendants is dismissed for failure to prove its existence.
>
> SO ORDERED.[12]

Petitioners then filed an appeal before the CA.

The Ruling of the CA

In a Decision[13] dated August 25, 2017, the CA partially affirmed the Decision of the RTC. The CA ruled that respondent

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[11] Penned by Judge Elmo M. Alameda; id. at 70-76.

[12] Id. at 76.

[13] Id. at 24-38.

established, through preponderance of evidence, petitioners' liability for the amount due. The CA held that petitioners never impugned the authenticity of the signatures on the promissory notes. The CA also found that petitioners also admitted having obtained loans from then Prudential Bank. Jurisprudence clearly provides that the person who pleads payment has the burden of proving payment. The CA held that the burden clearly rests on the petitioners to prove payment rather than on the respondent to prove non-payment. The CA also held that when a creditor is in possession of a document of credit, proof of non-payment is unnecessary for it is already presumed. The CA found that the respondent's possession of the promissory notes strongly buttresses its claim that petitioners' obligation has not yet been extinguished.

However, the CA reduced the principal amount to ₱10,000,000.00 since the prayer contained in respondent's complaint only asked for the specific amount of ₱10,000,000.00. The CA ruled that the rule is settled that courts cannot award more than what was specifically prayed for in the complaint.

The dispositive portion of the CA Decision provides:

> WHEREFORE, premises considered, the instant appeal is PARTIALLY GRANTED. The December 11, 2015 Decision of the Regional Trial Court of Makati City, Branch 150, is MODIFIED in that defendants-appellants are ORDERED to pay the plaintiff-appellee, jointly and severally, the principal amount of ₱10,000,000.00 plus interest of 12% per annum from September 19, 2006 to June 20, 2013, and 6% interest from July 1, 2013 until the obligation is fully paid. In all other respects, the assailed Decision is AFFIRMED.
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> SO ORDERED.[14]

In a Resolution[15] dated May 15, 2018, the CA denied petitioners' Motion for Reconsideration.

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[14] Id. at 37-38.

[15] Id. at 56-57.

The Issue

The issue for the Court's resolution is whether petitioners are liable for the amount due.

The Ruling of the Court

The records of the case show that two promissory notes signed by petitioners were duly presented in the RTC: (1) ₱10,000,000.00 evidenced by Promissory Note dated January 21, 1998; and (2) ₱2,500,000.00 evidenced by Promissory Note dated October 6, 1997. Petitioners then contend that the two aforementioned promissory notes had already been settled or paid by them. In *Royal Cargo Corporation v. DFS Sports Unlimited, Inc.*,[16] the Court held that in civil cases, the one who pleads payment has the burden of proving payment. The burden of proving payment, thus, rests on the defendant once proof of indebtedness is established. In fact, in a long line of cases, the Court has consistently held that the party alleging payment must necessarily prove his or her claim of payment.[17] When the creditor is in possession of the document of credit, proof of non-payment is not needed for it is presumed.[18] In *Bank of the Philippine Islands v. Spouses Royeca*,[19] the Court held that a promissory note in the hands of the creditor is proof of indebtedness and not of payment. Verily, the creditor's possession of an evidence of indebtedness is proof that the debt has not been discharged by payment, to wit:

The creditor's possession of the evidence of debt is proof that the debt has not been discharged by payment. A promissory note in the

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[16] 594 Phil. 73 (2008).

[17] *Bank of the Philippine Islands v. Spouses Royeca*, 581 Phil. 188, 194 (2008); *Benguet Corporation v. Department of Environment and Natural Resources-Mines Adjudication Board*, 568 Phil. 756, 772 (2008); *Citibank, N.A. v. Sabeniano*, 535 Phil. 384, 419 (2006); *Keppel Bank Philippines, Inc. v. Adao*, 510 Phil. 158, 166-167 (2005); and *Far East Bank and Trust Company v. Querimit*, 424 Phil. 721, 730-731 (2002).

[18] *Tai Tong Chuache & Co. v. Insurance Commission*, 242 Phil. 104, 112 (1988).

[19] Supra note 17.

hands of the creditor is a proof of indebtedness rather than proof of payment. In an action for replevin by a mortgagee, it is *prima facie* evidence that the promissory note has not been paid. Likewise, [a non-canceled] mortgage in the possession of the mortgagee gives rise to the presumption that the mortgage debt is unpaid.[20]

Upon perusing the records, the Court finds that there is no merit in petitioners' claim that their loan obligation had already been paid. Neither is there merit in petitioners' argument that the said loan obligation to respondent was deemed satisfied when the properties they mortgaged to secure the loans were supposedly foreclosed. Petitioners clearly failed to present documentary evidence of payment and evidence that the mortgaged properties were actually used to secure the subject promissory notes. As pointed out by the CA, Danilo was even unaware whether the properties petitioners previously mortgaged were used to secure their previous loans or the loans covered by the promissory notes, to wit:

Q: Do you have any proof to show to this court any payment by you on the Php10 Million which you have obtained from Prudential Bank?
A: As of now, I cannot recall I have to consult again with . . .

Q: *Nandito ka na sa husgado, ito na ang panahon hindi na pwedeng bukas ngayon na*[.]
A: I cannot show proof right now at [this] point in time.

Q: So all that you are saying, it is just your belief that this loan covered by the promissory note had already been paid when the bank foreclosed the collaterals which you offered?
A: That is correct, Your Honor as far as I know.

Q: Is it correct that the properties offered amounting to Php26 Million were offered not for this loan but for the previous loans which you obtained from the bank?
A: I cannot answer that. Sorry Your Honor.[21]

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[20] Id. at 197.

[21] *Rollo*, pp. 31-32.

In fact, as correctly ruled by the CA, it was Danilo who admitted the genuineness of his signatures in the Promissory Notes dated October 6, 1997 and January 21, 1998. The records provide:

Q: Look at this document Mr. witness subject matter of this case Mr. Decena Exhibit "A"?
A: Yes, Your Honor.

Q: Will you see if you affix your signature?
A: Yes, Your Honor, that is my signature.

Q: That is your signature. And will you examine your signature and tell the court if you are familiar with this signature?
A: Yes, Your Honor.

Q: x x x [S]ince you have admitted signing this document is it the impression of the court that you are also admitting the loan covered by the promissory note which you obtained from Prudential Bank?
A: Yes, Your Honor.[22]

The Court agrees with the CA that the existence of the promissory notes, coupled with their own admission, had already established petitioners' indebtedness to respondent. From the foregoing, the Court finds that petitioners remain liable for the two promissory notes because they had failed to discharge the burden of proving their payment. Indeed, as held by the Court, when the existence of a debt is fully established by the evidence contained in the record, the burden of proving that it has been extinguished by payment devolves upon the debtor who offers such defense to the claim of the creditor.[23] The debtor has the burden of showing with legal certainty that the obligation has been discharged by payment.[24] Having failed to discharge such

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[22] Id. at 30-31.

[23] *Citibank, N.A. v. Sabeniano*, supra note 17; and *Coronel v. Capati*, 498 Phil. 248, 255 (2005).

[24] *Royal Cargo Corporation v. DFS Sports Unlimited, Inc.*, supra note 16, at 84; *Bank of the Philippine Islands v. Spouses Royeca*, supra note 17, at 195; *Benguet Corporation v. Department of Environment and Natural*

burden, petitioners remain liable for their indebtedness to respondent.

Petitioners are liable for ₱12,500,000.00 as the principal amount of the claim.

The CA ruled that, while the complaint alleged that petitioners had an unpaid balance of ₱12,500,000.00 and that the same had already ballooned due to interest and penalty charges, the amount prayed for in respondent's complaint was the amount of ₱10,000,000.00. Hence, petitioners could only be liable for the amount of ₱10,000,000.00.

We disagree with the finding of the CA.

The principle that the "courts cannot grant a relief not prayed for in the pleadings or in excess of what is being sought by the party"[25] is generally a principle of law founded on due process. Due process, thus, requires that judgments must conform to and be supported by the pleadings and evidence presented in court.[26] Notwithstanding, in *Development Bank of the Philippines v. Teston*,[27] the Court explained that the foregoing due process requirement is satisfied when the opposing party is given notice and opportunity to be heard with respect to the proposed relief, to wit:

> Due process considerations justify this requirement. It is improper to enter an order which exceeds the scope of relief sought by the pleadings, **absent notice which affords the opposing party an opportunity to be heard with respect to the proposed relief**. The fundamental purpose of the requirement that allegations of a complaint must provide the measure of recovery is to prevent surprise to the defendant.[28] (Emphasis supplied)

Resources-Mines Adjudication Board, supra note 17; *Citibank, N.A. v. Sabeniano*, supra note 17; *Coronel v. Capati*, supra note 23, at 256; and *Far East Bank and Trust Company v. Querimit*, supra note 17, at 731.

[25] *Diona v. Balangue*, 701 Phil. 19 (2013).

[26] Id.

[27] 569 Phil. 137 (2008).

[28] Id. at 144.

In the present case, respondent specifically averred in its complaint that its cause of action was based on the two promissory notes issued by petitioners for a total amount of ₱12,500,000.00. Both the due execution and the non-payment thereof were sufficiently proven during trial with petitioners' active participation. Petitioners were, thus, not unduly deprived of their opportunity to be heard with respect to the total amount of the promissory notes of ₱12,500,000.00. Hence, it cannot be said that petitioners will be unduly surprised since petitioners actively participated and were given due notice during the whole proceedings. Accordingly, the CA erred when it reduced the principal amount to ₱10,000,000.00 only.

As regards the computation of interest, in *Nacar v. Gallery Frames*,[29] the Court pronounced the rules in determining the amount of interest during breaches of obligations of a payment of a sum of money including a loan or forbearance of money, 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*.**
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> 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

[29] 716 Phil. 267 (2013).

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.**

2. **When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum.** No interest, however, shall be adjudged on unliquidated claims or damages, except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code), but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.[30] (Citation omitted; emphases supplied)

There are two types of interest, namely: (1) monetary interest, which is the compensation fixed by the parties for the use or forbearance of money; and (2) compensatory interest, which is that imposed by law or by the courts as penalty or indemnity for damages. Accordingly, the right to recover interest rates arises either by virtue of a contract or monetary interest, or as damages for delay or failure to pay the principal loan which is demanded or compensatory interest.[31]

In the present case, it was established that petitioners' principal loan obligation to respondent was ₱12,500,000.00. The original

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[30] Id. at 280-283.

[31] See *Isla v. Estorga*, G.R. No. 233974, July 2, 2018, citing *Spouses Pen v. Spouses Santos*, 776 Phil. 50, 62 (2016).

monetary interest was then struck down by the RTC as unconscionable. In *Isla v. Estorga*,[32] the Court ruled that when the parties' stipulated interest rate is struck down for being excessive and unconscionable, the unconscionable interest rate is nullified and deemed not written in the contract. In *Isla*, the Court held that in cases where the interest rate is struck down as unconscionable the legal rate of interest prevailing at the time the agreement was entered into will be applied by the Court, to wit:

> [I]t is well to clarify that only the unconscionable interest rate is nullified and deemed not written in the contract; whereas the parties' agreement on the payment of interest on the principal loan obligation subsists. It is as if the parties failed to specify the interest rate to be imposed on the principal amount, in which case the legal rate of interest prevailing at the time the agreement was entered into is applied by the Court. This is because, according to jurisprudence, the legal rate of interest is the presumptive reasonable compensation for borrowed money.[33]

Applying the foregoing Decisions of the Court in the present case, the principal amount of ₱12,500,000.00, thus, should earn the straight monetary interest of 12% per annum reckoned from the date of extrajudicial demand or, in the present case, on September 19, 2006 until finality of the ruling. Further, in accordance with Article 2212[34] of the Civil Code, the stipulated monetary interest should also earn compensatory interest at the rate of 12% per annum from the time of judicial demand or, in the present case, on January 14, 2008 until June 30, 2013, and 6% per annum from July 1, 2013 until finality of the ruling.[35]

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[32] Id.

[33] Id.

[34] Art. 2212 of the CIVIL CODE provides:

> Art. 2212. Interest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent upon this point.

[35] Bangko Sentral ng Pilipinas Monetary Board Resolution No. 796 dated May 16, 2013, effective July 1, 2013.

Finally, all monetary awards will earn interest at the rate of 6% per annum from finality of the ruling until full payment.

WHEREFORE, the petition is **DENIED** and the Court **AFFIRMS with MODIFICATION** the Decision dated August 25, 2017 and the Resolution dated May 15, 2018 of the Court of Appeals in CA-G.R. CV No. 107364. Petitioners Danilo Decena and Cristina Castillo (formerly Decena) are jointly and severally liable to pay respondent Asset Pool A (SPV-AMC), Inc. the following amounts:

(1) The principal amount of ₱12,500,000.00 plus monetary interest of 12% per annum from extrajudicial demand, or on September 19, 2006 until finality of the ruling;

(2) Compensatory interest on the monetary interest at the rate of 12% per annum from the time of judicial demand, or on January 14, 2008 until June 30, 2013, and 6% per annum from July 1, 2013 until finality of the ruling;

(3) ₱25,000.00 as attorney's fees;

(4) The costs of the suit; and

(5) Legal interest at the rate of 6% per annum imposed on the sums due in (1), (2), (3), and (4) from finality of the ruling until full payment.

SO ORDERED.

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

Baltazar-Padilla, J., on leave.

SECOND DIVISION

[G.R. No. 240056. October 12, 2020]

DATU MALINGIN (LEMUEL TALINGTING *y* SIMBORIO), Tribal Chieftain, Higaonon-Sugbuanon Tribe, *Petitioner*, *v.* **PO3 ARVIN R. SANDAGAN, PO3 ESTELITO R. AVELINO, PO2 NOEL P. GUIMBAOLIBOT, HON. PROSECUTOR III JUNERY M. BAGUNAS and HON. JUDGE CARLOS O. ARGUELLES, Regional Trial Court, Branch 10, Abuyog, Leyte,** *Respondents*.

SYLLABUS

1. REMEDIAL LAW; COURTS; DOCTRINE OF HIERARCHY OF COURTS; RATIONALE THEREOF; THE FAILURE TO FILE PETITIONS FOR EXTRAORDINARY WRITS WITH THE COURT BELOW WARRANTS THE DISMISSAL OF THE CASE.— [T]he doctrine of the hierarchy of courts guides litigants on the proper forum of their appeals as well as the venue for the issuance of extraordinary writs. As to the latter, even if the RTC, the CA, and the Court have concurrent original jurisdiction over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*, litigants must, as a rule, file their petitions, with the court below and failure to do so will be sufficient for the dismissal of the case.

This doctrine serves as a "constitutional filtering mechanisms" to allow the Court to focus on its more important tasks. The Court is and must remain the court of last resort. It must not be burdened with the obligation to deal with suits which also fall under the original jurisdiction of lower-ranked courts. Moreover, direct recourse to the Court is allowed only in exceptional or compelling instances. There being no extraordinary circumstance that was established here, then the non-observance of the doctrine of hierarchy of courts warrants the dismissal of the case.

2. ID.; SPECIAL CIVIL ACTIONS; *MANDAMUS*; MINISTERIAL DUTY, DEFINED; FOR A WRIT OF

***MANDAMUS* TO BE ISSUED, THERE MUST BE A CONCURRENCE OF PETITIONER'S LEGAL RIGHT AND RESPONDENT'S NEGLECT TO DO A MINISTERIAL DUTY MANDATED BY LAW.—** Under Section 3, Rule 65 of the Rules of Court, a petition for *mandamus* is an appropriate remedy when any tribunal, corporation, board, officer or person: (1) unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station; . . .

The present petition falls within the first instance cited above considering that petitioner contends that respondents neglected their duties that the law required of them to do. This being so, for a writ of *mandamus* to be issued, there must be the concurrence of petitioner's legal right and a corresponding ministerial duty imposed by law upon respondents which they failed to perform.

Petitioner's legal right must be clearly shown and the petition must also prove that respondents indeed neglected to do a *ministerial* duty mandated by law. In contrast with discretionary duty, ministerial duty does not involve the exercise of judgment. It is a duty where an officer or tribunal, for that matter, undertakes one's tasks in a prescribed manner and in compliance with the law, without regard to one's own judgment.

Notably, the foregoing requirements were not established in the case.

3. ID.; ID.; ID.; POLITICAL LAW; POLICE POWER; DISCRETIONARY DUTY; CRIMINAL PROSECUTION, WHICH IS AN EXERCISE OF POLICE POWER, AND THE COURT'S ADJUDICATION BOTH PERTAIN TO DISCRETIONARY DUTIES.— In prosecuting a criminal case, the State, through the public prosecutor, exercises its police power and punishes those who are found guilty, through the determination by the court of law. Undeniably, criminal prosecution and the court's adjudication pertain to discretionary duties, not ministerial functions, because they require respondents Judge, Prosecutor and even respondents Police Officers to act in accordance with their own judgments and consciences uncontrolled by anyone. Overall, when the law requires and grants a public officer the right to decide on how he or she shall perform one's duty, then he or she is vested with discretionary functions, as in the case of respondents.

4. POLITICAL LAW; REPUBLIC ACT NO. 8371 (THE INDIGENOUS PEOPLES' RIGHTS ACT OF 1997); REMEDIAL LAW; JURISDICTION; JURISDICTION OF THE NATIONAL COMMISSION ON INDIGENOUS PEOPLES (NCIP); R.A. NO. 8371 DOES NOT BAR CRIMINAL PROSECUTION FOR ACTS COVERED BY THE REVISED PENAL CODE WHICH HAS NOTHING TO DO WITH MEMBERSHIP IN AN INDIGENOUS CULTURAL COMMUNITIES (ICC).— [P]etitioner relied on Sections 65 and 66 (on the jurisdiction of the NCIP), RA 8371 in arguing that respondents have no jurisdiction to prosecute him for his supposed criminal liability. However, his postulation is untenable because RA 8371 finds application in disputes relating to claims and rights of ICCs/IPs. This is not the case here.

Let it be underscored that petitioner's indictment for Rape has nothing to do with his purported membership in an ICC, but by reason of his alleged acts that is covered by the RPC. At the same time, RA 8371 does not serve as a bar for criminal prosecution because crime is an offense against the society. Thus, penal laws apply to individuals without regard to his or her membership in an ICC.

5. STATUTORY CONSTRUCTION; NATIONAL LAWS VIS-À-VIS CUSTOMARY LAWS.— [C]ustomary laws and practices of the IPs [Indigenous Peoples] may be invoked provided that they are *not* in conflict with the legal system of the country. There must be legal harmony between the national laws and customary laws and practices in order for the latter to be viable and valid and must not undermine the application of legislative enactments, including penal laws.

D E C I S I O N

INTING, *J.*:

This resolves the Petition for *Mandamus*[1] with prayer for Writ of Preliminary Injunction filed by Datu Malingin (Lemuel Talingting *y* Simborio) (petitioner) praying that the Court (a) declares Branch 10, Regional Trial Court (RTC), Abuyog, Leyte to be without jurisdiction to settle disputes involving Indigenous Peoples (IP); (b) orders Prosecutor III Junery M. Bagunas (respondent Prosecutor) to refrain from prosecuting cases involving IPs; and (c) declares Police Officer (PO) III Arvin R. Sandagan, PO3 Estelito R. Avelino, PO2 Noel P. Guimbaolibot (respondent Police Officers) guilty of Arbitrary Detention (collectively respondents).

The Antecedents

Through the criminal Informations issued by respondent Prosecutor, petitioner was accused of having carnal knowledge of a 14-year-old minor, AAA,[2] on six occasions by force, threat, intimidation and by taking advantage of superior strength. Consequently, Criminal Case Nos. 3821, 3822, 3823, 3824, 3825 and 3826 were filed against him for rape and raffled with

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[1] *Rollo,* pp. 3-31.

[2] The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. (RA) 7610, "An Act Providing for Stronger Deterrence and Special Protection against Child Abuse, Exploitation and Discrimination, and for Other Purposes"; RA 9262, "An Act Defining Violence against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes"; Section 40 of A.M. No. 04-10-11-SC, known as the "Rule on Violence against Women and Their Children," effective November 15, 2004; *People v. Cabalquinto,* 533 Phil. 703 (2006); and Amended Administrative Circular No. 83-2015 dated September 5, 2017, Subject: Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Personal Circumstances.

the RTC presided by Judge Carlos O. Arguelles (respondent Judge).[3]

Subsequently, petitioner filed a Motion to Quash[4] on the ground of lack of jurisdiction. He averred that he was a member of the Higaonon-Sugbuanon Tribe, an indigenous group. According to him, pursuant to Sections 65[5] and 66,[6] Republic Act No. (RA) 8371,[7] the criminal cases filed against him should be resolved first through the customary law and practices of the indigenous group he belonged to and thereafter, the issues must be referred to the National Commission on Indigenous Peoples (NCIP).

On August 31, 2017, respondent Judge issued a Joint Order[8] denying the Motion to Quash for lack of merit. He ratiocinated that the invocation of petitioner of the provisions of RA 8371 was misplaced. He specified that RA 8371 covered only disputes concerning customary law and practices of Indigenous Cultural Communities (ICCs) and did not extend to those recognized by regular courts such as violations of RA 8353[9] and the Revised Penal Code (RPC).

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[3] As culled from the Motion to Quash filed by petitioner with Branch 10, Regional Trial Court, Abuyog, Leyte, *rollo*, p. 38.

[4] *Id.* at 38-39.

[5] Section 65. *Primacy of Customary Laws and Practices*. — When disputes involve ICCs/IPs, customary laws and practices shall be used to resolve the dispute.

[6] Section 66. *Jurisdiction of the NCIP*. — The NCIP, through its regional offices, shall have jurisdiction over all claims and disputes involving rights of ICCs/IPs: *Provided, however*, That no such dispute shall be brought to the NCIP unless the parties have exhausted all remedies provided under their customary laws. For this purpose, a certification shall be issued by the Council of Elders/Leaders who participated in the attempt to settle the dispute that the same has not been resolved, which certification shall be a condition precedent to the filing of a petition with the NCIP.

[7] The Indigenous Peoples' Rights Act of 1997.

[8] *Rollo*, pp. 43-45.

[9] *The Anti-Rape Law of 1997*.

Proceedings before the Court

Undeterred, petitioner filed the present petition contending that *mandamus* is the only available remedy in order to ensure that the victims of violations of cultural rights are given reparation.

Petitioner also argued that respondent Prosecutor committed grave abuse of discretion when he failed to observe the rights of members of an indigenous group. He claimed that the IPs are not included in the persons subject of the country's penal laws because they have the right to use customary laws and practices to resolve disputes.[10]

Petitioner, likewise, ascribed grave abuse of discretion against respondent Judge arguing that the latter did not take into account that the cases cognizable by regular courts do not include those covered by RA 8371.[11]

Finally, petitioner posited that respondent Police Officers committed Arbitrary Detention because they detained him without warrant on June 3, 2017.[12]

Meanwhile, respondent Judge in his Comment[13] countered that the petition should be denied outright because of its procedural infirmities. He stressed that *mandamus* is the applicable remedy when the complained act involved a ministerial duty. He asserted that he is exercising judicial, not mere ministerial function, and the issue of lack of jurisdiction is a matter proper subject of a *certiorari* petition, not a petition for *mandamus*.

Respondent Judge also contended that the petition was filed out of time. He posited that petitioner did not file a motion for reconsideration on the denial of the Motion to Quash which is

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[10] *Rollo*, pp. 12, 15.

[11] *Id.* at 15.

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

[13] *Id.* at 62-67.

a *sine qua non* condition in the filing of a petition for *certiorari*; and that the direct resort to the Court is unjustified and, thus, violative of the doctrine of hierarchy of courts.

Furthermore, respondent Judge contended that the petitioner cannot rely on RA 8371 because he is not exempt from criminal prosecution under the RPC; that following the principle of generality, penal laws are binding to all persons within the territorial jurisdiction of the Philippines; that rape cases are excluded in the claims or disputes involving the rights of petitioner as a supposed member of ICCs or IPs; and that to subscribe to the submissions of petitioner that he is exempt from criminal prosecution by a regular court is to surrender police power and grant him criminal immunity which he is not entitled under the law.

On the other hand, respondents Prosecutor and Police Officers manifested[14] that they adopt the Comment filed by respondent Judge and prayed that the petition be dismissed for utter lack of merit.

Issue

May the Court issue a writ of *mandamus* to compel respondents Judge and Prosecutor to desist from proceeding with the rape cases against petitioner and declare respondent Police Officers guilty of Arbitrary Detention?

Our Ruling

The Petition for *Mandamus* lacks merit.

Non-observance of the doctrine of hierarchy of courts.

Section 5 (1),[15] Article VIII of the Constitution provides that the Court exercises original jurisdiction over petitions for

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[14] See Manifestation for the Adoption of the Comment of the Hon. Judge Carlos Arguelles, *id.* at 71-72, 82-83.

[15] Section 5 (1), Article VIII, CONSTITUTION:

Section 5. The Supreme Court shall have the following powers:

certiorari, prohibition, *mandamus*, *quo warranto* and *habeas corpus*. It shares this original jurisdiction with the RTC and the CA as provided for under Sections 9 (1)[16] and 21 (1)[17] of Batas Pambansa Bilang 129. By reason of the shared jurisdiction, the immediate and direct recourse to the Court is frowned upon following the doctrine of hierarchy of courts.[18]

Specifically, the doctrine of the hierarchy of courts guides litigants on the proper forum of their appeals as well as the venue for the issuance of extraordinary writs. As to the latter, even if the RTC, the CA, and the Court have concurrent original jurisdiction over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*, litigants must, as a rule, file their petitions, with the court below and failure to do so will be sufficient for the dismissal of the case.[19]

This doctrine serves as a "constitutional filtering mechanisms" to allow the Court to focus on its more important tasks. The Court is and must remain the court of last resort. It must not be burdened with the obligation to deal with suits which also

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(1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for *certiorari*, prohibition. *mandamus*, *quo warranto*, and *habeas corpus*.

[16] Section 9 (1), Batas Pambansa Blg. 129 provides:

SECTION 9. *Jurisdiction*. — The Intermediate Appellate Court shall exercise:

(1) Original jurisdiction to issue writs of *mandamus*, prohibition, *certiorari*, *habeas corpus*, and *quo warranto*, and auxiliary writs or processes, whether or not in aid of its appellate jurisdiction[.]

[17] Section 21 (1), Batas Pambansa Blg. 129 provides:

Section 21. *Original Jurisdiction in Other Cases*. — Regional Trial Courts shall exercise original jurisdiction:

(1) In the issuance of writs of *certiorari*, prohibition, *mandamus*, *quo warranto*, *habeas corpus* and injunction which may be enforced in any part of their respective regions[.]

[18] See *Ha Datu Tawahig v. Lapinid*, G.R. No. 221139, March 20, 2019.

[19] See *Gios-Samar, Inc. v. Department of Transportation and Communications*, G.R. No. 217158, March 12, 2019.

fall under the original jurisdiction of lower-ranked courts.[20] Moreover, direct recourse to the Court is allowed only in exceptional or compelling instances. There being no extraordinary circumstance that was established here, then the non-observance of the doctrine of hierarchy of courts warrants the dismissal of the case.[21]

Invocation of the provisions of RA 8371 is insufficient to evade criminal prosecution.

At any rate, even if the Court sets aside the failure of petitioner to abide by the doctrine of hierarchy of courts, the Petition for *Mandamus* will still fail as it is not a proper recourse to compel respondents to defer from pursuing the criminal cases against him.

Under Section 3, Rule 65 of the Rules of Court, a petition for *mandamus* is an appropriate remedy when any tribunal, corporation, board, officer or person: (1) unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station; or (2) unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled. Added to this, it must be shown that there is "no other plain, speedy and adequate remedy in the ordinary course of law" that may be availed of by the aggrieved person.

The present petition falls within the first instance cited above considering that petitioner contends that respondents neglected their duties that the law required of them to do. This being so, for a writ of *mandamus* to be issued, there must be the concurrence of petitioner's legal right and a corresponding ministerial duty imposed by law upon respondents which they failed to perform.[22]

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[20] *Id.*

[21] *Saint Mary Crusade to Alleviate Poverty of Brethren Foundation, Inc. v. Judge Riel*, 750 Phil. 57, 68 (2015).

[22] *Lihaylihay v. Tan*, G.R. No. 192223, July 23, 2018.

Petitioner's legal right must be clearly shown and the petition must also prove that respondents indeed neglected to do a *ministerial* duty mandated by law. In contrast with discretionary duty, ministerial duty does not involve the exercise of judgment. It is a duty where an officer or tribunal, for that matter, undertakes one's tasks in a prescribed manner and in compliance with the law, without regard to one's own judgment.[23]

Notably, the foregoing requirements were not established in the case.

First, petitioner failed to show that he has a clear legal right which respondents had violated.

To stress, petitioner relied on Sections 65 and 66 (on the jurisdiction of the NCIP), RA 8371 in arguing that respondents have no jurisdiction to prosecute him for his supposed criminal liability. However, his postulation is untenable because RA 8371 finds application in disputes relating to claims and rights of ICCs/IPs. This is not the case here.

Let it be underscored that petitioner's indictment for Rape has nothing to do with his purported membership in an ICC, but by reason of his alleged acts that is covered by the RPC. At the same time, RA 8371 does not serve as a bar for criminal prosecution because crime is an offense against the society.[24] Thus, penal laws apply to individuals without regard to his or her membership in an ICC.

Definitely, customary laws and practices of the IPs may be invoked provided that they are *not* in conflict with the legal system of the country. There must be legal harmony between the national laws and customary laws and practices in order for the latter to be viable and valid and must not undermine the application of legislative enactments, including penal laws.[25]

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[23] *Id.*, citing *Samson v. Barrios*, 63 Phil. 198, 203 (1936).

[24] *Ha Datu Tawahig v. Lapinid*, supra note 18, citing P.J. Ortmeier, Public Safety and Security Administration 23 (1999).

[25] *Id.*

The recent case of *Ha Datu Tawahig v. Lapinid*[26] (*Ha Datu Tawahig*) also involved a petition for *mandamus* against a judge and prosecutor in relation to the prosecution of another IP member and tribal leader for rape. Therein petitioner also relied on the provisions of RA 8371 maintaining that he was not covered by penal laws.

The Court explained in *Ha Datu Tawahig* that the intention of our laws to protect the IPs does not include the deprivation of courts of its jurisdiction over criminal cases. This means that members of the ICC who are charged with criminal offenses cannot simply invoke the provisions of RA 8371 to evade prosecution and the possibility of criminal sanctions.

Interestingly, herein petitioner raised substantially the same arguments as the petitioner in *Ha Datu Tawahig*. For this reason, the Court reiterates Our earlier pronouncement that one's membership in an indigenous group shall not hinder the filing of a criminal case against the concerned person. This being the case, it follows that no right of petitioner, as an alleged member of an ICC, was violated by the filing of rape charges against him. Thus, the first requirement for the issuance of a writ of *mandamus* is lacking.

Second, petitioner did not prove any ministerial duty on the part of respondents which they neglected to perform.

In prosecuting a criminal case, the State, through the public prosecutor, exercises its police power and punishes those who are found guilty, through the determination by the court of law. Undeniably, criminal prosecution and the court's adjudication pertain to discretionary duties, not ministerial functions, because they require respondents Judge, Prosecutor and even respondents Police Officers to act in accordance with their own judgments and consciences uncontrolled by anyone. Overall, when the law requires and grants a public officer the right to decide on how he or she shall perform one's duty, then he or she is vested with discretionary functions,[27] as in the case of respondents.

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[26] G.R. No. 221139, March 20, 2019.

[27] *Lihaylihay v. Tan*, *supra* note 22, citing *Sy Ha v. Galang*, 117 Phil. 798, 805 (1963).

Verily, in the absence of a clear legal right on the part of petitioner and the corresponding ministerial duties required by law on respondents that they neglected to perform, then a writ of *mandamus* cannot be issued.

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

SO ORDERED.

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

Baltazar-Padilla, J., on leave.

SECOND DIVISION

[G.R. No. 241523. October 12, 2020]

DANIEL F. TIANGCO, *Petitioner*, *v.* **SUNLIFE FINANCIAL PLANS, INC., SUNLIFE OF CANADA (PHILS.), INC., and RIZALINA MANTARING,** *Respondents*.

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; IN A RULE 45 PETITION, THE COURT IS LIMITED TO THE RESOLUTION OF QUESTIONS OF LAW; EXCEPTIONS.— Under Rule 45, the Court is only limited to the resolution of questions of [law]. It is not part of the function of the Court to analyze or weigh the evidence already perused by the trial courts. However, this rule admits of some exceptions, to wit: (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the CA, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the CA are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition, as well as in petitioner's main and reply briefs are not disputed by respondents; and (10) The finding of fact of the CA is premised on the supposed absence of evidence and is contradicted by the evidence on record.

. . .

A judicious scrutiny of the case reveals that none of the exceptional circumstances is present in the instant case.

2. MERCANTILE LAW; CORPORATIONS; ALTER EGO DOCTRINE OR THE PIERCING OF THE CORPORATE VEIL; CONTROL TEST; ELEMENTS THEREOF; IN THE ABSENCE OF FRAUD OR OTHER PUBLIC POLICY

CONSIDERATIONS, THE EXISTENCE OF INTERLOCKING DIRECTORS, MANAGEMENT, AND EVEN THE INTERTWINING OF POLICIES OF TWO CORPORATIONS DO NOT JUSTIFY THE PIERCING OF THE VEIL OF THE CORPORATIONS.—In order for the Alter Ego Doctrine or the piercing of the corporate veil to be applied, the following elements of the Control Test must concur:

> (1) Control, not mere majority or complete stock control, but complete domination, not only of finances but of policy and business practice in respect to the transaction attacked so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own;
>
> (2) Such control must have been used by the defendant to commit fraud or wrong, to perpetuate the violation of a statutory or other positive legal duty, or dishonest and unjust act in contravention of plaintiff's legal right; and
>
> (3) The aforesaid control and breach of duty must [have] proximately caused the injury or unjust loss complained of.

The mere existence of interlocking directors, management, and even the intricate intertwining of policies of the two corporate entities do not justify the piercing of the corporate veil of SLFPI, unless there is presence of fraud or other public policy considerations. To stress, the Alter Ego Doctrine cannot be casually invoked nor presumed. Failure to prove any of the foregoing requisites precludes Tiangco from invoking the same.

APPEARANCES OF COUNSEL

Jabla Bagassampior & Libardo Law Offices for petitioner.
Quasha Ancheta Peña & Nolasco for respondents.

D E C I S I O N

DELOS SANTOS, *J.*:

This is a Petition for Review on *Certiorari* filed under Rule 45 of the Rules of Court assailing the Decision[1] dated April

[1] Penned by Associate Justice Rafael Antonio M. Santos, with Associate Justices Ramon A. Cruz and Socorro B. Inting, concurring; *rollo*, pp. 45-63.

13, 2018 of the Court of Appeals (CA) in CA-G.R. CV No. 106069, which affirmed the Decision[2] dated November 16, 2015 of the Regional Trial Court (RTC) of Makati City, Branch 133, which dismissed Daniel F. Tiangco's (Tiangco) Complaint for Sum of Money with Damages.

The Facts

In 1978, herein petitioner Tiangco was engaged as an insurance agent by the Philippine branch of Sun Life Assurance of Canada (a part of Sun Life Financial), which name was later changed to Sun Life of Canada (Philippines), Inc. (SLOCPI).

In 2000, Sun Life Financial established Sun Life Financial Plans, Inc. (SLFPI) as part of its expansion in the pre-need industry. Tiangco was then engaged by SLFPI as Sales Consultant to market its pre-need plans in the Philippines.

On December 10, 2003, Tiangco's SLOCPI's Agent's Agreement (Agent's Agreement) and SLFPI's Sales Consultant's Agreement (Consultant's Agreement) were terminated, after due and proper investigation of a sexual harassment charge against him by one Marigay S. Rivera.[3]

In a Letter[4] dated July 10, 2004, Tiangco demanded from SLFPI, SLOCPI, and Rizalina Mantaring (collectively, respondents), President of both SLFPI and SLOCPI, payment of commission on premium payments to SLFPI after December 10, 2003. The unpaid remunerations mostly pertained to renewal commissions for a group life policy, educational plans, and pension plans amounting to a total of ₱496,148.70.

SLFPI denied the demands of Tiangco on the provisions in the Consultant's Agreement to which Tiangco agreed to. SLFPI likewise contended that whatever commissions Tiangco is entitled to, have already been paid for and were received by Tiangco.

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[2] Penned by Presiding Judge Elpidio R. Calis; id. at 256-264.

[3] Id. at 48, 165-166.

[4] Id. at 167.

Aggrieved, Tiangco then filed a Complaint[5] for Sum of Money before the RTC with claims for moral damages.

The Ruling of the RTC

The RTC, in its Decision[6] dated November 16, 2015, dismissed the complaint and the compulsory counterclaims filed by respondents for lack of merit. The RTC held that Tiangco failed to adduce preponderant proof to support his claim against respondents.

The Ruling of the CA

On appeal, Tiangco interposed the following arguments: (a) that he did not sign the Consultant's Agreement; (b) that, as a signatory of the Agent's Agreement and having rendered 15 years of service, he is entitled to the commissions, bonuses, and other compensation even after his termination; and (c) that since SLOCPI and SLFPI share the same president and administrative officers, and since the policies of the two companies are integrated, the compensation scheme in SLOCPI would likewise apply to SLFPI.

The CA, in its Decision[7] dated April 13, 2018, denied Tiangco's appeal and affirmed the Decision of the RTC. The CA held that Tiangco cannot deny having signed the Consultant's Agreement as shown by his signature and affirmation in the SLFPI Briefing Certificate that he read, understood, and submitted the Consultant's Agreement. As regards Tiangco's postulation that SLOCPI and SLFPI are one entity as they have interlocking officers, the CA held that it has no reason to pierce the veil of corporate entity of SLFPI and SLOCPI or consider the two companies as one entity. The CA concurred with the RTC that Tiangco failed to present sufficient evidence to prove that he is entitled to the commission he is claiming.

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[5] Id. at 168-181.

[6] Id. at 256-264.

[7] Id. at 45-63.

Regarding the claim of cash bond, the CA upheld the ruling of the RTC that such cannot be released considering that Tiangco has not secured the necessary clearance from respondents.

Not in conformity with the CA Decision, Tiangco elevated the case before the Court *via* Rule 45 of the Rules of Court submitting the following grounds of his petition:

1. THE FINDINGS OF FACT OF THE HON. [CA] THAT THERE IS ABSENCE OF EVIDENCE THAT [TIANGCO] IS ENTITLED TO CERTAIN RENEWAL COMMISSIONS FROM THE SALE OF SLFPI'S PRE-NEED PLANS IS SHARPLY CONTRADICTED BY THE EVIDENCE ON RECORD.
2. THE FINDINGS OF FACT OF THE HON. [CA] THAT THERE IS NOT ENOUGH JUSTIFICATION TO CONSIDER SLOCPI AND SLFPI AS ONE ENTITY IS STRONGLY CONTRADICTED BY THE EVIDENCE ON RECORD.
3. THE HON. [CA] IS MANIFESTLY MISTAKEN IN FINDING THAT [TIANGCO] IS NOT ENTITLED TO THE REFUND OF HIS [₱50,000.00] CASH BOND.[8]

The Issues

The issues in the present controversy redounds to the following:

(a) Whether Tiangco is entitled to the commission earned after his termination under the premise that SLFPI and SLOCPI are one entity; and

(b) Whether Tiangco is entitled to the refund of his cash bond amounting to ₱50,000.00.

The Court's Ruling

The petition lacks merit.

The parameters of Rule 45 of the Rules of Court.

[8] Id. at 19.

Under Rule 45, the Court is only limited to the resolution of questions of law. It is not part of the function of the Court to analyze or weigh the evidence already perused by the trial courts. However, this rule admits of some exceptions, to wit: (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the CA, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the CA are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition, as well as in petitioner's main and reply briefs are not disputed by respondents; and (10) The finding of fact of the CA is premised on the supposed absence of evidence and is contradicted by the evidence on record.[9]

In the present petition, Tiangco asserts that the present case falls under the exceptions since the CA's inference is manifestly mistaken, absurd, and impossible, and the findings of fact is premised on the supposed absence of evidence and is contradicted by the evidence on record.[10]

A judicious scrutiny of the case reveals that none of the exceptional circumstances is present in the instant case.

The Alter Ego Doctrine is not applicable; Tiangco is not entitled to commission after termination.

Tiangco insists that the CA erred in affirming the ruling of the RTC that he is not entitled to the unpaid renewal commissions which accrued after his termination. Tiangco argues that under

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[9] *Spouses Miano, Jr. v. Manila Electric Company*, 800 Phil. 118, 123 (2016), citing *Medina v. Mayor Asistio, Jr.*, 269 Phil. 225, 232 (1990).

[10] *Rollo*, pp. 19-20.

the Agent's Agreement in SLOCPI, an agent who has completed 15 years of service is entitled to commissions, bonuses and other compensations even after his termination. Tiangco further *posits* that SLOCPI and SLFPI are holding themselves out to the public as one and the same entity considering that both companies have interlocking management, officers, and policies. Moreover, the termination of SLFPI's Consultant's Agreement meant the automatic or concurrent termination of SLOCPI's Agent's Agreement. Allegedly, the provisions in the Agent's Agreement under SLOCPI is applicable to his commissions under SLFPI.

In its assailed Decision, the CA held that it saw no reason to pierce the veil of corporate fiction of SLFPI or consider SLFPI and SLOCPI as one, as there was no showing that SLFPI was established to defeat public convenience, justify wrong, protect fraud or defend crime, or is used as a device to defeat the labor laws, nor is there any showing that SLFPI is used as a business conduit of SLOCPI.

In order for the Alter Ego Doctrine or the piercing of the corporate veil to be applied, the following elements of the Control Test must concur:

> (1) Control, not mere majority or complete stock control, but complete domination, not only of finances but of policy and business practice in respect to the transaction attacked so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own;
>
> (2) Such control must have been used by the defendant to commit fraud or wrong, to perpetuate the violation of a statutory or other positive legal duty, or dishonest and unjust act in contravention of plaintiff's legal right; and
>
> (3) The aforesaid control and breach of duty must [have] proximately caused the injury or unjust loss complained of.[11]

The mere existence of interlocking directors, management, and even the intricate intertwining of policies of the two corporate

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[11] *Pacific Rehouse Corp. v. Court of Appeals*, 730 Phil. 325, 348 (2014).

entities do not justify the piercing of the corporate veil of SLFPI, unless there is presence of fraud or other public policy considerations.[12] To stress, the Alter Ego Doctrine cannot be casually invoked nor presumed. Failure to prove any of the foregoing requisites precludes Tiangco from invoking the same. Considering that no clear and convincing proof of any wrongdoing was proven in this case, the CA properly ruled that the provisions in the Agent's Agreement in SLOCPI cannot be used as a basis in Tiangco's claim for commissions under SLFPI. Simply put, Tiangco cannot invoke the provisions under the SLOCPI Agent's Agreement in order to demand the renewal commissions under SLFPI policies, which accrued after his termination.

Aside from invoking the Alter Ego Doctrine to pursue his claim, Tiangco denied being bound by the Consultant's Agreement as he belied having signed it. However, there is preponderant evidence on record, which would prove that Tiangco knows that he is bound by SLFPI's Consultant's Agreement. Tiangco admitted that it was his signature appearing on the SLFPI's Briefing Certification wherein he acknowledged that he has read the Consultant's Agreement, Guidelines on Personal and Returned Cheques of Sales Consultants and understood the full context of such agreements.[13] Tiangco likewise indicated therein that he submitted the Sales Consultant's Contract and Remuneration Schedule to SLFPI.[14]

Section VI, paragraph (d), sub-paragraph (a) of the SLFPI's Consultant's Agreement provides that:

VI. SALES CONSULTANT'S COMPENSATION

The Company will compensate the Sales Consultant commissions, bonuses and other compensation while this Agreement is in force and effect subject to the following conditions:

x x x x x x x x x

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[12] See *Jardine Davies, Inc. v. JRB Realty, Inc.*, 502 Phil. 129, 138 (2005).

[13] *Rollo*, p. 426; TSN, October 20, 2014, p. 53.

[14] Id. at 373.

(d) Commissions, bonuses and other compensation shall not be payable nor accrue to the Sales Consultant:

a. After termination of this Agreement except as follows:

i. First year commissions due on cases submitted and installment paid prior to such termination but approved after the effective date of cancellation;

ii. If the termination is by reason of the death of the Sales Consultant[,] then the Company will pay to the legal representative of the Sales Consultant as they become payable the commissions that would have been payable during the commission-paying period of the plans concerned;

iii. With respect to the payments described in (ii), in the absence of the appointment of a legal representative, the Company may in its sole discretion make payment to the Sales Consultant's legal spouse, if any, and be fully discharged of its liability to the extent of the payment actually made to such spouse.[15]

Considering that Tiangco was terminated due to an administrative complaint, it is clear from the foregoing that he is not entitled to any commission, bonus or other compensation after the termination of the agreement.

Cash Bond is withheld until the release of Clearance.

Tiangco likewise asserts that he is entitled to the refund of his cash bond with SLFPI. Tiangco claims that SLFPI's Agency Accounting and Administration Officer Elvie M. Mamaril issued a Certification[16] dated June 8, 2005 clearing him of all his financial accountabilities, thus, justifying his claim for refund of cash bond amounting to ₱50,000.00. Respondents, on the other hand, insist that the certification they issued to Tiangco only pertained to his earnings for the years 2002 to 2003.[17]

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[15] Id. at 137-138.

[16] Id. at 68.

[17] Id. at 127.

Both the RTC and the CA held that Tiangco failed to present sufficient proof that he secured the necessary clearance for the release of the cash bond. The Court concurs with the RTC and the CA. Indeed, Tiangco has to secure a clearance from SLFPI for the release of the cash bond. Since Tiangco failed to present sufficient proof that the necessary clearance was indeed released, his claim must be denied.

WHEREFORE, in view of the foregoing, the Petition for Review on *Certiorari* is **DENIED**. The Decision dated April 13, 2018 of the Court of Appeals in CA-G.R. CV No. 106069 is hereby **AFFIRMED**.

SO ORDERED.

Perlas-Bernabe, S.A.J. (*Chairperson*), *Hernando,* and *Lopez,*[*] *JJ.*, concur.

Baltazar-Padilla, J., on leave.

[*] Designated as additional member in lieu of Associate Justice Henri Jean Paul B. Inting per Raffle dated September 23, 2020.

FIRST DIVISION

[G.R. No. 241780. October 12, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **DANILO TUYOR *y* BANDERAS,** *Accused-Appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; HEARSAY RULE; ENTRIES IN OFFICIAL RECORDS; MEDICO-LEGAL REPORT; A GOVERNMENT DOCTOR'S MEDICO-LEGAL REPORT IS AN EXCEPTION TO THE HEARSAY RULE AND A *PRIMA FACIE* EVIDENCE OF THE FACTS THEREIN STATED.— Dr. Baluyut's issuance of the medico-legal report falls under one of the exceptions to the hearsay rule.

Under Section 44, Rule 130 of the Rules on Evidence, "Entries in official records made in the performance of [her] duty [as] a public officer of the Philippines, x x x are *prima facie* evidence of the facts therein stated."

Dr. Baluyut, a government doctor, and who by actual practice and by virtue of her oath as civil service official, is competent to examine persons and issue medico-legal reports.

2. ID.; ID.; DISPUTABLE PRESUMPTIONS; THERE IS A PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF A DOCTOR'S FUNCTION WHEN ISSUING A MEDICO-LEGAL REPORT.—There is a presumption of regularity in the performance of Dr. Baluyut's functions and duties when she issued the medico-legal reports. In the absence of evidence proving the contrary, Dr. Baluyut's finding that AAA had sexual intercourse with Tuyor, and was seven weeks pregnant when she was examined, are conclusive.

3. ID.; ID.; ADMISSIBILITY; OPINION RULE; THE TESTIMONY OF A WITNESS REGARDING A FAMILIAR HANDWRITING IS ADMISSIBLE AS AN OPINION OF AN ORDINARY WITNESS.— Under Section 50(b), Rule 130 of the Rules on Evidence, "[T]he opinion of a witness x x x

may be received in evidence regarding x x x [a] handwriting with which [s]he has sufficient familiarity."

Since Dr. Madrid was familiar with Dr. Baluyut's signature, because both of them work at the Philippine General Hospital *(PGH)*, and she saw Dr. Baluyut sign a document, Dr. Madrid's testimony with regard to Dr. Baluyut's signature is admissible as an opinion of an ordinary witness.

4. ID.; ID.; ID.; ID.; EXPERT TESTIMONY; THE OPINION ON MATTERS REQUIRING SPECIAL KNOWLEDGE, SKILL, EXPERIENCE, OR TRAINING WHICH THE WITNESS IS SHOWN TO POSSESS IS ADMISSIBLE AS EXPERT TESTIMONY.— Under Section 49 of the Rules of Evidence, "The opinion of a witness on a matter requiring special knowledge, skill, experience or training which [s]he is shown to possess, may be received in evidence."

The prosecution was able to establish Dr. Madrid's expertise in the relevant medical field. Dr. Madrid's interpretation of the entries made by Dr. Baluyut in the medico-legal report is admissible as expert testimony.

5. ID.; ID.; CREDIBILITY OF WITNESSES; THE ASSESSMENT THEREON AND THE FINDINGS OF FACT BY THE TRIAL JUDGE ARE ACCORDED GREAT RESPECT ON APPEAL.—With respect to the probative value of Dr. Madrid's expert testimony, this will depend on her credibility as an expert witness and the relevance of her testimony to the issue at hand. As a rule, the trial judge's assessment of the witnesses' testimonies and findings of fact are accorded great respect on appeal. In the absence of any substantial reason to justify the reversal of the trial court's assessment and conclusion, like when no significant facts and circumstances are shown to have been overlooked or disregarded, the reviewing court is generally bound by the former's findings.The rule is even more stringently applied if the appellate court has concurred with the trial court.

6. ID.; ID.; ID.; WOMEN'S HONOR DOCTRINE; RAPE MAY BE PROVEN BY THE SOLE AND UNCORROBORATED TESTIMONY OF THE OFFENDED PARTY, PROVIDED THAT HER TESTIMONY IS CLEAR, POSITIVE, AND PROBABLE; THE EVALUATION OF THE OFFENDED

PARTY'S WEIGHT AND CREDIBILITY SHOULD BE WITHOUT GENDER BIAS OR CULTURAL MISCONCEPTION.— In determining whether AAA's testimony should be given due weight and credence, it is important to take into consideration the *women's honor* doctrine which states, "[the] well-known fact that women, especially Filipinos would not admit that they have been abused unless that abuse had actually happened, [because it is] their natural instinct to protect their honor," borders on the fallacy of *non-sequitur*. . . .

Through this, the Court can evaluate the weight and credibility of a private complainant of rape without gender bias or cultural misconception.

It is a settled rule that rape may be proven by the sole and uncorroborated testimony of the offended party, provided that her testimony is clear, positive and probable.

7. CRIMINAL LAW; RAPE; THE PRECISION AS TO THE DATE OR TIME WHEN RAPE IS COMMITTED HAS NO BEARING ON ITS COMMISSION.— AAA's inconsistency as to the exact date of the second rape does not in itself, cast doubt on Tuyor's guilt. **Since the essence of rape is carnal knowledge of a person through force or intimidation against that person's will, the precision as to the time when the rape is committed has no bearing on its commission.**

8. ID.; ID.; QUALIFYING CIRCUMSTANCES; MINORITY; RELATIONSHIP; TO QUALIFY THE RAPE, THE VICTIM'S MINORITY AND RELATIONSHIP WITH THE OFFENDER SHOULD BOTH BE ALLEGED IN THE INFORMATION AND PROVEN BEYOND REASONABLE DOUBT.— In order to qualify the rape, the minority of the victim and his or her relationship with the offender should both be **alleged in the Information and proven beyond reasonable doubt during trial**. The *raison d' etre* is that the special qualifying circumstances of minority and relationship have the effect of altering the nature of the rape and its corresponding penalty. Otherwise, death penalty cannot be imposed upon the offender.

AAA's minority at the time the crimes were committed against her, was properly alleged and proven during trial. Evidence

also proved that Tuyor had carnal knowledge of AAA without the latter's consent, with the use of force, threat and intimidation, and by taking advantage of his moral ascendancy. However, in the five Informations, the allegation that AAA is the "stepdaughter" of Tuyor, is inaccurate. Neither AAA is the stepdaughter of Tuyor nor is the latter the stepfather of the former, because such a relationship presupposes a legitimate relationship between the appellant and the victim's mother. A stepdaughter is the daughter of one's wife or husband by a former marriage, or a stepfather is the husband of one's mother by virtue of a marriage subsequent to that of which the person spoken of is the offspring.

During trial, the prosecution failed to establish the stepparent-stepdaughter relationship between Tuyor and AAA. No proof of marriage was presented to establish Tuyor's relationship with AAA's mother. On the contrary, AAA's testimony shows that Tuyor was the live-in partner of AAA's mother. . . .

Although the State has successfully proven the common-law relationship, the crime is only simple rape where the information does not properly allege the qualifying circumstance of relationship between the accused and the victim. This is because the accused's right to be informed of the nature and cause of the accusation against him is inviolable. Tuyor can only be convicted of simple rape, and not of qualified rape.

9. ID.; ID.; CIVIL LAW; DAMAGES; CIVIL INDEMNITY*EX DELICTO;* MORAL DAMAGES; EXEMPLARY DAMAGES. — Jurisprudence has settled that an award of civil indemnity *ex delicto* is mandatory upon a finding of the fact of rape, while moral damages may be automatically awarded in rape cases without need of proof of mental and physical suffering. The award of exemplary damages is also proper to set a public example, to serve as deterrent to elders who abuse and corrupt the youth, and to protect the latter from sexual abuse.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *C.J.*:

For consideration is the appeal of the Court of Appeals *(CA)* Decision[1] dated December 15, 2017 which affirmed with modification the Decision[2] dated October 9, 2015 of the Regional Trial Court *(RTC)*, Branch 89, Bacoor City, finding accused-appellant Danilo Tuyor y Banderas *(Tuyor)* guilty of four (4) counts of Rape. The accusatory portions of the five (5) Informations[3] state:

Criminal Case No. B-2008-771

That on or about the 29th of September 2007, in the Municipality of [redacted] Philippines and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust and with lewd designs, with the use of force, threat and intimidation, and taking advantage of his moral ascendancy did, then and there, willfully, unlawfully and feloniously, have carnal knowledge of his step-daughter [AAA] — Minor, fourteen (14) years old, born on April 13, 1993, against her will and consent, which acts tend to debase, degrade and demean complainant's intrinsic worth and integrity as a child, to the damage and prejudice of the said [AAA].

CONTRARY TO LAW.[4]

Criminal Case No. B-2008-770

That on or about the 24th day of October 2007, in the Municipality of [redacted] Philippines and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust and with lewd designs, with the use of force, threat and

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[1] Penned by Associate Justice Ramon Paul L. Hernando (now a member of this Court), with Associate Justices Marlene B. Gonzales-Sison and Rafael Antonio M. Santos, concurring; *rollo*, pp. 2-20.

[2] Penned by Executive Judge Eduardo Israel Tanguanco; CA *rollo*, pp. 46-61.

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

[4] Records, pp. 1, 3.

intimidation, and taking advantage of his moral ascendancy did, then and there, willfully, unlawfully and feloniously, have carnal knowledge of his step-daughter [AAA] — Minor, fourteen (14) years old, born on April 13, 1993, against her will and consent, which acts tend to debase, degrade and demean complainant's intrinsic worth and integrity as a child, to the damage and prejudice of the said [AAA].

CONTRARY TO LAW.[5]

Criminal Case No. B-2008-769

That on or about the 17th day of July 2007, in the Municipality of [redacted] Philippines and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust and with lewd designs, with the use of force, threat and intimidation, and taking advantage of his moral ascendancy did, then and there, willfully, unlawfully and feloniously, have carnal knowledge of his step-daughter [AAA] — Minor, fourteen (14) years old, born on April 13, 1993, against her will and consent, which acts tend to debase, degrade and demean complainant's intrinsic worth and integrity as a child, to the damage and prejudice of the said [AAA].

CONTRARY TO LAW.[6]

Criminal Case No. B-2008-768

That on or about the 24th day of September 2007, in the Municipality of [redacted] Philippines and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust and with lewd designs, with the use of force, threat and intimidation, and taking advantage of his moral ascendancy did, then and there, willfully, unlawfully and feloniously, have carnal knowledge of his step-daughter [AAA] — Minor, fourteen (14) years old, born on April 13, 1993, against her will and consent, which acts tend to debase, degrade and demean complainant's intrinsic worth and integrity as a child, to the damage and prejudice of the said [AAA].

CONTRARY TO LAW.[7]

Criminal Case No. B-2008-767

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[5] *Id.* at 5, 7.

[6] *Id.* at 9, 11.

[7] *Id.* at 13, 15.

That sometime in August 2007, at around 8:00 p.m. in the Municipality of [redacted], Philippines and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust and with lewd designs, with the use of force, threat and intimidation, and taking advantage of his moral ascendancy did, then and there, willfully, unlawfully and feloniously, have carnal knowledge of his step-daughter [AAA] — Minor, fourteen (14) years old, born on April 13, 1993, against her will and consent, which acts tend to debase, degrade and demean complainant's intrinsic worth and integrity as a child, to the damage and prejudice of the said [AAA].

CONTRARY TO LAW.[8]

Tuyor pleaded not guilty[9] in all the five (5) charges. Pre-trial and trial ensued.

For the Prosecution

The facts, as established by the prosecution, and as culled from the CA Decision are as follows:

The prosecution presented as witnesses AAA[10] (the victim) and Dr. Bernadette J. Madrid of the Child Protection Unit of the Philippine General Hospital (PGH). The prosecution also adduced the following evidence: 1) Exhibit "A" — AAA's Certificate of Live Birth; 2) Exhibit "B" — BBB's Certificate of Live Birth, the alleged offspring of AAA with [Tuyor]; 3) Exhibit "C" — AAA's Affidavit; 4) Exhibit "E" — Medico[-]Legal Report No. 2007-4907; 5) Exhibit F — picture of AAA taken by the Child Protection Unit of PGH.

x x x x x x x x x

[Tuyor] and CCC, the mother of private complainant AAA, were live-in partners for five years. CCC had three children, including AAA, with a different man before her cohabitation with [Tuyor]. [Tuyor] and CCC have three children of their own.

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[8] *Id.* at 17.

[9] CA *rollo*, p. 47.

[10] Under Republic Act No. 7610 (Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act), the real name of the victim and those of her immediate family members are withheld and fictitious initials are instead used to protect the victim's privacy.

AAA testified that on July 17, 2007, around 9:30 o'clock in the evening, she was inside their room will all her five siblings. At that time her mother was at work at SM City Sucat. In a while, [Tuyor] asked all her five siblings to leave the room, leaving her alone. [Tuyor] closed the door and pulled her towards the bed. He then removed AAA's colored shorts and panty and pinned her thighs with his legs. AAA struggled and asked why [Tuyor] was doing it to her but he just kept silent. She cried and fought back but she was overpowered by [Tuyor]. Thereafter, he spread her legs and inserted his penis into AAA's private parts. [Tuyor] later wiped his penis with a piece of cloth to remove the blood that came out from AAA's vagina. He likewise threatened AAA that he would kill her siblings and her mother if she told anyone about what happened. Hence, AAA kept silent and never told anyone about the incident.

Sometime in August 2007, at around 8 o'clock in the evening, AAA was inside her room sleeping when she felt that someone was on top of her. When she opened her eyes, she saw [Tuyor] naked from the waist down. Then, he covered her mouth and inserted his penis into her vagina. AAA cried and was threatened again by [Tuyor] not to tell anyone about what happened or he would kill her.

AAA was not able to narrate and testify on the third incident of rape on her direct examination for she was continuously crying.

Nevertheless, she was able to recall later that on September 29 and October 24, 2007 that she was at her room sleeping when [Tuyor] undressed her and covered her mouth. AAA was awakened when [Tuyor] inserted his penis into her vagina. Thereafter, he threatened AAA again to *[sic]* not tell anyone as to what happened or else he would kill her.

On October 26, 2007, AAA complained of stomach cramps to her mother CCC so the latter brought her to a doctor where they found out that AAA was pregnant. AAA then told her mother that [Tuyor] had raped her several times. Thereafter, they went to the police station in [redacted], Cavite to file a complaint against [Tuyor]. AAA was examined by the Philippine General Hospital for medico-legal examination which showed that she suffered hymenal laceration and was indeed pregnant.

[Tuyor] was arrested by barangay officials and brought to the Bacoor police station where complaints for rape were filed against him.[11]

[11] *Rollo*, pp. 5-6. (Citations omitted)

For the Defense

Tuyor was given ample time to present his evidence, but he manifested through his counsel that he would no longer be presenting evidence.

RTC Ruling

On October 9, 2015, the RTC rendered its Decision, the dispositive portion of which reads:

ACCORDINGLY, in **Criminal Case B-2008-767**, finding the accused Danilo Tuyor y Banderas GUILTY beyond reasonable doubt of Rape, he is sentenced to suffer the penalty of *reclusion perpetua*.

He is ordered to pay AAA ₱50,000[.00] as civil indemnity, ₱50,000[.00] as moral damages and ₱30,000[.00] as exemplary damages and to pay the interest at the rate of six percent (6%) per annum on all damages awarded, to be computed from the date of the finality of this Decision until fully paid.

In **Criminal Case B-2008-768**, the accused Danilo Tuyor y Banderas is found GUILTY beyond reasonable doubt of Rape and is sentenced to suffer the penalty of *reclusion perpetua*.

He is ordered to pay AAA ₱50,000[.00] as civil indemnity, ₱50,000[.00] as moral damages and ₱30,000[.00] as exemplary damages and to pay the interest at the rate of six percent (6%) per annum on all damages awarded, to be computed from the date of the finality of this Decision until fully paid.

In **Criminal Case B-2008-769**, considering the failure of the prosecution to prove his guilt beyond reasonable doubt, the accused is ACQUITTED of the crime charged.

In **Criminal Case B-2008-770**, the accused Danilo Tuyor y Banderas is found GUILTY beyond reasonable doubt of Rape and sentenced to suffer the penalty of *reclusion perpetua*.

He is ordered to pay AAA ₱50,000[.00] as civil indemnity, ₱50,000[.00] as moral damages and ₱30,000[.00] as exemplary damages and to pay the interest at the rate of six percent (6%) per annum on all damages awarded, to be computed from the date of the finality of this Decision until fully paid.

In **Criminal Case B-2008-771**, the accused Danilo Tuyor y Banderas is found GUILTY beyond reasonable doubt of Rape and sentenced to suffer the penalty of *reclusion perpetua*.

He is ordered to pay AAA ₱50,000[.00] as civil indemnity, ₱50,000[.00] as moral damages and ₱30,000[.00] as exemplary damages and to pay the interest at the rate of six percent (6%) per annum on all damages awarded, to be computed from the date of the finality of this Decision until fully paid.

Being a detention prisoner, the accused is credited in full of the time he had undergone preventive imprisonment.

SO ORDERED.[12]

The RTC found AAA's testimony as categorical, straightforward, consistent and credible. AAA was able to narrate four of the five crimes of rape in detail: the act of Tuyor in inserting his private organ into hers; how she struggled to fight back against the accused; the pain she experienced during the rape; the whitish substance which came out from Tuyor; how Tuyor wiped her private part; and Tuyor's threats after the crimes of rape.[13] Through AAA's narration, the RTC was fully convinced that Tuyor raped AAA. According to the court *a quo*, Tuyor can only be convicted of the crimes of simple rape and not qualified rape. Although it was proven that AAA was a minor when the crimes of rape were committed, the relationship between AAA and Tuyor was not that of a stepfather-stepdaughter's since Tuyor was not married to AAA's mother. The special qualifying circumstance of a stepfather and stepdaughter relationship where the victim is a minor, cannot be considered in this case.

Tuyor filed his appeal with the CA. The accused-appellant Tuyor, and the plaintiff-appellee filed their respective Briefs.

CA Ruling

On December 15, 2017, the Court of Appeals issued its assailed Decision affirming accused-appellant Tuyor's conviction. The dispositive portion of the Decision reads:

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[12] CA *rollo*, pp. 60-61.

[13] *Id.* at 56.

WHEREFORE, the instant appeal is **DENIED**. The assailed x x x Decision dated October 9, 2015 of the Regional Trial Court (RTC) Branch 89 of [redacted] in Criminal Case Nos. B-2008-767, B-2008-768, B-2008-769, B-2008-770, and B-2007-771 is hereby **AFFIRMED** with the **MODIFICATION** that as to each of said cases, the civil indemnity, moral damages and exemplary damages are increased to PhP100,000.00 as to each award. Lastly, accused-appellant is ordered to pay interest on the amounts awarded at the legal rate of 6% per *annum* from the date of finality of this judgment until fully paid.

SO ORDERED.[14]

The CA held that the records clearly prove that Tuyor had carnal knowledge of AAA with force, threat and intimidation and by taking advantage of his moral ascendancy over AAA, being the live-in partner of AAA's mother.[15] Based on AAA's testimony, it was established that Tuyor raped her.[16] The prosecution's evidence has established that Tuyor committed four counts of qualified rape against AAA, to wit: (1) the presentation of AAA's Certificate of Live Birth, which proves that she was 14 years old when the incidents of rape happened; (2) Tuyor had carnal knowledge of AAA on four separate occasions through AAA's positive, categorical, and spontaneous testimony; (3) Tuyor perpetrated the acts through force, threat or intimidation by using force and threatening to kill AAA if the latter would tell anyone about the sexual assault; and (4) AAA is the live-in partner of AAA's mother.[17]

As regards the medico-legal report presented before the RTC, the latter gave weight and credence to it, to which the CA affirmed. There is a presumption of regularity in the performance of the government doctor's functions and duties, when Dr. Irene

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[14] *Rollo*, p. 19.

[15] *Id.* at 8.

[16] *Id.*

[17] *Id.* at 16.

Baluyut issued the medico-legal report.[18] Since entries in the official records made in the performance of official duty are *prima facie* evidence of the facts therein stated, Dr. Baluyut's findings that AAA had sexual contact and was seven weeks pregnant at that time, are conclusive in the absence of evidence proving the contrary.[19] Even assuming *arguendo* that the medico-legal report has no evidentiary value, the prosecution has established Tuyor's guilt beyond reasonable doubt, by sufficiently proving all the elements of qualified rape.[20]

On January 15, 2018, accused-appellant Tuyor filed his Notice of Appeal[21] before the CA, on the ground that the CA Decision dated December 15, 2017 is contrary to fact, law and applicable jurisprudence.

When this appeal was instituted before this Court, the parties made their Manifestations[22] that they will adopt their appellant's and appellee's Briefs, respectively, in lieu of their Supplemental Briefs.

Issues

1. Whether the CA erred in not excluding Dr. Bernadette J. Madrid's testimony for allegedly being hearsay.
2. Whether the CA erred in giving due weight and credence to AAA's testimony.
3. Whether the CA erred in convicting Tuyor guilty beyond reasonable doubt of four (4) counts of qualified rape through sexual intercourse under Article 266 (A) (1a), in relation to Article 266-B (1).

Tuyor faults the CA for affirming his conviction.

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[18] *Id.* at 18.

[19] *Id.*

[20] *Id.*

[21] CA *rollo*, pp. 109-110.

[22] *Id.* at 32-36; 37-42.

He argues that Dr. Madrid's testimony should have been excluded for being hearsay because she was neither present at the time the medico-legal report was made, nor was she present at the time of AAA's medical examination.

As regards AAA's testimony, Tuyor argues that AAA's failure to be consistent as to the exact date when she was allegedly raped for the second time, is fatal and should have been considered in favor of him. According to him, the RTC gave more credence to AAA's incredible testimony.[23]

Ruling of the Court

We deny the appeal, but modify the crime committed,[24] the penalty imposed, and the awarded indemnities.

After establishing that the medico-legal report shall be given weight and credence, Dr. Madrid's testimony that she is familiar with Dr. Baluyut's signature and her interpretations of Dr. Baluyut's medico-legal report, shall also be given weight and credence.

The medico-legal report shall be given weight and credence, even if the physician who examined and prepared it, was not presented in court.

First, Dr. Baluyut's issuance of the medico-legal report falls under one of the exceptions to the hearsay rule.

Under Section 44, Rule 130 of the Rules on Evidence, "Entries in official records made in the performance of [her] duty [as] a public officer of the Philippines, x x x are *prima facie* evidence of the facts therein stated."

Dr. Baluyut, a government doctor, and who by actual practice and by virtue of her oath as civil service official, is competent to examine persons and issue medico-legal reports. There is a presumption of regularity in the performance of Dr. Baluyut's functions and duties when she issued the medico-legal reports.

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[23] CA *rollo*, p. 37.

[24] In Criminal Case Nos. B-2008-767 to B-2008-771.

In the absence of evidence proving the contrary, Dr. Baluyut's finding that AAA had sexual intercourse with Tuyor, and was seven weeks pregnant when she was examined, are conclusive.

Second, when Dr. Madrid testified in court, she identified the signature of Dr. Baluyut in Medico-Legal Report No. 2007-4907, and mentioned that she is familiar with Dr. Baluyut's signature because she saw Dr. Baluyut sign a document, to wit:

Pros. Dumaual: I am showing you a Medico[-]Legal [R]eport prepared by Dr. Irene D. Baluy[u]t. Will you go over this document[?]. Where is the Medico[-]Legal Report that you are referring to?

Witness: This is the one. This is the Medico[-]Legal Report No. 2007-4907 prepared by Dr. Baluy[u]t and this is her signature, sir.

x x x x x x x x x

Pros. Dumaual: And how did you come to know that is the signature of Dr. Baluy[u]t?

Witness: I already saw her signing a document, sir.[25]

Under Section 50 (b), Rule 130 of the Rules on Evidence, "[T]he opinion of a witness x x x may be received in evidence regarding x x x [a] handwriting with which [s]he has sufficient familiarity."

Since Dr. Madrid was familiar with Dr. Baluyut's signature, because both of them work at the Philippine General Hospital *(PGH)*, and she saw Dr. Baluyut sign a document, Dr. Madrid's testimony with regard to Dr. Baluyut's signature is admissible as an opinion of an ordinary witness.

Third, Dr. Madrid, a doctor from the Child Protection Unit *(CPU)* of the PGH, is an expert witness:

Pros. Dumaual: Madam Witness, since when have you been a doctor of CPU-PGH?

Witness: Since January, 1997, sir.

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[25] TSN, August 5, 2013, pp. 4-5.

Pros. Dumaual: [Doctor,] [y]ou said that you were already connected with the PGH since 1997.
Witness: Yes, sir.

Pros. Dumaual: And on October 26, 2007[,] how long have you been a medico-legal officer?
Witness: 10 years, sir.[26]

Under Section 49 of the Rules of Evidence, "The opinion of a witness on a matter requiring special knowledge, skill, experience or training which [s]he is shown to possess, may be received in evidence."

The prosecution was able to establish Dr. Madrid's expertise in the relevant medical field. Dr. Madrid's interpretation of the entries made by Dr. Baluyut in the medico-legal report is admissible as expert testimony.

With respect to the probative value of Dr. Madrid's expert testimony, this will depend on her credibility as an expert witness and the relevance of her testimony to the issue at hand. As a rule, the trial judge's assessment of the witnesses' testimonies and findings of fact are accorded great respect on appeal.[27] In the absence of any substantial reason to justify the reversal of the trial court's assessment and conclusion, like when no significant facts and circumstances are shown to have been overlooked or disregarded, the reviewing court is generally bound by the former's findings.[28] The rule is even more stringently applied if the appellate court has concurred with the trial court.[29]

Dr. Madrid testified as regards Dr. Baluyut's findings contained in the medico-legal report, to wit:

Pros. Dumaual: Can you tell us the case of [AAA] based on the data record?

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[26] *Id.* at 3.

[27] *People v. Labraque*, 818 Phil. 204, 211 (2017), citing *People v. Alberca*, 810 Phil. 896, 906 (2017).

[28] *Id.* at 211-212.

[29] *Id.* at 212.

Witness: Based on the record [AAA] appeared before Dr. Baluy[u]t on October 26, 2007 and conducted the examination and attached to the record the picture of the said victim, sir.

x x x x x x x x x

Pros. Dumaual: What can you say about the findings of Dr. Baluy[u]t to [AAA]?

Witness: Based on the medical examination of Dr. Baluy[u]t that there is a definite evidence of sexual abuse on the genitalia of the victim on the 5:00 o'clock position, sir.[30]

There is no substantial reason to justify the reversal of the RTC's assessment and conclusion on the probative value of Dr. Madrid's expert testimony. Moreso, the CA concurred with the RTC on the matter. The relevance of Dr. Madrid's testimony to the issue at hand was also established where she testified that based on the medico-legal report, AAA was sexually abused.

AAA's testimony must be given due weight and credence.

In determining whether AAA's testimony should be given due weight and credence, it is important to take into consideration the *women's honor* doctrine which states, "[the] well-known fact that women, especially Filipinos would not admit that they have been abused unless that abuse had actually happened, [because it is] their natural instinct to protect their honor,"[31] borders on the fallacy of *non-sequitur*, to wit:[32]

x x x While the factual setting back then would have been appropriate to say it is natural for a woman to be reluctant in disclosing a sexual assault; today we simply cannot be stuck to the *Maria Clara* stereotype of a demure and reserved Filipino woman. We should stay away

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[30] TSN, August 5, 2013, pp. 4-5.

[31] *People v. Taño, et al.*, 109 Phil. 912, 914 (1960).

[32] *People v. Amarela*, G.R. Nos. 225642-43, January 17, 2018, 852 SCRA 54, 68.

from such mindset and accept the realities of a woman's dynamic role in society today; she who has over the years transformed into a strong and confidently intelligent and beautiful person, willing to fight for her rights.[33]

Through this, the Court can evaluate the weight and credibility of a private complainant of rape without gender bias or cultural misconception.[34]

It is a settled rule that rape may be proven by the sole and uncorroborated testimony of the offended party, provided that her testimony is clear, positive and probable.[35]

As a general rule, findings of facts and assessment of credibility of witnesses are matters best left to the trial court.[36] Jurisprudence has set the following guidelines:

First, **the Court gives the highest respect to the RTC's evaluation of the testimony of the witnesses**, considering its unique position in directly observing the demeanor of a witness on the stand. From its vantage point, the trial court is in the best position to determine the truthfulness of witnesses.

Second, **absent any substantial reason which would justify the reversal of the RTC's assessments and conclusions, the reviewing court is generally bound by the lower court's findings**, particularly when no significant facts and circumstances, affecting the outcome of the case, are shown to have been overlooked or disregarded.

And third, **the rule is even more stringently applied if the CA concurred with the RTC**.[37]

AAA's testimony with regard to the first, second, fourth and fifth counts of rape committed against her, was categorical and straightforward. There could be no substantial reason to overturn the weight given by the RTC, and as affirmed by the CA.

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[33] *Id.*

[34] *Id.*

[35] *People v. Barberan, et al.*, 788 Phil. 103, 109 (2016).

[36] *People v. Dayaday*, 803 Phil. 363, 371 (2017).

[37] *People v. Tanglao*, G.R. No. 219963, June 13, 2018. (Emphases ours)

On the first count of rape, AAA narrated:

PROS. DUMAUAL:	Can you still remember when was the first time you were raped by the accused, [AAA]?
WITNESS:	AAA: July 17, 2007, sir.
x x x	x x x x x x
PROS. DUMAUAL:	Can you still remember the exact time when you were first abused by the accused [o]n July 17, 2007?
WITNESS:	9:30 in the evening, sir.
PROS. DUMAUAL:	What were you doing on July 17, 2007 at around 9:30 in the evening in your house?
WITNESS:	I was inside our room, sir.
x x x	x x x x x x
PROS. DUMAUAL:	Where was the accused during that time?
WITNESS:	Also inside the room, sir.
x x x	x x x x x x
PROS. DUMAUAL:	Do you know if during that time your siblings were already sleeping?
WITNESS:	At that time, he asked my siblings to go out and go to sleep and until the time we were the ones left in the room, sir.
x x x	x x x x x x
PROS. DUMAUAL:	What did the accused exactly tell you before he raped you?
WITNESS:	He told me that he ordered my sibling (sic) to go out of the room, sir.
x x x	x x x x x x
PROS. DUMAUAL:	After telling you that, what did the accused do next?
WITNESS:	He removed my clothes and pulled me towards the bed, sir.
PROS. DUMAUAL:	What clothes were you wearing then?
WITNESS:	I was wearing white t-shirt and colored shorts, sir.

PROS. DUMAUAL: Where were you when he removed your clothes?
WITNESS: In the room, sir.

x x x x x x x x x

PROS. DUMAUAL: You said you were wearing white t-shirt and colored shorts. What clothes did the accused removed *(sic)* first?
WITNESS: Shorts, sir.

x x x x x x x x x

PROS. DUMAUAL: What was your reaction when he removed your shorts?
WITNESS: I was struggling against him and I was asking why, sir.

PROS. DUMAUAL: And what was the answer of the accused when you asked him why he was doing that to you?
WITNESS: Nothing, sir. He did not say anything.

x x x x x x x x x

PROS. DUMAUAL: How was he able to remove your shorts considering that it has buttons and buttons are difficult to remove?
WITNESS: He removed the buttons one by one and then he pinned down my thigh with his legs, sir.

PROS. DUMAUAL: What was his position when he remove *(sic)* you shorts?
WITNESS: His feet were straight, sir.

x x x x x x x x x

PROS. DUMAUAL: After he removed your shorts, what did he do next?
WITNESS: He raped me, sir.

PROS. DUMAUAL: Why did you say that he raped you?
WITNESS: When I was lying down that's the time he forced me and I was crying at that time, sir.

x x x x x x x x x

PROS. DUMAUAL: **You said that he forced you. How did he force you? What did he do when you said that he forced you?**
WITNESS: **He was holding both of my shoulders and I was pushing him away, but I couldn't fight him back considering that he was strong, sir.**

PROS. DUMAUAL: **When he held your shoulders, what did he do next?**
WITNESS: **Then he raped me, sir.**

PROS. DUMAUAL: **By rape, you mean what?**
WITNESS: **He spread my legs and inserted his organ into mine, sir.**

x x x x x x x x x

PROS. DUMAUAL: **Was he able to penetrate you?**
WITNESS: **Yes, sir.**

x x x x x x x x x

PROS. DUMAUAL: How long did he penetrate you?
WITNESS: Only for a short period of time.

PROS. DUMAUAL: Was that the first time that you had an experience of penetration?
WITNESS: Yes, sir.

PROS. DUMAUAL: And what did you feel?
WITNESS: It was painful, sir.

x x x x x x x x x

PROS. DUMAUAL: What was your reaction when he tried to in and out his private part?
WITNESS: I was just crying, sir.

x x x x x x x x x

COURT: By the way, after he removed his private part in and out of your private part, what happened?
WITNESS: Blood came out, Your Honor.

x x x x x x x x x

PROS. DUMAUAL:	**Why did you not report to them what the accused did to you?**
WITNESS:	**He threatened that he would kill us all, sir.**
PROS. DUMAUAL:	Who threatened you?
WITNESS:	The accused, Danilo Tuyor, sir.
PROS. DUMAUAL:	When did he tell you that he would kill you all?
WITNESS:	He whispered it to me, sir.
PROS. DUMAUAL:	When was that?
WITNESS:	After doing what he did to me and when my siblings arrived, we were the only ones left in that room that's the time he told me the threat, sir.[38]

On the second incident of rape, AAA recalled how the ordeal transpired:

PROS. DUMAUAL:	You said you were raped five times. When was the second time that you were raped by the accused?
WITNESS:	August 2008, sir.
x x x	x x x x x x
PROS. DUMAUAL:	But can you still remember what you were doing during that time that you were raped for the second time?
WITNESS:	I was about to go to sleep, sir.
PROS. DUMAUAL:	What time was that?
WITNESS:	8 o'clock, sir.
x x x	x x x x x x
COURT:	**And how did the rape occur?**
WITNESS:	**I was already asleep until the time that I felt that he was on top of me, Your Honor.**
x x x	x x x x x x

[38] TSN, December 1, 2009, pp. 4-15. (Emphases supplied)

PROS. DUMAUAL: **You said that you noticed the accused was already on top of you, how did you come to know that it was the accused who was on top of you considering that you said that you had no electricity during that time?**

WITNESS: **Because at that time, he was our only companion in that house, sir.**

x x x x x x x x x

PROS. DUMAUAL: **And what did he do when he went on top of you?**

WITNESS: **I did not know then that I was already naked and I only felt that he was already on top of me, sir.**

PROS. DUMAUAL: **By naked, you mean your total body?**

WITNESS: **Only my clothing from the waist down, sir.**

x x x x x x x x x

PROS. DUMAUAL: **What did the accused do when you found him on top of you in the night of August 2008?**

WITNESS: **He inserted his organ into mine, sir.**

x x x x x x x x x

PROS. DUMAUAL: **And what did he do after the accused inserted his private part into your private part?**

WITNESS: **He covered my mouth, sir.**

PROS. DUMAUAL: **How about him, did he make any motion while he inserted his private part into your private part?**

WITNESS: **He held both of my hands, sir.**

PROS. DUMAUAL: And how long did he insert his private part into your private part?

WITNESS: Only for five minutes, sir.

PROS. DUMAUAL: And during that time that he inserted his private part into your private part for five minutes, did he make any motion.

WITNESS:	No, sir. I didn't know considering that he had my eyes closed, sir.
PROS. DUMAUAL:	And what did you feel when he inserted his private part into your private part in the night of August 2008 when he raped you for the second time?
WITNESS:	*Masakit po*.
PROS. DUMAUAL:	**You said that he inserted his private part into your private part for almost five minutes. After five minutes, what did he do next?**
WITNESS:	***Nilabas-masok nya po***.
PROS. DUMAUAL:	**Did you notice if there was something that came out from you?**
WITNESS:	**No, I didn't notice, sir**.
PROS. DUMAUAL:	**How about him, did you notice if there was something that came out form *(sic)* his private part?**
WITNESS:	**There was, sir**.
PROS. DUMAUAL:	How did you come to know that considering that it was dark?
WITNESS:	I was able to touch something which was sticky coming from his organ, sir.
PROS. DUMAUAL:	How were you able to touch that sticky substance when according to you during that time he was covering your mouth and holding your hands?
WITNESS:	After the act, sir.
x x x	x x x x x x
PROS. DUMAUAL:	After he wiped your private part and he wiped his private part, what did he do?
WITNESS:	I was crying, sir.[39]

As regards the third count of rape, the elements of the crime were not established. While AAA testified on the third count of rape, she was crying profusely during the direct examination; and the prosecution had to ask for a continuance, to wit:

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[39] *Id.* at 16-20. (Emphases supplied)

PROS. DUMAUAL: And where were you when you were raped for the third time [o]n September 24, 2007?
WITNESS: I was doing the dishes then, sir.

PROS. DUMAUAL: What portion of your house were you washing the dishes?
WITNESS: In the kitchen, sir.

PROS. DUMAUAL: It was already 10 o'clock. Why is it that it was only then that you were washing the dishes?
WITNESS: Because we just had dinner, sir.

PROS. DUMAUAL: And who were your companions in eating supper?
WITNESS: My siblings and my mother because after my mother came from work, sir, that same night, she would also sell ballot.

PROS. DUMAUAL: What time did your mother arrive on that night of September 24, 2007?
WITNESS: 9 o'clock, sir.

x x x x x x x x x

PROS. DUMAUAL: While washing the dishes, where were your siblings?
WITNESS: Already asleep, sir.

COURT: And where was your mother then?
WITNESS: We all had supper then, Your Honor, and after that, I did the dishes and that's the time she left, Your Honor.

COURT: So while washing dishes, your mother had already left home?
WITNESS: Yes, Your Honor.

COURT: And what time did [s]he usually return after selling ballot?
WITNESS: Sometimes 1 o'clock early morning, sometimes 2 o'clock, Your Honor.

COURT: By the way, what was your mother's work in SM hen?
WITNESS: In the alteration department, Your Honor.

PROS. DUMAUAL: Your Honor, please, it appears that the witness is already crying and likewise the mother. Can we ask for a continuance?[40]

When her examination continued before the RTC, she no longer testified on the third count of rape.[41]

On the fourth incident of rape, AAA declared:

PROS. DUMAUAL: So when was the fourth time that you were sexually abused by the accused?
WITNESS: September 29, 2007, sir.

PROS. DUMAUAL: What time?
WITNESS: 10:05 in the evening, sir.

PROS. DUMAUAL: Where were you that time?
WITNESS: I was about to go to sleep when he laid down beside me, sir.

PROS. DUMAUAL: Where were you suppose[d] to sleep on that time and date?
WITNESS: On the floor, sir.

PROS. DUMAUAL: Do you have companions inside that place where you were about to sleep and then he laid beside you?
WITNESS: He told my siblings to go out, sir.

x x x x x x x x x

PROS. DUMAUAL: So when they went out of the place, what happened?
WITNESS: He pulled me inside the room and that is where he raped me, sir.

x x x x x x x x x

PROS. DUMAUAL: So, was he able to pull you out to that room?
WITNESS: Yes, sir.

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

[41] TSN, October 19, 2010, pp. 1-21; TSN, December 14, 2010, pp. 1-8; TSN, March 6, 2012, pp. 1-12.

PROS. DUMAUAL: **And what happened when he was able to pull you inside the room?**
WITNESS: **He covered my mouth with the handkerchief, sir. Before that I am asking him why but he did not answer and then he pulled me inside the room.**

x x x x x x x x x

PROS. DUMAUAL: **So what happened when you were pulled inside the room?**
WITNESS: **That's when he started raping me, sir.**

PROS. DUMAUAL: **How did he start raping you?**
WITNESS: **He held my hands and then pinned "inipit" down my legs and then he inserted his genital organ into mine, sir.**

PROS. DUMAUAL: What was your position when he held your hands and pinned your legs?

Interpreter: The witness demonstrated her hands downwards.

WITNESS: He hold *(sic)* my hands and he pinned my two legs, sir.

PROS. DUMAUAL: Were you standing when he hold *(sic)* your hands?

WITNESS: I was sitting, sir.

PROS. DUMAUAL: Were you wearing something during that time that he held your hands and pinned your legs?

WITNESS: Yes, sir.

PROS. DUMAUAL: What was something in your body?

WITNESS: I was wearing short and t-shirt, sir.

PROS. DUMAUAL: Considering that you were wearing shorts, how was he able to insert his private part with your private part?

WITNESS: My legs was *(sic)* pinned down by his legs and then he spread my legs, sir.

PROS. DUMAUAL: Why was your short already placed down, who did that?

WITNESS: He did it, sir.

PROS. DUMAUAL: When did he pull down your shorts?
WITNESS: Before he started raping me, sir.

PROS. DUMAUAL: What was your position when he pulled your short?
WITNESS: Lying, sir.

PROS. DUMAUAL: And what did you do, if any, when he pulled your short?
WITNESS: He told me not to tell that matter to my mother or he would kill us, sir.

x x x x x x x x x

PROS. DUMAUAL: And what happened when he inserted his private part into your private part?

Interpreter: Make it of record that the witness is crying.
WITNESS: That is when he started raping me but I did not know for how long he did that to me, sir.

PROS. DUMAUAL: What did the accused do when his private part was inserted into yours?
WITNESS: Nothing, he was just quiet, sir.

PROS. DUMAUAL: Was there any movement that transpire[d]?
WITNESS: None, sir.

PROS. DUMAUAL: You mean to say his private part was just inserted to your private part without him doing anything?
WITNESS: Aside from what he told me not to tell that to my mother or else he would kill us also, sir.

x x x x x x x x x

PROS. DUMAUAL: Did you notice if something came out from him?
WITNESS: Yes, sir.

PROS. DUMAUAL: What was that that came out from the accused?
WITNESS: Looks like something white, sir.

PROS. DUMAUAL: Did you observe what was that?
WITNESS: No, sir.

PROS. DUMAUAL:	**In what particular part of his body did that something white came out?**
WITNESS:	**From his organ, sir.**
PROS. DUMAUAL:	So after noticing that whitish substance came out from his private organ, what did the accused do next, if any?
WITNESS:	He wiped it out and asked me to stand up while I was crying, sir.
PROS. DUMAUAL:	When did you start crying?
WITNESS:	"Pagpasok ng ari nya," sir.[42]

On the fifth incident of rape, AAA stated:

Pros. Dumaual:	Because you did not report the incident it appears that there was another time that you were sexually abused again by the accused. Can you still remember when was that?
Witness:	October 24, sir.
Pros. Dumaual:	Of what year?
Witness:	2007, sir.
Pros. Dumaual:	And can you still remember the time when that sexual abused *(sic)* happened on October 24, 2007?
Witness:	9:30 o'clock in the evening, sir.
Pros. Dumaual:	And where were [you] during that time? During that time and date?
Witness:	I was already lying down on my bed and it was about 5 minutes and then suddenly I felt that somebody lay down beside me, although I have may *(sic)* family lying beside me but not that close, it was only the accused who laid beside me so close, sir.
x x x	x x x x x x
Pros. Dumaual:	So who were with you on October 24, 2009 when you were already sleeping at around 9:30 o'clock in the evening?

[42] TSN, December 1, 2009, pp. 3-9. (Emphases supplied)

Witness: My younger siblings, sir.

Pros. Dumaual: And how far were they from the place where you were sleeping?

Witness: We were lying beside each other, sir.

Pros. Dumaual: So, you said a while ago that you were asleep and somebody laid beside you. Did you come to know who was that person who laid beside you?

Witness: When I was awaken[ed,] I realized that it was the accused who laid beside me, sir.

Pros. Dumaual: What made you realized *(sic)* that it was the accused who laid beside you?

Witness: Because he placed his hand on my breast and he mashed it, sir.

Pros. Dumaual: For how long did he mash your breast?

Witness: I did not know probably 2 minutes, sir.

x x x x x x x x x

Pros. Dumaual: After mashing your breast for 2 minutes, what did the accused do next, if any?

Witness: The same, sir. I was facing my side when he raped me.

Pros. Dumaual: Right side or left side?

Interpreter: Make it of record that the witness turn[ed] to her right side.

Pros. Dumaual: Where was the accused when you were facing right side?

Witness: Behind me, sir.

Pros. Dumaual: What did he do?

Witness: He removed my short, sir.

x x x x x x x x x

Pros. Dumaual: What did he do with your panty?

Witness: He pulled them halfway down my legs and then he inserted his organ into my private part, sir.

Pros. Dumaual:	**Are you sure that he was able to insert his private part into your private part?**
Witness:	**Yes, sir.**
x x x	x x x x x x
Pros. Dumaual:	Did you notice if there was movement made by the accused while his private part was inserted into your private part while you were facing the right side and he was at your back?
Witness:	No, sir.
Pros. Dumaual:	**Did you notice if there was something that came out from his private part on that time and date?**
Witness:	**Yes, sir.**
Pros. Dumaual:	**How did you come to know that something came out from his private part?**
Witness:	**That something came out from his private part felt hot, sir.**[43]

Based on AAA's testimony, the elements of rape were proven beyond reasonable doubt.

Under Article 266-A, rape is committed:

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

Tuyor had carnal knowledge of AAA through force, threat and intimidation. AAA's positive, categorical and spontaneous testimony shows that on these four separate instances, Tuyor had inserted his penis into her vagina against her will by using force and threatening to kill AAA if she would tell anyone about the rape.

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[43] *Id.* at 12-15. (Emphases ours)

AAA's inconsistency as to the exact date of the second rape does not in itself, cast doubt on Tuyor's guilt. **Since the essence of rape is carnal knowledge of a person through force or intimidation against that person's will,**[44] **the precision as to the time when the rape is committed has no bearing on its commission.**[45]

Tuyor can only be convicted with four (4) counts of simple rape.

Under Article 266-B of the RPC, death penalty shall be imposed in a crime of rape through sexual intercourse:

> 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.

In order to qualify the rape, the minority of the victim and his or her relationship with the offender should both be **alleged in the Information and proven beyond reasonable doubt during trial**.[46] The *raison d'etre* is that the special qualifying circumstances of minority and relationship have the effect of altering the nature of the rape and its corresponding penalty.[47] Otherwise, death penalty cannot be imposed upon the offender.[48]

AAA's minority at the time the crimes were committed against her, was properly alleged and proven during trial. Evidence also proved that Tuyor had carnal knowledge of AAA without the latter's consent, with the use of force, threat and intimidation, and by taking advantage of his moral ascendancy. However, in the five Informations, the allegation that AAA is the

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[44] *People v. ZZZ*, G.R. No. 224584, September 4, 2019.

[45] *Id.*

[46] *People v. Romeo de Castro de Guzman*, G.R. No. 224212, November 27, 2019.

[47] *Id.*

[48] *Id.*

"stepdaughter" of Tuyor, is inaccurate. Neither AAA is the stepdaughter of Tuyor nor is the latter the stepfather of the former, because such a relationship presupposes a legitimate relationship between the appellant and the victim's mother.[49] A stepdaughter is the daughter of one's wife or husband by a former marriage, or a stepfather is the husband of one's mother by virtue of a marriage subsequent to that of which the person spoken of is the offspring.[50]

During trial, the prosecution failed to establish the stepparent-stepdaughter relationship between Tuyor and AAA. No proof of marriage was presented to establish Tuyor's relationship with AAA's mother. On the contrary, AAA's testimony shows that Tuyor was the live-in partner of AAA's mother, to wit:

Pros. Dumaual:	How were you related to the accused?
Witness:	He is my stepfather, sir.
Pros. Dumaual:	How did he become your stepfather?
Witness:	He is the live-in partner of my mother, sir.[51]
x x x	x x x x x x
COURT:	Is the accused married to your mother?
Witness:	No, Your Honor.[52]

Although the State has successfully proven the common-law relationship, the crime is only simple rape where the information does not properly allege the qualifying circumstance of relationship between the accused and the victim.[53] This is because the accused's right to be informed of the nature and cause of the accusation against him is inviolable.[54] Tuyor can only be convicted of simple rape, and not of qualified rape.

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[49] *Id.*

[50] *People v. Melendres*, 393 Phil. 878, 896 (2000).

[51] TSN, October 19, 2010, p. 7.

[52] TSN, March 6, 2012, p. 10.

[53] *People v. Romeo de Castro de Guzman, supra* note 46.

[54] *Id.*

The Penalties

In Criminal Case Nos. B-2008-767, B-2008-768, B-2008-770, B-2008-771, Rape through Sexual Intercourse, under paragraph 1 of Article 266-A, were committed without any of the qualifying or aggravating circumstances enumerated under Article 266-B, where the penalty for each count of rape shall be *reclusion perpetua*.

The Damages

For the four (4) counts of rape, the award of civil indemnities, moral and exemplary damages are proper.

Jurisprudence has settled that an award of civil indemnity *ex delicto* is mandatory upon a finding of the fact of rape, while moral damages may be automatically awarded in rape cases without need of proof of mental and physical suffering.[55] The award of exemplary damages is also proper to set a public example, to serve as deterrent to elders who abuse and corrupt the youth, and to protect the latter from sexual abuse.[56]

For the crime of simple rape under Article 266-A (1), the penalty to be imposed is *reclusion perpetua*,[57] with civil indemnity of ₱75,000.00, moral damages of ₱75,000.00, and exemplary damages of ₱75,000.00; in accordance with *People v. Jugueta*.[58]

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[55] *People v. Tulagan*, G.R. No. 227363, March 12, 2019.

[56] *People v. Layco, Sr.*, 605 Phil. 877, 882 (2009).

[57] Article 266-B of the Revised Penal Code provides:

Article 266-B. *Penalty*. — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

[58] 783 Phil. 806 (2016).

II. For Simple Rape/Qualified Rape:

2.1 Where the penalty imposed is *reclusion perpetua*[;] other than [where the penalty imposed is Death but reduced to *reclusion perpetua* because of RA 9346, or where the crime committed was not consummated but merely attempted] x x x:

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

In consonance with prevailing jurisprudence, the amount of damages awarded shall earn interest at the rate of six percent (6%) *per annum* from the finality of this judgment until said amounts are fully paid.

WHEREFORE, PREMISES CONSIDERED, the appeal is **DISMISSED**. The Decision dated October 9, 2015 of the Regional Trial Court, Branch 89, Bacoor City in Criminal Case Nos. B-2008-767 to B-2008-771, as affirmed by the Court of Appeals Decision dated December 15, 2017 in CA-G.R. CR-HC No. 08607 is **AFFIRMED** with **MODIFICATIONS**. We find accused-appellant Danilo Tuyor y Banderas:

1. Guilty beyond reasonable doubt of **Simple Rape under Article 266-A (1) (a) and penalized in Article 266-B of the Revised Penal Code**, in Criminal Case No. B-2008-767, and is sentenced to suffer the penalty of *reclusion perpetua*, and with modification as to the award of damages. Accused-appellant is **ORDERED** to **PAY** AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages.

2. Guilty beyond reasonable doubt of **Simple Rape under Article 266-A (1) (a) and penalized in Article 266-B of the Revised Penal Code**, in Criminal Case No. B-2008-768, and is sentenced to suffer the penalty of *reclusion perpetua*, and with modification as to the award of damages. Accused-appellant is **ORDERED** to **PAY** AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages.

3. Not guilty of **Simple Rape under Article 266-A (1) (a) and penalized in Article 266-B of the Revised Penal Code**, in Criminal Case No. B-2008-769, considering his guilt was not proven beyond reasonable doubt. Accused-appellant is **ACQUITTED** of the crime charged.

4. Guilty beyond reasonable doubt of **Simple Rape under Article 266-A (1) (a) and penalized in Article 266-B of the Revised Penal Code**, in Criminal Case No. B-2008-770, and is sentenced to suffer the penalty of *reclusion perpetua*, and with modification as to the award of damages. Accused-appellant is **ORDERED** to **PAY** AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages.

5. Guilty beyond reasonable doubt of **Simple Rape under Article 266-A (1) (a) and penalized in Article 266-B of the Revised Penal Code**, in Criminal Case No. B-2008-771, and is sentenced to suffer the penalty of *reclusion perpetua*, and with modification as to the award of damages. Accused-appellant is **ORDERED** to **PAY** AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages.

Legal interest of six percent (6%) *per annum* is imposed on all damages awarded from the date of finality of this Decision until fully paid.

SO ORDERED.

Caguioa, Lazaro-Javier, Lopez, and *Rosario, JJ.*, concur.

SECOND DIVISION

[G.R. No. 244828. October 12, 2020]

ERNESTO L. CHING, *Petitioner, v.* **CARMELITA S. BONACHITA-RICABLANCA,** *Respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PETITION FOR REVIEW ON *CERTIORARI*; *LOCUS STANDI*; THE COMPLAINANT IN AN ADMINISTRATIVE CASE WHO HAS MATERIAL INTEREST IN THE ISSUE HAS A LEGAL STANDING TO FILE A PETITION FOR THE REVIEW OF THE DECISION IN THAT CASE.—Ricablanca argues that Ching has no legal standing or legal personality to file the instant petition to assail the Amended Decision of the CA, he being a mere witness of the government. The real party aggrieved of the Amended Decision is the Ombudsman, who has not filed any motion or appeal to the Supreme Court when the Amended Decision came out.

. . .

It is important to note that this case arose because of a fire incident that traumatized Ching as his residence is right beside the building that caught fire, which is also connected to the fuel station. Both the building and the fuel station are owned by Ricablanca's father, Virgilio. It is through the effort of Ching that pieces of evidence were gathered which led to the discovery of the participation of Ricablanca in the authorship, approval, and passing of *Barangay* Resolution No. 16 which allowed the construction and operation of the subject fuel station. It was also Ching who filed the complaint against Ricablanca before the Ombudsman. . . . As such, he was one of the respondents when the case was still pending in the CA. These factual antecedents show that Ching has a material interest in the issue at hand and, therefore, has a legal standing to file the Petition for Review before the Court.

2. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; DOCTRINE OF CONDONATION; THE ABANDONMENT OF THAT

DOCTRINE IN *IFURUNG V. CARPIO MORALES* IS PROSPECTIVE IN APPLICATION AND SHALL THEREFORE BE RECKONED FROM APRIL 12, 2016 WHEN THE DECISION IN THAT CASE BECAME FINAL.— The condonation doctrine . . . states that a public official cannot be removed for administrative misconduct committed during a prior term, since his re-election to office operates as a condonation of the officer's previous misconduct to the extent of cutting off the right to remove him therefor.

. . .

Despite the abandonment of the condonation doctrine in *Carpio Morales*, it must be stressed, however, that the said doctrine still applies in this case as the effect of the abandonment was made prospective in application. In *Crebello v. Office of the Ombudsman*, the Court clarified that the ruling promulgated in *Carpio Morales* on the abandonment of the doctrine of condonation had become final only on April 12, 2016, and thus, the abandonment should be reckoned from April 12, 2016.

3. ID.; ID.; ID.; ID.; ID.; THE DEFENSE OF CONDONATION IS STILL AVAILABLE IF THE RE-ELECTION HAPPENS PRIOR TO APRIL 12, 2016.— [I]n order to finally clarify and provide guidance for the bench, the bar, and the public, this Court has reexamined the question and, after consideration, has arrived at the conclusion that the proper interpretation is that the condonation is manifested through re-election, and therefore, the defense of condonation is no longer available if the re-election happens after April 12, 2016. To reiterate, Black's Law Dictionary, as cited in *Carpio Morales*, defines condonation as "[a] victim's express or implied forgiveness of an offense, [especially] by treating the offender as if there had been no offense." Considering that the electorate's act of forgiving a public officer for a misconduct is done through re-election, the abandonment of the condonation doctrine should mean that re-elections conducted after April 12, 2016 should no longer have the effect of condoning the public officer's misconduct. Simply put, albeit by judicial *fiat* only, it is the act of re-election which triggers the legal effect of and, to an extent, vests the right to rely on the defense of condonation.

In this case, since Ricablanca was re-elected during the 2013 Elections (specifically on May 13, 2013), the doctrine of

condonation applies to her. In sum, for so long as the elective official had already been re-elected prior to April 12, 2016, he or she may avail of the doctrine of condonation as a valid defense to the administrative complaint against him/her, as in this case.

4. ID.; ID.; ID.; ID.; *RATIO DECIDENDI* BEHIND THE CONDONATION DOCTRINE; THE CONDONATION DOCTRINE STILL APPLIES EVEN IF THE BODY POLITIC THAT PREVIOUSLY ELECTED THE RESPONDENT PUBLIC OFFICER IS MERELY A PART OF, OR IS NOT EXACTLY THE SAME AS, THAT WHICH ELECTED THAT PUBLIC OFFICER TO ANOTHER OFFICE.—[N]owhere in the *ratio decidendi* behind the condonation doctrine that it requires that there should be a geographical and numerical exactness of body politic or that the body politic in the previous term should be exactly, identically, and exclusively the same with that who elected the public official to a new term. What is clear in the rationale behind the condonation doctrine is that **primary consideration is given to the right of the electorate to elect officers and for the courts not to overrule the will of the people, and that a public officer should never be removed for acts done prior to his present term of office.**

The word "same body politic," therefore, as mentioned in *Giron*, *Almario-Templonuevo*, and *Vergara* which, to note, are all cases decided after *Carpio Morales* – should not be applied literally, but should be construed by taking into account the spirit and intent of the condonation doctrine prior to its abandonment in *Carpio Morales*.

. . .

In this case, while it may be true that the body politic who voted for Ricablanca as *Sangguniang Bayan* Member is not exactly, identically, and exclusively the same with that who elected her to the previous term as *Barangay Kagawad*, the voters thereof, however, were not entirely different. The voters of *Barangay* Poblacion maintained its identity as the body politic, which previously elected Ricablanca as *Barangay Kagawad*, when it formed part of the bigger electorate who elected Ricablanca as *Sangguniang Bayan* Member of the Municipality of Sagay during the 2013 Elections, being a fraction thereof as one of its *barangays*. Hence, the requirement of "same body

politic" as pronounced by the Court in *Giron* is still compliant as regards the voters of *Barangay* Poblacion who belong to the Municipality of Sagay to which Ricablanca was elected as *Sangguniang Bayan* Member. The Court, in applying the condonation doctrine, should consider that the electorate for the election of *Kagawad* of *Barangay* Poblacion is the same and part of the electorate who participated and elected Ricablanca as *Sangguniang Bayan* Member of Sagay. Otherwise stated, condonation still applies since the electorate who voted Ricablanca as *Sangguniang Bayan* Member of Sagay in 2013 included the same body politic (*Barangay* Poblacion) whom she has served in her previous term when the alleged misconduct was committed.

PERLAS-BERNABE, *J., concurring opinion*:

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; CONDONATION DOCTRINE; ABANDONMENT THEREOF; RATIONALE FOR THE ABANDONMENT THEREOF; THE RE-ELECTION PRIOR TO THE ABANDONMENT OF THE CONDONATION DOCTRINE ABSOLVES THE RESPONDENT PUBLIC OFFICER OF ADMINISTRATIVE LIABILITY FOR INFRACTIONS COMMITTED DURING THE PREVIOUS TERM.— I concur. Having been re-elected by the same body politic prior to the abandonment of the condonation doctrine on April 12, 2016, respondent Carmelita S. Bonachita-Ricablanca (Ricablanca) may validly invoke the same to absolve her of any administrative liability arising from the alleged infractions committed during her previous term.

To recount, in *Carpio Morales v. Court of Appeals* (*Carpio Morales*), the Court traced the origin of the condonation doctrine and found that it was **merely a "jurisprudential creation"** without any constitutional or statutory anchor. The doctrine was simply lifted from select United States of America (US) cases and was adopted hook, line, and sinker in the 1959 case of *Pascual v. Provincial Board of Nueva Ecija* (*Pascual*), and thereafter, applied in our jurisprudence. As it appears, the propriety of the condonation doctrine was never seriously questioned before the Court up until the institution of the *Carpio*

Morales case on March 25, 2015. Met with the opportunity to revisit said doctrine, the Court abandoned the doctrine of condonation after finding that it is not only **bereft of any constitutional or statutory basis** in this jurisdiction but is also "**out of touch from—and rendered obsolete by—the current legal regime**." In *particular, the Court had pertinently ruled that the existence of the condonation doctrine runs counter to the public accountability provisions of our present Constitution*, . . .

2. ID.; ID.; ID.; ID.; THE PROSPECTIVE APPLICATION OF THE ABANDONMENT OF THE CONDONATION DOCTRINE IS INTENDED TO AFFORD DUE PROCESS TO THOSE WHO RELIED IN GOOD FAITH ON THAT DOCTRINE.— [T]he Court declared the abandonment to be **prospective in application** on the basis of Article 8 of the Civil Code, which states that judicial decisions applying this doctrine became, prior to its abandonment, "part of the legal system of the Philippines" such that persons were bound to abide by it, . . .

In order to afford due process to persons who relied on prevailing jurisprudence at that time in good faith, as well as recognize the practical implications of acts already done in the interim based thereon, the Court thus gave "prospective application" to the abandonment.

3. ID.; ID.; ID.; ID.; THE RE-ELECTION AFTER THE ABANDONMENT OF THE CONDONATION DOCTRINE ON APRIL 12, 2016 DOES NOT HAVE THE EFFECT OF CONDONING THE PUBLIC OFFICER'S MISCONDUCT DURING THE PREVIOUS TERM.— [T]he proper point to reckon the doctrine's limited application is no other than **at that time when the elective official was re-elected to a new term** (in this case, during the May 13, 2013 elections). As consistently evinced by the jurisprudence on the doctrine of condonation, condonation of prior administrative liability by the will of people is triggered by **the fact of re-election**. Thus, the time when the alleged misconduct was committed (in this case, in 2012) as well as the time of the filing of the administrative case (in this case, on March 26, 2015) are not technically material in reckoning condonation. ***Verily, for as long as the elective official had already been re-elected prior to April 12, 2016,***

***he/she may avail of the doctrine of condonation as a valid defense to the administrative complaint against him/her for acts committed during a prior term*.**

. . .

However, as already discussed above, the proper interpretation is that the condonation is manifested through re-election, and therefore, the defense of condonation is no longer available if the re-election happens after April 12, 2016. Black's Law Dictionary, as cited in *Carpio Morales*, defines condonation as "[a] victim's express or implied forgiveness of an offense, [especially] by treating the offender as if there had been no offense." Thus, albeit by judicial fiat only, it is the act of re-election which triggers the legal effect of and, to an extent, vests the right to rely on the defense of condonation. ***Accordingly, considering that the electorate's act of forgiving a public officer for a misconduct is done through re-election, the abandonment of the condonation doctrine should mean that a re-election conducted after April 12, 2016 should no longer have the effect of condoning the public officer's misconduct for a previous term***.

4. ID.; ID.; ID.; ID.; THE APPLICATION OF THE DOCTRINE OF CONDONATION IS NOT RESTRICTED TO A RE-ELECTION BY EXACTLY THE SAME BODY POLITIC.— I express my concurrence with the *ponencia*'s holding that condonation may apply in favor of Ricablanca despite the fact that she was not re-elected by exactly the same body politic which previously elected her as Barangay Kagawad of Barangay Poblacion, Sagay, Camiguin. There is no gainsaying that Barangay Poblacion forms part of the larger political unit of the Municipality of Sagay, Camiguin. Thus, since the *barangay* squarely falls under the municipality's geographical division, the *ponencia* correctly ruled that Ricablanca was effectively elected by the same electorate. Verily, the expression of the will of Barangay Poblacion's constituents is already subsumed by Ricabalanca's election by the constituents of a political unit that is not only larger but more importantly, encompasses Barangay Poblacion.

In so ruling, this Court is not adding any new legal nuance to the abandoned condonation doctrine. In our jurisdiction, condonation, prior to its abandonment, has always been premised

> on the theory that an elective official's re-election cuts off the right to remove him for an administrative offense committed during a prior term. Accordingly, a public officer should never be removed for acts done prior to his present term of office because to do otherwise would deprive the people of their right to elect their officers.
>
> The condonation doctrine cases prior to *Carpio Morales* never exclusively restricted the condonation's application to a re-election by exactly the same body politic.
>
> . . .
>
> If at all, these cases only state a general rule as it is common in condonation cases that it is the same body politic who re-elects the public officer.

APPEARANCES OF COUNSEL

Arubio Cadavos Barsaga Enriquez Law Office for petitioner.
Rogen T. Dal for respondent.

D E C I S I O N

DELOS SANTOS, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court filed by Ernesto L. Ching (Ching) assailing both the Amended Decision[1] of the Court of Appeals, Cagayan de Oro City (CA) dated June 29, 2018 and the Resolution[2] dated January 28, 2019 in CA-G.R. SP No. 07261-MIN which reversed the Decision of the Office of the Deputy Ombudsman-Mindanao in OMB-M-A-15-0120[3] dated October 13, 2015 finding

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[1] Penned by Associate Justice Perpetua T. Atal-Paño, with Associate Justices Romulo V. Borja and Oscar V. Badelles, concurring; *rollo*, pp. 130-135.

[2] Penned by Associate Justice Oscar V. Badelles, with Associate Justices Evalyn M. Arellano-Morales and Florencio M. Mamauag, Jr., concurring; id. at 167-169.

[3] Also referred to as "OMB-M-A-15-012" in some parts of the *rollo*.

Carmelita S. Bonachita-Ricablanca (Ricablanca) guilty of grave misconduct and conduct prejudicial to the best interest of the service and imposes upon her the penalty of dismissal from service pursuant to Section 10 of Administrative Order (A.O.) No. 17, amending Rule III of A.O. No. 7 providing for the Rules of Procedure of the Office of the Ombudsman.

The Facts

The case arose after a fire broke out in the Residential Building in *Barangay* Poblacion, Sagay, Camiguin owned by Virgilio Bonachita (Virgilio), father of Ricablanca, on January 29, 2015. Although the fire was extinguished, Ching claimed that he was traumatized by the incident because the building is connected to a "Petron *Bulilit* Station," a fuel station, near his residence.

The fire incident led to the discovery that Ricablanca, while she was still a *Barangay Kagawad* of Poblacion, Sagay, Camiguin, not only authored *Barangay* Resolution No. 16, Series of 2012 (*Barangay* Resolution No. 16) for the construction of the Petron *Bulilit* Station operated by her father Virgilio, who was then a Member of the *Sangguniang Bayan*, but likewise participated in the approval of the same resolution.

During the 2013 Elections, Ricablanca ran for office and won a seat as a Member of the *Sangguniang Bayan* of the Municipality of Sagay.

On March 26, 2015, Ching filed a Complaint against Ricablanca and seven (7) other public officials (Ricablanca, *et al.*) of Sagay, Camiguin before the Office of the Ombudsman (Ombudsman) for Grave Misconduct, Gross Neglect of Duty, Conduct Prejudicial to the Best Interest of the Service, and for Violation of Republic Act No. (RA) 6713 (The Code of Conduct and Ethical Standards for Public Officials and Employees).

Ricablanca, *et al.*, contended in their individual Counter-Affidavits that they did not violate any law when they authored and/or approved *Sangguniang Bayan* Resolution No. 25 and/or *Barangay* Resolution No. 16.

At the time the complaint was filed before the Ombudsman, Ricablanca was already serving as Member of the *Sangguniang Bayan* of Sagay, Camiguin.

The Ombudsman Ruling

In a Decision[4] dated October 13, 2015, the Ombudsman found no substantial evidence to hold the seven (7) other public officials of Sagay, Camiguin guilty except for Ricablanca who was found guilty of Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service for authoring *Barangay* Resolution No. 16, a resolution approving and endorsing the construction and operation of the Petron *Bulilit* Station owned by her father, and for not inhibiting herself from participating in its deliberation and approval. By not immediately inhibiting herself from the deliberation of *Barangay* Resolution No. 16, and worse, eventually approving the same, Ricablanca created the impression that she intended to advance her own interest and ensure that the outcome of the deliberation would be favorable to her.

The Ombudsman imposed upon her the penalty of dismissal from service pursuant to Section 10 of A.O. No. 17, amending Rule III of A.O. No. 7 providing for the Rules of Procedure of the Office of the Ombudsman. In the event that the penalty of dismissal can no longer be enforced due to her separation from service, her penalty shall be converted into a fine in an amount equivalent to her salary for one (1) year, payable to the Ombudsman, and may be deductible from her retirement benefits, accrued leave credits, or any receivable from her office.

The administrative charges filed against the seven (7) other public officials of Sagay, Camiguin were dismissed.

Ricablanca filed a Motion for Reconsideration dated November 20, 2015. In its Order[5] dated December 23, 2015,

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[4] Penned by Graft and Investigation and Prosecution Officer Randolph C. Cadiogan, Jr., reviewed by Director for Evaluation and Investigation Bureau-A Maria Iluminada S. Lapid-Viva and approved by Deputy Ombudsman for Mindanao Rodolfo M. Elman; *rollo*, pp. 170-180.

[5] Id. at 181-185.

the Ombudsman denied Ricablanca's Motion for Reconsideration.

The Ombudsman did not agree with Ricablanca's contention that the case against her should be dismissed for being moot and academic by virtue of Aguinaldo Doctrine (Doctrine of Condonation), because after she authored *Barangay* Resolution No. 16 on April 13, 2012, she subsequently ran for public office in the 2013 Elections and won.

The Ombudsman ruled that the Doctrine of Condonation finds no place in this case because Ricablanca was not re-elected as *Barangay Kagawad* of Poblacion, Sagay, Camiguin in the 2013 Elections, but was elected as *Sangguniang Bayan* Member in the said elections.

Aggrieved, Ricablanca filed an Appeal before the CA.

The CA Ruling

In a Decision[6] dated June 30, 2017, the CA denied the petition and affirmed the Decision[7] dated October 13, 2015 of the Ombudsman.

Preliminarily, as to the procedural issue, the CA did not find any legal or factual basis to justify Ricablanca's failure to serve a copy of the petition to Ching and to provide proof of such service. Considering that the service and proof thereof is a mandatory requirement under the Rules of Court and absent any compelling reason to do so, the CA found no cogent reason to relax the application of the Rules of Court in the instant petition. However, the CA also noted that even if the petition complied with the requirements under Rule 43 of the Rules of Court, the same must nevertheless be denied for lack of merit.

The CA found Ricablanca liable for Gross Misconduct and Conduct Prejudicial to the Best Interest of Service. Ricablanca's

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[6] Penned by Associate Justice Perpetua T. Atal-Paño, with Associate Justices Romulo V. Borja and Oscar V. Badelles, concurring; id. at 214-227.

[7] Id. at 170-180.

act of authoring and approving *Barangay* Resolution No. 16, which, she admitted, was aimed at helping her father's gasoline business, undoubtedly constituted Gross Misconduct. She need not have direct interest in the establishment and operation of her father's gasoline business in order to be found administratively liable. Under Section 7 (a) of RA 6713, she is prohibited from directly or indirectly having financial or material interest in any transaction requiring the approval of their office. Her authorship and approval of *Barangay* Resolution No. 16, knowing that it is for the benefit of her father and/or brother, indicates her shortsightedness which is so gross that it cannot be considered as simple misconduct. Moreover, the CA rejected Ricablanca's claim that simultaneous finding of gross misconduct and conduct prejudicial to the best interest of the service is judicially proscribed. In *Office of the Ombudsman, Field Investigation Office v. Faller*,[8] which upheld the ruling of the Ombudsman finding therein respondent, Faller, guilty of simple misconduct and conduct prejudicial to the best interest of the service, the Supreme Court reiterated that acts may constitute conduct prejudicial to the best interest of the service as long as they tarnish the image and integrity of his/her public office,[9] as in this case.

Furthermore, it did not find merit to Ricablanca's claim that the doctrine of condonation, as held in the landmark case of *Pascual v. Hon. Provincial Board of Nueva Ecija*,[10] is applicable to her case. It must be stressed that the application of the doctrine depends on the public officer being re-elected to the same office for a new term,[11] which is not the case here. More importantly, the Supreme Court, in *Ombudsman Carpio Morales v. Court of Appeals*,[12] after conducting a judicious examination of our

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[8] 786 Phil. 467 (2016).

[9] Id. at 482, citing *Avenido v. Civil Service Commission*, 576 Phil. 654, 662 (2008).

[10] 106 Phil. 466 (1959).

[11] *Rollo*, p. 226.

[12] 772 Phil. 672 (2015).

current laws, abandoned the application of the doctrine of condonation to administrative cases filed against public officials.

As to the penalty imposed by the Ombudsman, the CA found that there was a sufficient basis in upholding the same.

For all the foregoing reasons, the CA sustained the findings of the Ombudsman, holding Ricablanca liable for Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service, and dismissing her from service as provided under Section 11 of RA 6713.

Feeling aggrieved, Ricablanca filed a Motion for Reconsideration[13] dated July 27, 2017, assailing the above-cited Decision[14] of the CA dated June 30, 2017. She maintained that apart from the general averments of Ching, there was no substantial evidence to hold her liable for Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service and that her act of authoring *Barangay* Resolution No. 16 was not so grave that would warrant the imposition of the penalty of dismissal.

In her Supplemental Motion for Reconsideration,[15] Ricablanca also contended that her case is similar to that of *Almario-Templonuevo v. Office of the Ombudsman*,[16] where the Supreme Court ruled that despite the abandonment of the condonation doctrine in the case of *Carpio Morales*, the effect of abandonment was made prospective in application.

In an Amended Decision[17] dated June 29, 2018, the CA resolved to grant the Motion for Reconsideration filed by Ricablanca, and the Decision dated June 30, 2017, as well as the Decision dated October 13, 2015 were reconsidered.

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[13] *Rollo*, pp. 228-234.

[14] Id. at 214-227.

[15] Id. at 235-240.

[16] 811 Phil. 686 (2017).

[17] *Rollo*, pp. 130-135.

Effectively, the Order[18] dated December 23, 2015 of the Office of the Deputy Ombudsman-Mindanao was reversed.

The CA found sufficient grounds to reconsider the assailed Decision and applied the recently decided case of *Almario-Templonuevo*, wherein the Supreme Court ruled that the condonation doctrine will apply despite its abandonment in the case of *Carpio Morales*. Even if it involved a public officer who was elected to a different position, provided that, it is shown that the body politic electing the person to another office is the same as held in the case of *Giron v. Hon. Executive Secretary Ochoa*.[19] Moreover, the penalty of dismissal from service, which was converted into a fine in an amount equivalent to her salary for one (1) year was rendered moot and academic on the basis of the condonation doctrine. Finally, the CA found it more in accord with substantial justice to overlook Ricablanca's procedural lapse in the interest of resolving the case on the merits, considering that there exists a compelling reason to reconsider its judgment.

Ching filed a Motion for Reconsideration assailing the Amended Decision. In a Resolution[20] dated January 28, 2019, the CA denied Ching's Motion for Reconsideration for lack of merit.

Ching filed a Petition for Review on *Certiorari*[21] under Rule 45 with the Court.

Our Ruling

Preliminarily, before we move to resolve the substantive issues raised by Ching in his petition, we first settle the issue on *locus standi* raised by Ricablanca. In her Comment,[22] Ricablanca argues

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[18] Id. at 181-185.

[19] 806 Phil. 624 (2017).

[20] Penned by Associate Justice Oscar V. Badelles, with Associate Justices Evalyn M. Arellano-Morales and Florencio M. Mamauag, Jr., concurring; *rollo*, pp. 55-57.

[21] Id. at 61-108.

[22] Id. at 244-253.

that Ching has no legal standing or legal personality to file the instant petition to assail the Amended Decision of the CA, he being a mere witness of the government. The real party aggrieved of the Amended Decision is the Ombudsman, who has not filed any motion or appeal to the Supreme Court when the Amended Decision came out.

We do not agree.

The Court rules that Ching has legal standing to file the instant petition before the Court.

In *Association of Flood Victims v. Commission on Elections*,[23] the Court defined legal standing as follows:

> [*Locus standi* or legal standing is defined as] a personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged. The term "interest" means a material interest, an interest in issue affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest. The gist of the question of standing is whether a party alleges such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions.

Further, in *Ifurung v. Carpio Morales*,[24] the Court cited *Funa v. Chairman Villar*[25] in showing the liberal stance of the Court in interpreting *locus standi*:

> To have legal standing, therefore, a suitor must show that he has sustained or will sustain a "direct injury" as a result of a government action, or have a "material interest" in the issue affected by the challenged official act. However, the Court has time and again acted liberally on the *locus standi* requirements and has accorded certain individuals, not otherwise directly injured, or with material interest

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[23] 740 Phil. 472, 481 (2014), citing *Integrated Bar of the Philippines v. Zamora*, 392 Phil. 618, 632-633 (2000).

[24] G.R. No. 232131, April 24, 2018, 862 SCRA 684.

[25] 686 Phil. 571 (2012).

affected, by a Government act, standing to sue provided a constitutional issue of critical significance is at stake. The rule on *locus standi* is after all a mere procedural technicality in relation to which the Court, in a *catena* of cases involving a subject of transcendental import, has waived, or relaxed, thus allowing non-traditional plaintiffs, such as concerned citizens, taxpayers, voters or legislators, to sue in the public interest, albeit they may not have been personally injured by the operation of a law or any other government act. In *David*, the Court laid out the bare minimum norm before the so-called "non-traditional suitors" may be extended standing to sue, thusly:

1.) For *taxpayers*, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional;

2.) For *voters*, there must be a showing of obvious interest in the validity of the election law in question;

3.) For *concerned citizens*, there must be a showing that the issues raised are of transcendental importance which must be settled early; and

4.) For *legislators*, there must be a claim that the official action complained of infringes their prerogatives as legislators.[26]

It is important to note that this case arose because of a fire incident that traumatized Ching as his residence is right beside the building that caught fire, which is also connected to the fuel station. Both the building and the fuel station are owned by Ricablanca's father, Virgilio. It is through the effort of Ching that pieces of evidence were gathered which led to the discovery of the participation of Ricablanca in the authorship, approval, and passing of *Barangay* Resolution No. 16 which allowed the construction and operation of the subject fuel station. It was also Ching who filed the complaint against Ricablanca before the Ombudsman for Grave Misconduct, Gross Neglect of Duty, Conduct Prejudicial to the Best Interest of the Service, and for violation of RA 6713. As such, he was one of the respondents when the case was still pending in the CA. These factual antecedents show that Ching has a material interest in

[26] *Ifurung v. Carpio Morales*, supra note 24, at 704.

the issue at hand and, therefore, has a legal standing to file the Petition for Review before the Court.

Ricablanca's reliance to the case of *Office of the Ombudsman v. Gutierrez*[27] is flawed. A careful perusal of the said case would reveal that such case involved a different issue which is the legal standing of the Ombudsman to validly intervene on appeal in administrative cases that it has resolved. Such is not the issue here. Considering that *Gutierrez* was decided against an entirely different factual milieu, reliance on that case is misplaced and unjustified.

Condonation Doctrine, when applicable.

The remaining issue involves the application of the doctrine of condonation, which is a question of law.

In this regard, Ching submits that the doctrine of condonation had been abandoned on November 10, 2015 through the ruling in *Carpio Morales*. Hence, the administrative case filed by Ching in the case at bar is still pending with the Ombudsman when the doctrine of condonation was abandoned. Specifically, it was only on December 23, 2015 when the Ombudsman finally disposed of the administrative case of Ricablanca — about a month after the promulgation of *Carpio Morales*. As such, since the case was still pending before the Ombudsman when the doctrine was abandoned, Ching argued that Ricablanca could no longer invoke condonation as a defense as it was already declared unconstitutional.

In contrast, Ricablanca averred that her case is similar to that of *Almario-Templonuevo*, and invokes the ruling of the Supreme Court that despite the abandonment of the condonation doctrine in the case of *Carpio Morales*, the effect of abandonment was made prospective in application. Therefore, she can still raise condonation as a defense because as far as her case is concerned, the doctrine remains to be a good law.

We agree with Ricablanca.

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[27] 811 Phil. 389 (2017).

In the case of Ricablanca, it is undisputed that her acts which is subject of the administrative case were committed during her previous term as *Barangay Kagawad* of *Barangay* Poblacion in the Municipality of Sagay, Province of Camiguin in 2012, for allegedly authoring, not inhibiting from the deliberation of, and participating in the approval of *Barangay* Resolution No. 16 which approved and endorsed the construction and operation of Petron *Bulilit* Station owned by her father. However, in the elections of 2013, Ricablanca was elected as a Member of the *Sangguniang Bayan* of the Municipality of Sagay. Applying then the condonation doctrine, Ricablanca's subsequent election in 2013 meant that she could no longer be administratively charged for the complained acts committed in 2012.

The condonation doctrine, first enunciated in *Pascual v. Provincial Board of Nueva Ecija*[28] and reiterated in *Aguinaldo v. Santos*,[29] states that a public official cannot be removed for administrative misconduct committed during a prior term, since his re-election to office operates as a condonation of the officer's previous misconduct to the extent of cutting off the right to remove him therefor.

The condonation doctrine was thoroughly discussed in the case of *Carpio Morales* where it defined condonation as "[a] victim's express or implied forgiveness of an offense, [especially] by treating the offender as if there had been no offense."[30] It also discussed in length the origin of the doctrine and reviewed its validity in this jurisdiction. The Court in that case enunciated that:

> The condonation doctrine — which connotes this same sense of complete extinguishment of liability as will be herein elaborated upon — is not based on statutory law. It is a jurisprudential creation that

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[28] Supra note 10.

[29] 287 Phil. 851 (1992).

[30] *Ombudsman Carpio Morales v. Court of Appeals*, supra note 12, at 754.

originated from the **1959 case** of ***Pascual v. Hon. Provincial Board of Nueva Ecija***, (Pascual), ***which was therefore decided under the 1935 Constitution***.

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In this case, the Court agrees with the Ombudsman that since the time *Pascual* was decided, the legal landscape has radically shifted. Again, *Pascual* was a 1959 case decided under the 1935 Constitution, which dated provisions do not reflect the experience of the Filipino People under the 1973 and 1987 Constitutions. Therefore, the plain difference in setting, including, of course, the sheer impact of the condonation doctrine on public accountability, calls for *Pascual's* judicious re-examination.

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Reading the 1987 Constitution together with the above-cited legal provisions now leads this Court to the conclusion that the doctrine of condonation is actually bereft of legal bases.

To begin with, the concept of **public office is a public trust and the corollary requirement of accountability to the people at all times**, as mandated under the 1987 Constitution, is **plainly inconsistent** with the idea that an elective local official's administrative liability for a misconduct committed during a prior term can be wiped off by the fact that he was elected to a second term of office, or even another elective post. **Election is not a mode of condoning an administrative offense**, and there is simply no constitutional or statutory basis in our jurisdiction to support the notion that an official elected for a different term is fully absolved of any administrative liability arising from an offense done during a prior term. In this jurisdiction, **liability arising from administrative offenses may be condoned by the President** in light of Section 19, Article VII of the 1987 Constitution which was interpreted in *Llamas v. Orbos* to apply to administrative offenses[.]

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[I]t would be a violation of the Court's own duty to uphold and defend the Constitution if it were not to abandon the condonation doctrine now that its infirmities have become apparent. As extensively discussed, the continued application of the condonation doctrine is simply impermissible under the auspices of the present Constitution which

explicitly mandates that public office is a public trust and that public officials shall be accountable to the people at all times.[31] (Emphases and underscoring in the original; citations omitted)

Despite the abandonment of the condonation doctrine in *Carpio Morales*, it must be stressed, however, that the said doctrine still applies in this case as the effect of the abandonment was made prospective in application. In *Crebello v. Office of the Ombudsman*,[32] the Court clarified that the ruling promulgated in *Carpio Morales* on the abandonment of the doctrine of condonation had become final only on April 12, 2016, and thus, the abandonment should be reckoned from April 12, 2016.

The prospective application of the ruling in *Carpio Morales* was already reiterated and applied by the Court in several cases. In *Almario-Templonuevo* and *Giron*, condonation doctrine was applied to a situation where the complained acts of the elected public official, the filing of administrative case against him and his re-election took place prior to the abandonment of the aforementioned doctrine in *Carpio Morales*. In *Ombudsman v. Vergara*,[33] the Court categorically stated that the abandonment of condonation doctrine is prospective in application which means that "the same doctrine is still applicable in cases that transpired prior to the ruling." In ruling so, the Court took note of *Carpio Morales* where it was pointed out that "judicial decisions assume the same authority as a statute itself and, until authoritatively abandoned, necessarily become, to the extent that they are applicable, the criteria that must control the actuations, not only of those called upon to abide by them, but also of those duty-bound to enforce obedience to them."[34] Thus, in *Vergara*, the Court applied the doctrine — considering that

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[31] *Id.* at 755, 760, 769-770, and 778.

[32] G.R. No. 232325, April 10, 2019.

[33] 822 Phil. 361 (2017).

[34] *Ombudsman Carpio Morales v. Court of Appeals*, supra note 12, at 775, citing *De Castro v. Judicial and Bar Council*, 632 Phil. 657, 686 (2010).

the case was instituted prior to the finality of the *Carpio Morales* ruling.

While it is settled that the doctrine of condonation is applied prospectively, there is diversity of views with regard to the reckoning point of the Court's limited application of the condonation doctrine.

As aptly pointed out by Senior Associate Justice Estela M. Perlas-Bernabe in her Concurring Opinion,[35] there are three misguided views as to when condonation should be reckoned. The first view, as contained in the Ombudsman's Office Circular No. 17 dated May 11, 2016, considers condonation doctrine inapplicable to all administrative cases that are open and pending as of April 12, 2016, to wit:

> From the date of finality of the Decision on 12 April 2016 and onwards, the Office of the Ombudsman will no longer give credence to the condonation doctrine, regardless of when an administrative infraction was committed, when the disciplinary complaint was filed, or when the concerned public official was re-elected. In other words, for [as] long as the administrative case remains open and pending as of 12 April 2016 and onwards, the Office of the Ombudsman shall no longer honor the defense of condonation.

A second view suggests the date of filing of the complaint as the reckoning point. As aforementioned, in *Vergara*, the condonation doctrine was applied because the case was "instituted prior to" April 12, 2016; while in *Dator v. Carpio Morales*,[36] the condonation doctrine was held to be no longer applicable because the case was instituted after such date even though the misconduct was committed in 2014.

A third view considers the date of commission of the misconduct as the reckoning point.

In view of the diversity of precedents, and in order to finally clarify and provide guidance for the bench, the bar, and the

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[35] See Concurring Opinion of Senior Associate Justice Estela M. Perlas-Bernabe, pp. 4-5.

[36] G.R. No. 237742, October 8, 2018.

public, this Court has reexamined the question and, after consideration, has arrived at the conclusion that the proper interpretation is that the condonation is manifested through re-election, and therefore, the defense of condonation is no longer available if the re-election happens after April 12, 2016. To reiterate, Black's Law Dictionary, as cited in *Carpio Morales*, defines condonation as "[a] victim's express or implied forgiveness of an offense, [especially] by treating the offender as if there had been no offense."[37] Considering that the electorate's act of forgiving a public officer for a misconduct is done through re-election, the abandonment of the condonation doctrine should mean that re-elections conducted after April 12, 2016 should no longer have the effect of condoning the public officer's misconduct. Simply put, albeit by judicial *fiat* only, it is the act of re-election which triggers the legal effect of and, to an extent, vests the right to rely on the defense of condonation.

In this case, since Ricablanca was re-elected during the 2013 Elections (specifically on May 13, 2013), the doctrine of condonation applies to her. In sum, for so long as the elective official had already been re-elected prior to April 12, 2016, he or she may avail of the doctrine of condonation as a valid defense to the administrative complaint against him/her, as in this case.

Condonation Doctrine will still apply even if Ricablanca was not elected by exactly, identically, and exclusively the same body politic.

It is also the contention of Ching that the doctrine of condonation cannot be applied in this case because Ricablanca was not re-elected by the same body politic/electorate. On the other hand, the latter maintains that the electorate that elected her as a *Sangguniang Bayan* Member is wider than the electorate that elected her as a *Barangay Kagawad* and her re-election operates as forgiveness of her constituents.

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[37] *Ombudsman Carpio Morales v. Court of Appeals*, supra note 12, at 754.

In *Giron*,[38] the Court recognized that the condonation doctrine can be applied to a public officer who was elected to a different position provided that it is shown that the body politic electing the person to another office is *the same*. Thus, the Court ruled:

> On this issue, considering the *ratio decidendi* behind the doctrine, the Court agrees with the interpretation of the administrative tribunals below that the condonation doctrine applies to a public official elected to another office. The underlying theory is that each term is separate from other terms. Thus, in *Carpio-Morales*, the basic considerations are the following: *first*, the penalty of removal may not be extended beyond the term in which the public officer was elected for each term is separate and distinct; *second*, an elective official's re-election serves as a condonation of previous misconduct, thereby cutting the right to remove him therefor; and *third*, courts may not deprive the electorate, who are assumed to have known the life and character of candidates, of their right to elect officers. **In this case, it is a given fact that the body politic, who elected him to another office, was the same**.[39] (Emphasis supplied)

The same ruling was reiterated in the subsequent cases of *Almario-Templonuevo* and *Vergara*.

It is worthy to note that in *Giron*, *Almario-Templonuevo*, and *Vergara* (all decided by the Court in Division), the Court fell short in categorically setting the parameters or elements of the words "same body politic." For certain, the Court **did not rule** that the doctrine of condonation **cannot be applied** to a public officer who was **not subsequently elected by exactly, identically, and exclusively the same body politic**. Obviously, the Court did not expound on these material points due to the fact that the aforesaid cases involve a scenario where the electorate involved belongs to exactly, identically, and exclusively the same political geographical unit — *Barangay* Chairman Arnaldo A. Cando of *Barangay* Capri, Novaliches, Quezon City having been subsequently elected as *Kagawad* of the same *barangay*; Templonuevo as *Sangguniang Bayan*

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[38] Supra note 19.

[39] Id. at 634.

Member of the Municipality of Caramoan, Province of Catanduanes who was elected as Vice-Mayor of the same municipality; and Mayor Vergara of Cabanatuan City re-elected as Mayor of the same city, respectively.

Accordingly, the Court is confronted with the issue on whether or not the condonation doctrine is applicable to a public official who is elected to another office by not exactly, identically, and exclusively the same body politic. To be specific, the issue before the Court is whether or not the doctrine of condonation can be applied to a public official (Ricablanca) elected to an office (*Sangguniang Bayan* Member) by the electorate (Municipality of Sagay) which includes the whole body politic (*Barangay* Poblacion, Municipality of Sagay) she has served in her previous term (as *Barangay Kagawad*).

It is submitted that the answer to the above-mentioned issue is in the affirmative.

It is imperative to take a look into the *ratio decidendi* behind the condonation doctrine, prior to its abandonment.

As explained in *Carpio Morales* and as reiterated in *Giron*, the *ratio decidendi* behind the condonation doctrine, can be dissected into three parts, to wit:

> *First*, the **penalty of removal may not be extended beyond the term in which the public officer was elected** for each term is separate and distinct:
>
> Offenses committed, or acts done, during previous term are generally held not to furnish cause for removal and this is especially true where the constitution provides that the penalty in proceedings for removal shall **not** extend beyond the removal from office, and disqualification from holding office for the term for which the officer was elected or appointed. x x x
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> The underlying theory is that each term is separate from other terms x x x.
>
> *Second*, an elective official's **re-election serves as a condonation of previous misconduct, thereby cutting the right to remove him** therefor; and

[T]hat the [*re-election*] *to office operates as a condonation of the officer's previous misconduct to the extent of cutting off the right to remove him therefor*. x x x

Third, courts may not deprive the electorate, who are assumed to have known the life and character of candidates, of their right to elect officers:

As held in *Conant vs. Grogan* x x x —

The Court should never remove a public officer for acts done prior to his present term of office. To do otherwise would be to deprive the people of their right to elect their officers. When the people have elected a man to office, it must be assumed that they did this with knowledge of his life and character, and that they disregarded or forgave his faults or misconduct, if he had been guilty of any. **It is not for the court, by reason of such faults or misconduct to practically overrule the will of the people**.[40] (Original underscoring deleted; emphases supplied)

The *ratio decidendi* behind the condonation doctrine as discussed in *Carpio Morales* is taken from the 1959 *En Banc* ruling in *Pascual*. In another *En Banc* 1996 ruling in *Salalima v. Guingona*,[41] the Court **stated that the condonation doctrine** is not only founded on the theory that an official's re-election expresses the sovereign will of the electorate to forgive or condone any act or omission constituting a ground for administrative discipline which was committed during his previous term. The same is also **justified by "sound public policy."** The Court held that to rule otherwise would open the floodgates to exacerbating endless partisan contests between the re-elected official and his political enemies, who may not stop to hound the former during his new term with administrative cases for acts alleged to have been committed during his previous term. His second term may, thus, be devoted to defending himself in the said cases to the detriment of public service. This doctrine of forgiveness or condonation cannot, however, apply to criminal

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[40] *Ombudsman Carpio Morales v. Court of Appeals*, supra note 12, at 761-762.

[41] 326 Phil. 847 (1996).

acts which the re-elected official may have committed during his previous term.

As can be observed from the foregoing, nowhere in the *ratio decidendi* behind the condonation doctrine that it requires that there should be a geographical and numerical exactness of body politic or that the body politic in the previous term should be exactly, identically, and exclusively the same with that who elected the public official to a new term. What is clear in the rationale behind the condonation doctrine is that **primary consideration is given to the right of the electorate to elect officers and for the courts not to overrule the will of the people, and that a public officer should never be removed for acts done prior to his present term of office.**

The word "same body politic," therefore, as mentioned in *Giron*, *Almario-Templonuevo*, and *Vergara* which, to note, are all cases decided after *Carpio Morales* — should not be applied literally, but should be construed by taking into account the spirit and intent of the condonation doctrine prior to its abandonment in *Carpio Morales*.

Collorarily, the condonation doctrine is a jurisprudential creation that originated from the 1959 case of *Pascual*, which was decided under the 1935 Constitution.[42] Section 1, Article II thereof states that "[t]he Philippines is a democratic and republican State" and "[s]overeignty resides in the people and all government authority emanates from them." The same provision is maintained under the present 1987 Constitution.[43] Republicanism, insofar as it implies the adoption of a representative type of government, necessarily points to the enfranchised citizen as a particle of popular sovereignty and

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[42] *Ombudsman Carpio Morales v. Court of Appeals*, supra note 12, at 755.

[43] Art. II. Declaration of Principles and State Policies.

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Sec. 1. The Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them.

as the ultimate source of the established authority.[44] Each time the enfranchised citizen goes to the polls to assert this ***sovereign will***, that abiding credo of republicanism is translated into living reality.[45] Indeed, a truly-functioning democracy owes its existence to the people's collective sovereign will.

In this case, while it may be true that the body politic who voted for Ricablanca as *Sangguniang Bayan* Member is not exactly, identically, and exclusively the same with that who elected her to the previous term as *Barangay Kagawad*, the voters thereof, however, were not entirely different. The voters of *Barangay* Poblacion maintained its identity as the body politic, which previously elected Ricablanca as *Barangay Kagawad*, when it formed part of the bigger electorate who elected Ricablanca as *Sangguniang Bayan* Member of the Municipality of Sagay during the 2013 Elections, being a fraction thereof as one of its *barangays*. Hence, the requirement of "same body politic" as pronounced by the Court in *Giron* is still compliant as regards the voters of *Barangay* Poblacion who belong to the Municipality of Sagay to which Ricablanca was elected as *Sangguniang Bayan* Member. The Court, in applying the condonation doctrine, should consider that the electorate for the election of *Kagawad* of *Barangay* Poblacion is the same and part of the electorate who participated and elected Ricablanca as *Sangguniang Bayan* Member of Sagay. Otherwise stated, condonation still applies since the electorate who voted Ricablanca as *Sangguniang Bayan* Member of Sagay in 2013 included the same body politic (*Barangay* Poblacion) whom she has served in her previous term when the alleged misconduct was committed.

It might not be amiss to point out that it would be too much to stretch the meaning of the requirement "same body politic" so as to say that it should be required and proven that the elected public official won in the exact same political unit (but forming

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[44] *Moya v. Del Fierro*, 69 Phil. 199, 204 (1939).

[45] *People v. San Juan*, 130 Phil. 515, 522 (1968).

part of a bigger body politic who re-elected him) he has previously served in the previous term. By being elected by a bigger body politic, he is effectively re-elected by the same body politic with that he has previously served. The reason is that the bigger body politic who voted for him or her still chose and designated him to rule over or represent them, as the case may be, already subsuming the vote of the smaller body politic.

To reiterate, the meaning of "the same body politic," as mentioned in the cases of *Vergara*, *Almario-Templonuevo*, and *Giron*, should not be viewed or interpreted in a limited and restrictive sense. Rather, the same should be interpreted in conjunction and in consideration with the *ratio decidendi* behind the condonation doctrine, prior to its abandonment, which is primarily about the protection of and respect for the sovereign will of the electorate to elect their officers. To do otherwise, is to give a myopic interpretation of the word "same body politic" resulting into absurdity. Accordingly, as thoroughly explained, condonation doctrine applies to Ricablanca.

WHEREFORE, the petition is **DENIED**. The Amended Decision dated June 29, 2018 and the Resolution dated January 28, 2019 of the Court of Appeals, Cagayan de Oro City in CA-G.R. SP No. 07261-MIN are hereby **AFFIRMED**.

SO ORDERED.

Hernando and *Inting, JJ.*, concur.

Perlas-Bernabe, S.A.J. (Chairperson), see concurring opinion.

Baltazar-Padilla, J., on leave.

CONCURRING OPINION

PERLAS-BERNABE, *J.*:

I concur. Having been re-elected by the same body politic prior to the abandonment of the condonation doctrine on April 12, 2016,[1] respondent Carmelita S. Bonachita-Ricablanca

[1] See *Crebello v. Ombudsman*, G.R. No. 232325, April 10, 2019.

(Ricablanca) may validly invoke the same to absolve her of any administrative liability arising from the alleged infractions committed during her previous term.

To recount, in *Carpio Morales v. Court of Appeals*[2] *(Carpio Morales)*, the Court traced the origin of the condonation doctrine and found that it was **merely a "jurisprudential creation"**[3] without any constitutional or statutory anchor. The doctrine was simply lifted from select United States of America (US) cases and was adopted hook, line, and sinker in the 1959 case of *Pascual v. Provincial Board of Nueva Ecija*[4] *(Pascual)*, and thereafter, applied in our jurisprudence. As it appears, the propriety of the condonation doctrine was never seriously questioned before the Court up until the institution of the *Carpio Morales* case on March 25, 2015. Met with the opportunity to revisit said doctrine, the Court abandoned the doctrine of condonation after finding that it is not only **bereft of any constitutional or statutory basis** in this jurisdiction but is also "**out of touch from — and rendered obsolete by — the current legal regime**."[5] *In particular, the Court had pertinently*

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[2] 772 Phil. 672 (2015).

[3] See id. at 755; emphasis supplied.

[4] 106 Phil. 466 (1959). See also *Carpio Morales v. Court of Appeals*, id. at 755-756, to wit:

> [T]he controversy [in *Pascual*] posed a novel issue — that is, whether or not an elective official may be disciplined for a wrongful act committed by him during his immediately preceding term of office.
>
> **As there was no legal precedent on the issue at that time**, the Court, in *Pascual*, resorted to American authorities and "found that cases on the matter are conflicting due in part, probably, to differences in statutes and constitutional provisions, and also, in part, to a divergence of views with respect to the question of whether the subsequent election or appointment condones the prior misconduct." Without going into the variables of these conflicting views and cases, it proceeded to state that:
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> > The weight of authorities x x x seems to incline toward the rule denying the right to remove one from office because of misconduct during a prior term, to which we fully subscribe. (Emphasis supplied)

[5] *Carpio Morales v. Court of Appeals*, id. at 775.

ruled that the existence of the condonation doctrine runs counter to the public accountability provisions of our present Constitution,[6] *viz.*:

The foundation of our entire legal system is the Constitution. It is the supreme law of the land; thus, the unbending rule is that every statute should be read in light of the Constitution. Likewise, the Constitution is a framework of a workable government; hence, its interpretation must take into account the complexities, realities, and politics attendant to the operation of the political branches of government.

As earlier intimated, *Pascual* was a decision promulgated in 1959. **Therefore, it was decided within the context of the 1935 Constitution which was silent with respect to public accountability, or of the nature of public office being a public trust**. x x x Perhaps owing to the 1935 Constitution's silence on public accountability, and considering the dearth of jurisprudential rulings on the matter, as well as the variance in the policy considerations, there was no glaring objection confronting the *Pascual* Court in adopting the condonation doctrine that originated from select US cases existing at that time.

With the advent of the 1973 Constitution, the approach in dealing with public officers underwent a significant change. The new charter introduced an entire article on accountability of public officers, found in Article XIII. Section 1 thereof positively recognized, acknowledged, and declared that "[p]ublic office is a public trust." Accordingly, "[p]ublic officers and employees shall serve with the highest degree of responsibility, integrity, loyalty and efficiency, and shall remain accountable to the people."

After the turbulent decades of Martial Law rule, the Filipino People have framed and adopted the 1987 Constitution, which sets forth in the Declaration of Principles and State Policies in Article II that "[t]he State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption." Learning how unbridled power could corrupt public servants under the regime of a dictator, the Framers put primacy on the integrity of the public service by declaring it as a constitutional principle and a State policy. **More significantly, the 1987 Constitution strengthened**

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[6] See id. at 772.

and solidified what has been first proclaimed in the 1973 Constitution by commanding public officers to be accountable to the people at all times:

> Section 1. Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency and act with patriotism and justice, and lead modest lives.
>
> x x x x x x x x x

x x x **[T]he concept of public office is a public trust and the corollary requirement of accountability to the people at all times, as mandated under the 1987 Constitution, is plainly inconsistent with the idea that an elective local official's administrative liability for a misconduct committed during a prior term can be wiped off by the fact that he was elected to a second term of office, or even another elective post.** Election is **not** a mode of condoning an administrative offense, and there is simply no constitutional or statutory basis in our jurisdiction to support the notion that an official elected for a different term is fully absolved of any administrative liability arising from an offense done during a prior term. x x x

x x x x x x x x x

Equally infirm is *Pascual*'s proposition that the electorate, when re-electing a local official, are assumed to have done so with knowledge of his life and character, and that they disregarded or forgave his faults or misconduct, if he had been guilty of any. Suffice it to state that no such presumption exists in any statute or procedural rule. Besides, it is contrary to human experience that the electorate would have full knowledge of a public official's misdeeds. The Ombudsman correctly points out the reality that most corrupt acts by public officers are shrouded in secrecy, and concealed from the public. Misconduct committed by an elective official is easily covered up, and is almost always unknown to the electorate when they cast their votes. At a conceptual level, condonation presupposes that the condoner has actual knowledge of what is to be condoned. Thus, there could be no condonation of an act that is unknown. x x x

x x x x x x x x x

That being said, this Court simply finds no legal authority to sustain the condonation doctrine in this jurisdiction. **As can be seen from**

this discourse, it was a doctrine adopted from one class of US rulings way back in 1959 and thus, out of touch from — and now rendered obsolete by — the current legal regime. In consequence, it is high time for this Court to abandon the condonation doctrine that originated from *Pascual*, and affirmed in the cases following the same, such as *Aguinaldo* [*v. Santos*, 287 Phil. 851 (1992)], *Salalima* [*v. Guingona, Jr.*, 326 Phil. 847 (1996)], *Mayor Garcia* [*v. Mojica*, 372 Phil. 892 (1999)], and *Governor Garcia, Jr.* [*v. Court of Appeals*, 604 Phil. 677 (2009)] which were all relied upon by the [Court of Appeals].[7] (Emphases and underscoring supplied; citations omitted)

Nevertheless, the Court declared the abandonment to be **prospective in application** on the basis of Article 8 of the Civil Code, which states that judicial decisions applying this doctrine became, prior to its abandonment, "part of the legal system of the Philippines" such that persons were bound to abide by it,[8] *viz.*:

> It should, however, be clarified that this Court's abandonment of the condonation doctrine should be **prospective in application** for the reason that judicial decisions applying or interpreting the laws or the Constitution, until reversed, shall form part of the legal system of the Philippines. Unto this Court devolves the sole authority to interpret what the Constitution means, and all persons are bound to follow its interpretation. As explained in *De Castro v. Judicial Bar Council* [632 Phil. 657 (2010)]:
>
> > Judicial decisions assume the same authority as a statute itself and, until authoritatively abandoned, necessarily become, to the extent that they are applicable, the criteria that must control the actuations, not only of those called upon to abide by them, but also of those duty-bound to enforce obedience to them.[9] (Emphasis supplied)

In order to afford due process to persons who relied on prevailing jurisprudence at that time in good faith, as well as recognize the practical implications of acts already done in the interim based thereon, the Court thus gave "prospective application" to the abandonment.

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[7] Id. at 765-775; citations omitted.

[8] See id. at 775; citations omitted.

[9] Id.

One of the two (2) main issues in the present case is the actual reckoning point of the Court's limited application of the condonation doctrine in light of its prospective abandonment in *Carpio Morales*, which attained finality on April 12, 2016.[10]

As the *ponencia* correctly holds, the proper point to reckon the doctrine's limited application is no other than **at that time when the elective official was re-elected to a new term** (in this case, during the May 13, 2013 elections). As consistently evinced by the jurisprudence on the doctrine of condonation, condonation of prior administrative liability by the will of people is triggered by **the fact of re-election**. Thus, the time when the alleged misconduct was committed (in this case, in 2012) as well as the time of the filing of the administrative case (in this case, on March 26, 2015) are not technically material in reckoning condonation. ***Verily, for as long as the elective official had already been re-elected prior to April 12, 2016, he/she may avail of the doctrine of condonation as a valid defense to the administrative complaint against him/her for acts committed during a prior term.***

In this regard, I deem it apt to point out that there are three (3) misguided views as to when condonation should be reckoned.

The first view, as contained in the Office of the Ombudsman's Office Circular No. 17 dated May 11, 2016, considers the condonation doctrine inapplicable to all administrative cases that are open and pending as of April 12, 2016, to wit:

> From the date of finality of the Decision on 12 April 2016 and onwards, the Office of the Ombudsman will no longer give credence to the condonation doctrine, regardless of when an administrative infraction was committed, when the disciplinary complaint was filed, or when the concerned public official was re-elected. In other words, for [as] long as the administrative case remains open and pending as of 12 April 2016 and onwards, the Office of the Ombudsman shall no longer honor the defense of condonation.

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[10] See *Crebello v. Ombudsman*, supra note 1.

A second view suggests the date of filing of the complaint as the reckoning point. In *Ombudsman v. Vergara*[11] *(Vergara)*, the condonation doctrine was applied because the case was "instituted prior to" April 12, 2016; while in *Dator v. Carpio Morales*,[12] the condonation doctrine was held to be no longer applicable because the case was instituted after such date even though the misconduct was committed in 2014.

A third view considers the date of commission of the misconduct as the reckoning point.

However, as already discussed above, the proper interpretation is that the condonation is manifested through re-election, and therefore, the defense of condonation is no longer available if the re-election happens after April 12, 2016. Black's Law Dictionary, as cited in *Carpio Morales*, defines condonation as "[a] victim's express or implied forgiveness of an offense, [especially] by treating the offender as if there had been no offense."[13] Thus, albeit by judicial fiat only, it is the act of re-election which triggers the legal effect of and, to an extent, vests the right to rely on the defense of condonation. ***Accordingly, considering that the electorate's act of forgiving a public officer for a misconduct is done through re-election, the abandonment of the condonation doctrine should mean that a re-election conducted after April 12, 2016 should no longer have the effect of condoning the public officer's misconduct for a previous term***.

Likewise, I express my concurrence with the *ponencia*'s holding that condonation may apply in favor of Ricablanca despite the fact that she was not re-elected by exactly the same body politic which previously elected her as Barangay Kagawad of Barangay Poblacion, Sagay, Camiguin. There is no gainsaying that Barangay Poblacion forms part of the larger political unit of the Municipality of Sagay, Camiguin.[14] Thus, since the

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[11] 822 Phil. 361 (2017).

[12] G.R. No. 237742, October 8, 2018.

[13] Black's Law Dictionary, 8th Ed., p. 315.

[14] See *ponencia*, p. 15.

barangay squarely falls under the municipality's geographical division, the *ponencia* correctly ruled that Ricablanca was effectively elected by the same electorate. Verily, the expression of the will of Barangay Poblacion's constituents is already subsumed by Ricablanca's election by the constituents of a political unit that is not only larger but more importantly, encompasses Barangay Poblacion.

In so ruling, this Court is not adding any new legal nuance to the abandoned condonation doctrine. In our jurisdiction, condonation, prior to its abandonment, has always been premised on the theory that an elective official's re-election cuts off the right to remove him for an administrative offense committed during a prior term.[15] Accordingly, a public officer should never be removed for acts done prior to his present term of office because to do otherwise would deprive the people of their right to elect their officers.[16]

The condonation doctrine cases prior to *Carpio Morales* never exclusively restricted the condonation's application to a re-election by exactly the same body politic.

In this relation, the *ponencia* aptly highlights the cases of *Giron v. Ochoa*[17] *(Giron)*, *Templonuevo v. Ombudsman*[18]

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[15] *Carpio Morales v. Court of Appeals*, supra note 2, at 764. In *Carpio Morales*, the Court dissected the rationale in *Pascual* in this wise: (1) the penalty of removal may not be extended beyond the term in which the public officer was elected for each term is separate and distinct; (2) an elective official's re-election serves as a condonation of previous misconduct, thereby cutting the right to remove him therefor; (3) courts may not deprive the electorate, who are assumed to have known the life and character of candidates, of their right to elect officers. (See id. at 760-761. See also *Aguinaldo v. Santos*, 287 Phil. 851, 857-858 [1992].)

[16] See *Pascual v. Provincial Board of Nueva Ecija*, supra note 4, at 471-472; emphases supplied. See also *Salalima v. Guingona, Jr.*, wherein the Court stated that the condonation prevented the elective official from being hounded by administrative cases filed by his political rivals "during [a] new term." (326 Phil. 847, 921 [1996].)

[17] 806 Phil. 624 (2017).

[18] 811 Phil. 686 (2017).

(Templonuevo), and *Vergara*[19] where the statement "same body politic" was first uttered. However, it must be borne in mind that not only were all these cases decided after *Carpio Morales*, but also the main issues raised therein pertained to whether or not the condonation doctrine will apply to a public official who was re-elected, albeit in a different position. They did not involve — as in this case — an instance where an official was elected by a larger body politic comprising a smaller unit which had first voted the public officer.

Giron involved a former Barangay Chairman who was "re-elected" as Barangay Kagawad of the same barangay. In that case, the Court ruled, *inter alia*, that as stated in *Carpio Morales*, one of the considerations for the condonation doctrine is that the "courts may not deprive the electorate who are assumed to have known the life and character of the candidates, of their right to elect officers."[20] Proceeding from such consideration, the Court held that the condonation doctrine would apply to therein subject public official, as "it is a given fact that the body politic, who elected him to another office, was the same."[21]

Notably, *Templonuevo* (which involved a former Sangguniang Bayan Member who was elected as Vice-Mayor of the same municipality), *Vergara* (which involved a Mayor who was thereafter elected as Vice-Mayor of the same city), as well as the 2019 case of *Aguilar v. Benlot*[22] (which involved barangay officials who were re-elected to the same positions), appear to have misquoted *Giron* as all of them held that condonation would apply to a public officer who was elected to a different position, "*provided that it is shown that the body politic electing the person to another office is the same.*"[23] Again, no such

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[19] Supra note 11.

[20] *Giron v. Ochoa*, supra note 17, at 634.

[21] Id.

[22] G.R. No. 232806, January 21, 2019.

[23] See *Templonuevo v. Ombudsman*, supra note 18, at 699; *Ombudsman v. Vergara*, supra note 11, at 379; and *Aguilar v. Benlot*, id.

restriction was intended by *Giron*, and besides, it is my view that no new substantive qualification should be made to the condonation doctrine after it had already been abandoned in the *Carpio Morales* case.

If at all, these cases only state a general rule as it is common in condonation cases that it is the same body politic who re-elects the public officer. However, this does not — as it should not — foreclose scenarios where the essence of condonation, *as known in our existing case law*, is preserved. To reiterate, **what remains significant is that the people chose to forgive the misdeeds committed by the elective official during a previous term. This forgiveness is manifested through the official's re-election for a new term and hence, cuts off the right to remove him for an administrative offense committed during a prior term**. This is the essence of condonation which was recognized by the Court prior to *Carpio Morales* where the doctrine was prospectively abandoned.

In this case, the recognized essence of condonation is merely preserved since the same body politic who first re-elected Ricablanca forms part of the larger body politic who elected her anew. Indeed, through such re-election, she obtained not only the forgiveness of the people she supposedly slighted in her previous term as Barangay Kagawad, but also the confidence of more people in choosing her to serve as Municipal Councilor.

In fine, I vote to **DENY** the present petition.

EN BANC

[A.M. No. P-20-4041. October 13, 2020]
(Formerly OCA I.P.I. No. 20-4997-P)

OFFICE OF THE COURT ADMINISTRATOR, *Complainant, v.* **ATTY. JOAN M. DELA CRUZ, CLERK OF COURT V, BRANCH 64, REGIONAL TRIAL COURT, MAKATI CITY,** *Respondent*.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; DUTY TO CARRY OUT THEIR RESPONSIBILITIES AS PUBLIC SERVANTS IN A COURTEOUS MANNER.— Professionalism, respect for the rights of others, good manners and right conduct are expected of all judicial officers and employees, because the image of the judiciary is necessarily mirrored in their actions. In keeping with this, Section 2, Canon IV of the Code of Conduct for Court Personnel, requires that "[c]ourt personnel shall carry out their responsibilities as public servants in as courteous a manner as possible."

2. ID.; ID.; ID.; DISCOURTESY IN THE COURSE OF OFFICIAL DUTIES; DISRESPECT BY A TRIAL COURT'S CLERK OF COURT TO THE CHIEF JUSTICE HARMS THE IMAGE OF THE SUPREME COURT AND THE JUDICIARY AS A WHOLE.— Verily, for a public officer, courtesy should be the policy always. This applies with more force in the case of a Clerk of Court who is supposed to be the model of all court employees not only with respect to the performance of their assigned tasks, but also in the manner of conducting themselves with propriety and decorum ever mindful that their conduct, official or otherwise, necessarily reflects on the court of which they are a part.

. . .

In this case, respondent categorically admitted that she failed to accord respect to the highest magistrate of the land. Needless to say, seeing a Chief Justice being disrespected by a Clerk of

Court of a trial court harms the image of the Supreme Court, and the Judiciary as a whole. And if respondent has the temerity to do that to the Chief Justice, it is more than likely that she can do it to anyone else.

3. ID.; ID.; ID.; ID.; MODIFYING CIRCUMSTANCES; PENALTY; MODIFYING CIRCUMSTANCES MAY BE INVOKED OR CONSIDERED *MOTU PROPRIO*.— Respondent's acts constitute the offense of Discourtesy in the Course of Official Duties, a less grave offense punishable by suspension of one (1) month and one (1) day to six (6) months for the first offense and dismissal from the service for the second offense. The 2017 Revised Rules on Administrative Cases in the Civil Service (RRACCS) allows for the appreciation of mitigating and aggravating circumstances in the imposition of the appropriate penalty, which must, however, be invoked in order to be appreciated. In any event, the disciplining authority may, in the interest of substantial justice, consider the circumstances *motu proprio*.

. . . Indeed, while this Court is duty-bound to sternly wield a corrective hand to discipline errant employees and to weed out those who are undesirable, this Court also has the discretion to temper the harshness of its judgment with mercy.

4. ID.; ID.; ID.; ID.; ID.; LONG SERVICE IN THE GOVERNMENT MAY BE TAKEN AS MITIGATING CIRCUMSTANCE; PRIOR ADMINISTRATIVE OFFENSE IS CONSIDERED AN AGGRAVATING CIRCUMSTANCE.— Respondent's service in the government for seventeen (17) years may be taken as a mitigating circumstance. Notably, however, this is not the first time that respondent has been found guilty of discourtesy. . . . Thus, respondent's prior administrative offense, which is considered as an aggravating circumstance, cancels out the mitigating circumstance of length of service in her favor.

5. ID.; ID.; ID.; ID.; ID.; ACKNOWLEDGMENT BY ERRANT EMPLOYEES OF THEIR INFRACTION IS NOT MITIGATING WHEN PROMPTED ONLY BY FEAR OF ADMINISTRATIVE SANCTION.— Another mitigating circumstance considered by this Court in previous cases is the acknowledgment by the errant employee of his or her infraction. However, respondent's admission of the offense

cannot be considered mitigating as it was prompted only by fear of possible administrative sanctions against her.

6. ID.; ID.; ID.; ID.; ID.; WHEN THE MITIGATING AND AGGRAVATING CIRCUMSTANCES PRESENT EQUALLY OFFSET EACH OTHER, THE PENALTY IMPOSED MUST BE IN ITS MEDIUM PERIOD.— Section 54 of the RRACCS provides that when mitigating and aggravating circumstances present equally offset each other, the penalty imposed must be in its medium period, which in this case, should be a suspension of three (3) months.

7. ID.; ID.; ID.; ID.; PENALTY IN CASE OF RESIGNATION OF A DISCIPLINED COURT EMPLOYEE; FINE IS IMPOSED IN LIEU OF SUSPENSION.— [I]n view of respondent's resignation effective 2 January 2020, this Court imposes a fine equivalent to three (3) months of her salary, in lieu of suspension, computed at the salary rate for her former position at the time of her resignation, which amount shall be deducted from her accrued leave credits or other monetary benefits she may be entitled to.

D E C I S I O N

ZALAMEDA, *J.*:

Before this Court is an administrative matter for Discourtesy in the Course of Official Duties which the Office of the Court Administrator (OCA) filed against respondent Atty. Joan M. Dela Cruz (respondent), Clerk of Court V at Branch 64, Regional Trial Court of Makati City (Branch 64).

Antecedents

The case stemmed from the visit of Chief Justice Diosdado M. Peralta (Chief Justice) to the first and second level courts of Makati City on 15 November 2019, in connection with the 5th Nationwide Judgment Day Program of the OCA. According to the Makati city trial court judges who were present during the visit, respondent was standing at the doorway of the court, leaning on the door frame, and effectively blocking the entrance when the Chief Justice arrived at Branch 64. Respondent

remained in such position even while speaking with the Chief Justice.

Further, after the Chief Justice asked respondent where Presiding Judge Gina M. Bibat-Palamos was, respondent nonchalantly replied that the latter was teaching at San Beda College. The Chief Justice inquired if Branch 64 had any cases scheduled on that day and respondent made a curt remark that their Branch does not schedule cases on Fridays. This merited a reminder from the Chief Justice that under the Rules on Continuous Trial, trial courts should hear criminal cases even on Fridays. Respondent, however, did not appear to be at least apologetic for failing to set any hearing for that day, and continued to talk brashly and impertinently to the Chief Justice.

In a Memorandum dated 18 November 2019, the OCA directed respondent to show cause why no disciplinary measures should be taken against her for her reported gross disrespect of, and discourtesy to the Chief Justice during his visit to the trial courts of Makati City during the 5th Nationwide Judgment Day Program.[1]

In her Letter/Compliance dated 21 November 2019, respondent profusely apologized for her actions during the said visit, and prayed for this Court's leniency, as well as the forgiveness of the Chief Justice. She claimed that she had no intention "to convey any discourtesy or disrespect" to the Chief Justice. She pointed out that she has been serving the Judiciary for seventeen (17) years, first, as legal researcher and then, as branch clerk of court. As such, she has nothing but reverence to the Supreme Court as an institution, and with it, her highest esteem for its head, the Chief Justice. She expressed that "[n]o words can describe my remorse for causing him any disrespect. I implore his kind understanding that in my earnest effort to explain myself before the highest magistrate of the land, I failed to exhibit the grace and courtesy befitting his Honor."[2]

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[1] *Rollo*, p. 1.

[2] *Id.* at 2.

Respondent further apologized for failing to set any case for hearing on 15 November 2019, despite the clear directive in OCA Circular No. 166-2019 on the occasion of the 5th Nationwide Judgment Day Program that all first and second level courts must conduct an inventory of civil and criminal cases, particularly those involving detention prisoners, and set them for hearing on the said date. She claimed that it was never her intention to violate any circular and explained that the court has actually been promulgating judgments and releasing detention prisoners even before 15 November 2019. In fact, in September 2019, the court was able to dispose 45 cases through plea bargaining. The following month, another four (4) cases were disposed through plea bargaining and resolution on the merits. The Branch 64 has also made it a point to properly observe A.M. No. 15-06-10-SC or the Revised Guidelines for Continuous Trial of Criminal Cases.[3]

OCA's Findings and Recommendations

After due proceedings, the OCA came up with the following evaluation:

> x x x This Office notes that in her Comment, Dela Cruz admits that she "failed to exhibit the grace and courtesy befitting his Honor." She then prays and begs for the Court's leniency and the Chief Justice's "forgiveness" and promises "to be more mindful of [her] language and demeanor to improve the way [she] communicates [herself]." These statements and admissions are considered declarations against her interest and evidence of gross disrespect and discourtesy. Declarations of parties as to a relevant fact may be given in evidence against them.
>
> The Court has constantly stressed the need for promptness, courtesy, and diligence of court personnel in public service. We find the need to reiterate this standard in this administrative case.
>
> Public officials and employees are under obligation to perform the duties of their offices honestly, faithfully, and to the best of their ability. They, as recipients of the public trust, should demonstrate courtesy, civility, and self-restraint in their official actuations to the

[3] *Id.* at 2.

public at all times even when confronted with rudeness and insulting behavior. In particular, the conduct of court employees must always be characterized by strict propriety and decorum in dealing with other people. There is no room for discourtesy of any kind in the ranks of court employees. Improper behavior, particularly during office hours, exhibits not only a paucity of professionalism at the workplace but also a great disrespect to the court itself. Such a demeanor is a failure of circumspection demanded of every public official and employee.

x x x x x x x x x

In this case, Dela Cruz sorely failed to meet the standard of conduct set by the Court when she did not accord the respect due to the Chief Justice of the Republic of the Philippines as shown by her rude manner of speaking and her lackadaisical posture. She also displayed arrogance in the way she replied to the Chief Justice's queries, particularly on her failure to calendar any case for the day. The fact that Dela Cruz promises to be more mindful of her language and demeanor only underscored her guilt in the instant case.

x x x x x x x x x

Records show that this is the second time Dela Cruz is being charged with discourtesy committed during office hours and, this time, directed at no less than the Chief Justice of the Republic of the Philippines. This shows her propensity to exhibit disrespectful behavior towards others while in the discharge of her official duties. Considering that such actions were not refuted, and were in effect admitted by Dela Cruz in her comment, we find her administratively liable for discourtesy in the course of official duties."[4]

The OCA recommends that respondent, in lieu of suspension, be fined in the amount equivalent to her three (3) month-salary, computed at the time of her resignation, which shall be deducted from her accrued leave credits or other monetary benefits she may be entitled to. This, considering that on 04 December 2019, respondent already tendered her resignation, effective 2 January 2020.[5]

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[4] *Id.* at 3-6.

[5] *Id.* at 9.

Ruling of the Court

The recommendation of the OCA is well-taken.

Professionalism, respect for the rights of others, good manners and right conduct are expected of all judicial officers and employees, because the image of the judiciary is necessarily mirrored in their actions.[6] In keeping with this, Section 2, Canon IV of the Code of Conduct for Court Personnel, requires that "[c]ourt personnel shall carry out their responsibilities as public servants in as courteous a manner as possible."

Verily, for a public officer, courtesy should be the policy always. This applies with more force in the case of a Clerk of Court who is supposed to be the model of all court employees not only with respect to the performance of their assigned tasks, but also in the manner of conducting themselves with propriety and decorum ever mindful that their conduct, official or otherwise, necessarily reflects on the court of which they are a part.[7]

Accordingly, in *Office of the Court Administrator v. Judge Moises M. Pardo and Clerk of Court Jessie Tuldague*,[8] the Court penalized Atty. Jessie Tuldague, Clerk of Court at the Regional Trial Court of Cabarroguis, Quirino, for gross discourtesy in the course of official duties, in view of his belligerent behavior, and admitted lack of respect for Judge Moises M. Pardo. As this Court held therein:

> The Court additionally finds that respondent Tuldague is guilty of **gross discourtesy** in the course of official duties under Rule IV, Section 52 (B) (3) of the Revised Uniform Rules on Administrative Cases in the Civil Service for failure to accord respect for the person and rights of the Judge. The belligerence he showed to the Judge,

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[6] *Reyes v. Reyes*, A.M. No. MTJ-06-1623, 18 September 2009; 616 Phil. 323-364 (2009); 600 SCRA 345.

[7] *See Amane v. Mendoza-Arce*, A.M. No. P-94-1080, 19 November 1999; 376 Phil. 575-602 (1999); 318 SCRA 465.

[8] A.M. No. RTJ-08-2109, 30 April 2008; 576 Phil. 52-64 (2008).

reflected in his above-quoted letter to the Judge — a case of *res ipsa loquitur* — which was even noted by the OCA, betrays his below-par conduct as a court employee.

In this case, respondent categorically admitted that she failed to accord respect to the highest magistrate of the land. Needless to say, seeing a Chief Justice being disrespected by a Clerk of Court of a trial court harms the image of the Supreme Court, and the Judiciary as a whole. And if respondent has the temerity to do that to the Chief Justice, it is more than likely that she can do it to anyone else.

Respondent's acts constitute the offense of Discourtesy in the Course of Official Duties, a less grave offense punishable by suspension of one (1) month and one (1) day to six (6) months for the first offense and dismissal from the service for the second offense.[9] The 2017 Revised Rules on Administrative Cases in the Civil Service (RRACCS)[10] allows for the appreciation of mitigating and aggravating circumstances in the imposition of the appropriate penalty, which must, however, be invoked in order to be appreciated. In any event, the disciplining authority may, in the interest of substantial justice, consider the circumstances *motu proprio*.[11]

In exercising this discretion granted by the RRACCS, this Court, in previous cases, had imposed lesser penalties in the presence of mitigating circumstances. This is consistent with precedent where this Court refrained from imposing the actual administrative penalties prescribed by law or regulation in the presence of mitigating factors. Indeed, while this Court is duty-bound to sternly wield a corrective hand to discipline errant employees and to weed out those who are undesirable, this Court

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[9] Section 50 (D) (3), Rule 10, 2017 Revised Rules on Administrative Cases in the Civil Service.

[10] CSC Resolution No. 1701077, 03 July 2017.

[11] Section 53, Rule 10, 2017 Revised Rules on Administrative Cases in the Civil Service.

also has the discretion to temper the harshness of its judgment with mercy.[12]

Respondent's service in the government for seventeen (17) years may be taken as a mitigating circumstance.[13] Notably, however, this is not the first time that respondent has been found guilty of discourtesy. In *Special Investigator Joel C. Otic v. Atty. Joan M. Dela Cruz*,[14] she was reprimanded for simple discourtesy, a light offense under Section 50 (F) of the RRACCS, with a warning that a repetition of the same or similar offense shall be dealt with more severely. Thus, respondent's prior administrative offense, which is considered as an aggravating circumstance, cancels out the mitigating circumstance of length of service in her favor.

Another mitigating circumstance considered by this Court in previous cases is the acknowledgment by the errant employee of his or her infraction.[15] However, respondent's admission of the offense cannot be considered mitigating as it was prompted only by fear of possible administrative sanctions against her.[16]

In effect, the mitigating and aggravating circumstances present in this case equally offset each other. Section 54 of the RRACCS provides that when mitigating and aggravating circumstances present equally offset each other, the penalty imposed must be in its medium period, which in this case, should be a suspension of three (3) months. However, in view of respondent's resignation effective 2 January 2020, this Court imposes a fine equivalent to three (3) months of her salary, in

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[12] *See Office of the Court Administrator v. Chavez*, A.M. No. RTJ-10-2219, 01 August 2017; 815 Phil. 41-53 (2017); 833 SCRA 518.

[13] Section 53 (m), Rule 10, 2017 Revised Rules on Administrative Cases in the Civil Service.

[14] A.M. No. P-17-3706, 05 June 2017.

[15] *See Committee on Security and Safety, Court of Appeals v. Dianco*, A.M. No. CA-15-31-P, 16 June 2015; 760 Phil. 169-206 (2015); 758 SCRA 137.

[16] *Id.*

lieu of suspension, computed at the salary rate for her former position at the time of her resignation, which amount shall be deducted from her accrued leave credits or other monetary benefits she may be entitled to.

WHEREFORE, in light of the foregoing, this Court finds Atty. Joan M. Dela Cruz, Clerk of Court V, Branch 64, Regional Trial Court, Makati City, **GUILTY** of gross discourtesy in the course of official duties, and is hereby **FINED**, in lieu of suspension, in the amount equivalent to her Three (3) Months Salary, computed at the salary rate at the time of her resignation, which amount shall be deducted from her accrued leave credits or any other monetary benefits she may be entitled to.

SO ORDERED.

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

Peralta, C.J., no part.

Leonen, J., on official leave.

Baltazar-Padilla, J., on leave.

EN BANC

[A.M. No. P-20-4062. October 13, 2020]
(Formerly OCA IPI No. 15-4392-P)

HON. ROSALIE D. PLATIL, Presiding Judge, Municipal Trial Court, Mainit, Surigao del Norte, *Complainant*, *v.* **MEDEL M. MONDANO, Clerk of Court II, Municipal Trial Court, Mainit, Surigao del Norte,** *Respondent*.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; CLERKS OF COURT; DUTIES AS CUSTODIANS OF COURT FUNDS.— SC Administrative Circular No. 3-2000 provides for the duty of the clerk of court to receive collections in their respective courts, to issue the proper receipt therefor and maintain a separate cash book. In addition, SC Circular No. 50-95 provides that all collections from bailbonds, rental deposits and other fiduciary collections shall be deposited with the Land Bank of the Philippines by the clerk of court concerned within 24 hours from receipt. In localities where there are no branches of LBP, fiduciary collections shall be deposited by the clerk of court with the provincial, city or municipal treasurer. Complimentary to these, OCA Circular No. 113-2004 requires clerks of court to submit monthly reports for three funds, namely, Judiciary Development Fund, Special Allowance for the Judiciary and Fiduciary Fund.

2. ID.; ID.; ID.; ID.; SERIOUS DISHONESTY, GRAVE MISCONDUCT, AND GROSS NEGLECT OF DUTY; FAILURE TO DEPOSIT COURT FUNDS AND TO SUBMIT FINANCIAL REPORTS AMOUNT TO THE SAID OFFENSES AND WARRANT DISMISSAL FROM THE SERVICE.— In the instant case, the OCA correctly ruled that respondent should be held administratively liable for his delayed/total failure to deposit cash bonds posted by litigants and collected by the MTC, and for his failure to submit the monthly financial reports to the OCA.

. . .

> . . . According to the working paper of the audit team (on the financial audit conducted by the Fiscal Monitoring Division), some cash bonds were belatedly deposited by respondent[;] while other remained undeposited as of the time of audit.
>
> In *Eugenio Sto. Tomas v. Judge Zenaida L. Galvez*, the Court ruled that failure of the Clerk of Court to remit the court funds collected and failure to submit financial reports in violation of the Court's administrative circulars, constitutes Serious Dishonesty, Grave Misconduct, and Gross Neglect of Duty punishable by dismissal from service with forfeiture of all retirement benefits, excluding accrued leave credits, and with prejudice to re-employment in the government, including government-owned or controlled corporations.
>
> Respondent's continued and willful disregard of the Court's guidelines in the proper management of collections and court funds, and repeated acts of misappropriation reveals his inherent inability, if not refusal, to live up to the exacting ethical standards required of court employees.
>
> **3. ID.; ID.; ID.; ID.; ID.; MISAPPROPRIATION OF COURT COLLECTIONS AND FUNDS RECEIVED IN OFFICIAL CAPACITY IS GROSS DISHONESTY AND GRAVE MISCONDUCT.—** [T]he OCA likewise found that respondent on numerous occasion misappropriated cash collections from litigants.
>
> . . .
>
> Moreover, as found by the audit team, respondent had misappropriated the collections from cash bonds posted by accused in several criminal cases pending before his court. It was only when the audit team discovered these discrepancies that respondent returned the cash collections. In addition, according to the fiduciary passbook of the court, several cash bonds collected by respondent were yet to be deposited.
>
> We have repeatedly emphasized that the Clerk of Court is the custodian of the court's funds and revenues, records, property and premises and as such, is liable for any loss, shortage, destruction or impairment of said funds and property.
>
> . . .

Clearly, respondent is likewise guilty of gross dishonesty and grave misconduct for misappropriating the collections of the court and funds received by him in his official capacity.

4. ID.; ID.; ID.; CIVIL SERVICE COMMISSION; ADMINISTRATIVE CIRCULAR NO. 14-2002; HABITUAL ABSENTEEISM; HABITUAL ABSENTEEISM IS CONSIDERED PREJUDICIAL TO THE BEST INTEREST OF PUBLIC SERVICE. — Administrative Circular No. 14-2002 provides that an employee in the Civil Service shall be considered habitually absent if he or she incurs "unauthorized absences exceeding the allowable 2.5 days monthly leave credit under the law for at least three (3) months in a semester or at least three (3) consecutive months during the year." To stress, mere failure to file leave of absence does not by itself result in any administrative liability. However, unauthorized absence is punishable if the same becomes frequent or habitual. In turn, absences become habitual when an officer or employee in the civil service exceeds the allowable monthly leave credit (2.5 days) within the given time frame.

In the instant case, respondent has incurred numerous unauthorized absences . . . .

. . . [R]espondent was guilty of habitual absenteeism as he evidently exceeded the authorized number of days that he may absent himself.

. . .

The high standards that the Judiciary maintains require that all court employees devote their full working time to the public service. Hence, habitual absenteeism is considered prejudicial to the best interest of the public service because it makes a mockery of these standards, and, as such, should be curtailed.

5. ID.; ID.; ID.; GROSS INSUBORDINATION; REPEATED FAILURE TO COMPLY WITH A DIRECTIVE OF THE OFFICE OF THE COURT ADMINISTRATOR (OCA) CONSTITUTES GROSS INSUBORDINATION.— [T]he OCA likewise found respondent guilty of gross insubordination when he repeatedly failed to comply with the directive of the OCA to submit a Comment in the instant case.

> At the outset, respondent's refusal to submit his comment despite the repeated directives of the OCA is beyond dispute. This blatant refusal and noncompliance with the OCA directives are tantamount to insubordination to the Court itself, which constitutes a clear and willful disrespect of lawful orders. Every officer or employee in the judiciary is duty-bound to obey the orders and processes of the Supreme Court without the least delay. Refusal to comply with the orders of the Court constitutes insubordination which warrants disciplinary action.

D E C I S I O N

***PER CURIAM*:**

The Case

For resolution is the administrative complaint[1] against Medel M. Mondano (respondent), Clerk of Court II of the Municipal Trial Court (MTC)-Mainit, Surigao del Norte filed by complainant, Presiding Judge Rosalie D. Platil (Presiding Judge Platil), of the same court for Grave Misconduct, Dishonesty, Gross Neglect of Duties, Conduct Prejudicial to the Best Interest of the Service, Flagrant Disregard of Office of the Court Administrator's (OCA's) Circulars, Misappropriation and Habitual Absenteeism.

The Antecedents

On March 5, 2015, the OCA received a Letter-Complaint[2] dated January 8, 2015 from Presiding Judge Platil charging respondent for Grave Misconduct, Dishonesty, Gross Neglect of Duties, Conduct Prejudicial to the Best Interest of the Service, Flagrant Disregard of OCA Circulars, Misappropriation and Habitual Absenteeism. In his Letter-Complaint, Presiding Judge Platil strongly recommended initially that respondent be dropped from the rolls.[3]

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[1] *Rollo*, pp. 4-10.

[2] Id.

[3] Id. at 10.

Thereafter, Presiding Judge Platil sent another Letter[4] dated February 6, 2015 modifying his previous recommendation from dropping from the rolls to dismissal from the service with forfeiture of retirement benefits except accrued leave credits and disqualification from re-employment in government service.[5] Presiding Judge Platil likewise attached a copy of a Memorandum[6] dated February 2, 2015 addressed to respondent citing the following additional infractions: failure to submit monthly report on collections, failure to remit collections, additional absences without leave and non-submission of his Daily Time Record (DTR).

In its Indorsement[7] dated March 17, 2015, the OCA referred the Letter-Complaint to respondent for comment. However, respondent failed to file any comment thereto. Thus, OCA sent two Letters dated January 28, 2016[8] and May 5, 2016[9] directing respondent to comment on the Letter-Complaint. However, despite proof that he received the Letters and the repeated directives of the OCA, respondent still did not submit his comment.[10]

Notably, respondent has already been dropped from the rolls pursuant to the Court's Resolution dated August 3, 2015 in A.M. No. 15-05-46-MTC due to respondent's failure to submit his DTR and any leave application for the month of September 2014 up to the date of the issuance of the resolution.[11]

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[4] Id. at 2.

[5] Id.

[6] Id. at 3.

[7] Id. at 63.

[8] Id. at 64.

[9] Id. at 65.

[10] Id. at 69.

[11] Id. at 68-69.

The Facts

The facts of the case are summarized by the OCA in its Agenda Report[12] dated June 8, 2020, as follows:

> On 8 February 2013, shortly after x x x [Presiding Judge Platil] assumed her post, it was discovered that respondent x x x did not turn over to the winning party in Civil Case No. 617 the money entrusted to him by the losing party in the amount of ₱12,500.00. A Memorandum dated 12 February 2013 was issued to respondent x x x regarding the matter. In his Reply to the 12 February 2013 Memorandum, respondent admitted the infraction but claimed that he had already returned the full amount of ₱12,500.00 to Laarni Ellar, the complainant in the case.
>
> However, upon verification from Ms. Ellar thru a letter dated 19 April 2013, x x x [Presiding Judge Platil] learned that respondent x x x only returned ₱5,000.00. Further, respondent x x x lied when he signed and certified on the last page of the Docket Inventory Forms for July-December 2012, January-June 2013 and July-December 2013 that he personally examined the records of each case mentioned therein. It was only when his attention was called that he examined the said records and signed the last page of the inventory form for the January-June 2014 semester.
>
> In 2013 alone, respondent x x x was always absent from work and did not file any application for leave on the following dates: February 4-8, April 1-June 4 and June 13-14. He belatedly submitted applications for leave covering the said periods but only thirty (30) days were approved and the rest of his absences were considered as unauthorized.
>
> Respondent x x x was remiss in the performance of his duties. Despite knowledge of existing Circulars issued by the Office of the Court Administrator (OCA) requiring the submission of monthly financial reports, he willfully failed to comply and eventually received a warning letter from the Chief of the Financial Management Office, OCA, and a show cause order from the OCA.
>
> On 19 February 2013, x x x [Presiding Judge Platil] requested a financial audit which was conducted in July 2013. In the exit conference

[12] Id. at 66-71.

following the audit, the head of the audit team informed the court that respondent x x x committed the following infractions:

1) Non-submission of financial reports.
2) Delayed and non-remittance of collections.
3) Non-issuance of official receipts for the entire ₱1,000.00 sheriff's fee collected.
4) Cancellation of some official receipts.
5) Failure to sign official receipts rendering them incomplete.

Even in the absence of an official report, the working paper of the audit on the fiduciary fund showed that some cash bonds were belatedly deposited by respondent x x x while others remained undeposited as of the time of audit.

On the charge of misappropriation, respondent x x x took half of the cash bond posted by accused Henry Behagan in Criminal Case No. 3867. The cash bond was ordered released on 7 August 2012, but the wife of the accused claimed that only ₱5,000.00 was released by respondent x x x in May 2013, after countless visits to the court. The other half (₱5,000.00) was given only on 15 July 2013 when the anomaly was discovered during the financial audit. Incidentally, the working paper of the audit team showed that the bond in Criminal Case No. 3867 was among the collections not remitted by respondent x x x.

In Criminal Case No. 3878, *People vs. Senior Ortoyo and Ricardo Ruiz*, the cash bonds were collected on 2 May 2014 and 23 July 2014, but remained undeposited even after the accused had already been ordered released. It was only on 18 December 2014, more than a month after their release, that the accused actually received their cash bonds. Respondent x x x went on absence without official leave (AWOL) from 25 November 2014 to 19 December 2014 and this added to the delay in the release of the cash bonds.

[Presiding Judge Platil] described respondent x x x as irresponsible and lazy, to the point that the latter could not even prepare his own Daily Time Record (DTR). He has not submitted his DTRs since September 2014 to date (02 February 2015), resulting in the withholding of his salaries. There were occasions too when it was the stenographers who prepared financial reports.

Respondent x x x is also a habitual absentee. He incurred unauthorized absences in 1-5, 7-11 July 2014 (9 days), and only reported for work on 17 and 24 in November 2014 (18 days).

Despite all his infractions in 2013, [Presiding Judge Platil] still gave respondent x x x a chance to redeem himself after he asked for forgiveness and promised to change. Thus, [Presiding Judge Platil] withheld the recommendation that respondent[']s] x x x name be dropped from the rolls. However, respondent x x x again failed to submit the required financial reports. The last financial reports he submitted were for March 2014 and the last deposit he made was on 12 May 2014. Photocopy of the fiduciary passbook shows that the last cash bond he deposited was the one paid on 24 April 2014, but deposited only on 12 May 2014. The rest of the cash bonds he collected after 24 April 2014 have yet to be deposited with the Land bank. To cite a few:

Amount	O.R. No.	Date Collected	Payee	Criminal Case No.
₱10,000.00	8522199	5-2-14	Ortoyo	3578
₱12,000.00	8522200	5-12-14	Casupas	3882
₱5,000.00	8174351	7-23-14	Ruiz	3878[13]

The OCA's Recommendation

Accordingly, upon the evaluation of the foregoing facts, the OCA concluded that respondent should be penalized for grave misconduct, gross neglect of duty, dishonesty, and gross insubordination, which read as follows:

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

1. the instant administrative complaint be RE-DOCKETED as a regular administrative matter against respondent Medel M. Modano, former Clerk of Court II, Municipal Trial Court, Mainit, Surigao del Norte; and

2. respondent former Clerk of Court Mondano be found **GUILTY** of Grave Misconduct, Gross Neglect of Duty, Dishonesty, and Gross Insubordination and be ordered **DISMISSED** from service, but considering that he has been dropped from the rolls effective 1 September 2014 for having been absence without official leave (AWOL) (sic),

[13] Id. at 66-68.

> that respondent former Clerk of Court Mondano be imposed instead the accessory penalties of **FORFEITURE** of all benefits, except accrued leave credits, if any, and **PERPETUAL DISQUALIFICATION** from re-employment in any government instrumentality, including government-owned and controlled corporations.[14]

The Court's Ruling

This Court finds in order the findings and evaluation of the case by the OCA that there is compelling evidence to dismiss respondent from the service for grave misconduct, gross neglect of duties, dishonesty, habitual absenteeism and even gross insubordination.

This Court has repeatedly stressed the crucial role that the Clerk of Court plays in our judicial system. The Clerk of Court's office is the nucleus of all court activities, adjudicative and administrative and their administrative functions are as vital to the prompt and proper administration of justice as their judicial duties.[15] Accordingly, clerks of court, as the chief administrative officers of their respective courts, must act with competence, honesty and probity in accordance with their duty of safeguarding the integrity of the court and its proceedings.[16]

RESPONDENT'S DELAYED REMITTANCE AND NON-REMITTANCE OF COURT COLLECTIONS, AND NON-SUBMISSION OF FINANCIAL REPORTS CONSTITUTE GROSS DISHONESTY, GRAVE MISCONDUCT, AND GROSS NEGLECT OF DUTY.

Clerks of Court perform delicate functions with regard to the collection of legal fees, and as such, are expected to implement regulations correctly and effectively. As custodians of court funds, they are constantly reminded to deposit immediately the

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[14] Id. at 70-71.

[15] *Office of the Court Administrator v. Banag, et al.*, 651 Phil. 308, 324 (2010).

[16] *Office of the Court Administrator v. Saddi*, 649 Phil. 27, 33 (2010).

funds which they receive in their official capacity to the authorized government depositories for they are not supposed to keep such funds in their custody.[17] In this regard, the Court has issued several guidelines to ensure that proper and strict procedures are observed in the collection and management of government funds to promote full accountability.

In particular, SC Administrative Circular No. 3-2000 provides for the duty of the clerk of court to receive collections in their respective courts, to issue the proper receipt therefor and maintain a separate cash book.[18] In addition, SC Circular No. 50-95 provides that all collections from bailbonds, rental deposits and other fiduciary collections shall be deposited with the Land Bank of the Philippines by the clerk of court concerned within 24 hours from receipt.[19] In localities where there are no branches

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[17] Id.

[18] ***Duty of the Clerks of Court, Officer-in-Charge or Accountable Officers***. — The Clerks of Court, Officers-in-Charge of the Office of the Clerk of Court, or their accountable duly authorized representatives designated by them in writing, who must be accountable officers, shall receive the Judiciary Development Fund collections, issue the proper receipt therefor, maintain a separate cash book properly marked CASH BOOK FOR JUDICIARY DEVELOPMENT FUND, deposit such collections in the manner herein prescribed, and render the proper Monthly Report of Collections and Deposits for said Fund.

x x x x x x x x x

Duty of the Clerks of Court, Officer-in-Charge or Accountable Officers. — The Clerks of Court, Officers-in-Charge of the office of the Clerk of Court, or their accountable duly authorized representatives designated by them in writing, who must be accountable officers, shall receive the General fund collections, issue the proper receipt therefor, maintain a separate cash book properly marked CASH BOOK FOR CLERK OF COURT'S GENERAL FUND AND SHERIFF'S GENERAL FUND, deposit such collections in the manner herein prescribed, and render the proper Monthly Report of Collections and Deposits for said Fund.

[19] OCA Circular No. 50-95

Section B. **Guidelines in Making Withdrawals**:

(4): All collections from bailbonds, rental deposits, and other fiduciary collections shall be deposited within twenty-four (24) hours by the Clerk of Court concerned upon receipt thereof, with the Land Bank of the Philippines.

of LBP, fiduciary collections shall be deposited by the clerk of court with the provincial, city or municipal treasurer. Complimentary to these, OCA Circular No. 113-2004[20] requires clerks of court to submit monthly reports for three funds, namely, Judiciary Development Fund, Special Allowance for the Judiciary and Fiduciary Fund.

In the instant case, the OCA correctly ruled that respondent should be held administratively liable for his delayed/total failure to deposit cash bonds posted by litigants and collected by the MTC, and for his failure to submit the monthly financial reports to the OCA.[21]

In a Letter[22] dated January 22, 2013, the Financial Management Office of the OCA brought to the attention of respondent that his quarterly Reports of Collections and Deposits for General Fund for the 1st Quarter of 2009 until January 2013 have not yet been submitted with a warning that his continued failure to comply shall mean the withholding of his salaries and allowances. In another Letter[23] dated February 14, 2013, the OCA directed respondent to show cause why his salaries should not be withheld for failure to comply with OCA Circular No. 113-2004 regarding the submission of the Monthly Reports of Collections, Deposits and Withdrawals.

Due to the several infractions committed by respondent involving the collections and management of the MTC's funds, complainant Presiding Judge Platil in a Letter[24] dated February 19, 2013 addressed to Deputy Court Administrator Hon. Jenny Lind Aldecoa-Delorino, requested that a financial audit be conducted in their court. In the said Letter, Presiding Judge Platil narrated, among others that respondent was only able to

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[20] Submission of Monthly Reports of Collections and Deposits.

[21] *Rollo*, p. 71.

[22] Id. at 26.

[23] Id. at 27.

[24] Id. at 28.

remit his collections from July 2011 up to January 2013 only on February 15, 2013 after complainant issued a Memorandum[25] dated February 12, 2013 and calling respondent's attention regarding the discrepancy.

Thus, a financial audit was conducted by the Fiscal Monitoring Division.[26] According to the working paper of the audit team, some cash bonds were belatedly deposited by respondent while other remained undeposited as of the time of audit.[27]

In *Eugenio Sto. Tomas v. Judge Zenaida L. Galvez*,[28] the Court ruled that failure of the Clerk of Court to remit the court funds collected and failure to submit financial reports in violation of the Court's administrative circulars, constitutes Serious Dishonesty, Grave Misconduct, and Gross Neglect of Duty punishable by dismissal from service with forfeiture of all retirement benefits, excluding accrued leave credits, and with prejudice to re-employment in the government, including government-owned or controlled corporations.[29]

Respondent's continued and willful disregard of the Court's guidelines in the proper management of collections and court funds, and repeated acts of misappropriation reveals his inherent inability, if not refusal, to live up to the exacting ethical standards required of court employees.

RESPONDENT MISAPPROPRIATED CASH COLLECTIONS FROM LITIGANTS

In addition to the foregoing, the OCA likewise found that respondent on numerous occasion misappropriated cash collections from litigants.

We have repeatedly emphasized that the Clerk of Court is the custodian of the court's funds and revenues, records, property

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[25] Id. at 17.

[26] Id. at 29.

[27] Id. at 30-32.

[28] A.M. No. MTJ-01-1385, March 19, 2019.

[29] Id.

and premises and as such, is liable for any loss, shortage, destruction or impairment of said funds and property.[30]

In the present case, complainant Presiding Judge Platil sent a Memorandum[31] dated February 12, 2013 to respondent directing him to explain his failure to turn over to the winning party the money received in Civil Case No. 617. Respondent in his Letter Reply[32] dated March 12, 2013 admitted that he indeed failed to turn over the money received to the winning party. In his defense, respondent clarified that he had already allegedly turned over the full amount of ₱12,500.00 to the winning party.

Complainant Presiding Judge Platil, however, eventually discovered that respondent had misled her and concealed the fact that only a portion of the full amount of ₱12,500.00 was turned over to the winning party.

Moreover, as found by the audit team, respondent had misappropriated the collections from cash bonds posted by accused in several criminal cases pending before his court. It was only when the audit team discovered these discrepancies that respondent returned the cash collections. In addition, according to the fiduciary passbook of the court, several cash bonds collected by respondent were yet to be deposited.[33]

Clearly, respondent is likewise guilty of gross dishonesty and grave misconduct for misappropriating the collections of the court and funds received by him in his official capacity.

RESPONDENT IS GUILTY OF HABITUAL ABSENTEEISM AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE JUDICIARY

Clerks of court must realize that their administrative functions are just as vital to the prompt and proper administration of

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[30] *Office of the Court Administrator v. Fortaleza*, 434 Phil. 511, 522 (2002).

[31] *Rollo*, at 17.

[32] Id. at 18.

[33] Id. at 67.

justice. They play a key role in the complement of the court and cannot be permitted to slacken on their jobs under one pretext or another.[34] Thus, respondent's duties and responsibilities as clerk of court require that his entire time be at the disposal of the court served by him to assure that full-time officers of the courts render the full-time service required by their office so that there may be no undue delay in the administration of justice and in the disposition of cases as required by the Rules of Court.[35]

Administrative Circular No. 14-2002 provides that an employee in the Civil Service shall be considered habitually absent if he or she incurs "unauthorized absences exceeding the allowable 2.5 days monthly leave credit under the law for at least three (3) months in a semester or at least three (3) consecutive months during the year." To stress, mere failure to file leave of absence does not by itself result in any administrative liability. However, unauthorized absence is punishable if the same becomes frequent or habitual. In turn, absences become habitual when an officer or employee in the civil service exceeds the allowable monthly leave credit (2.5 days) within the given time frame.[36]

In the instant case, respondent has incurred numerous unauthorized absences as follows:

Month Year	**No. of Unauthorized Absences**
February 2013	5 days
May 2013	12 days
June 2013	4 days
July 2014	8 days
November 2014	18 days
December 2014	15 days

[34] *Lloveras v. Sanchez*, 299 Phil. 300, 304-305 (1994).

[35] *RTC Makati Movement Against Graft and Corruption v. Atty. Dumlao*, 317 Phil. 128, 146 (1995).

[36] *Judge Arabani, Jr. v. Arabani, et al.*, 806 Phil. 129, 147 (2017).

The foregoing shows that respondent was guilty of habitual absenteeism as he evidently exceeded the authorized number of days that he may absent himself.

In *Judge Balloguing v. Dagan*,[37] the Court, citing several cases,[38] ruled that respondent Dagan was guilty of habitual absenteeism and conduct prejudicial to the best interest of the service and meted the penalty of dismissal from the service.[39]

The high standards that the Judiciary maintains require that all court employees devote their full working time to the public service. Hence, habitual absenteeism is considered prejudicial to the best interest of the public service because it makes a mockery of these standards, and, as such, should be curtailed.[40]

RESPONDENT'S FAILURE TO COMPLY WITH THE DIRECTIVE OF OCA CONSTITUTES INSUBORDINATION

In addition to the administrative charges filed in the Letter-Complaint dated January 8, 2015, the OCA likewise found respondent guilty of gross insubordination when he repeatedly failed to comply with the directive of the OCA to submit a Comment in the instant case.

At the outset, respondent's refusal to submit his comment despite the repeated directives of the OCA is beyond dispute. This blatant refusal and noncompliance with the OCA directives are tantamount to insubordination to the Court itself,[41] which constitutes a clear and willful disrespect of lawful orders.[42] Every

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[37] 824 Phil. 788 (2018).

[38] See *Re: AWOL of Ms. Bantog*, 411 Phil. 523 (2001); *Re: Habitual Absenteeism of Marcos*, 650 Phil. 251 (2010); *Leave Division-O.A.S., Office of the Court Administrator v. Sarceno*, 754 Phil. 1, 3 (2015).

[39] *Judge Balloguing v. Dagan,* supra at 796.

[40] *Leave Division-O.A.S., Office of the Court Administrator v. Sarceno*, 754 Phil. 1, 3 (2015).

[41] *Former Judge Pamintuan v. Comuyog, Jr.*, 766 Phil. 566, 575 (2015).

[42] *Puyo v. Judge Go*, A.M. No. MTJ-07-1677 (Formerly A.M. OCA IPI No. 06-1827-MTJ), November 21, 2018.

officer or employee in the judiciary is duty-bound to obey the orders and processes of the Supreme Court without the least delay.[43] Refusal to comply with the orders of the Court constitutes insubordination which warrants disciplinary action.[44]

In *Falsification of Daily Time Records of Ma. Emcisa A. Benedictos*,[45] this Court ruled:

> Additionally, the Court bears in mind Benedictos's failure to submit her comment, which constitutes clear and willful disrespect, not just for the OCA, but also for the Court, which exercises direct administrative supervision over trial court officers and employees through the former. In fact, it can be said that Benedictos's non-compliance with the OCA directives is tantamount to insubordination to the Court itself. Benedictos also directly demonstrated her disrespect to the Court by ignoring its Resolutions dated June 25, 2007 (ordering her to show cause for her failure to comply with the OCA directives and to file her comment) and March 26, 2008 (ordering her to pay a fine of ₱1,000.00 for her continuous failure to file a comment).
>
> A resolution of the Supreme Court should not be construed as a mere request, and should be complied with promptly and completely. Such failure to comply accordingly betrays not only a recalcitrant streak in character, but also disrespect for the Court's lawful order and directive.
>
> This contumacious conduct of refusing to abide by the lawful directives issued by the Court has likewise been considered as an utter lack of interest to remain with, if not contempt of, the system. Benedictos's insolence is further aggravated by the fact that she is an employee of the Judiciary, who, more than an ordinary citizen, should be aware of her duty to obey the orders and processes of the Supreme Court without delay.[46]

In the instant case, respondent's failure to comply with the OCA's directive to submit his Comment is tantamount to a

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[43] *Re: Absence without Leave (AWOL) of Ms. Lydia A. Ramil*, 588 Phil. 1, 8 (2008).

[44] Id. at 9.

[45] 675 Phil. 459 (2011).

[46] Id. at 465-466.

deliberate and continued refusal to comply with the lawful orders and directives of this Court. Accordingly, respondent is guilty of insubordination.

WHEREFORE, premises considered, this Court rules as follows:

1. **HOLD** respondent Medel M. Mondano, former Clerk of Court **GUILTY** of Grave Misconduct, Gross Neglect of Duty, Dishonesty, and Gross Insubordination and be ordered **DISMISSED** from service, but considering that he has been dropped from the rolls pursuant to this Court's Resolution dated August 3, 2015 in A.M. No. 15-05-46-MTC, that Medel M. Mondano be imposed instead the accessory penalties of **FORFEITURE** of all benefits, except accrued leave credits, if any, and **PERPETUAL DISQUALIFICATION** from re-employment in any government instrumentality, including government-owned and controlled corporations. The Civil Service Commission is ordered to cancel his civil service eligibility, if any, in accordance with Section 9, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292.

This Court further orders:

A. The Financial Management Office, Office of the Court Administrator, to submit a final report on the total accountabilities of Medel M. Mondano to determine any shortages in the collection of judiciary funds during his period of accountability;

B. The Employees Leave Division, Office of the Administrative Services, Office of the Court Administrator, to compute the balance of the earned leave credits of Medel M. Mondano and to **FURNISH** the same to the Finance Division, Financial Management Office, Office of the Court Administrator, which shall compute its monetary value dispensing with the usual documentary requirements. The amount, as well as other benefits he may be entitled to, and the withheld salaries and allowances of Medel M. Mondano shall be applied as part of the restitution of the shortage, if any.

C. Medel M. Mondano, former Clerk of Court, to **IMMEDIATELY RESTITUTE** any remaining shortages in case the monetary value of his earned leave credits and/or other benefits would not be sufficient to cover the same.

2. Finally, the Office of the Court Administrator is further **DIRECTED** to study the possibility of the filing of criminal complaint against respondent in light of the facts of this case.

SO ORDERED.

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

Leonen, J., on official leave.

Baltazar-Padilla, J., on leave.

EN BANC

[G.R. No. 217342. October 13, 2020]

NOEL F. MANANKIL, LIBERATO P. LAUS, GLORIA C. MAGTOTO, EVANGELINE G. TEJADA, ALIZAIDO F. PARAS and PHILIP JOSE B. PANLILIO, *Petitioners, v.* **COMMISSION ON AUDIT,** *Respondent*.

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON AUDIT (COA); THE COA IS CONSTITUTIONALLY EMPOWERED TO DISALLOW EXPENDITURES OR USES OF GOVERNMENT FUNDS AND PROPERTIES; GROUNDS.— The COA is constitutionally empowered to disallow "expenditures or uses of government funds and properties" based on any of the following grounds: 1) That the expenditure is *illegal* or contrary to law; 2) That the expenditure is *irregular* or "incurred without adhering to established rules, regulations, procedural guidelines, policies, principles or practices that have gained recognition in law" or "in violation of applicable rules and regulations other than the law"; 3) That the expenditure is *unnecessary*, the incurrence of which "could not pass the test of prudence or the diligence of a good father of a family, thereby donating non-responsiveness to the exigencies of the service"; 4) That the expenditure is *excessive* or "incurred at an immoderate quantity and exorbitant price"; 5) That the expenditure is *extravagant* or "immoderate, prodigal, lavish, luxurious, waste grossly excessive, and injudicious"; or 6) That the expenditure is *unconscionable* or "unreasonable and immoderate, and which no man in his right sense would make, nor a fair and honest man would accept as reasonable and incurred in violation of ethical and moral standards."

2. ID.; ID.; ID.; ID.; THE COA'S POWER AND AUTHORITY TO DISALLOW UPON AUDIT CAN ONLY BE EXERCISED OVER TRANSACTIONS DEEMED AS IRREGULAR, UNNECESSARY, EXCESSIVE, EXTRAVAGANT, ILLEGAL OR UNCONSCIONABLE

EXPENDITURES OR USES OF GOVERNMENT FUNDS AND PROPERTY.— The above-cited definitions serve as parameters such that "the COA's power and authority to disallow upon audit can only be exercised over transactions deemed as irregular, unnecessary, excessive, extravagant, illegal or unconscionable expenditures or uses of government funds and property." Thus, the COA may only issue an ND upon such grounds. Stated differently, these grounds are *jurisdictional.* Absent any of these grounds, the COA is not clothed with authority to disallow the subject expenditure.

3. MERCANTILE LAW; CORPORATION LAW; CORPORATIONS; BOARD OF DIRECTORS; THE COURT CANNOT INTERFERE WITH SOUND CORPORATE DECISIONS WHEN THERE IS NO EVIDENCE TAINTING THE BOARD'S GOOD FAITH IN ITS BUSINESS DEALINGS.— EO 80 provides that the CDC's powers shall be vested in and exercised by its Board. The CDC Board's authority to enter into a new contract preterminating the Lease Agreement originates from CDC's statutory power to make contracts and lease real property as the CSEZ's administrator. In the same vein, the Board's approval of the 50-50 sharing scheme was also within its recognized corporate power to "do and perform any and all things that may be necessary or proper" to administer the CSEZ. x x x All told, the Board Resolution preterminating the Lease Agreement and approving the 50-50 sharing scheme is a *legitimate exercise of the Board's business judgment*. The Court cannot interfere with sound corporate decisions when there is no evidence tainting the Board's good faith in its business dealings.

APPEARANCES OF COUNSEL

Ricardo M. Sagmit, Jr. for petitioners.
The Solicitor General for respondent.

R E S O L U T I O N

INTING, *J.*:

For the Court's resolution are the following motions filed by Noel F. Manankil, Liberato P. Laus, Gloria C. Magtoto,

Evangeline G. Tejada, Alizaido F. Paras, Philip Jose B. Panlilio (collectively, Manankil, *et al.*), and Clark Development Corporation (CDC):

(1) Motion for Leave to Admit Second Motion for Reconsideration[1] dated March 12, 2018; and

(2) Second Motion for Reconsideration[2] dated March 12, 2018 of the Court's Resolution[3] dated December 5, 2017 (Main Resolution), dismissing their petition for *certiorari*.

Antecedents

CDC is a subsidiary corporation of the Bases Conversion and Development Authority (BCDA). It was established through Executive Order No. (EO) 80[4] in 1993 for the purpose of becoming BCDA's "operating and implementing arm, x x x to manage the Clark Special Economic Zone (CSEZ)."[5] The CDC is empowered by law[6] to "make contracts, lease, own or otherwise dispose of personal and real property; sue and be sued; and otherwise do and perform any and all things that may be necessary or proper" to carry out the BCDA's purpose and objectives.

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[1] *Rollo*, pp. 447-451.

[2] *Id.* at 452-476.

[3] *Id.* at 405-410.

[4] Authorizing the Establishment of the Clark Development Corporation as the Implementing Arm of the Bases Conversion and Development Authority for the Clark Special Economic Zone, and Directing All Heads of Departments, Bureaus, Offices, Agencies and Instrumentalities of Government to Support the Program [April 3, 1993].

[5] Section 1, Executive Order No. (EO) 80.

[6] Section 2, EO 80 provides that, "x x x. Pursuant to Section 15 of [Republic Act No.] 7227, the CDC shall have the specific powers of the Export Processing Zone Authority as provided for in Section 4 of Presidential Decree No. 66 (1972) as amended." In turn, Presidential Decree No. (PD) 66 created the Export Processing Zone Authority (EPZA) and revising Republic Act No. (RA) 5490.

Pursuant to this authority, on December 14, 1995, CDC entered into a 25-year Lease Agreement[7] with Amari Duty Free, Inc. (Amari) to rent out a 1.70-hectare parcel of land located along Dyess Highway, CSEZ, Pampanga (leased property). Amari shall use the leased property for its "duty free store/commercial shopping" and "fastfood/cafeteria" operations.[8]

Under the agreement, Amari shall pay for the lease based on either of two schemes: (1) *minimum guaranteed lease payments* amounting to ₱204,000.00 per month for the first two years and subject to a 10% compounded increase thereafter; or (2) *percentage of gross revenues*, which shall be 3%, 5%, and 7% of gross revenues from years 1 to 7, 8 to 15, and 16 to 25, respectively.[9]

Amari also undertook the duty to "improve the best use of the [l]eased [p]roperty by upgrading the facilities" thereon. The parties agreed that the ownership of any improvement introduced to the leased property shall automatically transfer to CDC at the end of the lease term.[10] In this connection, Amari caused the construction of a two-story building (original structure) on the leased property. The structure was completed on November 13, 1996 and had an estimated cost of ₱36,000,000.00.[11]

In addition, Amari insured the original structure as required under the Lease Agreement, *viz.*:

ARTICLE VIII
MISCELLANEOUS

Section 1. x x x

Section 2. Insurance. — The LESSEE shall insure against all risks including its interest in all existing facilities, new constructions and

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[7] *Rollo*, pp. 49-65.

[8] *Id.* at 50.

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

[10] *Id.* at 59.

[11] *Id.* at 66.

improvements introduced during the term of the lease, and such insurance shall likewise include the coverage for business interruption in an amount equal to the maximum insurable value, and which shall be adjusted yearly commensurate to the increasing value of said insurable interest of LESSOR in the Leased Property. All premium on any such insurance coverage shall be for the account of the LESSEE.

It is expressly agreed and understood that the insurance coverage herein stipulated shall be secured from the Government Service Insurance System (GSIS) only not later than two (2) months after construction/rehabilitation of facilities, *in which the LESSOR shall be designated as its beneficiary*. However, for moveable properties, insurance coverage may be secured from any insurance company duly authorized by the LESSOR. *It is further agreed, that in case of loss or damage to the Leased Property during the term of this Contract, the LESSOR shall reconstruct or restore the lost or damaged property to its original condition using the proceeds from the insurance for the continued lease and use by the LESSEE. In the event that the insurance proceeds are insufficient for purpose of reconstruction or restoration as herein required, then LESSEE shall provide the necessary funds to augment the insurance proceeds.*[12] (Emphasis and underscoring supplied.)

In the meantime, Amari changed its corporate name to Grand Duty Free Plaza, Inc. (Grand Duty Free).[13] The parties also amended[14] the Lease Agreement to allow Grand Duty Free "[t]o engage in the transshipment of all kinds of goods or commercial products, such as but not limited to, clothing materials (brand new), appliances and house wares, tobacco and liquor products, consumer and health care products, food and other such products."[15]

On December 29, 2005, a fire razed the original structure, forcing Grand Duty Free to shut down its business operations.[16]

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[12] *Id.* at 58-59.

[13] *Id.* at 38.

[14] *Id.* at 68-71.

[15] *Id.* at 69.

[16] *Id.* at 38.

In view of this, in a Letter[17] dated January 16, 2006, Grand Duty Free, through its President Antonio See, requested CDC to waive its monthly rental payments starting January 2006. In response, CDC's Executive Committee authorized a moratorium on Grand Duty Free's rentals until December 31, 2007.[18]

Sometime in 2007, Grand Duty Free expressed its intention "to engage in the manufacture of branded cigarettes for export" and "to build a plant at the Grand Duty Free property." In this connection, Grand Duty Free inquired from CDC the tax and regulatory implications of its proposed venture.

In a Letter[19] dated May 30, 2007, CDC wrote Grand Duty Free on the following matters: (1) Grand Duty Free's proposal to manufacture branded cigarettes for export "is not among the Investment Priority Plan" as provided by Republic Act No. (RA) 9400,[20] which classified Clark as a freeport zone; (2) Grand Duty Free should cause the "complete demolition and clearing of all debris and remnants" of the original structure; and (3) As the moratorium on Grand Duty Free's rental payments had already ceased, the CDC shall resume the collection of rental payments accruing after the moratorium.

Nevertheless, in a Letter[21] dated June 12, 2007, Grand Duty Free pleaded CDC to extend the moratorium. It was still waiting for GSIS's release of the proceeds from the original structure's insurance (insurance proceeds), which it intends to use in clearing the leased property in preparation for the original structure's rebuilding. Moreover, the reconstruction is not expected to be completed for another eight months. Thus, it cannot resume its operations yet.

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[17] *Id.* at 72.

[18] *Id.* at 74.

[19] *Id.*

[20] An Act Amending Republic Act No. 7227, As Amended, Otherwise Known as the Bases Conversion and Development Act of 1992, and For Other Purposes [March 20, 2007].

[21] *Rollo*, pp. 75-76.

Meanwhile, on July 5, 2007, the GSIS released the insurance proceeds through a check amounting to ₱39,246,781.37 and payable to "CDC-Grand Duty Free Plaza."[22]

In response[23] to Grand Duty Free's request for extension, the CDC required Grand Duty Free to submit business and construction proposals, detailing its plans to erect a new structure (proposed structure) and the intended use thereof. The plans will be subject to CDC's approval. Thereafter, CDC shall: (1) consider extending the moratorium; and (2) undertake the construction of the proposed structure.

Grand Duty Free questioned CDC's rationale for its requirements, *viz.*: *First*, the activities Grand Duty Free is allowed to engage in are already set forth in the Lease Agreement and its amendment. *Second*, it already submitted a construction plan in relation to the original structure. In moving forward with the proposed structure, it does not intend to deviate from the original plan, which was already approved and found compliant with the National Building Code and CSEZ's master plan. *Third*, on a more practical standpoint, CDC should defer the duty to rebuild the proposed structure to Grand Duty Free. Section 18,[24] Article VIII of the Lease Agreement mandates the parties to amicably settle disputes between them, including the question of who bears the burden of rebuilding the original structure.[25]

In this regard, CDC insisted that Section 2, Article VIII of the Lease Agreement authorizes the lessor to reconstruct or restore the original structure in case of loss or damage to the lease property. The contract is clear on this matter. Thus, there is no dispute to subject to an amicable settlement.[26]

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[22] *Id.* at 38.

[23] *Id.* at 77.

[24] Section 18. Amicable Settlement. — In case of disputes arising from this Agreement, the parties shall promptly meet and exert best efforts towards amicable settlement of the dispute in good faith. *Id.* at 63.

[25] *Id.* at 78-79.

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

The parties had seemed to reach an impasse after these exchanges. As a result, Grand Duty Free intimated the possibility of discontinuing its business in the Clark Freeport Zone. With this in mind, it proposed the pretermination of the Lease Agreement.[27]

After negotiations between the parties, CDC agreed to preterminate the Lease Agreement, as authorized by its Board of Directors (Board) through Resolution No. SM-03-03, Series of 2008 dated March 13, 2008, *viz.*:

"RESOLVED THAT, the following recommendations of the Executive Committee (Excom) with regard to the pre-termination of the Lease Agreement of Grand Duty Free Plaza, Inc., be APPROVED, as they are hereby APPROVED:

a. Pre-termination of the Lease Agreement effective 31 December 2007;

b. 50%-50% sharing of the insurance proceeds of Php39,246,781 between CDC and Grand Duty Free;

c. Forfeiture of Security Deposit of Php1,224,000 and waiver of all accounts due (Php343,849.58-unpaid rentals) to CDC; and

d. Release of the 50% (Php19,623,390.68) share of Grand [Duty Free] in the insurance proceeds only upon proof of payments of all utility bills and submission of clearances from the Bureau of Customs and Bureau of Internal Revenue (BIR).[28]

Based on the parties' 50-50 sharing scheme, CDC and Grand Duty Free will each receive ₱19,623,390.68, representing their 50% share in the insurance proceeds. On its end, CDC's *net proceeds* from the pretermination amounted to ₱20,503,541.10 computed as follows:

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[27] *Id.* at 82-83.

[28] *Id.* at 90.

CDC's share in the proceeds	₱19,623,390.68
add Security deposit	1,224,000.00
subtract Unpaid dues	(343,849.58)
Net proceeds received by CDC	₱20,503,541.10

On April 1, 2008, CDC issued a check amounting to ₱19,623,390.68 payable to Grand Duty Free, representing the latter's share in the insurance proceeds (50% Release). However, on October 17, 2008, the Commission on Audit (COA), through Elvira G. Punzalan, State Auditor IV, issued *Notice of Disallowance No. (ND) 2008-10-03 (2008)*[29] finding the aforementioned disbursement "contrary to Article VIII, Sections 2 and 3 of the Lease Agreement."

The following persons were liable under the ND:

1. Grand Duty Free/Antonio See as payee;
2. Noel F. Manankil as approving officer for the check and disbursement voucher;
3. Liberato P. Laus as approving officer for the check;
4. Gloria C. Magtoto, Evangeline G. Tejada, and Alizaido F. Paras as certifying officers for the disbursement voucher; and
5. Philip Jose B. Panlilio as recommending officer.

Herein petitioners appealed the disallowance to the COA Regional Director.

The COA Regional Director's Ruling

In COA Regional Office No. III Decision No. 2011-09[30] dated April 13, 2011, the COA Regional Director Amante A. Liberato upheld the disallowance, *viz.*:

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[29] *Id.* at 92.

[30] *Id.* at 102-106.

WHEREFORE, in the light of the foregoing, the instant appeal cannot be given due course. Consequently, Notice of Disallowance No. 2008-10-03, amounting to PhP19,623,390.68, is AFFIRMED.

The COA Regional Director held that the CDC was entitled to 100% of the proceeds. *Thus, the 50% Release in favor of Grand Duty Free was not legally justified*. He explained as follows: *First*, under the Lease Agreement, the parties intended CDC to be the sole beneficiary of the insurance, as compensation for the loss it sustained from the destruction of its property by fire. *Second*, the insurance proceeds constituted a claim on the GSIS Property Insurance Fund, established to answer for any damage to, or loss of, government properties due to fire. *Third*, only CDC could preterminate the Lease Agreement. Grand Duty Free defaulted when it preterminated the contract and prevented CDC from fulfilling its obligation to reconstruct the original structure. Despite its default, Grand Duty Free collected half of the insurance proceeds. *Fourth*, the defense of "sound business judgment" cannot be used to defeat the rationale of property insurance, which is to compensate a person for such loss as the property insured may have suffered.[31]

Aggrieved, Manankil, *et al.*, elevated the case to the COA Commission Proper (COA Proper) docketed as COA CP Case No. 2011-253.

The COA Proper Ruling

In its Decision No. 2014-421[32] dated December 18, 2014, the COA Proper denied Manankil, *et al.*'s appeal, *viz.*:

WHEREFORE, premises considered, the instant Petition is hereby DENIED for lack of merit. Accordingly, the assailed Commission on Audit Regional Office 3 Decision No. 2011-09 dated April 13, 2011, which sustained Notice of Disallowance No. 2008-10-03 dated October 17, 2008 in the amount of ₱19,623,390.68, representing 50% of the insurance proceeds given out to Grand Duty Free Plaza, Inc.,

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[31] *Id.* at 104-106.

[32] *Id.* at 37-48.

is hereby AFFIRMED. The Audit Team Leader and Supervising Auditor, Clark Development Corporation, are, however directed to issue a Supplemental Notice of Disallowance to include the unpaid dues in the amount of P343,849.58.[33]

In affirming the Regional Director's Decision, the COA Proper further held that *the 50-50 sharing scheme: (1) finds no basis in law and (2) runs counter with the Lease Agreement*.[34] *First*, the parties constituted CDC as the sole beneficiary under the insurance contract to compensate CDC for the loss of the original structure's property value *and* the rental income pertaining to the remaining term of the lease. Section 53 of the Insurance Code of the Philippines (Insurance Code) provides that the "[i]nsurance proceeds shall be applied exclusively to the proper interest of the person in whose name or for whose benefit it is made x x x."[35] *Second*, when it did not agree to CDC undertaking the original structure's reconstruction, Grand Duty Free breached the Lease Agreement and was deemed to have abandoned the leased property.[36]

The COA Proper also pointed out that preterminating the Lease Agreement disadvantaged CDC, such that it received only the *net proceeds* (₱20,503,541.10), instead of earning the *minimum guaranteed lease rental payments* over the remaining portion of the lease period (₱183,398,896.43).[37] CDC would have derived greater financial benefits had the Grand Duty Free opted to continue the lease.

Lastly, CDC already had a vested right over the total amount of insurance proceeds. The parties' new agreement — preterminating the Lease Agreement and requiring CDC to forego a portion of the insurance proceeds does not affect CDC's exclusive right thereof.[38]

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[33] *Id.* at 47.

[34] *Id.* at 43.

[35] *Id.* at 42-43.

[36] *Id.* at 46.

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

[38] *Id.* at 46.

Undaunted, Manankil, *et al.*, elevated the case to the Court *via* a petition for *certiorari*, averring as follows: *first*, the Lease Agreement was superseded by the parties' agreement to preterminate the same. *Second*, the 50% Release to Grand Duty Free was approved by the CDC Board, exercising sound business judgment. The government did not sustain any loss, damage, or injury as a result thereof. *Third*, Grand Duty Free has insurable interest over the original structure, being the builder, possessor, and beneficial owner thereof. *Fourth*, Grand Duty Free was the main beneficiary of the insurance proceeds, leaving CDC to be a residual beneficiary. In fact, the GSIS released the proceeds through a check payable to both parties. *Fifth*, CDC's receipt of the net proceeds upon the Lease Agreement's pretermination duly indemnified and/or compensated it from whatever damage it may have sustained.

The COA, through the Office of the Solicitor General (OSG), raised[39] the following counter-arguments: *first*, the terms in the Lease Agreement shall prevail because the cause of the loss took place prior to the agreement's pretermination. *Second*, it was CDC's interest over the property that was subject of the fire insurance. The Insurance Code provides that the insurance proceeds shall be applied exclusively to the beneficiary's proper interest. *Third*, the fact that Grand Duty Free funded the original structure's construction does not militate against the parties' intention to insure CDC's interest thereon, not Grand Duty Free's. *Fourth*, the Lease Agreement is the primary law between the parties. *Fifth*, assuming *arguendo* that the CDC Board can validly agree to preterminate the contract, it cannot alter the Lease Agreement's terms considering that the CDC's right over the insurance proceeds had already vested. *Sixth*, Grand Duty Free's refusal to continue the lease released CDC from its contractual obligation to rebuild the original structure. *Seventh*, the CDC's obligation to reconstruct was intended to assure that the lease will continue and provide income to CDC. *Eighth*, the Lease Agreement's pretermination was disadvantageous to CDC. It cannot be used to reduce the CDC's insurable interest.

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[39] *Id.* at 344-377.

In the Main Resolution, the Court dismissed Manankil, *et al.*'s petition for *certiorari*.[40] The Court also denied their subsequent Motion for Reconsideration.[41] Thus, the Main Resolution became final and executory on February 6, 2018 and recorded in the book of entries of judgment accordingly.[42] Consequently, the Motion for Leave to Admit Second Motion for Reconsideration of the Resolution dated February 6, 2018, and the aforesaid Second Motion for Reconsideration dated March 12, 2018 were noted without action.[43] Manankil, *et al.* prayed that the Second Motion for Reconsideration be resolved by the Court.[44]

Second Motion for Reconsideration

In the Second Motion for Reconsideration, Manankil, *et al.* insist that the Lease Agreement's pretermination was a valid exercise of management discretion. It was clearly to CDC's advantage because the pretermination allowed it to enter to new Lease Agreement more profitable than its lease to Grand Duty Free. In the absence of bad faith, the Board's business judgment must be upheld.

Ruling of the Court

After a careful review, the Court finds merit in Manankil, *et al.*'s Second Motion for Reconsideration.

Resolving the Case on a Second Motion for Reconsideration

Previously, the Court resolved to dismiss Manankil, *et al.*'s petition for *certiorari* in the Resolution dated December 5, 2017. The Court also denied petitioners' Motion for Reconsideration. Subsequently, the entry of judgment of the aforementioned Resolution was made on February 6, 2018. Now before the Court is petitioners' Second Motion for Reconsideration.

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[40] *Id.* at 405-410.

[41] *Id.* at 430.

[42] *Id.* at 432.

[43] *Id.* at 477.

[44] *Id.* at 485-486.

The COA, through the OSG, urges the Court to deny this motion because, being a second motion for reconsideration, it is already forbidden by the rules.[45]

Verily, the Rules of Court prohibit second and subsequent motions for reconsideration.[46] However, while it is established that rules of procedure are "tools designed to facilitate the attainment of justice," courts shall not strictly and rigidly apply them if it will only "frustrate, rather than promote *substantial justice*."[47]

Thus, in the recent case of *Laya v. Court of Appeals*,[48] the Court *en banc* discussed at length that while "second and subsequent motions for reconsideration are [generally] forbidden," there is a long line of jurisprudence where the Court did not restrain itself from granting a second motion for reconsideration when exceptional circumstances in the case warrant the relaxation of the rules.

In *Laya*, it was held that procedural rules cannot prevent the Court from correcting a decision/resolution, which is "legally erroneous, patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties. Under these circumstances, even final and executory judgments may be set aside because of the existence of compelling reasons."[49]

As will be discussed below, *the Court has noted acts and omissions by the COA that violate the petitioners' right to due process. That these acts have tainted the assailed issuances with grave abuse of discretion compels the Court to revisit our previous Resolution and grant petitioner's Second Motion for Reconsideration*.

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[45] *Id.* at 498.

[46] Section 2. Rule 52, Rules of Court.

[47] *Civil Service Commission v. Almojuela*, G.R. No. 194368, April 2, 2013.

[48] G.R. No. 205813, January 10, 2018.

[49] G.R. No. 205813, January 10, 2018.

COA's Jurisdiction and Authority to Disallow Government Expenditures

The COA is constitutionally[50] empowered to disallow "expenditures or uses of government funds and properties" based on any of the following grounds:

1) That the expenditure is *illegal* or contrary to law;[51]

2) That the expenditure is *irregular* or "incurred without adhering to established rules, regulations, procedural guidelines, policies, principles or practices that have gained recognition in law" or "in violation of applicable rules and regulations other than the law;"[52]

3) That the expenditure is *unnecessary*, the incurrence of 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;"[53]

4) That the expenditure is *excessive* or "incurred at an immoderate quantity and exorbitant price;"[54]

5) That the expenditure is *extravagant* or "immoderate, prodigal, lavish, luxurious, waste grossly excessive, and injudicious;"[55] or

6) That the expenditure is *unconscionable* or "unreasonable and immoderate, and which no man in his right sense would

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[50] 1987 CONSTITUTION, Article IX(D), Section 2 (2) provides that the Commission on Audit (COA) has "exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds and properties."

[51] Section 16.1.1, COA Circular No. 94-001 (January 20, 1994).

[52] Paragraph 3.1, COA Circular No. 85-55-A (September 8, 1985).

[53] Paragraph 3.2, COA Circular No. 85-55-A (September 8, 1985).

[54] Paragraph 3.3, COA Circular No. 85-55-A (September 8, 1985).

[55] Paragraph 3.4, COA Circular No. 85-55-A (September 8, 1985).

The COA, through the OSG, urges the Court to deny this motion because, being a second motion for reconsideration, it is already forbidden by the rules.[45]

Verily, the Rules of Court prohibit second and subsequent motions for reconsideration.[46] However, while it is established that rules of procedure are "tools designed to facilitate the attainment of justice," courts shall not strictly and rigidly apply them if it will only "frustrate, rather than promote *substantial justice*."[47]

Thus, in the recent case of *Laya v. Court of Appeals*,[48] the Court *en banc* discussed at length that while "second and subsequent motions for reconsideration are [generally] forbidden," there is a long line of jurisprudence where the Court did not restrain itself from granting a second motion for reconsideration when exceptional circumstances in the case warrant the relaxation of the rules.

In *Laya*, it was held that procedural rules cannot prevent the Court from correcting a decision/resolution, which is "legally erroneous, patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties. Under these circumstances, even final and executory judgments may be set aside because of the existence of compelling reasons."[49]

As will be discussed below, *the Court has noted acts and omissions by the COA that violate the petitioners' right to due process. That these acts have tainted the assailed issuances with grave abuse of discretion compels the Court to revisit our previous Resolution and grant petitioner's Second Motion for Reconsideration*.

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[45] *Id.* at 498.

[46] Section 2, Rule 52, Rules of Court.

[47] *Civil Service Commission v. Almojuela*, G.R. No. 194368, April 2, 2013.

[48] G.R. No. 205813, January 10, 2018.

[49] G.R. No. 205813, January 10, 2018.

Inasmuch as it serves to notify a person charged with liability over a disallowed expenditure, the ND cannot be ambiguous as to the reasons justifying its issuance. The COA's *failure to specify the ground* relied upon for its disallowance raises serious concerns, *viz.*: *first*, it casts doubt over the COA's authority to disallow the expense in question, the grounds being jurisdictional; and *second*, it also deprives the persons found liable a fair opportunity to set up an effective case for their defense — a violation of their fundamental right to due process[60] amounting to grave abuse of discretion.

Later on, the COA Regional Director and COA Proper still did not cite a specific ground in upholding the disallowance. Notably, aside from being "contrary to the provisions of the contract," the COA also upheld the disallowance for being "contrary to law," *impliedly* categorizing the subject disbursement as "illegal" by definition.

Verily, the Court recognizes the wide latitude given to the COA in the discharge of its constitutional duty as the "guardian of public funds and properties."[61] *However, the COA must be deliberate and straightforward in its charges*. Its far-reaching jurisdiction cannot serve to justify its complacency in the performance of constitutional functions or to rectify due process violations.

Even if the Court considers COA's belated attempt to clarify its charges to have cured the defective ND,[62] the Court still finds for the petitioners.

Lease Agreement v. Insurance Contract.

At the onset, the Court must distinguish between the *Lease Agreement* and the *insurance contract*.

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[60] *Id.* at 398.

[61] *Id.*

[62] See *Development Bank of the Philippines v. COA*, G.R. No. 221706, March 13, 2018.

The *Lease Agreement's* subject was a parcel of land located within the CSEZ, upon which Grand Duty Free erected the original structure. While the parcel of land is a government property, the original structure thereon — an improvement to the leased property — was owned by Grand Duty Free.

Under the *Lease Agreement*, Grand Duty Free was obligated to: (1) enter into an insurance contract to secure the original structure against all risks, and (2) designate the CDC as the beneficiary therein. In turn, Grand Duty Free entered into an *insurance contract* with the GSIS and paid all the premiums required under the policy. The *Lease Agreement* merely required its designation as beneficiary. However, the CDC was not a party to the *insurance contract*. The *Lease Agreement* further provided that in case of loss of or damage to the leased property, the CDC shall reconstruct or restore the original structure using the proceeds from the *insurance contract*.

When fire gutted the original structure, Grand Duty Free, as the insured, filed a claim upon the *insurance contract*. The GSIS, the insurer, remitted the proceeds to the CDC, as the designated beneficiary under the *Lease Agreement*. Thereafter, the CDC and Grand Duty Free preterminated the *Lease Agreement* and agreed to share in the insurance proceeds, 50-50. Pursuant to this, the CDC released 50% of the proceeds to Grand Duty Free.

The COA cites two main reasons for disallowing CDC's 50% Release: *first*, that it violated the Insurance Code, particularly Sections 53 and 18 thereof; and *second*, that the expenditure was contrary to the provisions of the Lease Agreement, particularly Section 2, Article VIII and Section 2, Article VI, thereof.

Insurance Code does not Apply.

The COA Proper cited the following Insurance Code provisions to support the 50% Release's disallowance:

> Sec. 18. No contract or policy of insurance on property shall be enforceable except for the benefit of some person having an insurable interest in the property insured.

Sec. 53. The insurance proceeds shall be applied exclusively to the proper interest of the person in whose name or for whose benefit it is made unless otherwise specified in the policy.

Applying the above-cited provisions, the COA Proper ruled that the insurance contract was executed primarily to protect the CDC's — not Grand Duty Free's — insurable interest in the original structure. As the designated beneficiary having insurable interest in the property insured, the insurance proceeds shall be for the CDC's exclusive benefit. Thus, the 50-50 sharing scheme was contrary to law.

The Court disagrees with the COA Proper's reasoning.

That the disallowed amount in this case refers to a portion of insurance proceeds received from the GSIS does not *ipso facto* place the 50% Release within the coverage of the terms of the insurance contract and, by extension, the Insurance Code.

Certainly, whether or not a person designated to receive the insurance proceeds possesses the requisite insurable interest is a matter that will affect the *contract's enforceability* and the *beneficiary's suitability* to be constituted as such.[63] However, insurable interest is irrelevant to the manner by which the recipient chooses or is bound to use the proceeds after the fact.

In the present case, the COA seeks to disallow an amount that pertains not to the insurance proceeds *per se*, but to the subsequent disposition thereof.

Verily, the Insurance Code states that the proceeds shall be applied to the designated recipient's exclusive benefit. However, once the insurer releases the proceeds in full to the designated recipient, the obligations under a contract of insurance will have been fully performed and, thus, extinguished.[64] Upon such time, a contract of insurance's terms and the Insurance Code's provisions may no longer control the manner by which the proceeds are thereafter used or otherwise disposed of.

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[63] See *Cha v. CA*, 343 Phil. 488, 493-494 (1997).

[64] CIVIL CODE, Article 1231 (1).

To recall, the CDC's 50% Release was pursuant to the terms and conditions attached to the Lease Agreement's *pretermination.* Thus, the payment and its possible disallowance must be evaluated based on these terms and conditions, not on the insurance contract or the Insurance Code. *This leads to the next issue for the Court's resolution: Did the 50% Release violate the Lease Agreement?*

According to the COA, the insurance proceeds exclusively belonged to CDC as the sole beneficiary. While it had initially been required to use these proceeds to rebuild the original structure, CDC was released from this obligation when Grand Duty Free defaulted (*i.e.*, refused to allow the CDC to proceed with reconstruction) and preterminated the Lease Agreement. In the first place, the primary purpose of designating CDC as the insurance's sole beneficiary was to protect its interest, particularly in CDC's rental income for the remainder of the lease term. Thus, Grand Duty Free had no right over the proceeds unless it will continue to lease the property for the remainder of the lease term.

This reasoning is circuitous and flawed.

Section 2, Article VIII of the Lease Agreement Imposed Reciprocal Obligations

It is undisputed that the GSIS released the full amount of the insurance proceeds to the CDC. However, the Court cannot ignore that the CDC's receipt of these proceeds *carried with it the concomitant obligation to rebuild the original structure*. In other words, the parties were *reciprocally obligated*: on the one hand, Grand Duty Free shall insure the original structure and designate CDC as the recipient of the proceeds and, on the other, CDC shall use these proceeds in rebuilding the original structure.

When the parties agreed to preterminate the lease, CDC was excused from performing its contractual obligation to reconstruct because Grand Duty Free no longer desired to pursue its business in the CSEZ.

However, CDC's release from its former obligation was by no means gratuitous. *A fair and reasonable interpretation of the Lease Agreement and its subsequent pretermination demands that CDC remained reciprocally obligated upon the Lease Agreement's pretermination*. Thus, in place of its former obligation to undertake reconstruction, it had the duty to release to Grand Duty Free an amount equal to 50% of the insurance proceeds.

50-50 Sharing Scheme is Valid and Enforceable.

There is also no dispute that the Lease Agreement's pretermination was a new agreement. However, the COA argues that the pretermination *vis-à-vis* the 50-50 sharing scheme cannot supersede CDC's vested right over the total amount of the proceeds.

The Court disagrees with the COA.

When the parties expressly agreed to preterminate the Lease Agreement, they altered their original obligations' object and principal conditions and thereby extinguished the same. Thus, the parties shall be bound by the new agreement's terms and conditions, including the 50-50 sharing scheme.

The COA attempts to reduce the new terms' binding effect by arguing that the CDC Board's decision to preterminate the Lease Agreement was *ultra vires*.

This argument is specious.

EO 80 provides that the CDC's powers shall be vested in and exercised by its Board.[65] The CDC Board's authority to enter into a new contract preterminating the Lease Agreement originates from CDC's statutory power to make contracts and lease real property as the CSEZ's administrator.[66]

In the same vein, the Board's approval of the 50-50 sharing scheme was also within its recognized corporate power to "do

[65] Section 3, EO 80.

[66] Section 4 (k), PD 66 as provided in EO 80.

and perform any and all things that may be necessary or proper"[67] to administer the CSEZ.

From the very start, CDC knew that the insurance proceeds were not completely at their disposal. Even the COA recognizes that CDC's receipt thereof was qualified by the concomitant obligation to rebuild the original structure. Thus, the CDC held the proceeds in trust, in view of its reciprocal obligation to reconstruct. *The CDC Board simply exercised prudence* when it refused to unjustly enrich the corporation and agreed to share the insurance proceeds with Grand Duty Free.

The COA further argues that the parties intended the proceeds to answer for the loss of the original structure *and* lost rental income due to pretermination. Thus, the Board's approval of the 50-50 sharing scheme financially disadvantaged CDC.

The Court disagrees with the COA's proposition. This is negated by the clear absence of any penal or escalation clause obligating Grand Duty Free to pay for lease rentals for the unexpired portion of the lease in the event of pretermination.

Parenthetically, the contract of insurance in the present case is a "fire insurance" obtained to secure the original structure against *loss by fire and lightning*.[68] The proceeds thereof cannot be construed to answer for CDC's loss of future rentals. Thus, the COA's comparison between the net proceeds and minimum guaranteed lease payments for the remaining lease term is irrelevant and misplaced.

All told, the Board Resolution preterminating the Lease Agreement and approving the 50-50 sharing scheme is a *legitimate exercise of the Board's business judgment*. The Court cannot interfere with sound corporate decisions when there is no evidence tainting the Board's good faith in its business dealings.[69]

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[67] *Id.*

[68] As evidenced by Fire Insurance Policy Nos. F-0152-05-CSFP and F-0152-A-05-CSFP. *Rollo*, pp. 267-268.

[69] See *Philippine Stock Exchange, Inc. v. The Hon. CA*, 346 Phil. 218, 234 (1997).

The Court stresses that CDC and Grand Duty Free mutually agreed on the pretermination's terms and conditions. The Court must uphold the pretermination because it embodies the parties' mutual and amicable desistance from continuing their contractual relations. After all, the parties have the freedom to do so at their convenience, provided that their new terms do not contravene law, morals, good customs, public order, or public policy.[70]

Certainly, the CDC cannot be excused from the performance of its new obligation to release Grand Duty Free's share in the proceeds.

The Government Suffered No Loss in the Transaction

As earlier discussed, the CDC merely held the insurance proceeds in trust, in view of its impending duty to rebuild the original structure. To recall, when fire razed the original structure on December 29, 2005, 10 years into the lease's 25-year term, Grand Duty Free remained to have full ownership over the property.

In addition, Grand Duty Free: (1) obtained the insurance to protect its property (the original structure, and not the land on which it stood) against damage caused by fire, and (2) paid all the required premiums. It is clear that the government did not contribute any capital to obtain the insurance.

In other words, the government collected from an insurance policy constituted over private property, the premium payments for which it did not even fund. Certainly, the government did not suffer any loss of capital from its partial collection.

WHEREFORE, the Court **GRANTS** the Second Motion for Reconsideration dated March 12, 2018; **SETS ASIDE** the Resolutions dated December 5, 2017 and February 6, 2018.

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[70] CIVIL CODE, Article 1306.

The Court **GRANTS** the petition for *certiorari*, and **NULLIFIES** and **SETS ASIDE** Notice of Disallowance No. 2008-10-03 dated October 17, 2008 for being issued with grave abuse of discretion.

No pronouncement on costs of suit.

SO ORDERED.

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

Leonen, J., on official leave.

Baltazar-Padilla, J., on leave.

EN BANC

[G.R. No. 245274. October 13, 2020]

TERESITA P. DE GUZMAN, in her capacity as former General Manager; GODIULA T. GUINTO, in her capacity as former Internal Auditor; VIVECA V. VILLAFUERTE, in her capacity as former Administrative Manager; WILHELMINA A. AQUINO, in her capacity as Senior Accountant; RENATO S. RONDEZ, in his capacity as a member of the Baguio Water District (BWD) Board of Directors (BOD); MOISES P. CATING, RAMSAY M. COLORADO, GINA ROMILLO-CO, EMMANUEL B. MALICDEM and MARIA ROSARIO R. LOPEZ, in their capacities as former members of the BWD BOD; and the EMPLOYEES of BWD, in their capacities as payees, *Petitioners*, *v.* **COMMISSION ON AUDIT,** *Respondent*.

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON AUDIT (COA); A NOTICE OF DISALLOWANCE ISSUED WITHOUT THE SIGNATURE OF THE SUPERVISING AUDITOR IS NOT DEEMED DEFECTIVE WHEN THE REASON FOR THE ABSENCE OF THE SUPERVISING AUDITOR'S SIGNATURE IS DUE TO ITS NON-ASSIGNMENT.— On the first issue, we hold that ND No. 12-023-101-(09) is not deemed defective, let alone, without force and effect simply because it did not bear the signature of a supervising auditor. x x x By Memorandum dated May 9, 2012, the OIC Regional Director of COA-CAR expressly authorized Audit Team Leader Antonieta La Madrid to issue notices of disallowances, albeit without the signature of a supervising auditor as none was assigned to BWD at that time.

2. ID.; ADMINISTRATIVE LAW; BAGUIO WATER DISTRICT (BWD); AMOUNT OF PER DIEMS GRANTED TO THE BOARD OF DIRECTORS OF LOCAL WATER DISTRICTS IS SUBJECT TO THE PRESIDENTIAL

POWER OF CONTROL SINCE LOCAL WATER DISTRICTS ARE GOCCs.— Being a water district, the BWD itself is a GOCC, thus, subject to the power of control of the President. In *ZCWD v. COA*, it was held that the amount of per diems granted to the board of directors of local water districts is subject to the presidential power of control since local water districts are GOCCs.

3. ID.; ID.; ID.; ID.; THE COMMEMORATIVE OR CENTENNIAL BONUS GRANTED TO THE BWD IS NEITHER A CNA INCENTIVE NOR AUTHORIZED BY A PRESIDENTIAL ISSUANCE; ITS GRANT THEREFORE IS DEVOID OF ANY LEGAL BASIS.— Undeniably, AO 103 governs the manner by which local water districts like the BWD manage and handle their finances, x x x Here, the commemorative or centennial bonus granted to the BWD officers and employees on the occasion of the agency's 100th anniversary of Baguio City is neither a CNA incentive nor authorized by a presidential issuance. Its grant, therefore, was devoid of any legal basis.

4. ID.; ID.; PUBLIC OFFICERS; 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.— 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.

5. ID.; ID.; ID.; ID.; MALICE, BAD FAITH, AND GROSS NEGLIGENCE, DEFINED.— 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.

6. ID.; ID.; ID.; ID.; 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. x x x First, the centennial bonus cannot be considered to have been given in consideration of services rendered or in the nature of performance incentives, productivity pay, or merit increases. Second, a monetary grant that contravenes the unambiguous letter of the law cannot be forgone on social justice considerations. Liability arises and should be enforced when there is disregard for the basic principle of statutory construction that when the law was clear, there should be no room for interpretation but only application. Verily, therefore, the employees must be held liable to return the amounts that they had received. As earlier discussed, the approving officers of BWD, herein petitioners, are jointly and severally liable for the disallowed amounts received by the individual employees.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This Petition for Certiorari[1] assails the following issuances of the Commission on Audit (COA) in "*Petition for Review of*

[1] Under Rule 64 of the Revised Rules of Court.

Ma. Teresita P. De Guzman, Ms. Viveca V. Villafuerte, Ms. Wilhelmina A. Aquino, and employees of Baguio Water District (BWD), Baguio City, of Commission on Audit-Cordillera Administrative Region Division No. 2015-26 dated May 21, 2015, affirming Notice of Disallowance No. 12-023-101-(09) dated May 15, 2012, on the payment of Centennial Bonus to the officers and employment of BWD for calendar year 2009, amounting to ₱1,233,860.00":

1) Decision[2] No. 2017-475 dated December 28, 2017, disposing, thus:

> **WHEREFORE**, premises considered, the Petition for Review of Ms. Teresita P. De Guzman, et al., all of Baguio Water District (BWD), Baguio City, of Commission on Audit-Cordillera Administrative Region Decision No. 2015-26 dated May 21, 2015, is **DENIED** for lack of merit. Accordingly, Notice of Disallowance No. 12-023-101-(09) dated May 15, 2012, on the payment of Centennial Bonus to the officers and employees of BWD for calendar year 2009, amounting to P1,233,860.50 is **AFFIRMED with MODIFICATION**. The passive recipients of the disallowed Centennial Bonus are not required to refund the amount received in good faith, but the approving/certifying/authorizing officers for the benefit remain liable for the total disallowance.[3]

2) Resolution[4] dated September 27, 2018, denying petitioner's Motion for Reconsideration.

Antecedents

Under Resolution (BR) No. 046-2009 dated November 20, 2009, the Baguio Water District (BWD) authorized the grant of Centennial Bonus to its officers and employees in the amount equivalent to fifty percent (50%) of the employee's salary. The bonus was distributed to the recipients on the occasion of the 100th anniversary of the City of Baguio.[5]

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[2] *Rollo*, pp. 60-67.

[3] *Id.* at 66-67.

[4] *Id.* at 92.

[5] *Id.* at 94-97.

The COA Audit Team, led by Antonieta La Madrid, issued Notice of Disallowance (ND) No. 12-023-101-(09)[6] dated May 15, 2012 on the total amount of ₱1,233,860.50 granted as centennial bonus to the BWD officers and employees for being allegedly devoid of legal basis. The COA Audit Team cited Section 3 (b) of Administrative Order (AO) No. 103 dated August 31, 2004 issued by President Gloria Macapagal-Arroyo, suspending the grant of new or additional benefits to full-time officials and employees, except: 1) Collective Negotiation Agreement Incentives (CNAI) granted under the Public Sector Labor Management Council Resolution No. 4, Series of 2002, and No. 2, Series of 2003; and 2) those expressly granted by applicable presidential issuances. As a consequence of the disallowance, the recipients were each directed to refund the centennial bonus they received.

Proceedings before the COA-CAR

Petitioners Teresita de Guzman (former General Manager); Godiula Guinto, (former Internal Auditor); Viveca Villafuerte (former Administrative Manager); Wilhelmina Aquino (Senior Accountant); Renato Rondez (member of the present BWD Board of Directors); and former members of the Board of Directors, namely Moises Cating, Ramsay Colorado, Gina Romillo-Co, Emmanuel Malicdem, and Maria Rosario Lopez appealed to the COA-Cordillera Administrative Region (COA-CAR). They were joined by the BWD employees.

Petitioners and the BWD employees essentially argued that the notice of disallowance was defective because the same did not bear the supervising auditor's signature but only that of the audit team leader; the agency was not covered by the austerity measures embodied in AO 103; and, the bonus was released to the officers and employees in good faith.[7]

By Decision No. 2015-26[8] dated May 21, 2015, the COA-CAR affirmed. It noted that there was no supervising auditor

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[6] *Id.* at 94-98.

[7] *Id.* at 70-71.

[8] *Id.* at 70-75.

assigned to the BWD at the time the notice of disallowance was issued. By Memorandum dated May 9, 2012 though, the OIC Regional Director of COA-CAR authorized the audit team leaders concerned to issue notices of disallowance, sans the signature of a supervising auditor. Since BWD is a government-owned and controlled-corporation (GOCC) it is subject to the issuances emanating from the Office of the President. When the BWD Board granted the bonuses to its officers and employees, it disregarded AO 103, thus negating its claim of good faith.

Ruling of the COA En Banc

On petitioners' appeal, the COA En Banc rendered its assailed Decision No. 2017-475 dated December 28, 2017, affirming the COA-CAR's decision with modification that the passive recipients should not be required to refund the amounts they received in good faith. Only the approving/certifying/authorizing officers should refund the disallowed amount of ₱1,233,860.50.

Petitioners' Motion for Reconsideration[9] was denied per assailed Resolution[10] dated September 27, 2018.

The Present Petition

Petitioners now seek affirmative relief from the Court via Rule 64 of the Rules of Court. They essentially argue that the absence of the supervising auditor's signature on the notice of disallowance violated Section 10.2, Chapter III of the COA Rules and Regulations on Settlement of Accounts (COA-RRSA) which provides that a notice of disallowance "*shall be signed by both the Audit Team Leader and the Supervising Auditor*." Presidential Decree No. 198[11] (PD 198) granted water districts

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[9] *Id.* at 76-80.

[10] Supra note 4.

[11] DECLARING A NATIONAL POLICY FAVORING LOCAL OPERATION AND CONTROL OF WATER SYSTEMS; AUTHORIZING THE FORMATION OF LOCAL WATER DISTRICTS AND PROVIDING FOR THE GOVERNMENT AND ADMINISTRATION OF SUCH DISTRICTS; CHARTERING A NATIONAL ADMINISTRATION TO FACILITATE IMPROVEMENT OF LOCAL WATER UTILITIES; GRANTING SAID

the power to conduct their business and affairs through their respective board of directors. The BWD Board validly exercised its power under the law when it granted the centennial bonus to its officers and employees. Lastly, the centennial bonus was granted in good faith, hence, the officers who authorized their release should not be required to refund the same.[12]

The Office of the Solicitor General (OSG), through Assistant Solicitor General Gilbert Medrano and State Solicitor I Philander Turqueza, submits that ND No. 12-023-101-(09) is valid despite the fact that it bears the lone signature of the audit team leader. For at the time of its issuance, there was no supervising auditor assigned to the BWD audit team. Since water districts are GOCCs, they are under the control of the Office of the President, thus, AO 103 is binding on the BWD. Petitioners cannot invoke good faith because they were grossly negligent in granting the centennial bonus despite the clear provisions of AO 103.[13]

Issues

1) Is ND No. 12-023-101-(09) defective for not bearing the signature of a supervising auditor?

2) Is the BWD subject to the power of control of the Office of the President?

3) Are petitioners liable to refund the full disallowed amount?

Ruling

ND No. 12-023-101-(09) is not defective

On the first issue, we hold that ND No. 12-023-101-(09) is not deemed defective, let alone, without force and effect simply

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ADMINISTRATION SUCH POWERS AS ARE NECESSARY TO OPTIMIZE PUBLIC SERVICE FROM WATER UTILITY OPERATIONS, AND FOR OTHER PURPOSES.

[12] *Rollo*, pp. 3-11.

[13] *Id.* at 230-246.

because it did not bear the signature of a supervising auditor. We quote with concurrence the disquisition of the COA En Banc on this score, *viz.*:

> Although the requirement that an ND should be signed by both the ATL and the SA as provided under Section 10.2, Chapter III of the RRSA, its non-compliance is not a fatal defect that could render the ND invalid and without effect. As found by the RD, the reason for the absence of the signature of an SA was due to the non-assignment of an SA by the COA Central Office for Audit Group C. Hence, issuances such as NDs by the Audit Team for 2009 transactions and onwards were signed only by the ATL. Clearly, the ATL cannot be faulted for issuing the ND without a signature of the SA under the circumstances.[14]

By Memorandum dated May 9, 2012, the OIC Regional Director of COA-CAR expressly authorized Audit Team Leader Antonieta La Madrid to issue notices of disallowances, albeit without the signature of a supervising auditor as none was assigned to BWD at that time. Surely, the post audit functions of the COA do not depend on the availability of a supervising auditor. In other words, these audit functions are not halted or suspended simply because an officer or a member of the COA's audit team has resigned or has not been appointed in the meantime.

BWD is subject to the President's power of control

On the second issue, we rule that the disallowance of the centennial bonus under ND No. 12-023-101-(09) is in accord with law and jurisprudence. Local water districts are not private corporations but GOCCs.[15] Specifically, a water district is a GOCC with a special charter since it was created pursuant to a special law, PD 198.[16] Under the Revised Administrative Code, GOCCs are part of the Executive Department for they are attached

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[14] *Id.* at 62-63.

[15] *Engr. Borja v. People*, 576 Phil. 245, 249 (2008).

[16] *Engr. Feliciano, et al. v. Hon. Gison*, 643 Phil. 328, 339 (2010).

to the appropriate department with which they have allied functions.[17]

Being a water district, the BWD itself is a GOCC, thus, subject to the power of control of the President. In *ZCWD v. COA*,[18] it was held that the amount of per diems granted to the board of directors of local water districts is subject to the presidential power of control since local water districts are GOCCs, *viz*.:

> Although ZCWD is correct in arguing that A.O. No. 103 did not repeal R.A. No. 9286, it is, however, mistaken, that the LWUA resolution is a sufficient basis to justify the grant of per diem in the amount beyond what is allowed under A.O. No. 103. Section 3 of A.O. No. 103 instructs all GOCCs to reduce the combined total of per diems, honoraria and benefits to a maximum of ₱20,000.00.
>
> The said provision did not divest LWUA of its authority to fix the per diem of BODs of LWDs. It, nonetheless, limits the same in order to implement austerity measures, as directed by A.O. No. 103, to meet the country's fiscal targets. Under R.A. No. 9275, the LWUA is an attached agency of the Department of Public Works and Highways (DPWH). The President, exercising his power of control over the executive department, including attached agencies, may limit the authority of the LWUA over the amounts of per diem it may allow.

Undeniably, AO 103 governs the manner by which local water districts like the BWD manage and handle their finances, thus:

> SEC. 3. All NGAs, SUCs, GOCCs, GFIs and OGCEs, whether exempt from the Salary Standardization Law or not, are hereby directed to:

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[17] Revised Administrative Code: SECTION 42. Government-Owned or Controlled Corporations. — Government-owned or controlled corporations shall be attached to the appropriate department with which they have allied functions, as hereinafter provided, or as may be provided by executive order, for policy and program coordination and for general supervision provided in pertinent provisions of this Code.

In order to fully protect the interests of the government in government-owned or controlled corporations, at least one-third (1/3) of the members of the Boards of such corporations should either be a Secretary, or Undersecretary, or Assistant Secretary.

[18] 779 Phil. 225 (2016).

x x x x x x x x x

(b) Suspend the grant of new or additional benefits to full-time officials and employees and officials, except for (i) Collective Negotiation Agreement (CNA) Incentives which are agreed to be given in strict compliance with the provisions of the Public Sector Labor-Management Council Resolutions No. 04, s. 2002 and No. 2, s. 2003, and (ii) those expressly provided by presidential issuance;

x x x x x x x x x

Here, the commemorative or centennial bonus granted to the BWD officers and employees on the occasion of the agency's 100th anniversary of Baguio City is neither a CNA incentive nor authorized by a presidential issuance. Its grant, therefore, was devoid of any legal basis.

BWD's certifying and approving officers and recipient employees are liable to refund the disapproved amount

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 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.

4. 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

5. 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***,[19] the Court *En Banc*, 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 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.

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

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.

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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."

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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 BWD certifying and approving officers who authorized the payment of the disallowed centennial bonus, and the BWD employees, who received the same, are liable to return the same.

A. Liability of the BWD's certifying and approving officers

COA identified the BWD's certifying and approving officers and their respective roles in the release of the centennial bonus, *viz.*:

Name	Position/ Designation	Nature of Participation
Teresita P. De Guzman	General Manager	Approved and received payment
Godiula T. Guinto	Internal Auditor	Pre-audited the disbursement voucher and received payment
Wilhelmina A. Aquino	Senior Accountant	Certified the supporting documents are complete and proper, and received payment
Viveca A. Villafuerte	Administrative Division Manager	Certified that the expense was necessary, lawful, and incurred under her supervision; received payment
Moises P.Cating Renato S. Rondez Gina Romillo-Co Ramsey M. Colorado	Members of the BOD	Approved Board Resolution No. 049-2009[20]

[20] *Rollo*, p. 61.

Maria Rosario R. Lopez Emmanuel B. Malicdem		

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.[21] 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.[22]

Here, there is no showing, as none was shown that the BWD approving officers acted with malice and bad faith in approving the release of the centennial bonus to commemorate the City of Baguio's Centennial anniversary. Nevertheless, we hold that the certifying and approving officers are guilty of gross negligence. AO 103 clearly ordains that the grant of new or additional benefits to full-time officials and employees has been suspended except for CNA Incentives and those expressly provided by presidential issuances. Evidently, the grant of centennial bonus does not fall within the exception, hence, it belongs to the category of suspended benefits. Consequently,

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

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

pursuant to Section 43, Chapter V, Book VI of the 1987 Administrative Code and ***Madera***, the liability of the certifying and approving officers is joint and several for the disallowed amounts received by the individual employees.

ii. Liability of the BWD 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)

None of these exceptions are present here. First, the centennial bonus cannot be considered to have been given in consideration of services rendered or in the nature of performance incentives, productivity pay, or merit increases. Second, a monetary grant

that contravenes the unambiguous letter of the law cannot be forgone on social justice considerations. Liability arises and should be enforced when there is disregard for the basic principle of statutory construction that when the law was clear, there should be no room for interpretation but only application.[23]

Verily, therefore, the employees must be held liable to return the amounts that they had received. As earlier discussed, the approving officers of BWD, herein petitioners, are jointly and severally liable for the disallowed amounts received by the individual employees.

ACCORDINGLY, the assailed Decision No. 2017-475 dated December 28, 2017, and Resolution dated September 27, 2018 of the Commission on Audit — Commission Proper are **AFFIRMED** with **MODIFICATION**, *viz.*:

1. The Baguio Water District employees are individually liable to return the amounts they received as centennial bonus; and

2. Petitioners, as certifying and approving officers of the Baguio Water District who took part in the approval of Resolution (BR) No. 046-2009 dated November 20, 2009, are jointly and solidarily liable for the return of the disallowed centennial bonus.

SO ORDERED.

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

Leonen, J., on official leave.

Baltazar-Padilla, J., on leave.

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[23] See *MWSS v. COA*, 821 Phil. 117, 141 (2017).

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tenant or agricultural lessee; (2) that the subject matter of the relationship is an agricultural land; (3) that there is consent between the parties to the relationship; 4) that the purpose of the relationship is to bring about agricultural production; (5) that there is personal cultivation on the part of the tenant or agricultural lessee; and (6) that the harvest is shared between the landowner and the tenant or agricultural lessee. (*Id.*)

Jurisdiction of the Department of Agrarian Reform (DAR) Secretary and the Department of Agrarian Reform Adjudication Board (DARAB) — Cases involving the cancellation of CLOA in the implementation of the agrarian reform program and other agrarian laws and regulations between parties who are not agricultural tenants or lessees are cognizable by the DAR secretary. (Heirs of Teofilo Bastida, Represented by Criselda Bernardo *v.* Heirs of Angel Fernandez, Namely, Fernando A. Fernandez Married to Gemma Napalcruz, *et al.;* G.R. No. 204420; Oct. 7, 2020) p. 531

— Disputes involving properties exempt from CARP coverage and not agrarian in nature are cognizable by the DAR secretary. (Philcontrust Resources, Inc. [Formerly Known as Inter-Asia Land Development Co.] *v.* Atty. Aquino, in his Capacity as the Register of Deeds of Tagaytay City, *et al.;* G.R. No. 214714; Oct. 7, 2020) p. 616

— In the absence of an agrarian dispute between the parties, the jurisdiction over a petition for cancellation of registered CLOA (Certificate of Land Ownership Award) lies with the DAR secretary. (*Id.*)

— Issues of lack of notice and non-payment of just compensation are cognizable by the DAR secretary. (*Id.*)

— The respective jurisdiction of the DARAB and the DAR secretary to resolve petitions for cancellation of CLOAs has remained unchanged. (*Id.*)

— For the Department of Agrarian Reform Adjudication Board (DARAB) to have jurisdiction over a petition for cancellation of registered Certificate of Land Ownership

BASES CONVERSION AND DEVELOPMENT AUTHORITY (BCDA)

— The Bases Conversion and Development Authority (BCDA) is not a corporation, either as a stock or nonstock corporation, but a government instrumentality with corporate powers (GICP) or government corporate entity (GCE), vested or endowed with the powers of a corporation, including the power to sue and be sued in its corporate name and the right to own, hold and administer the lands that have been transferred to it, with operational autonomy, and part of the national government machinery although not integrated within the departmental framework. (Republic *v.* Heirs of Ma. Teresita A. Bernabe, *et al.;* G.R. No. 237663; Oct. 6, 2020) p. 394

— The BCDA, being the trustee of the CAB LANDS, through its authorized signatory, can execute the verification and certification against forum shopping; requirements on the verification and certification against forum shopping, substantially complied with; relaxation of the rule, proper due to special circumstances and jurisprudential significance of the case at bar and in the interest of justice. (*Id.*)

— The BCDA is a mere trustee of the Republic; the transfer of the military reservations and other properties, *i.e.,* Clark Air Base proper and portions of the Clark reverted base lands, (CAB LANDS) from the Clark Special Economic Zone (CSEZ) to the BCDA was not meant to transfer the beneficial ownership of these assets from the Republic to the BCDA, but merely to establish the BCDA as the governing body of the CSEZ. (*Id.*)

— The Republic, being the beneficial owner of the military reservations and their extensions, including the cab lands and camp Wallace, is the real party-in-interest and not the BCDA, in all cases involving the title to and ownership thereof; the BCDA cannot dispose of the CAB LANDS; its executive head cannot sign the deed of conveyance on behalf of the Republic; only the President of the

improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceedings were *ex parte* or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or where public interest is involved. (ABS-CBN Corporation *v.* Concepcion; G.R. No. 230576; Oct. 5, 2020) p. 71

CHILD ABUSE

Essential Elements of the Offense — Case law qualifies that for one to be held criminally liable for the commission of acts of Child Abuse under Section 10 (a), Article VI of RA 7610, "the prosecution [must] prove a specific intent to debase, degrade, or demean the intrinsic worth of the child; otherwise, the accused cannot be convicted [for the said offense]." The foregoing requirement was first established in the case of *Bongalon v. People* (*Bongalon*), where it was held that the laying of hands against a child, *when done in the spur of the moment and in anger*, cannot be deemed as an act of child abuse under Section 10 (a) of RA 7610, *absent the essential element of intent to debase, degrade, or demean the intrinsic worth and dignity of the child* as a human being on the part of the offender. (Talocod *v.* People; G.R. No. 250671; Oct. 7, 2020) p. 793

— It is imperative for the prosecution to prove a specific intent to debase, degrade, or demean the intrinsic worth of the child; debasement is defined as the act of reducing the value, quality, or purity of something; degradation, on the other hand, is a lessening of a person's or thing's character or quality; while demean means to lower in status, condition, reputation, or character; such intention can be inferred from the manner in which the offender committed the act complained of, as when the offender's use of force against the child was calculated, violent, excessive, or done without any provocation. (*Id.*)

CIVIL PROCEDURE

to merely reproduce or reiterate the allegations of the requesting party's pleading but it should set forth relevant evidentiary matters of fact described in the request, whose purpose is to establish said party's cause of action or defense. (*Id.*)

CLERKS OF COURT

Duties — The duties of the clerk of court are to receive collections in their respective courts, to issue the proper receipt therefor and maintain a separate cash book. (Platil, Presiding Judge, Municipal Trial Court, Mainit, Surigao del Norte *v.* Mondano, Clerk of Court II, Municipal Trial Court, Mainit, Surigao del Norte; A.M. No. P-20-4062; Oct. 13, 2020) p. 1025

Gross Insubordination — Repeated failure to comply with a directive of the Office of the Court Administrator (OCA) constitutes gross insubordination. (Platil, Presiding Judge, Municipal Trial Court, Mainit, Surigao del Norte *v.* Mondano, Clerk of Court II, Municipal Trial Court, Mainit, Surigao del Norte; A.M. No. P-20-4062; Oct. 13, 2020) p. 1025

Habitual Absenteeism — Habitual absenteeism is considered prejudicial to the best interest of public service. (Platil, Presiding Judge, Municipal Trial Court, Mainit, Surigao del Norte *v.* Mondano, Clerk of Court II, Municipal Trial Court, Mainit, Surigao del Norte; A.M. No. P-20-4062; Oct. 13, 2020) p. 1025

COMMISSION ON AUDIT (COA)

Notice of Disallowance — A notice of disallowance issued without the signature of the supervising auditor is not deemed defective when the reason for the absence of the supervising auditor's signature is due to its non-assignment. (De Guzman, in her capacity as former General Manager, et al. *v.* Commission on Audit; G.R. No. 245274; Oct. 13, 2020) p. 1067

Powers — COA's power and authority to disallow upon audit can only be exercised over transactions deemed as

committed during a prior term, since his re-election to office operates as a condonation of the officer's previous misconduct to the extent of cutting off the right to remove him therefor. (*Id.*)

— The condonation doctrine still applies even if the body politic that previously elected the respondent public officer is merely a part of, or is not exactly the same as, that which elected that public officer to another office. (*Id.*)

— The proper interpretation is that the condonation is manifested through re-election, and therefore, the defense of condonation is no longer available if the re-election happens after April 12, 2016. (*Id.*)

— What is clear in the rationale behind the condonation doctrine is that primary consideration is given to the right of the electorate to elect officers and for the courts not to overrule the will of the people, and that a public officer should never be removed for acts done prior to his present term of office; the word "same body politic," therefore, as mentioned in *Giron, Almario-Templonuevo*, and *Vergara* which, to note, are all cases decided after *Carpio Morales* should not be applied literally, but should be construed by taking into account the spirit and intent of the condonation doctrine prior to its abandonment in *Carpio Morales*. (*Id.*)

CONFLICT OF LAWS

National Laws Vis-à-vis Customary Laws — Customary laws and practices of the [Indigenous Peoples] IPs may be invoked provided that they are *not* in conflict with the legal system of the country; there must be legal harmony between the national laws and customary laws and practices in order for the latter to be viable and valid and must not undermine the application of legislative enactments, including penal laws. (Malingin [Lemuel Talingting], Tribal Chieftain, Higaonon-Sugbuanon Tribe *v.* PO3 Sandagan, *et al.;* G.R. No. 240056; Oct. 12, 2020) p. 922

CRIMINAL PROCEDURE

Joinder of Issues in Criminal Cases — In a criminal case, "there is no need to file a responsive pleading since the accused is, at the onset, presumed innocent, and thus it is the prosecution which has the burden of proving his guilt beyond reasonable doubt"; in other words, the entry of plea during arraignment signals joinder of issues in a criminal action. (People *v.* Ang, *et al.*; G.R. No. 231854; Oct. 6, 2020) p. 277

Parties in Criminal Cases — In criminal actions, the only parties are the State/People of the Philippines (as represented by the Office of the Solicitor General or agencies authorized to prosecute like the Office of the Ombudsman and the Department of Justice) and the accused. (People *v.* Ang, *et al.*; G.R. No. 231854; Oct. 6, 2020) p. 277

— The state is the real party-in-interest in criminal proceedings, but being a juridical entity, it lacks sensory perception making it incompetent to make an admission of fact. (*Id.*)

Pre-trial — It is during the pre-trial that parties may stipulate facts they are willing to admit; even if the Court were to carve out an exception by permitting only those matters which have no relevant or material relations to the offense to be discoverable through requests for admission, the same discovery facility would serve no practical and useful purpose tending only to delay the proceedings. (People *v.* Ang, *et al.*; G.R. No. 231854; Oct. 6, 2020) p. 277

DAMAGES

Civil Indemnity Ex Delicto — Jurisprudence has settled that an award of civil indemnity *ex delicto* is mandatory upon a finding of the fact of rape, while moral damages may be automatically awarded in rape cases without need of proof of mental and physical suffering; the award of exemplary damages is also proper to set a public example, to serve as deterrent to elders who abuse and

— The marking, photographing, and inventory of the seized items must be done immediately after seizure and confiscation of the items in the presence of three witnesses- a representative from the media, the Department of Justice (DOJ), and any elected official; the purpose of this rule is to preserve the integrity and evidentiary value of the seized dangerous drugs in order to fully remove doubts as to its identity. (People *v.* Baluyot; G.R. No. 243390; Oct. 5, 2020) p. 173

— The prosecution must satisfactorily establish the movement and custody of the seized drug through the following links: (1) the confiscation and marking of the specimen seized from the accused by the apprehending officer; (2) the turnover of the seized item by the apprehending officer to the investigating officer; (3) the investigating officer's turnover of the specimen to the forensic chemist for examination; and, (4) the submission of the item by the forensic chemist to the court. (*Id.*)

— To establish the identity of the dangerous drugs with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the offense; the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the seized drugs. (People *v.* Dejos; G.R. No. 237423; Oct. 12, 2020) p. 893

***Illegal Possession of Dangerous Drugs* —** Even if there was an agreement of sale of illegal drugs between the parties, the offense committed is only illegal possession of dangerous drugs if the accused was not able to receive the consideration of the sale due to his sudden arrest. (People *v.* Dejos; G.R. No. 237423; Oct. 12, 2020) p. 893

— The elements of illegal possession of dangerous drugs are: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug. (*Id.*)

appears that the employer and the employee dealt with each other on more or less equal terms with no moral dominance exercised by the former or the latter. (*Id.*)

— A fixed-term employment, while not expressly mentioned in the Labor Code, has been recognized by this Court as a type of employment embodied in a contract specifying that the services of the employee shall be engaged only for a definite period, the termination of which occurs upon the expiration of said period irrespective of the existence of just cause and regardless of the activity the employee is called upon to perform; it has been held that the fixed-term character of employment essentially refers to the period agreed upon between the employer and the employee; the decisive determinant in term employment should not be the activities that the employee is called upon to perform, but the day certain agreed upon by the parties for the commencement and termination of their employment relationship; specification of the date of termination is significant because an employee's employment shall cease upon termination date without need of notice. (*Id.*)

— The practice of utilizing fixed-term contracts in the industry does not mean that such contracts, as a matter of course, are valid and compliant with labor laws; one's employment should not be left entirely to the whims of the employer for at stake is not only the employee's position or tenure, but also his means of livelihood. (*Id.*)

— The service agreements executed between the employees and employer cannot be regarded as true fixed-term employment contracts, where the same specify only the effectivity dates of the employees' engagement, but not the periods of their expiration; mere presentation of the service agreements which do not express the terms of the employee's engagement does not prove that the employee is a mere fixed-term employee. (*Id.*)

(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, solidarity 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. (Social Security System *v.* Commission on Audit; G.R. No. 244336; Oct. 6, 2020) p. 439

Recipients' Liability to Return Disallowed Amounts — *Madera* decreed, however, that restitution may be excused in the following instances: 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. (Social Security System *v.* Commission on Audit; G.R. No. 244336; Oct. 6, 2020) p. 439

ILLEGAL POSSESSION OF FIREARMS, AMMUNITION, OR EXPLOSIVES

Elements — An accused cannot be held liable for the said crimes when the confiscated firearm and ammunition are held inadmissible in evidence; to secure a conviction for Illegal Possession of Explosives and Illegal Possession of Firearms and Ammunition, the elements for the offenses are as follows: (*a*) the existence of the firearm, ammunition or explosive; (b) ownership or possession of the firearm, ammunition or explosive; and (c) lack of license to own

for a fee to the complaining witnesses to warrant his conviction for illegal recruitment. (*Id.*)

— Under R.A. No. 8042, a non-licensee or non-holder of authority is liable for Illegal Recruitment when the following elements concur: (1) the offender has no valid license or authority required by law to enable him to lawfully engage in recruitment and placement of workers; and (2) the offender undertakes any of the activities within the meaning of recruitment and placement under Article 13(b) of the Labor Code, or any of the prohibited practices enumerated under Article 34 of the Labor Code (now Section 6 of R.A. No. 8042). (*Id.*)

INSTIGATION

— Instigation presupposes that the criminal intent to commit an offense originated from the inducer and not the accused who had no intention to commit the crime and would not have committed it were it not for the initiatives by the inducer; the law enforcers act as active co-principals; instigation leads to the acquittal of the accused, while entrapment does not bar prosecution and conviction. (People *v.* San Miguel; G.R. No. 247956; Oct. 7, 2020) p. 777

INTEREST

Legal Rate — When the parties' stipulated interest rate is struck down for being excessive and unconscionable, the legal rate of interest prevailing at the time the agreement was entered into will be applied by the Court. (Decena, *et al. v.* Asset Pool A (SPV-AMC); G.R. No. 239418; Oct. 12, 2020) p. 906

Types — There are two types of interest, namely: (1) monetary interest, which is the compensation fixed by the parties for the use or forbearance of money; and (2) compensatory interest, which is that imposed by law or by the courts as penalty or indemnity for damages; accordingly, the right to recover interest rates arises either by virtue of a contract or monetary interest, or as damages for delay or failure to pay the principal loan which is demanded

success of either of the parties, or an interest against both; or when he or she is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or an officer thereof. (*Id.*)

JUDGMENTS

Doctrine of Stare Decisis — Under the doctrine of *stare decisis*, once a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases where the facts are substantially the same, even though the parties may be different; it proceeds from the first principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike; thus, where the same questions relating to the same event have been put forward by parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue. (ABS-CBN Corporation *v.* Concepcion; G.R. No. 230576; Oct. 5, 2020) p. 71

Immutability of Judgments — It is a hornbook rule that once a judgment has become final and executory, it may no longer be modified in any respect, even if the modification is meant to correct an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land, as what remains to be done is the purely ministerial enforcement or execution of the judgment; exceptions: like any other rule, the doctrine of immutability of judgments admits of certain exceptions, to wit: (1) the correction of clerical errors, (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party, (3) void judgments, and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable. (Heirs of Felicisimo Gabule, Namely: Elishama Gabule-Vicera, *et al. v.* Jumuad, Substituted for by His Heirs, Namely: Susano, Isidra, *et al.*; G.R. No. 211755; Oct. 7, 2020) p. 575

employee; an independent contractor enjoys independence and freedom from the control and supervision of his principal; this is opposed to an employee who is subject to the employer's power to control the means and methods by which the employee's work is to be performed and accomplished. (ABS-CBN Corporation *v.* Concepcion; G.R. No. 230576; Oct. 5, 2020) p. 71

LAND REGISTRATION

Tax Declarations or Receipts — Tax receipts are good *indicia* of possession in the concept of an owner, but it does not follow that belated declaration of the same for tax purposes negates the fact of possession. (Republic *v.* Caraig; G.R. No. 197389; Oct. 12, 2020) p. 827

MANDAMUS

Requirements for the Issuance of a Writ of Mandamus — For a writ of *mandamus* to be issued, there must be a concurrence of petitioner's legal right and respondent's neglect to do a ministerial duty mandated by law. (Malingin (Lemuel Talingting), Tribal Chieftain, Higaonon-Sugbuanon Tribe *v.* PO3 Sandagan, *et al.;* G.R. No. 240056; Oct. 12, 2020) p. 922

— Petition for *mandamus* is an appropriate remedy when any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station. (*Id.*)

MINING

Mining Dispute — A mining dispute is a dispute involving (a) rights to mining areas, (b) mineral agreements, FTAAs, or permits, and (c) surface owners, occupants and claimholders/concessionaires. (Republic of the Philippines, Represented by the Philippine Mining Development Corporation *v.* Apex Mining Company Inc.; G.R. No. 220828; Oct. 7, 2020) p. 645

Preferential Right to Enter into Mineral Agreement — Areas covered by valid and existing mining rights with mineral

NOTARIAL PRACTICE

Duties of Notaries Public — In keeping with the faithful observance of his duties, a notary public shall keep, maintain, protect and provide for lawful inspection, a chronological official notarial register of notarial acts consisting of a permanently bound book with numbered pages. (Orenia III *v.* Atty. Gonzales; A.C. No. 12766; Oct. 7, 2020) p. 520

— The duties of a notary public are dictated by public policy; a notary public is mandated to discharge with fidelity the duties of his office; having taken a solemn oath under the Code of Professional Responsibility, a lawyer commissioned as a notary public has a responsibility to faithfully observe the rules governing notarial practice. (Orenia III *v.* Atty. Gonzales; A.C. No. 12766; Oct. 7, 2020) p. 520

— The principal function of a notary public is to authenticate documents; when a notary public certifies to the due execution and delivery of the document under his hand and seal, he gives the document the force of evidence; given the evidentiary value accorded to notarized documents, the failure of the notary public to record the document in his notarial register corresponds to falsely making it appear that the document was notarized when, in fact, it was not; it cannot be overemphasized that notaries public are urged to observe with utmost care and utmost fidelity the basic requirements in the performance of their duties; otherwise, the confidence of the public in the integrity of notarized deeds will be undermined. (Re: Order Dated December 5, 2017 in Adm. Case No. NP-008-17 (Luis Alfonso R. Benedicto *v.* Atty. John Mark Tamaño) Issued by the Executive Judge, Regional Trial Court, Bacolod City *v.* Atty. Tamaño; A.C. No. 12274; Oct. 7, 2020) p. 506

Effects of Notarization — Notarization is invested with substantive public interest, for it converts a private document into a public one, making it admissible in evidence without further proof of its authenticity and

OBLIGATIONS

PRESCRIPTION

Prescription of Actions — Prescription of actions is interrupted when (1) they are filed before the court, (2) when there is a written extrajudicial demand by the creditors, or (3) when there is any written acknowledgment of the debt by the debtor. (Alba, joined by her Husband, Rudolfo D. Alba *v.* Arollado, joined by her Husband, Pedro Arollado, Jr.; G.R. No. 237140; Oct. 5, 2020) p. 135

— A contract that is not evidenced by a written agreement may be enforced within six years; the six-year prescriptive period starts to run from the date of the breach of contract for non-payment, in this case, from the dishonor of the checks. (*Id.*)

PRESUMPTIONS

Presumption of Regularity in the Performance of Official Duties — In the absence of an adequate showing of bad faith, this presumption prevails over the accused's self-serving and uncorroborated denial and alibi. (People *v.* Dejos; G.R. No. 237423; Oct. 12, 2020) p. 893

— There is a presumption of regularity in the performance of a doctor's function when issuing a medico-legal report. (People *v.* Tuyor; G.R. No. 241780; Oct. 12, 2020) p. 944

— 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. (Social Security System *v.* Commission on Audit; G.R. No. 244336; Oct. 6, 2020)

PROPERTY REGISTRATION

Registration of Alienable and Disposable Land — No less than the Constitution prescribes under the Regalian

PUBLIC OFFICERS AND EMPLOYEES

Mistakes of Public Officials — Mistakes committed by a public official are not actionable absent any clear showing that they were motivated by malice or gross negligence amounting to bad faith. (De Guzman, in her capacity as former General Manager, *et al. v.* Commission on Audit; G.R. No. 245274; Oct. 13, 2020) p. 1067

RAPE

Circumstantial Evidence to Prove Rape — Direct evidence, such as the testimony of the victim, is not the only means of proving rape beyond reasonable doubt or is not indispensable to criminal prosecutions as a contrary rule would render convictions virtually impossible given that most crimes, by their nature, are purposely committed in seclusion and away from an eyewitness; if for some reason the complainant fails or refuses to testify, as in this case, then the court must consider the adequacy of the circumstantial evidence established by the prosecution provided that (*a*) there was more than one circumstance; (*b*) the facts from which the inferences were derived were proved; and (*c*) the combination of all the circumstances was such as to produce a conviction beyond reasonable doubt; it is absolutely necessary, however, that the unbroken chain of the established circumstances led to no other logical conclusion except the appellant's guilt. (People *v.* Loma *alyas* "Putol;" G.R. No. 236544; Oct. 5, 2020) p. 117

Elements of Rape — To sustain a conviction for rape, the elements necessary are: (1) that the accused had carnal knowledge of the victim; and (2) that said act was accomplished (a) through the use of force or intimidation, (b) when the victim is deprived of reason or otherwise unconscious, (c) by means of fraudulent machination or grave abuse of authority, or (d) when the victim is under 12 years of age or is demented. (People *v.* XXX; G.R. No. 232308; Oct. 7, 2020) p. 734

— *Res judicata* does not require absolute identity of the causes of action. (*Id.*)

— *Res judicata* sets in when the prior judgment on the merits rendered by a competent court has attained finality. (*Id.*)

RIGHTS OF THE ACCUSED

Presumption of Innocence — The presumption that the accused is innocent unless his guilt is proven beyond reasonable doubt can be overthrown if all the elements of the crime charged are deemed present. (XXX *v.* People; G.R. No. 243049; Oct. 5, 2020) p. 161

Right Against Self-Incrimination — The use of physical or moral compulsion to extort communications from the accused is proscribed. (People *v.* Ang, *et al.*; G.R. No. 231854; Oct. 6, 2020) p. 277

— Any compulsion on the part of the accused to answer all matters in a request for admission violates his/her right against self-incrimination; it should be noted that the constitutional privilege against self-incrimination applies to evidence that is communicative in essence taken under duress, not where the evidence sought to be excluded is part of object evidence; obviously, a response to any query is communicative in nature; being communicative, any compulsion on the part of the accused to answer all the matters in a request or admission clearly violates his or her right against self-incrimination; any compulsory process which requires the accused to act in a way which requires the application of intelligence and attention (as opposed to a mechanical act) will necessarily run counter to such constitutional right. (*Id.*)

ROBBERY WITH HOMICIDE

— It is immaterial that the death would supervene by mere accident; or that the victim of homicide is other than the victim of robbery, or that two or more persons are killed or that aside from the homicide, rape, intentional mutilation, or usurpation of authority, is committed by

accorded their due weight because labor determinations should not only be *secundum rationem* but also *secundum caritatem*. (ABS-CBN Corporation *v.* Concepcion; G.R. No. 230576; Oct. 5, 2020) p. 71

SALES

Earnest Money — An earnest money is part of the purchase price and is not forfeited when the transaction does not materialize, especially in the absence of a clear and express agreement thereon, and hence, it should be returned. (Aguinaldo *v.* Atty. Asuncion, Jr.; A.C. No. 12086; Oct. 7, 2020) p. 496

Sale of Real Estate by Installment — Realty Installment Buyer Act (R.A. No. 6552) governs all kinds of sales of real estate by installment except industrial lots, commercial buildings, and sales to tenants under R.A. No. 3844, as amended by R.A. No. 6389; the right of the seller to cancel the contract upon failure of the buyer to pay in installments the purchase price of the real estate; provided that the seller: (1) gives a grace period of not less than 60 days from the date of default; and (2) sent a notarized notice of cancellation or demand for rescission of the Contract to Sell upon the expiration of the grace period without payment. (Spouses Bayudan *v.* Dacayan; G.R. No. 246836; Oct. 7, 2020) p. 768

SEAFARERS

Disability Benefits — Before a seafarer may claim permanent total disability benefits from his employer, it must be first established that the latter's company designated physician failed to issue a declaration as to his fitness to engage in sea-duty or disability grading within the 120-day period or 240-day extension provided for by law. (Philippine Transmarine Carriers, Inc., *et al. v.* San Juan; G.R. No. 207511; Oct. 5, 2020) p. 41

— A seafarer has no basis to claim total and permanent disability benefits, where he was declared fit to resume sea duties by the company-designated physicians within

the 120-day period provided under the law; thus, a seafarer may pursue an action for total and permanent disability benefits if: (a) the company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lapse of the 120-day period and there is no indication that further medical treatment would address his temporary total disability, hence, justify an extension of the period to 240 days; (b) 240 days had lapsed without any certification being issued by the company-designated physician; (c) the company-designated physician declared that he is fit for sea duty within the 120-day or 240-day period, as the case may be, but his physician of choice and the doctor chosen under Section 20-B(3) of the POEA-SEC are of a contrary opinion. (*Id.*)

Findings or Assessment of Company-Designated Physicians — The findings of the company-designated physicians who assess the illness of the seafarer based on a number of tests and medical evaluation done on him deserve to be given greater evidentiary weight than the findings of the physician designated by the seafarer which were based on a single medical report examination of the seafarer; the certification issued by the seafarer's own physician cannot be the basis for his claim for permanent and total disability benefits where the same merely provides that the seafarer is unfit to resume sea duties, but did not state the disability grading as required by the POEA-SEC. (Philippine Transmarine Carriers, Inc., *et al. v.* San Juan; G.R. No. 207511; Oct. 5, 2020) p. 41

Referral to a Third Doctor — In case of disagreement between the findings of the seafarer's physician and that of the company-designated physicians, the seafarer is duty-bound to actively request from the company that the conflicting assessment be referred to a third doctor; upon notification, the company carries the burden of initiating the process for the referral to a third doctor commonly agreed between the parties; the seafarer seeking to impugn the certification that the law itself recognizes as prevailing, bears the

STATE

Liability for Tortious Acts of Special Agents — The state in the performance of its governmental functions is liable only for the tortious acts of its special agents. (Bank of the Philippine Islands *v.* Central Bank of the Philippines (now Bangko Sentral ng Pilipinas), *et al.*; G.R. No. 197593; Oct. 12, 2020) p. 849

Non-applicability of the Statute of Limitations to the State — It is a time-honored principle that the statute of limitations or the lapse of time does not run against the State. (Republic of the Philippines, Represented by the Philippine Mining Development Corporation *v.* Apex Mining Company Inc.; G.R. No. 220828; Oct. 7, 2020) p. 645

Prosecution of Offenses as an Exercise of Police Power — In prosecuting a criminal case, the State, through the public prosecutor, exercises its police power and punishes those who are found guilty, through the determination by the court of law; undeniably, criminal prosecution and the court's adjudication pertain to discretionary duties, not ministerial functions. (Malingin (Lemuel Talingting), Tribal Chieftain, Higaonon-Sugbuanon Tribe *v.* PO3 Sandagan, *et al.;* G.R. No. 240056; Oct. 12, 2020) p. 922

State Immunity — One of the generally accepted principles of international law, which we have adopted in our Constitution under Article XVI, Section 3 is the principle that a state may not be sued without its consent, which principle is also embodied in the 1935 and 1973 Constitutions; state immunity may be waived expressly or impliedly; express consent may be embodied in a general or special law; on the other hand, consent is implied when the state enters into a contract or it itself commences litigation. (Bank of the Philippine Islands *v.* Central Bank of the Philippines (now Bangko Sentral ng Pilipinas), *et al.*; G.R. No. 197593; Oct. 12, 2020) p. 849

Suability of a Government Agency — The question of a Government agency's suability depends on whether it is

injury to pets or to unlawful or unwanted deprivation of the right to custody and/or visitation of common children. (XXX *v.* People; G.R. No. 243049; Oct. 5, 2020) p. 161

— To establish psychological violence as an element of the crime, it is necessary to show proof of commission of any of the acts enumerated in Section 5(i) or similar such acts; and to establish mental or emotional anguish, it is necessary to present the testimony of the victim as such experiences are personal to this party. (*Id.*)

Measures Against Violators — The perpetrator must be required to undergo psychological counseling or psychiatric treatment in addition to imprisonment and fine. (XXX *v.* People; G.R. No. 243049; Oct. 5, 2020) p. 161

WITNESSES

Credibility of Testimony — Evidence, to be believed, must proceed not only from the mouth of a credible witness, but must be credible in itself. (People *v.* Maghuyop; G.R. No. 242942; Oct. 5, 2020) p. 147

Inconsistencies in Testimonies — [T]he alleged inconsistency or improbability in the victim's testimony pertaining to whether appellant's father was also inside the house when she got raped or whether there were also many people nearby since it was then the feast day of the barangay refer to trivial matters which do not affect the credibility of the victim's testimony. For another, the proximity of a number of people at the rape scene does not disprove the commission of rape. For lust is no respecter of time and place. Rape can be committed anywhere, even in places where people congregate. (People *v.* XXX; G.R. No. 232308; Oct. 7, 2020) p. 734

Testimonies of Child Victims — Testimonies of child victims are given full weight and credit; the same cannot be easily dismissed as mere concoction especially when it pertained to a young girl's story on how her own relative had sexually ravished her, more so because the rape story here is supported no less by physical evidence. (People *v.* XXX; G.R. No. 232308; Oct. 7, 2020) p. 734

CITATION

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I. LOCAL CASES

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II. FOREIGN CASES