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CASES

DECIDED BY THE

SUPREME COURT

OF THE

PHILIPPINES

FOR THE PERIOD

DECEMBER 1 - 7, 2020

SUPREME COURT OF THE PHILIPPINES
(as of June 2023)

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HON. RAMON PAUL L. HERNANDO, Associate Justice
HON. AMY C. LAZARO-JAVIER, Associate Justice
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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[G.R. No. 193143. December 1, 2020]

EMERITA A. COLLADO, SUPPLY OFFICER III, PHILIPPINE SCIENCE HIGH SCHOOL, DILIMAN CAMPUS, QUEZON CITY, *Petitioner*, *v.* **HON. REYNALDO A. VILLAR, HON. JUANITO G. ESPINO, JR. [COMMISSIONERS, COMMISSION ON AUDIT] and THE DIRECTOR, LEGAL SERVICES SECTOR, ADJUDICATION AND LEGAL SERVICES OFFICE, COMMISSION ON AUDIT**, *Respondents*.

APPEARANCES OF COUNSEL

The Solicitor General for respondents.

D E C I S I O N

CAGUIOA, *J.*:

The Case

This is a Petition for *Certiorari*[1] (Petition) under Rule 64 in relation to Rule 65 of the Rules of Court (Rules)seeking to set aside the following issuances of the Commission on Audit (COA):

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

(i) COA Decision No. 2008-048[2] dated May 6, 2008 (2008 COA Decision) rendered by the COA Commission Proper (COA-CP), and (ii) the Letter[3] dated July 16, 2010 (questioned Letter) issued by the COA Director of Legal Services Sector-Adjudication and Legal Services (LSS-ALS).

The instant dispute was precipitated by Notices of Disallowance Nos. 98-012-101-(89),[4] 98-015-101-(90),[5] and 98-013-101-(91)[6] (Notices of Disallowance), which uniformly found petitioner Emerita A. Collado (Collado) severally and solidarily liable with several others for erroneously computing liquidated damages arising from the construction of the Philippine Science High School (PSHS)-Mindanao Campus Building Complex. The Notices of Disallowance were eventually upheld by the COA-CP in COA Decision No. 2002-282[7] dated December 17, 2002 (2002 COA Decision) and later affirmed in the 2008 COA Decision.

Meanwhile, the questioned Letter affirmed with finality the LSS-ALS' finding that Collado's Letter[8] dated June 10, 2008 was a prohibited pleading for being a second motion for reconsideration pursuant to Section 13, Rule IX of the 1997 Revised Rules of Procedure of the COA (1997 COA Rules).

The Facts

The material facts are undisputed. As gathered from the records, the antecedents follow.

On December 27, 1988, a contract was entered into by and between the PSHS, Diliman Campus, Quezon City and N.C. Roxas, Inc., for

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[2] Id. at 24-28.

[3] Id. at 29-30.

[4] Id. at 47.

[5] Id. at 48.

[6] Id. at 49-50.

[7] Id. at 86-92.

[8] Id. at 31-36.

the construction of the PSHS-Mindanao Campus Building Complex at Mintal, Davao City in the amount of ₱9,064,799.76 which was to be completed within 240 calendar days. Due to certain circumstances beyond its control, the contractor requested an extension of the contract time, which the Department of Science and Technology (DOST)-Wide Infrastructure Committee granted for 50 days from September 12, 1989, the original completion date, to November 1, 1989 but with a notification and reminder to the contractor that even considering the grant of extension, the completion date of the project had elapsed and the same was already subject to liquidated damages.

The then PSHS Auditor, in her letter dated July 23, 1990, informed the Director, Technical Services Office, [the COA], that even with the granting of the extension of the contract time, the contractor had already incurred a negative slippage of 63.58% as of February 15, 1990. However, the DOST-Wide Infrastructure Committee decided to continue with the project as it would entail a longer time to finish the project if they rescind[ed] the contract and conducted another bidding.

On July 31, 1990, a Supplemental Contract was entered into by and between the PSHS and N.C. Roxas, Inc. for the completion of the Academic Building (Phase I), and concreting of the [d]riveway[,] etc., to be completed within 45 days, with a contract price of ₱2,333,313.61 under the same terms and conditions as the original contract dated December 27, 1988.

On January 25, 1991, the PSHS Board of Trustees in its Resolution No. 1 terminated the two Contracts (Original and Supplemental) for failure of the contractor to finish the projects.

Upon post-audit, the Auditor discovered that the liquidated damages imposed by PSHS Management on the contractor was only ₱252,114.79 instead of ₱2,400,134.65 or a difference of ₱2,148,019.86. x x x.[9]

x x x Notice of termination dated January 30, 1991, was furnished the Manager, Suretyship Department, Government Service Insurance System (GSIS) Makati, in a letter dated February 5, 1991, of the Director, PSHS, with the request for payment of the amount of ₱906,480.00, under Performance Bond G(13) GIF Bond No. 041917 for the Contract dated December 27, 1988 with contract price of

[9] *Id.* at 24-25.

₱9,064,799.76 and the amount of ₱233,331.36 under GSIS Performance Bond G(13) GIF Bond of No. 049783 for the Supplemental Contract dated July 31, 1990, with a contract price of P2,333,313.61. It appeared, however, in the letter of the General Manager, N.C. Roxas, Inc., dated March 27, 1991 and in the letter of the Director[,] PSHS, dated June 3, 1991, that the amounts under the aforestated GSIS Performance Bonds were already released to N.C. Roxas, Inc.[10]

Consequently, the COA State Auditor IV (COA Auditor)[11] issued the Notices of Disallowance covering the deficiency in the amount of liquidated damages deducted from the payments made to N.C. Roxas, Inc., for being contrary to the formula provided in the Implementing Rules and Regulations (IRR) of Presidential Decree No. (P.D.) 1594.[12] Thus:

Progress Billings	% Accomplished	Liquidated Damages (Actually Deducted)	Liquidated Damages (As Computed)	Difference
1st	7.00%	on schedule	-	-
2nd	10.99%	on schedule	-	-
3rd	25.47%	on schedule	-	-
4th	37.22%	2,130.86	11,736.60	(9,605.74)
5th	45.04%	21,959.78	181,917.30	(159,957.52)
6th	70.20%	148,268.25	381,439.49	(233,171.24)
7th	75.69%	25,397.49	289,283.29	(273,885.80)
8th	80.14%	12,497.65	158,444.10	(145,946.45)
9th	81.74%	2,166.76	152,575.80	(150,409.04)
10th	85.01%	4,143.86	82,156.20	(78,012.34)
11th	87.24%	6,052.80	176,049.00	(169,996.20)
12th	91.04%	9,989.34	170,180.70	(160,191.36)

[10] Id. at 87-88.

[11] Maribeth F. De Jesus.

[12] PRESCRIBING POLICIES, GUIDELINES, RULES AND REGULATIONS FOR GOVERNMENT INFRASTRUCTURE CONTRACTS, June 11, 1978.

13th	96.08%	15,535.96	264,073.49	(248,537.53)
14th	98.09%	3,829.24	123,234.30	(119,405.06)
15th	98.11%	142.80	399,044,39	(398,901.50)
Total		252,114.79	2,400,134.65	**(2,148,019.86)**[13]

Based on the records, N.C. Roxas, Inc. incurred delay starting from the 4th progress billing for a total of 409 days (from November 2, 1989 to December 15, 1990).[14] Thus:

Contract Price (CP)	₱9,064,799.16
Total Amount Payable (based on 98.11% completion rate less ₱2,622.00 due to use of 5/32" instead of 3/16" thickness of truss members)	₱8,893,585.26
Liquidated damages	=1/10 x 1% (CP — value completed as of expiration of contract time) x days of delay = .001 (9,064,799.16–3,196,499.29) x 409 = ₱2,400,134.85

Thus, due to the insufficient deduction in liquidated damages (*i.e.*, ₱252,114.79 instead of ₱2,400,134.65), there was an overpayment in the progress billings made to N.C. Roxas, Inc. in the amount of ₱2,148,019.86.[15] In effect, because the formula used was different from that mandated in the IRR of P.D. 1594, it would appear that PSHS incurred a total expenditure of ₱8,641,470.47, instead of only ₱6,793,450.41.

For such overpaid amount, the COA Auditor found the following persons solidarily liable: (i) N.C. Roxas, Inc., as payee, (ii) Evelyn B. Rabaca (Rabaca), Accountant III, (iii) Rufina E. Vasquez (Vasquez), Administrative Officer V, for her act of "certifying the expense as necessary, lawful and incurred under

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[13] *Rollo*, pp. 47-49.

[14] Id. at 50.

[15] Id.

[her] direct supervision," and (iv) Collado for her act of "computing the erroneous [liquidated damages] to be imposed."[16]

In a Letter[17] dated September 17, 1998, Collado, together with Vasquez, sought reconsideration of the Notices of Disallowance with the COA Auditor. They explained that the computation of liquidated damages was reached in consultation with the previous auditor and was based on their understanding of the IRR of P.D. 1594.[18] They also claimed that their computations were legal and proper considering that the vouchers of N.C. Roxas, Inc. passed the previous accountant in charge of reviewing the transactions.[19] The said vouchers also passed previous auditors from 1989 to 1992.[20] At the same time, Collado and Vasquez appealed for "humane consideration" as the PSHS-Mindanao Campus Building Complex has "served the best interest of the scholars."[21]

The records also showed that Collado and Vasquez could no longer recover from the payee as it was discovered that Nicanor C. Roxas, Manager of N.C. Roxas, Inc., died sometime in 1992.[22]

Ruling of the COA Auditor

In a Reply-Letter[23] dated September 24, 1999, the COA Auditor Ma. Eleanor C. A. Calo denied reconsideration of the Notices of Disallowance and affirmed the OCA Auditor's previous findings. The COA Auditor cited Contract Implementation (CI) 7 of the IRR of P.D. No. 1594, to wit:

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[16] Id. at 47-49.

[17] Id. at 52.

[18] Id.

[19] Id.

[20] Id.

[21] Id.

[22] Id. at 9 and 52.

[23] Id. at 53-54.

After a careful review of the documents submitted and the rules and regulations pertinent on the matter, we believe that the disallowances should be sustained. Applicable to herein request for reconsideration is CI 7 of the Implementing Rules and Regulations of PD 1594 as amended in June 1982, which expressly provided the formula for computing the liquidated damages as follows:

"**CI 7 Liquidated Damages**

Where the contractor refuses or fails to satisfactorily complete the work within the specified contract time, plus any time extension duly granted and is hereby in default under the contract, the contractor shall pay the Government for liquidated damages, and not by way of penalty, **an amount equal to one tenth of one percent** (0.10%) **of the total contract cost** minus the value of the completed portions of the contract certified by the Government Office concerned as usable as of the expiration of the contract time, **for each calendar day of delay, until the work is completed and accepted [or] taken over by the Government**. x x x"

Based on the aforecited provision of law, it is clear that the formula considered the contract price and the completed portions of the contract. However, **the PSHS management committed error in using the formula 1/10 of 1% of the value of every claim of the contractor only, resulting to insufficient deduction of liquidated damages from the contractor**.

In view of the foregoing, your request for reconsideration is regrettably denied. x x x[24]

Unsatisfied, Collado and Vasquez appealed[25] to the COA National Government Audit Office I (COA-NGAO) pursuant to Rule V of the 1997 COA Rules.

Ruling of the COA-NGAO

In a Decision[26] dated March 28, 2001, the COA-NGAO, through Marcelino P. Hanopol, Jr., Director IV, sustained the

[24] Id. at 54. Underscoring in the original; emphasis supplied.

[25] Id. at 56-71.

[26] Id. at 72-80.

findings of the COA Auditors and affirmed the liability of Collado, *inter alia*, based on Section 103 of P.D. No. 1445.[27] However, under the decretal portion of the decision, the COA-NGAO **reduced** the amount of liquidated damages chargeable insofar as it exceeded 15% of the total contract price,[28] as mandated by CI 8.4 of the IRR of P.D. No. 1594:[29]

Wherefore, in view of the foregoing, the instant appeal of the appellants is denied for lack of merit. **The assailed disallowances are hereby affirmed with a modification that in no case shall the total sum of liquidated damages exceed fifteen percent (15%) of the total contract price.** Accordingly, the appellee/auditor is directed to compute the correct liquidated damages and make an (*sic*) appropriate adjustments on the Certificate of Settlement and Balances. It is understood, however, that this decision is subject to review and approval of the COA Commission Proper in accordance with Section 6, Rule V of the 1997 Revised Rules of Procedure of the Commission on Audit.

SO ORDERED.[30]

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[27] Sec. 103 of P.D. 1445 states:

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.

[28] *Rollo*, p. 79.

[29] IRR OF P.D. 1594, CI Contract Implementation, CI 8 Liquidated Damages, par. 5 provides: CI 8 — LIQUIDATED DAMAGES

xxx xxx xxx

5. **In no case however, shall the total sum of liquidated damages exceed fifteen percent (15%) of the total contract price**, in which event the contract shall automatically be taken over by the office/agency/corporation concerned or award the same to the qualified contractor through negotiation and the erring contractor's performance security shall be forfeited. The amount of the forfeited performance security shall be set aside from the amount of the liquidated damages that the contractor shall pay the government under the provisions of this clause.

xxx xxx xxx (Emphasis supplied)

[30] *Rollo*, p. 79. Emphasis supplied.

Collado and Vasquez subsequently filed a Motion for Reconsideration[31] dated May 16, 2001, once again disclaiming their liability for the amount corresponding to the under-deducted liquidated damages.[32]

The 2002 COA Decision of the COA-CP

On automatic review,[33] the COA-CP[34] in the 2002 COA Decision denied the Motion for Reconsideration dated May 16, 2001, with modification only as to additional persons liable:

> WHEREFORE, premises considered, the instant request for reconsideration is hereby denied for lack of merit and the instant disallowance is hereby affirmed with a modification to the effect that Ms. Adoracion D. Ambrosio, Mr. Ceferino L. Follosco and Ms. Vicenta F. Reyes are included as severally and solidarily liable with Mr. Nicanor C. Roxas, Manager, N.C. Roxas, Inc. for the disallowance.[35]

Collado and Vasquez then filed a Petition for Review[36] dated February 27, 2003 (Petition for Review) with the COA-CP again. Thereafter, both jointly filed a supplemental letter[37] to the Petition for Review dated August 25, 2003.

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[31] Id. at 81-85.

[32] Id. at 84.

[33] 1997 REVISED RULES OF PROCEDURE OF THE COMMISSION ON AUDIT, Rule V, Sec. 6 provides:

> SECTION 6. Power of Director on Appeal. — The Director may reverse, modify, alter, or affirm the decision or ruling of the Auditor. However, should the Director render a decision reversing, modifying or altering the decision or ruling of the Auditor, the Director shall, within ten (10) days, certify the case and elevate the entire record to the Commission Proper for review and approval.

[34] Composed of Chairman Guillermo N. Carague and Commissioners Raul C. Flores and Emmanuel M. Dalman.

[35] *Rollo*, p. 92.

[36] Id. at 93-100.

[37] Id. at 101-109.

The 2008 Decision of the COA-CP

In the 2008 COA Decision, the COA-CP,[38] treating the Petition for Review as a motion for reconsideration of the 2002 COA Decision, affirmed the 2002 COA Decision with finality:

> WHEREFORE, premises considered, and there being no new and material evidence presented to warrant the reversal of the assailed decision, the instant petition for review has to be, as it is hereby denied for lack of merit. Accordingly, COA Decision No. 2002-282 dated December 17, 2002, is affirmed with **FINALITY**.[39]

Unsatisfied, in a Letter[40] dated June 10, 2008, Collado and Vasquez, purporting to question the 2008 COA Decision, again sought reconsideration of the 2002 COA Decision insofar as it found them liable for the under-deduction of liquidated damages.[41]

The LSS-ALS Letter dated March 1, 2010

In a Letter[42] dated March 1, 2010, the LSS-ALS denied due course to the Letter dated June 10, 2008 for being a **second motion for reconsideration** of the 2002 COA Decision — a prohibited pleading under Section 13, Rule IX of the 1997 COA Rules.[43]

Thereafter, in a Letter[44] dated March 17, 2010, Collado, acting alone,[45] disputed the finding of the LSS-ALS that she had filed a second motion for reconsideration, insisting that the Letter

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[38] Composed of Acting Chairman Reynaldo A. Villar and Commissioner Juanito G. Espino, Jr. (Respondents).

[39] *Rollo*, p. 27.

[40] Id. at 31-36.

[41] Id. at 31.

[42] Id. at 37.

[43] Id.

[44] Id. at 38.

[45] Id. at 36. Vasquez retired sometime in 2008 and began residing abroad.

dated June 10, 2008 was only the **first** motion for reconsideration directed against the **2008** COA Decision and **not** a **second** motion for reconsideration of the **2002** COA Decision.[46]

The LSS-ALS Letter dated July 16, 2010

In the questioned Letter, the LSS-ALS denied petitioner Collado's request for reconsideration, reiterating its finding that the Letter dated June 10, 2008 was a prohibited pleading:

> We wish to point out that under Section 13, Rule IX of the 1997 Revised Rules of COA, now under Section 10 of Rule X of the 2009 COA Revised Rules of Procedure, only one (1) motion for reconsideration of the decision of COA shall be entertained.
>
> Your Petition for Review dated February 27, 2003 of COA Decision No. 2002-282 dated December 17, 2002, the first decision promulgated by the COA Commission Proper (CP) relative to this subject, was treated as a motion for reconsideration of the decision. The ruling of the CP on said first motion for reconsideration is embodied in the above-mentioned COA Resolution No. 2008-048.
>
> Necessarily, the motion for reconsideration of COA Resolution No. 2008-048 is a second motion.
>
> Please be informed further that any decision, order or resolution of the CP must be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty (30) days from receipt of a copy thereof, otherwise, the same will become final and executory.[47]

Aggrieved, Collado resorted to the instant Petition.

On March 14, 2011, after several extensions,[48] the Office of the Solicitor General, representing respondents, filed its Comment[49] dated March 11, 2011, submitting in the main that the Petition was untimely filed.

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[46] Id. at 38.

[47] Id. at 29-30.

[48] Id. at 115-117, 120-122, 127-129, 133-135, 139-141, 146-148, 152-154.

[49] Id. at 165-196.

Collado filed her Reply to the Comment[50] dated September 2, 2011.

Issues

As summarized in the Petition, the following issues confront the Court:

(i) whether respondents committed grave abuse of discretion amounting to lack or excess of jurisdiction in treating the Petition for Review as a first motion for reconsideration; and

(ii) whether respondents committed grave abuse of discretion amounting to lack or excess of jurisdiction in finding Collado severally and solidarily liable for the erroneously computed liquidated damages.

The Court's Ruling

Respondents correctly treated the Petition for Review as a motion for reconsideration.

The Petition was filed out of time.

Applicable to this case is Section 3, Rule 64 of the Rules, which specifically governs the mode of review from judgments, final orders, or resolutions issued by the COA:

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

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[50] Id. at 210-215.

The provision requires a petition for *certiorari* assailing a judgment of the COA to be filed within 30 days from notice thereof, which period shall only be interrupted by the filing of a motion for new trial or reconsideration.[51] And, if such motion is denied, the aggrieved party may only file the petition within the remainder of the 30-day period, which in any event shall not be less than five days from notice of such denial.[52]

The timeliness of the instant Petition therefore hinges on the nature of the Petition for Review.

In their Comment, respondents repeatedly stress that the Petition for Review was already the first motion for reconsideration of the 2002 COA Decision, which effectively converted the Letter dated June 10, 2008 to a **second** motion for reconsideration of the said decision.[53] Respondents therefore assert that upon Collado's receipt of the 2008 COA Decision — which contained the denial of the first motion for reconsideration of the 2002 COA Decision — she should have already filed a petition for *certiorari* in accordance with Rule 64 of the Rules.[54] Hence, considering that a second motion for reconsideration is expressly prohibited by the 1997 COA Rules, the period for filing under Rule 64 could not have been interrupted by the filing of the Letter dated June 10, 2008; in the meantime, the 2008 COA Decision had already lapsed into finality.[55]

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[51] *Lokin, Jr. v. Commission on Elections*, G.R. No. 193808, June 26, 2012, 674 SCRA 538, 544.

[52] Id.

[53] *Rollo*, pp. 179-180.

[54] Id. at 175-176.

[55] Id. at 185; *see* 1997 REVISED RULES OF PROCEDURE OF THE COMMISSION ON AUDIT, Rule IX, Section 12 where it is stated:

SECTION 12. *Finality of Decisions or Resolutions*. — A decision or resolution of the Commission upon any matter within its jurisdiction shall become final and executory after the lapse of thirty (30) days from notice of the decision or resolution, unless a motion for reconsideration is seasonably made or an appeal to the Supreme Court is filed.

Respondents' contention is well-taken.

Collado's error stems from her apparent reliance on Rule VI of the 1997 COA Rules.[56] However, the plain language thereof indicates that it specifically applies only to appeals from the Director to the COA-CP:

RULE VI

Appeal from Director to Commission Proper

SECTION 1. *Who May Appeal and Where to Appeal*. — The party aggrieved by a final order or decision of the Director may appeal to the Commission Proper.

SECTION 2. *How Appeal Taken*. — Appeal shall be taken by filing a petition for review in seven (7) legible copies, with the Commission Secretariat, a copy of which shall be served on the Director. Proof of service of the petition on the Director shall be attached to the petition.

x x x x

Significantly, while Collado properly filed a motion for reconsideration with the COA-NGAO of its Decision dated March 28, 2001, such motion was resolved by the COA-CP on automatic review, following Section 6, Rule V of the 1997 COA Rules, in relation to Sections 12 and 13 of Rule XI:

RULE V

Appeal from Auditor to Director

x x x x

SECTION 6. *Power of Director on Appeal*. — The Director may reverse, modify, alter, or affirm the decision or ruling of the Auditor. However, should the Director render a decision reversing, modifying or altering the decision or ruling of the Auditor, the Director shall, within ten (10) days, certify the case and elevate the entire record to the Commission Proper for review and approval.

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[56] *Id.* at 12.

x x x x

RULE IX
Adjudication Process

x x x x

SECTION 12. *Finality of Decisions or Resolutions*. — A decision or resolution of the Commission upon any matter within its jurisdiction shall become final and executory after the lapse of thirty (30) days from notice of the decision or resolution, unless a motion for reconsideration is seasonably made or an appeal to the Supreme Court is filed.

SECTION 13. *Motion for Reconsideration*. — A motion for reconsideration may be filed on the grounds that the evidence is insufficient to justify the decision or resolution; or that the said decision, order or ruling is contrary to law. Only one (1) motion for reconsideration of a decision or resolution of the Commission shall be entertained.

x x x x

Unquestionably, the 2002 COA Decision was rendered by the COA-CP. It is therefore of no moment that the Petition for Review was denominated as such given that a "petition for review" under Rule V of the 1997 COA Rules is appropriate only for final decisions or orders issued by the Director.[57] Thus, by filing the Petition for Review with the COA-CP — the very same body that rendered the 2002 COA Decision — Collado was actually seeking a reconsideration of the 2002 COA Decision.

In this regard, in the 2008 COA Decision, the COA-CP was correct in treating the Petition for Review as a first motion for reconsideration, *viz.*:

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[57] 1997 REVISED RULES OF PROCEDURE OF THE COMMISSION ON AUDIT, Rule V, Section 6 states:

SECTION 6. *Power of Director on Appeal*. — The Director may reverse, modify, alter, or affirm the decision or ruling of the Auditor. However, should the Director render a decision reversing, modifying or altering the decision or ruling of the Auditor, the Director shall, within ten (10) days, certify the case and elevate the entire record to the Commission Proper for review and approval.

WHEREFORE, premises considered, and there being no new and material evidence presented to warrant the reversal of the assailed decision, the instant petition for review has to be, as it is hereby denied for lack of merit. Accordingly, COA Decision No. 2002-282 dated December 17, 2002, is affirmed with **FINALITY**.[58]

At that point, upon the denial of the first motion for reconsideration, Collado should have already filed a petition for *certiorari* with the Court within the period provided in Rule 64 of the Rules.[59] Instead, Collado resorted to filing the Letter dated June 10, 2008, purportedly questioning the 2008 COA Decision, and thereafter filed another Letter dated March 17, 2010.[60]

The records herein indicate that the 2008 COA Decision — the final dispositive act of the COA-CP on the motion for reconsideration of the 2002 COA Decision — was received by Collado on May 15, 2008.[61] Following the last sentence of Section 3, Rule 64 of the Rules, Collado had only five days therefrom, or until May 20, 2008, within which to file the proper petition. Considering therefore that the instant Petition was filed only on August 20, 2010,[62] or more than two years after Collado's receipt of the 2008 COA Decision, the Petition was perforce filed out of time.

Parenthetically, the Court notes that Collado subsequently filed another letter of reconsideration dated March 17, 2010

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[58] *Rollo*, p. 27. Emphasis in the original.

[59] RULES OF COURT, Rule 64, Sec. 2 provides:

SEC. 2. *Mode of review*. — A judgment or final order or resolution of the Commission on Elections and the Commission on Audit may be brought by the aggrieved party to the Supreme Court on *certiorari* under Rule 65, except as hereinafter provided; *see* also Section 1, Rule XII, 2009 Revised Rules of Procedure of the Commission on Audit.

[60] *Rollo*, p. 38.

[61] Id. at 4.

[62] Id. at 1.

with the LSS-ALS. The same letter was eventually denied on July 17, 2010 by the LSS-ALS in the questioned Letter, which in turn was received by Collado on July 23, 2010.[63] Regardless of the foregoing, while the Petition seems to assail the questioned Letter,[64] the reckoning point for the 30-day period under Rule 64 should not be counted from receipt of the same as it was merely a reiterative denial of Collado's Letter dated June 10, 2008; to reckon the period from receipt of the questioned Letter — merely because it was the latest issuance of Respondents — would be tantamount to an indefinite extension of the mandatory period under the Rules based on the whim of Collado. To rule otherwise would be to incentivize the indiscriminate filing of "clarificatory" letters instead of pursuing the appropriate remedies available under the law.

Bearing the foregoing in mind, the Court so finds that the Petition was filed outside the period prescribed in Rule 64 of the Rules.

Nevertheless, the Court has recognized that there are instances when a strict application of the rules on timeliness would work against rather than towards substantial justice. In *Riguer v. Mateo*,[65] this Court said:

> The procedural lapses notwithstanding, the Court may still entertain the present appeal. Procedural rules may be disregarded by the Court to serve the ends of substantial justice. Thus, in *CMTC International Marketing Corporation v. Bhagis International Trading Corporation*, the Court elucidated:
>
> > Time and again, this Court has emphasized that procedural rules should be treated with utmost respect and due regard, since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice. From time to

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[63] Id. at 4-5.

[64] Id. at 3-4.

[65] G.R. No. 222538, June 21, 2017, 828 SCRA 109.

> time, however, we have recognized exceptions to the Rules, but only for the most compelling reasons where stubborn obedience to the Rules would defeat rather than serve the ends of justice.
>
> x x x x
>
> ***Ergo, where strong considerations of substantive justice are manifest in the petition, the strict application of the rules of procedure may be relaxed, in the exercise of its equity jurisdiction***. Thus, a rigid application of the rules of procedure will not be entertained if it will obstruct rather than serve the broader interests of justice in the light of the prevailing circumstances in the case under consideration.

The merits of Riguer's petition for review warrant a relaxation of the rules of procedure if only to attain justice swiftly. As would be further discussed, a denial of his petition would only allow Atty. Mateo to collect unconscionable attorney's fees.[66]

Similarly, in *Barnes v. Padilla*,[67] this Court said:

> However, this Court has relaxed this rule in order to serve substantial justice considering (a) ***matters of life, liberty, honor or property***, (b) the existence of special or compelling circumstances, (c) ***the merits of the case***, (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (e) a lack of any showing that the review sought is merely frivolous and dilatory, and (f) the other party will not be unjustly prejudiced thereby.
>
> Invariably, rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. ***Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed***. Even the Rules of Court reflects this principle. The power to suspend or even disregard rules can be so pervasive and compelling as to alter even that which this Court itself had already declared to be final.
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> In *De Guzman* [*v.*] *Sandiganbayan*, this Court, speaking through the late Justice Ricardo J. Francisco, had occasion to state:

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[66] *Id.* at 118-119. Emphasis and underscoring supplied.

[67] G.R. No. 160753, September 30, 2004, 439 SCRA 670.

> The Rules of Court was conceived and promulgated to set forth guidelines in the dispensation of justice but not to bind and chain the hand that dispenses it, for otherwise, courts will be mere slaves to or robots of technical rules, shorn of judicial discretion. That is precisely why courts in rendering justice have always been, as they ought to be guided by the norm that when on the balance, technicalities take a backseat against substantive rights, and not the other way around. Truly then, technicalities, in the appropriate language of Justice Makalintal, "should give way to the realities of the situation."[68]

In the instant case, no less than the property rights of Collado hang in the balance. The Court is convinced that the belated filing of her petition was the result of an honest mistake and not an attempt to frustrate the proceedings of the COA or this Court. Hence, in the higher interest of equity and substantial justice, the Court shall look into the remaining issues of the case.

Respondents correctly applied the formula prescribed in the IRR of P.D. No. 1594.

The Court herein refrains from delving into the factual findings of respondents with respect to the proper computation of the liquidated damages charged against N.C. Roxas, Inc.

It is a long-standing rule that findings of administrative agencies are accorded not only respect but also finality absent unfairness or arbitrariness that would amount to grave abuse of discretion.[69] In *Delos Santos v. Commission on Audit*,[70] the Court explained the rationale behind such rule:

> x x x [T]he [COA] is endowed with enough latitude to determine, prevent, and disallow irregular, unnecessary, excessive, extravagant

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[68] Id. at 686-687.

[69] *Buisan v. Commission on Audit*, G.R. No. 212376, January 31, 2017, 816 SCRA 346, 364.

[70] G.R. No. 198457, August 13, 2013, 703 SCRA 501.

or unconscionable expenditures of government funds. It is tasked to be vigilant and conscientious in safeguarding the proper use of the government's, and ultimately the people's, property. The exercise of its general audit power is among the constitutional mechanisms that gives life to the check and balance system inherent in our form of government.

Corollary thereto, it is the general policy of the Court to sustain the decisions of administrative authorities, especially one which is constitutionally-created, such as the [COA], not only on the basis of the doctrine of separation of powers but also for their presumed expertise in the laws they are entrusted to enforce.[71]

In the case at bench, it bears noting that the formula and computation initially used by the COA Auditor in arriving at the liquidated damages were consistently upheld on review by the COA-NGAO[72] and the COA-CP.[73] On this score, Rule 64 of the Rules expressly decrees the finality of factual findings made by COA when supported by substantial evidence:

Section 5. Form and contents of petition. — The petition shall be verified and filed in eighteen (18) legible copies. The petition shall name the aggrieved party as petitioner and shall join as respondents the Commission concerned and the person or persons interested in sustaining the judgment, final order or resolution *a quo*. The petition shall state the facts with certainty, present clearly the issues involved, set forth the grounds and brief arguments relied upon for review, and pray for judgment annulling or modifying the questioned judgment, final order or resolution. Findings of fact of the Commission supported by substantial evidence shall be final and non-reviewable. x x x

Further to the foregoing, the Court hereby finds that the factual findings of the COA-NGAO are amply supported by the evidence on record, as well as applicable rules and jurisprudence:

After a circumspect evaluation of the facts of the case and a scrutiny of the accompanying documents, this Office concurs with the action

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[71] Id. at 512-513.

[72] *Rollo*, p. 79.

[73] Id. at 92, 27.

of the Auditor affirming the original disallowance with a modification that the total sum of liquidated damages shall in no case exceed fifteen percent (15%) of the total contract price.

It is an undisputed fact that the contractor failed to satisfactorily complete the work within the specified contract time, plus the time extension duly granted therefor. Verily, the contractor is hereby in default and as stipulated in the contract, the contractor "*shall be liable to the PSHS for liquidated and ascertained damages at the rate of One-Tenth of One Percent (1%) of the Contract Price per calendar day of delay, such damages to be deducted by the PSHS from whatever amount may be due to the CONTRACTOR*" (paragraph 5 of the contract). Since the contract has the force of law between the parties, each is bound to fulfill what has been expressly stipulated therein ([*Barons Marketing Corporation v. Court of Appeals*], 286 SCRA 96).

As gleaned from the basic contract, specifically paragraph 2(q) thereof, the parties had agreed that the "*pertinent provisions of Presidential Decree Number 1594, its Implementing Rules and Regulations and other applicable laws, rules and regulations*" shall be deemed to form and be interpreted and construed as part of the contract. Paragraph CI8.4 of the Implementing Rules and Regulations (IRR) of P.D. 1594 dated July 12, 1995 directs that:

> "4. In no case however, shall the **total sum of liquidated damages exceed fifteen percent (15%) of the total contract price**, in which event the contract shall automatically be taken over by the office/agency/corporation concerned or award the same to the qualified contractor through negotiation and the erring contractor's performance security shall be forfeited. The amount of the forfeited performance security shall be set aside from the amount of the liquidated damages that the contractor shall pay the government under the provisions of this clause."

Although the said IRR of P.D. 1594 was issued in 1995, it is applicable in this 1988 work contract under consideration because "*it is a settled rule in statutory construction that where a new statute deals only with procedure, it applies to all actions — to those which have accrued or are pending, and to future actions*[“] (COA Decision No. 95-586 dated November 2, 1995 citing Statutes and Statutory Construction, C. Dellas Sonds, p. 253)

x x x x

x x x As stated above, the liquidated damages shall be One-Tenth of One Percent of the Contract Price per calendar day of delay and not the appellant's allegation that the liquidated damages shall be 1/10 of 1% of the value of every claim. It is a cardinal rule in the interpretation of contracts that if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulation shall control.[74]

Nevertheless, there are circumstances attendant in this case which the Court believes excuse Collado from the civil liability to return the disallowed amounts.

Collado may be excused from the civil liability to return the disallowed amounts under Part 2a of the Rules on Return.

In the recently decided case of *Madera v. COA*[75] (*Madera*), the Court settled once and for all the nature and legal basis of the liability of approving and certifying officers and passive payees for illegal expenditures as well as the proper treatment of such liability in cases where there are badges of good faith attending the erroneous approval of the said expenditures. In *Madera*, the Court noted that the civil liability of officers for acts done in performance of official duties is rooted in Sections 38 and 39, Chapter 9, Book I of the Administrative Code of 1987, which state:

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***.

x x x x

(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.

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[74] *Rollo*, pp. 76-78. Emphasis and italics in the original; citations omitted.

[75] G.R. No. 244128, September 8, 2020.

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.[76]

Clarifying the import of the foregoing provisions, this Court further said that:

> x x x [T]he 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***.[77]

In the same case, the Court formulated what are now known as the Rules on Return, which harmonize former rulings as regards the return of disallowed amounts. Relevantly to this instant case, Part 2a of the Rules on Return states:

> 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 of 1987.[78]

The determination of whether good faith and regularity in the performance of official functions may be appreciated in favor of approving/certifying officers will be done by the Court on a case-to-case basis.[79] Towards this end, the Court finds that there are attendant circumstances which support the conclusion that Collado acted in good faith.

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[76] Emphasis, underscoring and italics supplied.

[77] Id. Emphasis, underscoring and italics supplied.

[78] Id.

[79] Id.

First, the Court notes that the disallowance resulted from failure to deduct the correct amount of liquidated damages from progress billings paid to the contractor, N.C. Roxas, Inc. **Nothing in the records would indicate that Collado received any portion of, or benefited from, the disallowed amounts**. Neither is the disallowance made on the basis of a finding that the disbursement was utterly without legal basis, but rather, for only a mistaken understanding of the IRR of P.D. 1594 and the provisions of the contract between PSHS and N.C. Roxas, Inc.

Second, the disallowed amounts were paid out for the 4th to 15th progress billings from December 18, 1989 to January 28, 1991.[80] It was only on September 10, 1998, or approximately eight years later, that the Notices of Disallowance were issued by the COA Auditor. In the meantime, Collado had no notice of any irregularity in the computations.

The foregoing circumstances may be taken as indications of Collado's good faith. While an error was made in the computation of liquidated damages, **nothing in the records would support the conclusion that such an error amounted to bad faith, malice, or even gross negligence**, consequently making Collado liable under Sections 38 and 39, Chapter 9, Book I of the Administrative Code of 1987.

In *Lumayna v. Commission on Audit*,[81] this Court explained:

> Furthermore, granting *arguendo* that the municipality's budget adopted the incorrect salary rates, this error or mistake was not in any way indicative of bad faith. Under prevailing jurisprudence, mistakes committed by a public officer are not actionable, absent a clear showing that he was motivated by malice or gross negligence amounting to bad faith. It does not simply connote bad moral judgment or negligence. Rather, there must be some ***dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a sworn duty through some motive or intent, or ill will. It partakes of the nature of fraud and contemplates a state of mind affirmatively***

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[80] *Rollo*, pp. 47-49.

[81] G.R. No. 185001, September 25, 2009, 601 SCRA 163.

operating with furtive design or some motive of self-interest or ill will for ulterior purposes. x x x[82]

The foregoing case was also affirmed in *Madera*, where this Court said:

As can be deduced above, petitioners disbursed the subject allowances in the honest belief that the amounts given were due to the recipients and the latter accepted the same with gratitude, confident that they richly deserve such reward. Otherwise stated, and to borrow the language of *Lumayna*, these mistakes committed are not actionable, absent a clear showing that such actions were motivated by malice or gross negligence amounting to bad faith. There was no showing of some dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a sworn duty through some motive or intent, or ill will in the grant of these benefits. There was no fraud nor was there a state of mind affirmatively operating with furtive design or some motive of self-interest or ill will for ulterior purposes.[83]

Certainly, no ill will or self-interest may be attributed to Collado in her erroneous computation of liquidated damages.

There was likewise no gross negligence in Collado's computation of the liquidated damages due. Gross negligence has been defined by the Court as follows:

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 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.[84]

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[82] Id. at 182. Emphasis, italics, and underscoring supplied; citations omitted.

[83] *Madera v. Commission on Audit, supra* note 75.

[84] *Office of the Ombudsman v. De Leon*, G.R. No. 154083, February 27, 2013, 692 SCRA 27, 38.

As Collado explained, she was reassured of the propriety of her computations when the vouchers for N.C. Roxas, Inc. passed the scrutiny of Rabaca, the accountant then in charge of reviewing the transactions, when these were submitted to her for pre-audit.[85] As also previously noted, the vouchers were submitted to the COA auditors for post-audit,[86] but no audit observation memorandum, nor any other kind of notice was given to Collado as to any irregularity thereon prior to the herein subject Notices of Disallowance — issued approximately eight years after the last voucher was issued. Thus, while the computation was erroneous, there were measures taken to ensure that the preparation of the vouchers was in accordance with standard procedure and the applicable rules. This negates any finding of her indifference or flagrant breach of duty which could have been equated to gross negligence.

Given the foregoing, it would be improper, if not totally unjust, to make Collado solidarily liable with the contractor for the disallowed amount.

The government is not without remedy, however, as deficiency, liquidated damages may still be recovered from the payee-contractor, N.C. Roxas, Inc. Lest it be misunderstood, the Court's observation that the COA's Notices of Disallowance were issued eight years after the fact is not meant to inspire the conclusion that the disallowed amount may no longer be recovered from the recipient thereof. Basic is the rule that prescription does not run against the state. In *Ramiscal, Jr. v. Commission on Audit*,[87] the Court held:

> x x x ***The right of the State, through the COA, to recover public funds that have been established to be irregularly and illegally disbursed does not prescribe***.
>
> Article 1108(4) of the Civil Code expressly provides that prescription does not run against the State and its subdivisions. This

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[85] *Rollo*, p. 8.

[86] Id. at 52.

[87] G.R. No. 213716, October 10, 2017, 842 SCRA 317.

rule has been consistently adhered to in a long line of cases involving reversion of public lands, where it is often repeated that when the government is the real party-in-interest, and it is proceeding mainly to assert its own right to recover its own property, there can, as a rule, be no defense grounded on laches or prescription. We find that ***this rule applies, regardless of the nature of the government property***. Article 1108 (4) does not distinguish between real or personal properties of the State. There is also no reason why the logic behind the rule's application to reversion cases should not equally apply to the recovery of any form of government property. In fact, in an early case involving a collection suit for unpaid loans between the Republic and a private party, the Court, citing Article 1108(4) of the Civil Code, held that the case was brought by the Republic in the exercise of its sovereign functions to protect the interests of the State over a public property.[88]

N.C. Roxas, Inc.'s liability to return the disallowed amount may be enforced based on the principle of *solutio indebiti*. As the Court has explained:

> x x x Article 2154 of the Civil Code explains the principle of *solutio indebiti*. Said provision provides that 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. In such a case, a creditor-debtor relationship is created under a quasi-contract whereby the payor becomes the creditor who then has the right to demand the return of payment made by mistake, and the person who has no right to receive such payment becomes obligated to return the same. The quasi-contract of *solutio indebiti* harks back to the ancient principle that no one shall enrich himself unjustly at the expense of another. The principle of *solutio indebiti* applies where (1) a payment is made when there exists no binding relation between the payor, who has no duty to pay, and the person who received the payment; and (2) the payment is made through mistake, and not through liberality or some other cause.[89]

In *Madera*, the Court recognized that the liability to return amounts disallowed by the COA is a civil liability, to which

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[88] Id. at 325. Emphasis, underscoring, and italics supplied; citations omitted.

[89] *Siga-an v. Villanueva*, G.R. No. 173227, January 20, 2009, 576 SCRA 696, 708.

the concept of *solutio indebiti* rightly applies. Evidently, because of the erroneous computation of liquidated damages, the contractor, N.C. Roxas, Inc., through mistake, received more than what was due to it under the contract. There being no binding obligation on the part of PSHS to pay the excess amount, N.C. Roxas, Inc. is therefore bound to return the same.

WHEREFORE, premises considered, the Petition is **GRANTED IN PART**. The Commission on Audit-Commission Proper Decision No. 2008-048 is **AFFIRMED WITH MODIFICATION**. Petitioner Emerita A. Collado is excused from solidary liability to return the total amount of the under-deducted liquidated damages. The Commission on Audit is hereby **DIRECTED** to institute the necessary claims against N.C. Roxas, Inc.

SO ORDERED.

Peralta, C.J., *Gesmundo, Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, Lopez, Gaerlan,* and *Rosario, JJ.*, concur.

Perlas-Bernabe, Leonen, and *Delos Santos, JJ.*, on official leave.

EN BANC

[G.R. No. 218374. December 1, 2020]

ZAMBOANGA CITY WATER DISTRICT and its employees, represented by General Manager LEONARDO REY D. VASQUEZ, *Petitioner*, *v.* **COMMISSION ON AUDIT**, *Respondent*.

APPEARANCES OF COUNSEL

The Legal Department for petitioner Zamboanga City Water District.

The Solicitor General for respondent Commission on Audit.

D E C I S I O N

INTING, *J.*:

This resolves the Petition[1] for *Certiorari* under Rule 65 in relation to Rule 64 of the Rules of Court filed by the Zamboanga City Water District (ZCWD), represented by its General Manager Leonardo Rey D. Vasquez, assailing the Decision No. 2014-182[2] dated August 28, 2014 and the Resolution[3] dated March 9, 2015 of the Commission on Audit (COA) Commission Proper (COA Proper). In the assailed issuances, the COA Proper upheld the Notice of Disallowance (ND) No. 10-127 (09)[4] dated September 7, 2010 which disallowed the payment of ₱5,127,523.00 financial subsidy to ZCWD officials and employees.

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[1] *Rollo*, pp. 3-21.

[2] *Id.* at 37-42; signed by Chairperson Ma. Gracia M. Pulido Tan and Commissioners Heidi L. Mendoza and Jose A. Fabia; and attested by Director IV and Commission Secretariat Nilda B. Plaras.

[3] *Id.* at 43.

[4] *Id.* at 60-61.

The Antecedents

ZCWD is a local water district created pursuant to the Provincial Water Utilities Act of 1973.[5] It is also a government-owned and -controlled corporation (GOCC).[6]

On May 13, 2009, former President Gloria Macapagal-Arroyo signed Memorandum Circular No. (MC) 1740[7] calling all government agencies, including GOCCs, "to support the Philippine Government Employees Association's public sector agenda" and mandating as follows:

> In view thereof, all government agencies, *including Government Owned and Controlled Corporations*, State Universities and Colleges are hereby enjoined to provide the following to their employees:
>
> - shuttle service;
> - *financial subsidy and other needed support to make the Botika ng Bayan more accessible to them;*
> - scholarships programs for their children with siblings;
> - PX mart that sell affordable commodities and the provision of its seed fund.
>
> The DOLE is hereby directed to monitor and to ensure the implementation of this Circular. (Italics supplied.)

In a letter dated November 25, 2009,[8] ZCWD, through General Manager Leonardo Rey D. Vasquez, submitted the following queries to the Office of the Government Corporate Counsel (OGCC) relative to MC 174's provisions: "(1) does [ZCWD]

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[5] Presidential Decree No. (PD) 198, approved on May 25, 1973.

[6] See *Davao City Water District v. CSC*, 278 Phil. 605 (1991).

[7] Entitled "Enjoining Government Agencies, Including Government Owned and Controlled Corporations, State Universities and Colleges to Support the Philippine Government Employees Association's Public Sector Agenda," approved on May 13, 2009.

[8] As culled from the Office of the Government Corporate Counsel Opinion No. 001, Series of 2010 dated January 4, 2010, *rollo*, p. 56-B.

have the power to prescribe the amount to be granted as financial subsidy?; (2) are the benefits enumerated in [MC 174] in the nature of "*de minimis*" benefits and/or can be treated as such by ZCWD?; and (3) how often can ZCWD allow the grant of such subsidy (monthly or annually)?"[9]

In the meantime, the ZCWD Board of Directors (Board) nonetheless granted a financial subsidy in favor of ZCWD officials and employees through Board Resolution No. 206[10] dated December 7, 2009, *viz.*:

> RESOLVED, as it is hereby resolved, to approve the grant of Financial Subsidy authorized under [MC 174] dated May 13, 2009 to an amount equivalent to one (1) month salary of every ZCWD Officials and employees irrespective of the nature of their appointments, whether permanent, casual, temporary or contractual who have rendered at least a total or an aggregate of four (4) months service including leaves of absence with pay. Provided: That employees who have rendered services less than four (4) months shall be entitled to such benefit pro rata. Provided further: That the Guidelines, herewith annexed, be adopted for purposes of implementation of [MC 174].
>
> x x x x
>
> (signed)
> MS. NELIDA F. ATILANO
> Secretary

ATTESTED:

(signed) EDWIN N. MAKASIAR Chairman	(signed) GREGORIO I. MOLINA Vice Chairman
(signed) MILAGROS L. FERNANDEZ Director	(signed) EFREN ARAÑEZ Director

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[9] *Id.*

[10] *Id.* at 56-56-A.

On even date, the Board also issued guidelines[11] on the financial subsidy grant reiterating that each covered official or employee shall receive a financial subsidy equal to one month's salary; and that an official or employee is covered by the grant irrespective of the nature of his appointment, provided he/she satisfies the service requirements under the guidelines.

Two days after, or on December 9, 2009, ZCWD paid an aggregate amount of ₱5,127,523.00 representing the financial subsidy granted through Board Resolution No. 206.

Subsequently, OGCC responded to ZCWD's previous query and issued Opinion No. 001,[12] Series of 2010 dated January 4, 2010 (OGCC Opinion) as follows:

> Anent your first query [ZCWD's power to prescribe the amount to be granted as financial subsidy], we answer in the affirmative. The [MC 174] itself does not provide for the amount of financial subsidy x x x. The Department of Budget and Management (DBM) has not issued a set of guidelines on the implementation of the said [MC 174]. Hence, considering that water districts generate their own income, it is our view that the Board has sufficient discretion and authority to determine the amount of the financial subsidy that it will grant through a board resolution, subject to the availability of funds. It is noted though that the financial subsidy is intended to support the Botika ng Bayan, and thus, would presumably be for the purpose of purchasing medicines.
>
> We likewise answer your second query [nature of benefits enumerated under MC 174] in the affirmative. Financial subsidies given pursuant to [MC 174] may be classified as *"de minimis"* benefits which are not subject to withholding tax on compensation pursuant to Section 2.78.1 (B) (11) (b) of Revenue Regulations No. 2-98. These are being given to address the needs of government employees in the midst of the present global economic crisis, thus:

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[11] Guidelines on the Grant of Financial Subsidy to ZCWD Officials and Employees Pursuant to Memorandum Circular No. 174 dated May 13, 2009, *id.* at 54-55.

[12] *Id.* at 56-B-57; signed by then Government Corporate Counsel Alberto C. Agra.

x x x x

As to your third query [frequency of grant], [MC 174] is likewise silent as to how often a GOCC may grant the financial subsidy. Hence, unless the Office of the President or the DBM will issue guidelines in the implementation thereof, it is our considered view that there are no legal objections if ZCWD were to adopt its own guidelines on the frequency of the grants, which as mentioned earlier, would be subject to availability of funds.

Please be guided accordingly.

Very truly yours,
(signed)
ALBERTO C. AGRA
Government Corporate Counsel[13]

Later in 2010, as a result of their investigation, the COA audit team issued Audit Observation Memorandum No. (AOM) ZCWD-2010-05 (09)[14] dated July 21, 2010 finding the subject disbursement violative of Section 57 of Republic Act No. (RA) 9524, otherwise known as the General Appropriations Act of 2009 (2009 GAA), which provides:

SECTION 57. *Personal Liability of Officials or Employees for Payment of Unauthorized Personal Services Cost.* — No official or employee of the national government, LGUs, and GOCCs shall be paid any personnel benefits charged against the appropriations in this Act, other appropriations laws or income of the government, unless specifically authorized by law. Grant of personnel benefits authorized by law but not supported by specific appropriations shall also be deemed unauthorized.

The payment of any unauthorized personnel benefit in violation of this section shall be null and void. The erring officials and employees shall be subject to disciplinary action under the provisions of Section 43, Chapter 5 and Section 80, Chapter 7, Book VI of E.O. No. 292, and to appropriate criminal action under existing penal laws.

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[13] *Id.*

[14] *Id.* at 58-59.

Further, the audit team recommended the refund by ZCWD officials and employees of the financial subsidies so received.[15]

Based on the above-mentioned findings, the COA issued ND No. 10-127 (09)[16] dated September 7, 2010. In disallowing the payment of financial subsidy amounting to ₱5,127,523.00, COA further explained:

> [MC 174] particularly item no. 2 of the above paragraph cannot be used as the legal basis for the payment of such benefit since the "financial subsidy" meant monetary assistance to the Botica ng Bayan and not to the employees of the agency. The MC did not specifically mention that financial assistance shall be given to the employees. The phrase "financial subsidy" should not be taken out of context.[17]

It found all ZCWD officers and employees who received the financial subsidy liable for the disallowance and ordered them to refund the amounts so received.[18]

Consequently, ZCWD appealed[19] the disallowance to the COA Regional Director.

Ruling of the COA Regional Director

In Decision No. 2012-12[20] dated February 6, 2012, COA Regional Director Roberto T. Marquez denied ZCWD's appeal and upheld the disallowance. He opined as follows:

> In the case of Yap vs. COA x x x the Supreme Court held:
>
> x x x x

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[15] *Id.* at 59.

[16] *Id.* at 60.

[17] *Id.*

[18] *Id.*

[19] *Id.* at 62-68.

[20] *Id.* at 69-72; signed by Director IV Roberto T. Marquez, Regional Director.

x x x Such board action should in itself be authorized by law or regulation or have valid legal basis. Otherwise, it becomes an illegal corporate act that is void and cannot be validated. x x x[21]

x x x Section 2 of MC 174 relied upon by the appellant does not stand on its own but has to be harmonized with Section 8, Article IX-B of the 1987 Constitution, Section 4 of PD 1445 and [the] ruling laid down by the [Court] in the case of Yap vs. COA x x x. It is basic that a law should be construed in harmony with and not in violation of the Constitution x x x.[22]

Aggrieved, ZCWD elevated the case to the COA Proper.

Ruling of the COA Proper

In the assailed Decision, the COA Proper affirmed the COA Regional Director's ruling. It held that, contrary to the mandate of ZCWD Board Resolution No. 206, MC 174 did not authorize any direct payment to the employees. The COA Proper discussed as follows:

This Commission concurs with the interpretation of the [Audit Team Leader]. Contrary to the assertion of the Petitioners, [MC 174] does not suggest that the financial subsidy should be paid directly to the employees. The more plausible conclusion is to direct the payment of financial subsidy to the Botika ng Bayan; otherwise, the phrase "to make Botika ng Bayan more accessible" should not have been added in the first place. Moreover, the financial subsidy is intended to make the Botika ng Bayan more accessible to the government employees. If payment of financial subsidy should be made directly to the employees, as suggested by the Petitioners, the money received may not necessarily be used to purchase medicines or to purchase them from the Botika ng Bayan. This is beyond what is contemplated under [MC 174].[23]

Hence, ZCWD filed the present petition.

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[21] *Id.* at 71; emphasis and italics omitted.

[22] *Id.* at 72.

[23] *Id.* at 40.

Issues

In the present case, the Court shall resolve whether the COA Proper gravely abused its discretion when it upheld the disallowance of the financial subsidy amounts paid to ZCWD employees. Petitioner claims that the COA Proper committed grave abuse: (a) in ruling that MC 174 does not authorize direct payment to government employees as it contemplates a financial subsidy directly in favor of the *Botika ng Bayan*; and (b) in denying their motion for reconsideration by way of a one-page notice without exhaustively resolving the merits thereof, and thus, failing to distinctly state the facts and the law on which it is based.[24]

The Court's Ruling

The petition lacks merit.

At the onset, the Court emphasizes that Our power to review COA decisions *via* Rule 64 petitions is limited to *jurisdictional errors* or *grave abuse of discretion*.[25] The Court generally upholds the COA's ruling, especially in the clear absence of grave abuse on its part.[26]

A perusal of the petition reveals that only one issue is a *bona fide* imputation of grave abuse: that the COA Proper violated the constitutional mandate that all decisions must clearly and distinctly contain its factual and legal bases. Petitioners point out that the COA Proper resolved ZCWD's motion for reconsideration of its Decision dated August 28, 2014 only "by way of a one-page notice, which does not exhaustively resolve the merits presented."[27]

The Court disagrees with petitioners.

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[24] *Id.* at 10.

[25] See *Fontanilla v. The Commissioner Proper, COA*, 787 Phil. 713 (2016).

[26] See *Ramiscal v. Commission on Audit*, 819 Phil. 597 (2017).

[27] *Rollo*, p. 16.

Verily, it is recognized in jurisprudence that the constitutional rule requiring a clear and distinct statement of factual and legal basis of a resolution/decision is an indispensable component of the litigant's right to due process.[28] Violation thereof amounts to grave abuse of discretion.[29]

However, the mere brevity of the COA Proper's resolution does not equate to grave abuse.[30] To recall, the COA Proper denied ZCWD's motion "*for failure to raise new matter*[*s*] *or show sufficient ground to justify reconsideration of the assailed* [*d*]*ecision*."[31] This reasoning sufficiently justifies its denial.

Notably, ZCWD offered no new arguments and alleged no novel facts in its motion. The COA Proper already found these unmeritorious. Thus, it did not need to reevaluate the same antecedents, issues, and evidence it previously passed upon in the decision sought to be reconsidered and reiterate the very same findings and legal justifications in an exhaustive resolution.[32]

That being said, the remaining issue raised in the present petition are not averments of grave abuse of discretion against the COA. At best, the errors imputed upon the COA Proper are merely *errors of judgment* that cannot be remedied *via certiorari*.[33] To be sure, petitioner bears the burden of proving "not merely reversible error"[34] committed by the COA Proper, but "*such a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction*."[35]

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[28] *Go v. East Oceanic Leasing and Finance Corporation*, G.R. Nos. 206841-42, January 18, 2019.

[29] See *Fontanilla v. The Commissioner Proper, COA, supra* note 25.

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

[31] *Rollo*, p. 43.

[32] See *Agoy v. Araneta Center, Inc.*, 685 Phil. 246 (2012).

[33] See *Ramiscal v. Commission on Audit, supra* note 26 at 604.

[34] See *Fernandez v. Commission on Audit*, G.R. No. 205389, November 19, 2019.

[35] *Id.*, citing *Career Executive Service Board v. Commission on Audit*, G.R. No. 212348, June 19, 2018, 866 SCRA 475, 488.

In any case, after a careful review of the records, the Court finds that the disallowance of financial subsidy paid to ZCWD employees was proper.

MC 174 prescribes the grant of financial subsidy directly to government employees.

The mandate of MC 174 is clear which is "to provide the following [benefits] *to* [*government*] *employees*." One of these benefits is the crux of the present controversy: the provision of a "financial subsidy or other needed support to make the *Botika ng Bayan more accessible to them.*"[36]

The COA, through the Office of the Solicitor General, argues that the circular could not have intended the financial subsidy to be given directly to the employees. Otherwise, "*the money received may not* [*be necessarily*] *used to purchase* [*medicine*] *from* [*the*] *Botika ng Bayan, or, worse, may be used to purchase things other than* [*medicine*]."[37]

The Court does not subscribe to this interpretation.

The circular's plain meaning instructs government agencies to give certain benefits (*i.e.*, shuttle service, financial subsidy, scholarship programs, PX mart) for the direct enjoyment and consumption of its employees. As clear as it is, the circular "*must be given its literal meaning and applied without attempted interpretation*."[38] That the employees will use the financial subsidy for some other purpose when it is paid directly to them is both specious and speculative.

Thus, the grant of the subject financial subsidy directly to ZCWD employees finds basis on MC 174. Having been authorized by law, this grant did not violate the 2009 GAA.

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[36] *Rollo*, p. 53.

[37] *Id.* at 91.

[38] *Bolos v. Bolos*, 648 Phil. 630, 637 (2010).

ZCWD Board Resolution No. 206 was issued ultra vires.

While MC 174 prescribes the provision of a financial subsidy directly to government employees, it did not mention the amount thereof. In the present case, the Board, through Board Resolution No. 206,[39] *effectively took upon itself to fix the financial subsidy at an amount equal to one-month's salary*.

However, they were not free to determine the amount to be given to ZCWD employees. That the circular was silent as to the financial subsidy amount cannot be construed as a government instrumentality's implied authority to fix it on its own.

To be sure, ZCWD Board has no authority to fill in the details of what MC 174 may have been lacking. Verily, the Provincial Water Utilities Act of 1973 empowers the boards of local water districts such as ZCWD to promulgate rules and regulations. However, their rule-making power shall be limited to setting policies in relation to "*local water supply and wastewater disposal systems x x x to achieve national goals and the objective of providing public waterworks services to the greatest number at least cost*."[40]

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[39] *Rollo*, pp. 56-56-A.

[40] Section 2, PD 198 provides:

SECTION 2. *Declaration of Policy*. — The creation, operation, maintenance and expansion of reliable and economically viable and sound water supply and wastewater disposal system for population centers of the Philippines is hereby declared to be an objective of national policy of high priority. For purpose of achieving said objective, the formulation and operation of independent, locally controlled public water districts is found and declared to be the most feasible and favored institutional structure. To this end, it is hereby declared to be in the national interest that said districts be formed and that local water supply and wastewater disposal systems be operated by and through such districts to the greatest extent practicable. To encourage the formulation of such local water districts and the transfer thereto to existing water supply and wastewater disposal facilities, this Decree provides the general act the authority for the formation thereof, on a local option basis. It is likewise declared appropriate, necessary and advisable that all funding requirements for such local water systems, other than those provided by local revenues, should be channeled through and administered by an institution

As things presently stand, there is no law supporting the Board's self-determination of the financial subsidy amount. Thus, their decision to grant and pay the subject financial subsidy was made *ultra vires*, which renders the subsequent disbursement illegal.

Parenthetically, even the amount so granted by the Board — a full month's salary — finds no basis in law. *First*, MC 174 granted the financial subsidy to enable government employees to gain more access to the *Botika ng Bayan* and to *low-cost* medicine.[41] A month's salary, especially those received by high-ranking officials, appears to be disproportionate to the medicine purchases envisioned by the circular and incoherent to its overall objective. *Second*, the subject subsidy may be considered as a form of medical benefit, which is typically subject to the limits set by applicable laws. Letter of Implementation No. 97, s. 1979,[42]

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on the national level, which institution shall be responsible for and have authority to promulgate and enforce certain rules and regulations to achieve national goals and the objective of providing public waterworks services to the greatest number at least cost, to effect system integration or joint investments and operations whenever economically warranted and to assure the maintenance of uniform standards, training of personnel and the adoption of sound operating and accounting procedures.

[41] It is state policy to "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**," (Section II, Article XII, 1987 Constitution). Thus, the *Botika ng Bayan/ Barangay* Program was implemented to establish drug outlets "to improve access to essential drugs and the general healthcare of the population, **especially the poor**" (Implementing Rules and Regulations of RA 9502 (Universally Accessible, Cheaper and Quality Medicines Act of 2008), Joint DOH-DTI-IPO-BFAD Administrative Order No. 01-08, [November 4, 2008]), more specifically "to sell, distribute, offer for sale and/or make available **low-priced** generic home remedies, over-the-counter (OTC) drugs and x x x selected x x x prescription antibiotic drugs," pursuant to (Department of Health Administrative Order No. 144, s. 2004, Guidelines for the Establishment and Operations of Botika ng Barangays (BnB) and Pharmaceutical Distribution Networks). Emphasis supplied.

[42] Signed on August 31, 1979. Available on: <https://www. officialgazette. gov.ph/1979/08/31/letter-of-implementation-no-97-s-1979/> (last accessed: October 23, 2020).

for instance, provides a cap of "₱2,500.00 *per annum* per official/employee."

Thus, even if the Court brushes aside the *ultra vires* character of Board Resolution No. 206, the subject disbursement may still be disallowed for being unnecessary[43] and/or excessive.[44]

The Board did not act in good faith.

The Court also does not find merit in the Board's claim that they acted in good faith because they merely relied on the OGCC opinion seemingly allowing them to proceed with the financial subsidy's payout.

Their good faith is negated by their decision to issue the subject resolution and internal guidelines instructing the financial subsidy disbursement *without even bothering to wait for the formal issuance of OGCC's opinion*. The facts reveal that by the time the OGCC had issued its opinion, the Board had already completed the disbursement. In other words, the opinion was already rendered obsolete by the Board's premature actions.

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[43] Paragraph 3.2, COA Circular No. 85-55-A (September 8, 1985) defines *unnecessary expenditures* as follows: "x x x expenditures which could not pass the test of prudence or the diligence of a good father of a family, thereby denoting non-responsiveness to the exigencies of the service. Unnecessary expenditures are those not supportive of the implementation of the objectives and mission of the agency relative to the nature of its operation. This would also include incurrence of expenditure not dictated by the demands of good government, and those the utility of which can not be ascertained at a specific time. An expenditure that is not essential or that which can be dispensed with without loss or damage to property is considered unnecessary. The mission and thrusts of the agency incurring the expenditures must be considered in determining in whether or not an expenditure is necessary."

[44] Paragraph 3.3, COA Circular No. 85-55-A (September 8, 1985) defines *excessive expenditures* as follows: "unreasonable expense or expenses incurred at an immoderate quantity and exorbitant price. It also includes expenses which exceed what is usual or proper as well as expenses which are unreasonably high, and beyond just measure or amount. They also include expenses in excess of reasonable limits."

Any reliance on the belated OGCC opinion could only be discounted as mere afterthoughts.

All told, that they sought to clarify with the OGCC the manner by which MC 174 should be implemented only shows that the Board was well-aware of its ambiguity. However, instead of remaining prudent by simply awaiting implementing rules expressly providing the amount of financial subsidy to be granted under MC 174, the Board proceeded to grant and pay the benefits on its own.

Liability for disallowed amount.

Following the guidelines laid down in *Madera v. Commission on Audit*,[45] the following persons shall be liable for the subject disallowance:

(a) All ZCWD officials and employees who *received* the financial subsidy, as passive recipients, are liable to return the amount they individually received based on *solutio indebiti*.

(b) Aside from what they have received by virtue of Board Resolution No. 206, the Board shall be solidarily liable for the disallowed amount on account of their unauthorized and imprudent directive to pay the subject financial subsidy.

WHEREFORE, the Decision dated August 28, 2014 and the Resolution dated March 9, 2015 of the Commission on Audit, Commission Proper, which upheld Notice of Disallowance No. 10-127 (09) dated September 7, 2010 amounting to ₱5,127,523.00 are **AFFIRMED WITH MODIFICATION** in that the ZCWD Board of Directors shall be solidarily liable for the disallowed amount while the passive recipients shall be liable to return only what they had individually received.

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[45] G.R. No. 244128, September 8, 2020.

SO ORDERED.

Peralta, C.J., Caguioa, Gesmundo, Hernando, Carandang, Lazaro-Javier, Zalameda, Lopez, Gaerlan, and *Rosario, JJ.*, concur.

Perlas-Bernabe, on official leave, left a vote.

Leonen and *Delos Santos, JJ.*, on official leave.

EN BANC

[G.R. No. 228795. December 1, 2020]
[Formerly UDK 15699]

ESTELITA A. ANGELES, *Petitioner*, *v*. **COMMISSION ON AUDIT (COA) AND COA-ADJUDICATION AND SETTLEMENT BOARD**, *Respondents*.

APPEARANCES OF COUNSEL

The Solicitor General for respondents.

D E C I S I O N

LOPEZ, *J.*:

The propriety of the denial of a request for relief from accountability is the main issue in this Petition for *Certiorari*[1] under Rule 64, in relation to Rule 65 of the Rules of Court assailing the Commission on Audit's (COA) Decision[2] dated April 13, 2015.

ANTECEDENTS

On March 12, 2010 at 2:30 p.m., cashier Lily De Jesus (Lily) and revenue collection officer Estrellita Ramos of the Office of the Treasurer of the Municipality of San Mateo, Rizal, on board the service vehicle maneuvered by municipal driver Felix Alcantara (Felix), went to the Land Bank of the Philippines in J.P. Rizal St., Barangay Concepcion, Marikina City to withdraw ₱1,300,000.00 payroll money. The group drove back to their office after the transaction. At around 4:30 p.m., they reached the traffic light along J.P. Rizal St. in front of the old barangay hall. Later, a man crossed the street and fired a gunshot on the

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[1] *Rollo*, pp. 2-15.

[2] *Id.* at 43-49.

driver's side of the vehicle. The bullet hit Felix's left arm and pierced his left chest. Felix felt numb and eventually passed out. Thereafter, another man broke the glass window in the passenger's side of the vehicle. The man forcibly took from Lily the black bag containing the payroll money. The man then shot Lily that caused her death. After the investigation, the police arrested the suspects Jay-ar Magpuri and Virgilio Redito, who were indicted for Robbery with Homicide.[3]

On March 15, 2010, the officer-in-charge municipal treasurer Estelita Angeles (Estelita) informed the Audit Team Leader about the incident and requested a relief from accountability for the lost payroll money. Estelita explained that she assumed office on October 27, 2008, and the practice of her predecessors is that the paymaster or cashier transacts with the depositary bank without any police escort. The standard operating procedure requires a travel pass from the Human Resource Development Officer stating the personnel's name, date, time, and purpose of travel. Meanwhile, the municipal mayor Jose Rafael Diaz and the Audit Team Leader recommended the grant of relief from accountability given the positive identification of the culprits, and the absence of Estelita's fault or participation in the robbery. Moreover, the Audit Team Leader advised that the accountable officer should have a security escort every time a transaction is made with the bank to avoid similar incidents in the future. The Supervising Auditor did not object to the recommendation. On May 30, 2012, however, the Adjudication and Settlement Board denied the request for relief from accountability and found Estelita and Lily's estate solidary liable to pay ₱1,300,000.00. The Board held that a security escort is necessary considering the amount involved, and its absence gave the perpetrators an opportunity to commit robbery.[4]

Estelita elevated the case to the COA through a petition for review contending that she exercised due diligence despite the absence of specific regulations on how to safeguard payroll

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

[4] *Id.* at 17-23.

money while in transit. Estelita alleged that a security escort would invite more attention and put the payroll money in greater risk. A security escort cannot also prevent the violent nature of robbery, which resulted in injuries to the driver and the death of the cashier. Lastly, Estelita invoked the favorable recommendations to grant her request for relief from accountability.[5] On April 13, 2015, the COA denied Estelita's petition and ruled that a higher degree of precaution is required given the amount withdrawn and transported. Yet, securing a simple travel pass without a security escort fell short of the necessary diligence in handling government funds,[6] thus:

> **WHEREFORE,** premises considered, the instant petition for review of Ms. Estelita A. Angeles is hereby **DENIED**. Accordingly, Adjudication and Settlement Board Decision No. 2012-023 dated May 30, 2012, finding Ms. Angeles and the Estate of the late Lily de Jesus jointly and severally liable for the total amount of [₱]1.3 million, is hereby **AFFIRMED**.[7] (Emphasis in the original.)

Estelita sought reconsideration. On June 6, 2016, the COA denied the motion for being filed out of time and for lack of merit.[8] Hence, this Petition for *Certiorari* under Rule 64 of the Rules of Court. Estelita maintains that the absence of security escort alone does not indicate negligence, and that the robbery was unexpected to occur in broad daylight on a public street.[9] On the other hand, the Office of the Solicitor General (OSG) argues that Estelita was negligent in allowing bank transactions without any security escort. The OSG points out that the COA properly considered the absence of security escort and the explanation offered in case of loss of government funds through robbery.[10]

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[5] *Id.* at 24-32.

[6] *Id.* at 43-49.

[7] *Id.* at 48.

[8] *Id.* at 50.

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

[10] *Id.* at 151-169.

Meantime, the Court directed Estelita to provide a complete statement of material dates to determine whether her petition is timely filed.[11] Estelita then manifested that she received on August 18, 2016 the Resolution of the COA denying her motion for reconsideration and that she filed the petition for *certiorari* on September 19, 2016 or within the 30-day reglementary period under Rule 64 of the Rules of Court.[12]

RULING

Under Section 3, Rule 64 of the Rules of Court, an aggrieved party may file a petition for review on *certiorari* within 30 days from notice of the COA's judgment. The reglementary period includes the time taken to file the motion for reconsideration, and is only interrupted once the motion is filed. If the motion is denied, the party may file the petition only within the period remaining from the notice of judgment. The aggrieved party is not granted a fresh period of 30 days,[13] to wit:

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

Accordingly, the petition must show when notice of the assailed judgment or order or resolution was received; when the motion for reconsideration was filed; and when notice of its denial was received. The rationale for requiring a complete statement of material dates is to determine whether the petition

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[11] *Id.* at 99-100.

[12] *Id.* at 104-109.

[13] *Fortune Life Insurance Company, Inc. v. Commission on Audit Proper* (Resolution), 752 Phil. 97, 105 (2015).

is timely filed. Yet, Estelita merely provided the date she received the Resolution of the COA denying her motion for reconsideration. Estelita failed to state the time she had been notified of the COA Decision denying her appeal and the date she filed the motion for reconsideration. Notwithstanding, this Court can reasonably conclude that Estelita's Petition for *Certiorari* was filed beyond the reglementary period. Admittedly, Estelita sought for a reconsideration before the COA, which would no longer entitle her to the full 30-day period to file a petition for *certiorari* unless such motion was filed on the same day that she received the decision denying her appeal, which did not happen in this case. To be sure, the COA denied Estelita's motion for reconsideration because it was belatedly filed and has no merit. As such, the petition for *certiorari* could have been dismissed outright for being filed out of time.

On this point, we cannot overemphasize·that courts have always tried to maintain a healthy balance between the strict enforcement of procedural laws and the guarantee that every litigant be given the full opportunity for the just disposition of his cause.[14] Indeed, the Court has allowed several cases to proceed in the broader interest of justice despite procedural defects and lapses.[15] In *The Law Firm of Laguesma Magsalin Consulta and Gastardo v. Commission on Audit*,[16] the petitioner erroneously reckoned the 30-day reglementary period from the denial of its motion for reconsideration. The Court relaxed the rules and resolved the case on merits considering that the issue involved

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[14] *Tanenglian v. Lorenzo*, 573 Phil. 472, 485 (2008), citing *Neypes v. CA*, 506 Phil. 613, 625-626 (2005).

[15] *Dr. Malixi v. Dr. Baltazar*, 821 Phil. 423, 440-441 (2017), citing *Paras v. Judge Baldado*, 406 Phil. 589 (2001); *Doble v. ABB, Inc./Nitin Desai*, 810 Phil. 210, 228 (2017); *Trajano v. Uniwide Sales Warehouse Club*, 736 Phil. 264, 273-274 (2014); *Heirs of Amada Zaulda v. Zaulda*, 729 Phil. 639, 651 (2014); *Manila Electric Company v. Gala*, 683 Phil. 356, 364 (2012); and *Durban Apartments Corp. v. Catacutan*, 514 Phil. 187, 195 (2005).

[16] 750 Phil. 258 (2015).

the right of the petitioner to receive due compensation *vis-à-vis* the COA's duty to prevent the unauthorized disbursement of public funds. In *Sto. Niño Construction v. Commission on Audit*,[17] the COA denied the petitioner's motion for reconsideration for being filed out of time. The Court gave due course to the petition to serve substantial justice and considered the merits of the petition. Verily, these rulings are in keeping with the principle that rules of procedure are mere tools designed to facilitate the attainment of justice.[18] Here, there exists a clear need to prevent the commission of a grave injustice to Estelita, which is not commensurate with her failure to comply with the prescribed procedure. The circumstances obtaining in this case merit the liberal application of the rule in the interest of substantial justice. We now proceed to determine whether Estelita and Lily are negligent in handling government funds.

Public properties and funds for official use and purpose shall be utilized with the diligence of a good father of a family.[19] Thus, Section 105 of the Government Auditing Code of the Philippines[20] hold the accountable officers liable in case of their negligence in keeping or using government properties or funds resulting in loss, damage or deterioration,[21] to wit:

SEC. 105. *Measure of liability of accountable officers.* —

(1) Every officer accountable for government property shall be liable for its money value in case of improper or unauthorized use or misapplication thereof, by himself or any person for whose acts he may be responsible. He shall likewise be **liable for all losses, damages,**

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[17] G.R. No. 244443 (Resolution), October 15, 2019.

[18] *Philippine Bank of Communications v. CA*, 805 Phil. 964, 972 (2017).

[19] RULES IMPLEMENTING THE CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES. See Rule VI, Section 8, par. 3; See *Cruz v. Gangan*, 443 Phil. 856, 863 (2003).

[20] Presidential Decree (PD) No. 1445; published on August 7, 1978.

[21] *Id.*; *Gutierrez v. Commission on Audit*, 750 Phil. 413, 431 (2015).

or deterioration occasioned by negligence in the keeping or use of the property, whether or not it be at the time in his actual custody.

(2) Every officer accountable for government funds shall be **liable** for all losses resulting from the unlawful deposit, use, or application thereof and **for all losses attributable to negligence in the keeping of the funds.** (Emphases supplied.)

Differently stated, the officers may be relieved from accountability absent evidence that they acted negligently in handling public properties or funds,[22] or when the loss occurs while they are in transit or if the loss is caused by fire, theft, or other casualty or *force majeure*.[23] In *Bintudan v. Commission on Audit*,[24] we explained that negligence is a comparative and relative concept highly dependent on the surrounding facts,[25] *viz.*:

> Negligence is the omission to do something that a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent man and [a] reasonable man could not do. Stated otherwise, negligence is want of care required by the circumstances. Negligence is, therefore, a relative or comparative concept. Its application depends upon the situation the parties are in, and the degree of care and vigilance which the prevailing circumstances reasonably require. x x x.[26]

Cognitive of this standard, we rule that Estelita and Lily exercised the reasonable care and caution that an ordinary prudent person would have observed in a similar situation. They have performed what is humanly possible under the circumstances. Foremost, the cashier and the revenue collection officer used the service vehicle driven by the municipal driver in going to

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[22] *Callang v. Commission on Audit*, G.R. No. 210683, January 8, 2019.

[23] PD No. 1445, SEC. 73; See *Bintudan v. Commission on Audit*, 807 Phil. 795, 804 (2017).

[24] 807 Phil. 795 (2017).

[25] *Callang v. Commission on Audit, supra*.

[26] *Id.*

and from the bank which is safer compared to other means of transportation. They followed the existing practice of securing travel pass and the procedure in withdrawing the payroll money. The bank transaction was made during regular office hours. Unfortunately, armed men attacked them while they were *en route* back to their office. As Estelita aptly argued, the robbery was unexpected to occur in broad daylight on a public street. The violent robbery, which resulted in injuries to the driver and the death of the cashier, could not have been prevented. It was beyond Estelita or Lily's control. The municipal mayor, the audit team leader, and the supervising auditor all recommended the grant of relief from accountability given the positive identification of the culprits and the absence of Estelita's fault or participation in the robbery.

Contrary to the COA's ruling, the absence of security escort alone does not indicate negligence. In *Hernandez v. Chairman, Commission on Audit*,[27] the relief from accountability was granted when the petitioner lost government funds even though he was un-escorted and rode a public transport. In that case, the petitioner encashed checks to pay the wages of his co-employees. However, the petitioner decided to bring the money home to Marilao, Bulacan, and to just deliver it the next day since it was already late and considering the hazards of the trip going back to the project site in Ternate, Cavite. Unfortunately, while the petitioner was aboard a passenger jeep going to the project site, two robbers attacked him in broad daylight, in the presence of other passengers, and while the jeep was in a busy street. We ruled that the loss of the money was due to a fortuitous event and cannot be attributed to petitioner's imprudence and negligence. The Court then cautioned in passing out judgment with the benefit of foresight, thus:

Hindsight is a cruel judge. It is so easy to say, after the event, that one should have done this and not that or that he should not have acted at all, or else this problem would not have arisen at all. That is all very well as long as one is examining something that

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[27] 258-A Phil. 604 (1989).

has already taken place. **One can hardly be wrong in such a case**. But the trouble with this retrospective assessment is that it assumes for everybody an uncanny prescience that will enable him by some mysterious process to avoid the pitfalls and hazards that he is expected to have foreseen. **It does not work out that way in real life. For most of us, all we can rely on is a reasoned conjecture of what might happen, based on common sense and our own experiences, or our intuition, if you will, and without any mystic ability to peer into the future**. x x x.[28] (Emphasis supplied.)

Similarly, in *Callang v. Commission on Audit*,[29] the petitioner cannot be faulted that she believed that it was safer to bring the money home where she could always keep a vigilant eye. In that case, the petitioner decided to bring home the remaining cash of ₱537,454.50 for the salaries and wages of her co-employees given that their office does not have a safety vault and had been the subject of burglaries in the past. While aboard a jeepney on her way to work the next day, a robber took her bag containing the money and her personal belongings. The Court citing *Hernandez* reiterated that while it is easy to pass judgment with the benefit of foresight, an individual cannot be faulted in failing to predict every outcome of one's action.

Notably, aside from the amount involved, the COA did not rationalize its stringent condition of having security escort. It is settled that reasonable men govern their conduct by the circumstances which are before them or known to them. They are not, and are not supposed to be, omniscient of the future. They can be expected to take care only when there is something before them to suggest or warn of danger.[30] Here, there is nothing that could have prompted Estelita or Lily to request a security escort for that particular transaction. It is improper for COA to conclude that a higher degree of diligence is expected from the accountable municipal officers in withdrawing the payroll money. As discussed earlier, only the diligence of a good father of a

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[28] *Id.* at 610.

[29] *Supra* note 22.

[30] *Picart v. Smith*, 37 Phil. 809, 813 (1918).

family is required in handling government properties and funds. At any rate, a common carrier, who is obliged to exercise extraordinary diligence, was absolved from liability for loss due to robbery. The ruling of the Court in *De Guzman v. Court of Appeals*,[31] although not involving public properties or funds, is instructive when it rejected the argument that the common carrier must be required to hire a security guard to ride the truck in order to comply with its duty to observe extra ordinary diligence, thus:

> **We do not believe, however, that in the instant case, the standard of extraordinary diligence required private respondent to retain a security guard to ride with the truck and to engage brigands in a firelight at the risk of his own life and the lives of the driver and his helper.**
>
> x x x x
>
> In these circumstances, we hold that the occurrence of the loss must reasonably be regarded as quite beyond the control of the common carrier and properly regarded as a fortuitous event. It is necessary to recall that even common carriers are not made absolute insurers against all risks of travel and of transport of goods, and are not held liable for acts or events which cannot be foreseen or are inevitable, provided that they shall have complied with the rigorous standard of extraordinary diligence.[32]

Taken together, the COA committed grave abuse of discretion when it denied the request for relief from accountability. The conclusion that the accountable officers, in hindsight, should have requested a security escort is insufficient to establish negligence. While the COA's diligence in guarding public properties and funds is admirable, we stress that it should not be at the cost of government employees who are not guilty of negligence, and who, in the performance of their duties, risk their lives and limbs.

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[31] 250 Phil. 613 (1988).

[32] *Id.* at 621-623.

FOR THESE REASONS, the Commission on Audit's Decision dated April 13, 2015 is **REVERSED** and **SET ASIDE**. The request for relief from money accountability of Estelita Angeles and the late Lily De Jesus is **GRANTED**.

SO ORDERED.

Peralta, C.J., Caguioa, Gesmundo, Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, Gaerlan, and *Rosario, JJ.*, concur.

Perlas-Bernabe, Leonen, and *Delos Santos, JJ.*, on official leave.

EN BANC

[G.R. No. 230549. December 1, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **GLENN BARRERA y GELVEZ**, *Accused-Appellant.*

APPEARANCES OF COUNSEL

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

D E C I S I O N

GAERLAN, *J.*:

Courts, in criminal cases, must delicately carry the scales of justice to arrive at a three-way balance with respect to the interest of the State to maintain an effective system of deterrence; to provide adequate retribution to the victim; and with utmost regard to the innate value of human liberty and the constitutional rights of the accused.[1] *Hence, a determination of guilt does not automatically tilt the law against the person convicted. On the contrary, in case of ambiguity, it is the Court's duty to apply and interpret criminal law in favor of the defendant. As in the hierarchy of rights, the Bill of Rights takes precedence over the right of the State to prosecute, and when weighed against each other, the scales of justice lean towards the former.*[2]

This resolves the appeal pursuant to Section 13(c), Rule 124 of the Rules of Court as amended, from the Decision[3] dated September 30, 2016, of the Court of Appeals (CA) in CA-G.R.

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[1] *Cf. Allado v. Judge Diokno*, 302 Phil. 213, 238 (1994).

[2] *People v. Lacson*, 448 Phil. 317, 463 (2003).

[3] *Rollo*, pp. 2-10; penned by Associate Justice Socorro B. Inting, with Associate Justices Remedios A. Salazar-Fernando and Priscilla J. Baltazar-Padilla (now a retired Member of this Court), concurring.

CR-HC No. 07488. The CA affirmed the Decision of the Regional Trial Court (RTC) of Calamba City, Branch 34, finding the accused-appellant Glenn Barrera *y* Gelvez guilty beyond reasonable doubt of the crime of robbery with rape in Criminal Case No. 22085-2014-C.

The Antecedent Facts

The accused-appellant was charged with the crime of robbery with rape by virtue of an Information dated February 4, 2013, the accusatory portion of which reads:

> That on or about 5:30 a.m. of 02 February 2013 at XXX,[4] Calamba City and within the jurisdiction of this Honorable Court, the above-named accused, with intent to gain by means of force upon things, did then and there willfully, unlawfully and feloniously entered the house of the private complainant and once inside, take, steal one (1) portable DVD worth Php2,500 and one (1) TCL 21 inches television, owned by BBB, to the damage and prejudice of the latter.
>
> That on occasion thereof, the said accused, with lewd design, sexually assaulted AAA, a seven (7)-year old minor, against her will, by pulling down her shorts and inserting his tongue inside the vagina of the said minor, to the damage and prejudice of the minor.
>
> CONTRARY TO LAW.[5]

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

After pre-trial, trial on the merits ensued.

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[4] The real name of the victim, her personal circumstances and other information which tend to establish or compromise her identity, as well as those of her immediate family or household members, shall not be disclosed to protect her privacy and fictitious initials shall, instead, be used, in accordance with *People v. Cabalquinto* (533 Phil. 703 [2006]), and A.M. No. 04-11-09-SC dated September 19, 2006.

[5] *Rollo*, p. 3.

[6] Id.

The prosecution presented as witnesses: the minor offended party, AAA, and her father, BBB. Their testimonies tend to establish the following facts:

In the early morning of February 2, 2013, accused-appellant broke into the house occupied by BBB, his wife CCC, and their seven-year old daughter AAA. Accused-appellant gained entry by removing one of the jalousies of a window, through which he was able to turn the doorknob and enter the house.[7]

Once inside, the accused-appellant took a DVD player worth ₱2,500.00 and a television set. He then proceeded to the second floor of the house where AAA was sleeping.[8]

The accused-appellant then approached AAA, took off her shorts and licked and inserted his tongue in her vagina.[9] This awakened AAA who then shouted to CCC, "*Mommy hinubadan po ako ng short at dinilaan ang pepe ko*."[10] CCC, hearing the noise, got up from sleep and started to wake BBB by shouting at him. BBB then saw the accused-appellant still inside the house and carrying their DVD player. The accused-appellant tried to escape but BBB and CCC chased after him. The commotion woke their relatives who live in the same compound and proceeded to help the couple catch the accused-appellant. In the process, the accused-appellant dropped the DVD player. The accused-appellant was eventually apprehended by BBB, who then sought the aid of the *barangay tanod*. Thereafter, accused-appellant was turned over to the police.[11]

For its part, the defense presented the accused-appellant and his neighbor and sister-in-law, one Rachelle Magsino (Rachelle).

The accused-appellant offered the defense of denial. He claims that on February 3, 2013, at around 5:00 a.m., as he was on his

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

[8] Id. at 64-65.

[9] Id.

[10] Id. at 65.

[11] Id.

way to the seashore to help his father, he was approached by the *barangay* officials who brought him to the Municipal Hall. Therein, he was informed that he was being charged with robbery with rape and was to be investigated. The accused-appellant claims that he is familiar with the faces of AAA, BBB, and CCC but cannot identify them by their names. Finally, he denies that he committed the acts complained of.[12]

Rachelle testified that at around 5:00 a.m. of the day of the incident she saw the accused-appellant having breakfast in his house. After some time, Rachelle again saw the accused-appellant head to the sea where his father was waiting. Thereafter, Rachelle saw the accused-appellant being arrested by the *barangay tanods*. Rachelle admitted that she did not know what happened from the time the accused left his house up to the time he went towards the sea.[13]

On November 20, 2014, the RTC rendered its Decision,[14] ruling as follows:

> WHEREFORE, foregoing premises considered, JUDGMENT is hereby rendered finding accused GLENN BARRERA *y* GELVEZ GUILTY beyond reasonable doubt of the crime of Robbery with Rape under Article 293 in relation to Article 294 of the Revised Penal Code and hereby imposes upon him the penalty of *reclusion perpetua*.
>
> Moreover, accused GLENN BARRERA *y* GELVEZ is, likewise, ORDERED to PAY private complainant AAA the amount of ₱50,000.00 as civil damages *ex delicto*, ₱50,000.00 as moral damages and ₱30,000.00 as exemplary damages. The total monetary awards shall earn 6% interest *per annum* from the finality of this Decision until fully paid.
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> SO ORDERED.[15]

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[12] Id. at 66.

[13] Id. at 66-67.

[14] Id. at 63-73; rendered by Judge Maria Florencia B. Formes-Baculo.

[15] Id. at 73.

The RTC held that there is an undeniable positive identification of the accused-appellant as the person who entered BBB's house and took their television and DVD player.[16] Further, the RTC found AAA's testimony credible and sufficient to establish the fact that she was sexually assaulted by the accused- appellant.[17]

The accused-appellant filed an appeal before the CA, which rendered the herein assailed Decision,[18] dated September 30, 2016, affirming the RTC Decision, the dispositive portion of which reads:

> WHEREFORE, in light of the foregoing, the appeal is DENIED. The assailed Decision of the RTC of Calamba City, Branch 34, in Criminal Case No. 22085-2014-C, is hereby AFFIRMED with MODIFICATION in that accused-appellant shall not be eligible for parole pursuant to Republic Act No. 9346 and the awards of civil indemnity and moral damages are each increased to ₱75,000.00.
>
> SO ORDERED.[19]

In this appeal, both parties manifested that they would no longer submit supplemental briefs considering that they had already exhaustively discussed the issues in their briefs before the CA.[20]

In the main, the accused-appellant assails the judgment of conviction on the ground that the testimonies upon which they are based are "incongruent and improbable" and as such should not be given weight and credence.[21]

Ruling of the Court

The appeal is ***not*** **meritorious**. The accused-appellant's conviction must stand, albeit for two separate offenses of robbery and sexual assault.

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[16] Id. at 69.

[17] Id. at 71.

[18] Id. at 2-10.

[19] Id. at 9-10.

[20] Id. at 27-29; 18-20.

[21] CA *rollo*, p. 55.

The Court affirms, as there is no compelling reason to deviate from the common factual findings of the RTC and the CA.

It is settled that questions on credibility of witnesses are generally left for the trial court to determine as it had the unique opportunity to observe the witness' deportment and demeanor on the witness stand. The trial court's evaluation is accorded the highest respect and will not be disturbed on appeal in the absence of any showing that significant facts have been overlooked or disregarded, which could have otherwise affected the outcome of the case. This rule is more stringently observed when the assessment and conclusion of the RTC is concurred in by the CA.[22]

In this case, both the RTC and the CA found the testimonies of AAA and BBB to be trustworthy and sufficient to establish the guilt of the accused-appellant beyond reasonable doubt. The Court sees no reason to depart from such finding.

AAA was merely seven years of age at the time the crime was committed. She was eight years old when she testified before the court. Nonetheless, AAA was clear, straightforward, and unwavering in relating to the court what happened to her and in identifying the accused as the perpetrator of the offense. During cross-examination, her testimony remained consistent and unrebutted.[23] Thus, the RTC and the CA did not err in giving her testimony full faith and credit.

Jurisprudence recognized that "[y]outh and immaturity are generally badges of truth. It is highly improbable that a girl of tender years, one not yet exposed to the ways of the world, would impute to any man a crime so serious as rape if what she claims is not true."[24]

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[22] *People v. Banzuela*, 723 Phil. 797, 814 (2013).

[23] *Id.* at 71.

[24] *People v. Pareja*, 724 Phil. 759, 780 (2014) citing *People v. Perez*, 595 Phil. 1232, 1251-1252 (2008).

The accused-appellant's defense of denial and alibi, in the absence of clear and convincing proof to substantiate the same, will not stand against the categorical statement and positive identification of the prosecution witnesses.[25]

Notably, the accused-appellant failed to make account of his whereabouts during that period after he left the house and prior to the time he went to the seashore to help his father and was captured by the barangay officials.[26] Considering the proximity of these places to the scene of the crime, the accused-appellant was not able to prove that "it is impossible for him to be somewhere else when the crime was committed and that it was physically impossible for him to have been at the scene of the crime."[27] Since there is a chance for the accused-appellant to be present at the crime scene, his defense of alibi must fail.[28]

The accused-appellant should be convicted of two separate crimes of robbery and sexual assault.

While the Court affirms and adopts the factual findings of the RTC and the CA, it however differs with respect to the crime committed by the accused-appellant. As aptly pointed out by Justice Rosmari D. Carandang during the deliberations of this case, the accused-appellant should be convicted of two separate crimes, *i.e.*, robbery and sexual assault under Article 266-B of the Revised Penal Code (RPC).

The legislature intended to maintain the dichotomy between rape through carnal knowledge and sexual assault; the former should be treated more severely than the latter.

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[25] *People v. Banzuela*, supra note 22.

[26] *Rollo*, p. 8.

[27] *People v. Evangelio, et al.*, 672 Phil. 229, 245 (2011).

[28] Id.

The crime of robbery with rape is a special complex crime penalized by Article 294 of the RPC, as amended by Section 9 of Republic Act (R.A.) No. 7659. For a successful prosecution of the said crime, the following elements must be established beyond reasonable doubt: a) the taking of personal property is committed with violence or intimidation against persons; b) the property taken belongs to another; c) the taking is done with intent to gain or *animus lucrandi*; and d) the robbery is accompanied by rape.[29] In robbery with rape, the true intent of the accused must be to take, with intent to gain, the property of another; rape must be committed only as an accompanying crime. Article 294 does not distinguish when rape must be committed, for as long as it is contemporaneous with the commission of robbery.[30]

With the amendment introduced by R.A. No. 7659 on December 13, 1993, the penalty of *reclusion perpetua* to death was imposed for the special complex crime of robbery with rape owing to its inherent atrocity and perversity.[31] The penalty for the crime of rape was similarly amended under Section 11 of the same Act by imposing the penalty of death when Rape is attended by certain circumstances.[32] Even so, the definition

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[29] *People v. Romobio*, 820 Phil. 168, 183-184 (2017).

[30] Id. at 184-185.

[31] REPUBLIC ACT NO. 7659, Sec. 9.

[32] Article 335. x x x

> The crime of rape shall be punished by reclusion perpetua.
>
> Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.
>
> When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death.
>
> When the rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof, the penalty shall be reclusion perpetua to death.
>
> When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death.

of rape under Article 335 of the RPC and as a component of the special complex crime of robbery with rape, remained unchanged, *viz.*:

Section 11. Article 335 of the same Code is hereby amended to read as follows:

Art. 335. When and how rape is committed. — Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;

2. When the woman is deprived of reason or otherwise unconscious; and

3. When the woman is under twelve years of age or is demented.

x x x x

In choosing to impose the penalty of death for certain heinous crimes, the legislature acted within the purview of crimes as

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The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant 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.

2. when the victim is under the custody of the police or military authorities.

3. when the rape is committed in full view of the husband, parent, any of the children or other relatives within the third degree of consanguinity.

4. when the victim is a religious or a child below seven (7) years old.

5. when the offender knows that he is afflicted with Acquired Immune Deficiency Syndrome (AIDS) disease.

6. when committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency.

7. when by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation.

they are defined at the time of the passage of R.A. No. 7659. To be more specific, in the special complex crime of robbery with rape, the legislature evaluated the gravity of the offense and formulated its decision as to the depravity of the offenses based on the definition of the component crimes at that point in time: robbery as defined under Article 293 of the RPC, and rape as defined under then Article 335 (now Article 266-A (1)) of the RPC, herein aforequoted.

On October 22, 1997, R.A. No. 8353 otherwise known as the "Anti-Rape Law of 1997" took effect. It expanded the traditional definition of rape to include acts of sexual assault also referred to as "gender-free rape" or "object rape." Thus, there are now two modes in which rape may be committed, *viz.*:

Article 266-A. *Rape; When and How Committed*. — Rape is Committed —

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat, or intimidation;

b) When the offended party is deprived of reason or otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority; and

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.[33] (Emphasis supplied)

The expansion of the definition of the crime of rape by including acts of sexual assault notwithstanding, it is evident

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[33] REPUBLIC ACT NO. 8353, Sec. 2.

that R.A. No. 8353 does not view the two modes of commission on an equal footing. The distinction between rape committed through sexual intercourse (first mode) on the one hand and sexual assault (second mode) on the other is exhibited by the penalty which the legislature determined appropriate to impose. R.A. No. 8353 punishes rape through the first mode more severely as depending on the attendance of circumstances, it provides for the penalty within the range of *reclusion perpetua* to death; whereas, rape under the second mode is generally punishable with penalty ranging from *prision mayor* to *reclusion temporal*, save for instances where homicide attended its commission, then penalty of *reclusion perpetua* is imposed. Article 266-B of the RPC as amended by R.A. No. 8353, reads:

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

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be *reclusion perpetua* to death.

When the rape is attempted and a homicide is committed by reason or on the occasion thereof, the penalty shall be *reclusion perpetua* to death.

When by reason or on the occasion of the rape, homicide is committed, the penalty shall be death.

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;

2) When the victim is under the custody of the police or military authorities or any law enforcement or penal institution;

3) When the rape is committed in full view of the spouse, parent, any of the children or other relatives within the third civil degree of consanguinity;

4) When the victim is a religious engaged in legitimate religious vocation or calling and is personally known to be such by the offender before or at the time of the commission of the crime;

5) When the victim is a child below seven (7) years old;

6) When the offender knows that he is afflicted with Human Immune-Deficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS) or any other sexually transmissible disease and the virus or disease is transmitted to the victim;

7) When committed by any member of the Armed Forces of the Philippines or para-military units thereof or the Philippine National Police or any law enforcement agency or penal institution, when the offender took advantage of his position to facilitate the commission of the crime;

8) When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation or disability;

9) When the offender knew of the pregnancy of the offended party at the time of the commission of the crime; and

10) When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime.

Rape **under paragraph 2** of the next preceding article shall be punished by *prision mayor*.

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *prision mayor* to *reclusion temporal*.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be *reclusion temporal*.

When the rape is attempted and a homicide is committed by reason or on the occasion thereof, the penalty shall be *reclusion temporal* to *reclusion perpetua*.

When by reason or on the occasion of the rape, homicide is committed, the penalty shall be *reclusion perpetua*.

Reclusion temporal shall also be imposed if the rape is committed with any of the ten aggravating/qualifying circumstances mentioned in this article. (Emphasis supplied)

The imposition of a more severe penalty for rape through sexual intercourse shows that the legislature found such mode of commission more appalling than the other thus warranting a more severe punishment as a form of chastisement and deterrence.

The distinction between the two modes — the traditional concept of rape and sexual assault, has been exhaustively and judiciously discussed in the landmark case of *People v. Tulagan*.[34] The case highlighted that R.A. No. 8353 merely upgraded Rape from a "crime against chastity" (a private crime) to a "crime against persons" (a public crime) for facility in prosecution; and reclassified specific acts constituting "acts of lasciviousness" as a distinct crime of "sexual assault." The Court, speaking through then Associate Justice, now Chief Justice, Diosdado M. Peralta, elucidated:

Upon the effectivity of R.A. No. 8353, specific forms of acts of lasciviousness were no longer punished under Article 336 of the RPC, but were transferred as a separate crime of "sexual assault" under paragraph 2, Article 266-A of the RPC. Committed by "inserting penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person" against the victim's will, "sexual assault" has also been called "gender-free rape" or "object rape." However, the term "rape by sexual assault" is a misnomer, as it goes against the traditional concept of rape, which is carnal knowledge of a woman without her consent or against her will. In contrast to sexual assault which is a broader term that includes acts that gratify sexual desire (such as cunnilingus, felatio, sodomy or even rape), the classic rape is particular and its commission involves only the reproductive organs of a woman and a man. **Compared to sexual assault, rape is severely penalized because it may lead to unwanted procreation; or to paraphrase the words of the legislators, it will put an outsider into the woman who would bear a child, or to the family, if she is married. The dichotomy**

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[34] G.R. No. 227363, March 12, 2019.

between rape and sexual assault can be gathered from the deliberation of the House of Representatives on the Bill entitled "*An Act to Amend Article 335 of the Revised Penal Code, as amended, and Defining and Penalizing the Crime of Sexual Assault*":

INTERPELLATION OF MR. [ERASMO B.] DAMASING:

x x x x

Pointing out his other concerns on the measure, specifically regarding the proposed amendment to the Revised Penal Code making rape gender-free, Mr. Damasing asked how carnal knowledge could be committed in case the sexual act involved persons of the same sex or involves unconventional sexual acts.

Mr. [Sergio A. F.] Apostol replied that the Bill is divided into two classifications: rape and sexual assault. The Committee, he explained, defines rape as carnal knowledge by a person with the opposite sex, while sexual assault is defined as gender-free, meaning it is immaterial whether the person committing the sexual act is a man or a woman or of the same sex as the victim.

Subsequently, Mr. Damasing adverted to Section 1 which seeks to amend Article 335 of the Revised Penal Code as amended by RA No. 7659, which is amended in the Bill as follows: "Rape is committed by having carnal knowledge of a person of the opposite sex under the following circumstances." He then inquired whether it is the Committee's intent to make rape gender-free, either by a man against a woman, by a woman against a man, by man against a man, or by a woman against a woman. He then pointed out that the Committee's proposed amendment is vague as presented in the Bill, unlike the Senate version which specifically defines in what instances the crime of rape can be committed by a man or by the opposite sex.

Mr. Apostol replied that under the Bill "carnal knowledge" presupposes that the offender is of the opposite sex as the victim. If they are of the same sex, as what Mr. Damasing has specifically illustrated, such act cannot be considered rape — it is sexual assault.

Mr. Damasing, at this point, explained that the Committee's definition of carnal knowledge should be specific since the phrase "be a person of the opposite sex" connotes that carnal knowledge can be committed by a person, who can be either a man or a woman and hence not necessarily of the opposite sex but may be of the same sex.

Mr. Apostol pointed out that the measure explicitly used the phrase "carnal knowledge of a person of the opposite sex" to define that the abuser and the victim are of the opposite sex; a man cannot commit rape against another man or a woman against another woman. He pointed out that the Senate version uses the phrase carnal knowledge with a woman."

While he acknowledged Mr. Apostol's points, Mr. Damasing reiterated that the specific provisions need to be clarified further to avoid confusion, since, earlier in the interpellation Mr. Apostol admitted that being gender-free, rape can be committed under four situations or by persons of the same sex. Whereupon, Mr. Damasing read the specific provisions of the Senate version of the measure.

In his rejoinder, Mr. Apostol reiterated his previous contention that the Bill has provided for specific and distinct definitions regarding rape and sexual assault to differentiate that rape cannot be totally gender-free as it must be committed by a person against someone of the opposite sex.

With regard to Mr. Damasing's query on criminal sexual acts involving persons of the same sex, Mr. Apostol replied that Section 2, Article 266(b) of the measure on sexual assault applies to this particular provision.

Mr. Damasing, at this point, inquired on the particular page where Section 2 is located.

SUSPENSION OF SESSION

x x x x

INTERPELLATION OF MR. DAMASING
(Continuation)

Upon resumption of session, Mr. Apostol further expounded on Sections 1 and 2 of the bill and differentiated rape from sexual assault. Mr. Apostol pointed out that the main difference between the aforementioned sections is that carnal knowledge or rape, under Section 1, is always with the opposite sex. Under Section 2, on sexual assault, he explained that such assault may be on the genitalia, the mouth, or the anus; it can be done by a man against a woman, a man against a man, a woman against a woman or a woman against a man.

Concededly, R.A. No. 8353 defined specific acts constituting acts of lasciviousness as a distinct crime of "sexual assault," and increased

the penalty thereof from *prision correccional* to *prision mayor*. But it was never the intention of the legislature to redefine the traditional concept of rape. The Congress merely upgraded the same from a "crime against chastity" (a private crime) to a "crime against persons" (a public crime) as a matter of policy and public interest in order to allow prosecution of such cases even without the complaint of the offended party, and to prevent extinguishment of criminal liability in such cases through express pardon by the offended party.[35] (Citations omitted and emphasis supplied)

From the foregoing discussion, it can be inferred that it was never the intention of the legislature to redefine the traditional concept of rape. R.A. No. 8353 merely expanded the crime by including another mode in which the crime of rape may be committed. Simply, the legislature only found it fit to categorize acts previously classified and punished as "Acts of Lasciviousness" as the second mode of committing the crime of rape, that is, through sexual assault. In doing so, legislative intent is clear in that while encompassed in the definition of rape, sexual assault should be treated less severely than rape through carnal knowledge. In the exercise of its discretion and wisdom, the legislature resolved that a more severe penalty should be imposed when rape is committed through sexual intercourse owing to the fact that it may lead to unwanted procreation, an outcome not possible nor present in sexual assault.

Inasmuch as the intent of a law is a vital component and the essence of the law itself,[36] the clear legislative intent to maintain the dichotomy between the two modes of commission of rape, in terms of penalty, must be carried out.

In the same vein, following legislative intent in the passage of R.A. No. 7659, the penalty of *reclusion perpetua* to death for the special complex crime of robbery and rape should be limited to instances when rape is accomplished through sexual intercourse or "organ penetration." The penalty should not be

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[35] Id.

[36] *Eugenio v. Exec. Sec. Drilon*, 322 Phil. 112, 117 (1996), citing Vol. II, Sutherland, STATUTORY CONSTRUCTION, pp. 693-695.

unduly extended to cover sexual assault considering that the acts punishable under such mode were not yet recognized as "Rape" but as "Acts of Lasciviousness" at the time the severe penalty of death was imposed. All the more, to repeat for the sake of emphasis, as even after the inclusion of sexual assault in the definition of rape by R.A. No. 8353, Congress deliberations show that the law never intended to redefine the traditional concept of rape. Rather, the law merely expanded the definition of the crime of rape, with the intent of maintaining the existing distinction between the two modes of commission.

The criminalization of an act cannot be based on mere inferences.

A law is tested by its purposes and results. In seeking the meaning of the law, the first concern is legislative intent. In determining such intent, the law should never be interpreted in such a way as to cause injustice.[37] As "[a]n indispensable part of that intent, in fact, for we presume the good motives of the legislature, is *to render justice*."[38] In the performance of its duty, courts should therefore interpret the law in harmony with the dictates of justice.[39]

The Court cannot simply presume that with the passage of R.A. No. 8353, rape as a component of the special complex crime of robbery with rape includes sexual assault. With respect to penal statutes, the Court cannot rest on mere deductions.[40] Likewise, "it is not enough to say that the legislature intended to make a certain act an offense."[41] The penal statute must clearly and specifically express that intent. In order for an accused to be convicted under a penal statute, the latter must definitively encompass and declare as criminal the accused's act prior to

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[37] *Alonzo v. Intermediate Appellate Court*, 234 Phil. 267, 276 (1987).

[38] Id.

[39] Id.

[40] *People v. PO1 Sullano*, 827 Phil. 613, 625-626 (2018).

[41] Id. at 623.

its commission.[42] "Whatever is not plainly within the provisions of a penal statute should be regarded as without its intendment."[43]

In the case at bar, R.A. No. 7659, insofar as it imposes the penalty of *reclusion perpetua* to death for the special complex crime of robbery with rape, is bereft of any statement to suggest that it contemplates any and all forms of rape which may subsequently be defined. Thus, the law which imposes a harsher penalty should not be extended to include sexual assault, which was recognized as rape only after its passage.

Furthermore, it is a fundamental rule in criminal law that any ambiguity shall be always construed strictly against the State and in favor of the accused.[44] Penal laws "are not to be extended or enlarged by implications, intendments, analogies or equitable considerations. They are not to be strained by construction to spell out a new offense, enlarge the field of crime or multiply felonies."[45] Consequently, the interpretation of penal statutes is subjected to a strict and careful scrutiny in order to safeguard the rights of the accused. When confronted with two reasonable and contradictory interpretations, that which favors the accused is always preferred.[46]

In view of the foregoing principles therefore, the more reasonable interpretation is that when Sexual Assault under Article 266-A, paragraph 2 of the RPC accompanied the robbery, the accused should not be punished of the special complex crime of robbery with rape but that of two separate and distinct crimes, as it would be more favorable to the accused.

The conviction of the accused-appellant of two separate offenses does not violate his right to information.

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[42] *People v. PO1 Sullano*, supra at 625.

[43] Id., citing *Centeno v. Judge Villalon-Pornillos*, 306 Phil. 219, 230-231 (1994).

[44] *People v. PO1 Sullano*, supra.

[45] *Centeno v. Judge Villalon-Pornillos*, supra.

[46] Id.

The Constitution guarantees the right of an accused in a criminal prosecution to be informed of the nature and cause of accusation against him.[47] Flowing from the said right, it is required that every element of the offense charged must be alleged in the Complaint or Information, to afford the accused an opportunity to adequately prepare his defense. Consequently, an accused cannot be convicted of a crime, even if duly proven, unless it is alleged or necessarily included in the Information.[48]

The nature of the offense charged is judged on the basis of the recital of facts in the Complaint or Information, without regard to the caption or the specification of the law alleged to have been violated.[49] In this case, the recital of facts in the Information presents no obstacle in convicting the accused-appellant of two distinct crimes of robbery and sexual assault under Article 266-A (2) of the RPC in relation to Section 5 (b) of R.A. No. 7610. The Information contains a complete recital of the elements of each of the said offenses.

The right of the accused to information is also the basis for the rule that a Complaint or Information, to be valid, must charge only one offense.[50] Failure to comply with this rule is a ground for quashing the duplicitous Complaint or Information. However, the accused must raise the defect in a motion to quash before arraignment, otherwise the defect is deemed waived.[51] In this case, the accused-appellant entered a plea of not guilty without moving for the quashal of the Information, hence, he is deemed to have waived his right to question the same.

The accused-appellant equally failed to object to the duplicitous information during trial. As a result, the court may

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[47] 1987 CONSTITUTION, Article III, Section 14(2).

[48] *Canceran v. People*, 762 Phil. 558, 568 (2015).

[49] Id. at 568-569.

[50] RULES OF COURT, Rule 110, Section 13; *People, et al. v. Court of Appeals, et al.*, 755 Phil. 80, 116-117 (2015).

[51] RULES OF COURT, Rule 117, Section 9.

convict the accused-appellant of as many offenses as charged and proved during trial, and impose upon him the penalty for each offense.[52]

The Court finds that the facts as alleged and proven establish that robbery was committed by the use of force upon things as defined and penalized under Article 299 (a) (1) of the RPC. The elements[53] of the said crime was established through the common factual findings of the RTC and the CA, which the Court approves and adopts:

> [T]here is thus an undeniable positive identification of the accused as the person who entered private complainant [BBB's] house, and brought out the television set and the DVD player. And the four elements constituting the crime of Robbery with Force Upon Things are duly proven. The second element of the taking of personal properties was testified to and duly established by private complainant [BBB] whose television set and DVD player were taken by the accused. The first element of intent to gain or *animus lucrandi* is presumed from the fact of the loss of the personal belongings of private complainant. And there can be no dispute or quibble that the two items taken, which were both recovered, are personal properties, thus the third element is likewise proven.
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> Lastly, the fourth element of the use of force upon things is very clear as testified to by the private complainant [BBB] of the destruction of their window jalousies in order to reach the doorknob of his house and to gain entry into private complainant [BBB's] house. x x x
>
> It is thus clear that by destroying the jalousies of the window to reach the doorknob of the door to gain ingress or entry into private complainant [BBB's] house, the fourth element of the crime charged is duly proven.[54]

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[52] RULES OF COURT, Rule 120, Section 3.

[53] (1) that there is taking of personal property; (2) the personal property belongs to another; (3) the taking is with *animus lucrandi*; and (4) the taking is with violence against or intimidation of persons or force upon things. [*Consulta v. People*, 598 Phil. 464, 471 (2009).]

[54] CA *rollo*, pp. 69-70.

Similarly, the prosecution proved beyond reasonable doubt all the elements of the crime of Sexual Assault under Article 266-A(2) of the RPC in relation to Section 5(b) of R.A. No. 7610. The RTC explained:

> Moreover, from the testimony of private complainant [AAA], x x x, rape by sexual assault was committed by the accused. x x x [S]he categorically testified that the accused licked and inserted his tongue inside her vagina. During the incident complained of private complainant [AAA] was only 7 years old as duly proven by her Certificate of Live Birth.[55]

The apparent inconsistencies in the narration of facts relative to the specific sexual acts performed by the accused-appellant does not affect the nature and character of the crime committed. Herein, the Information alleged that the accused-appellant "*inserted his tongue*" inside AAA's vagina;[56] the CA Decision narrated that the accused-appellant "*licked her vagina*";[57] while the RTC concluded that the accused-appellant "*licked and inserted his tongue*" inside AAA's vagina.[58]

As aforementioned early on in this Decision, the Court sees no reason to depart from the factual findings of the RTC that the accused-appellant committed acts of Sexual Assault against AAA by licking and inserting his tongue inside her vagina. Owing to its unique position to observe directly the demeanor of witnesses, the trial court's evaluation of the testimony of witnesses is accorded the highest respect by the Court, more so, when as in this case, the CA made a similar conclusion. Despite the apparent inconsistencies in the language employed, the CA Decision was clear in that it is affirming the factual findings of the trial court. There should be no obstacle in convicting the accused-appellant of the crime of Sexual Assault. The difference as to the terminologies used by the RTC and

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[55] Id. at 70.

[56] *Rollo*, p. 3.

[57] Id. at 4.

[58] CA *rollo*, p. 70.

the CA is understandable. In her testimony, ". . . *sa paggising ko po ay dinidilaan ang pepe ko.*" While literally translated, "dilaan" means to "lick" the Court must consider that the witness is a child of tender years. AAA was merely seven years of age at the time the crime was committed; and eight years old when she testified in court. As such, she cannot be expected to describe with such particularity the sexual act committed. Verily, the trial court, observing the demeanor of the witnesses first hand, is in a better position than the appellate court to evaluate the testimonial evidence properly[59] and draw conclusions from them.

The separation of the charge into two distinct offenses finds further justification as the same is more favorable to the accused-appellant.

Under Article 294 of the RPC, the special complex crime of robbery with rape is penalized by *reclusion perpetua* to death. Pursuant to Article 63(1) of the same Code, when the law prescribes a penalty composed of two indivisible penalties, the greater penalty shall be applied when the deed is attended by an aggravating circumstance. With the presence of the aggravating circumstance of dwelling in this case, the penalty would be death, the higher among the two individual penalties prescribed. Consequently, had the conviction be for the special complex crime of robbery with rape, the penalty would be "*reclusion perpetua* without eligibility for parole" as directed by R.A. No. 9346 and A.M. No. 15-08-02-SC.

In contrast, the prosecution and conviction for two separate offenses, even if taken together would yield a lower penalty.

The penalty for robbery by the use of force upon things as defined under Article 299 (a) (2) of the RPC as amended by R.A. No. 10951,[60] depends upon the value of the property taken and whether or not the offender carry arms, *viz.*:

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[59] *People v. Perez*, 595 Phil. 1232, 1251 (2008).

[60] An Act Adjusting the Amount or the Value of Property and Damage on Which a Penalty is Based, and the Fines Imposed under the Revised Penal Code, Republic Act No. 10951, August 29, 2017.

ART. 299. *Robbery in an inhabited house or public building or edifice devoted to worship*. — Any armed person who shall commit robbery in an inhabited house or public building or edifice devoted to religious worship, shall be punished by *reclusion temporal*, if the value of the property taken shall exceed Fifty thousand pesos (₱50,000), and if —

(a) The malefactors shall enter the house or building in which the robbery was committed, by any of the following means:

x x x x

2. By breaking any wall, roof, or floor or breaking any door or window.

x x x x

When the offenders do not carry arms, and the value of the property taken exceeds Fifty thousand pesos (₱50,000), the penalty next lower in degree shall be imposed.

The same rule shall be applied when the offenders are armed, but the value of the property taken does not exceed Fifty thousand pesos (₱50,000).

When said offenders do not carry arms and the value of the property taken does not exceed Fifty thousand pesos (₱50,000), they shall suffer the penalty prescribed in the two (2) next preceding paragraphs, in its minimum period.

x x x x[61] (Emphasis supplied)

Herein, the information alleged that the accused-appellant took "one (1) portable DVD worth ₱2,500.00 and one (1) TCL 21 inches television."[62] The Court finds such allegation insufficient to prove the amount of the property taken for the purpose of fixing the penalty imposable against the accused-appellant. The prosecution must prove such value by an independent and reliable

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SECTION 100. *Retroactive Effect*. — This Act shall have retroactive effect to the extent that it is favorable to the accused or person serving sentence by final judgment.

[61] REPUBLIC ACT NO. 10951, Section 79.

[62] *Rollo*, p. 3.

estimate.[63] An uncorroborated estimate is not enough.[64] The prosecution failed on this score. In the absence of factual and legal bases, jurisprudence instructs that the Court may either apply the minimum penalty or fix the value of the property taken based on the attendant circumstances of the case.[65]

In the exercise of such discretion, the Court hereby imposes upon the accused-appellant the minimum penalty under Article 299 of the RPC, as warranted by the circumstances, *i.e.*, *prision mayor* minimum.

In the crime of robbery by the use of force upon things, the breaking of the jalousies in BBB's house is a means of committing the crime and as such can no longer be considered to increase the penalty.[66] Similarly, with the separation of the crimes committed and the crime of robbery established is with the use of force upon things, the aggravating circumstance of dwelling can no longer be considered as it is inherent in the offense.[67]

Applying the Indeterminate Sentence Law (ISL), there being no attendant mitigating or aggravating circumstance, the maximum penalty shall be within the medium period of *prision mayor* minimum or 6 years, 8 months and 1 day to 7 years and 4 months.[68] The minimum penalty on the other hand shall be anywhere within the range of *prision correccional* in its maximum period or 4 years, 2 months and 1 day to 6 years, the penalty next lower in degree to *prision mayor* minimum.[69]

With this, for the crime of robbery, the Court imposes upon the accused-appellant the indeterminate penalty of 6 years of

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[63] *Cf. Viray v. People*, 720 Phil. 841, 848 (2013).

[64] *People v. Anabe*, 644 Phil. 261, 280-281 (2010), citing *Merida v. People*, 577 Phil. 243, 258-259 (2008).

[65] *People v. Anabe*, *id.*

[66] REVISED PENAL CODE, Article 62, as amended.

[67] *People v. Cabatlao*, 195 Phil. 211, 223 (1981).

[68] REVISED PENAL CODE, Article 64(1).

[69] INDETERMINATE SENTENCE LAW, Section 1.

prision correccional as minimum and 7 years and 4 months of *prision mayor* as maximum.

On the amount of civil liability, it is clear that no actual damages can be awarded as the television set and DVD player that were stolen were eventually recovered.[70]

With respect to the crime of sexual assault under Article 266-A(2) of the RPC in relation to Section 5(b) of R.A. No. 7610 committed against AAA, 7 years of age, guided by the Court's ruling in the case of *People v. Tulagan*,[71] the penalty shall be *reclusion temporal* in its medium period.

In view of the separation of the crimes, the aggravating circumstance of dwelling having been properly alleged in the Information must still be appreciated. While dwelling cannot be considered in the crime of robbery, the Court deems it proper to consider the same in determining the penalty of sexual assault, the same having been proven during trial. When the crime of rape through sexual assault is committed in the dwelling of the offended party, and the latter has not given any provocation, dwelling may be appreciated as an aggravating circumstance.[72]

The presence of the aggravating circumstance of dwelling warrants the imposition of the penalty prescribed in its maximum period.[73] Hence, applying the ISL, the maximum term shall be anywhere within the maximum period of *reclusion temporal* medium or 16 years, 5 months and 10 days to 17 years and 4 months. The minimum penalty, on the other hand, shall be one degree lower of *reclusion temporal* in its medium period or *reclusion temporal* in its minimum period. The minimum term

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[70] *Rollo*, p. 73.

[71] G.R. No. 227363, March 12, 2019.

[72] *People v. Gayeta*, 594 Phil. 636, 648-649 (2008). See *People v. Padilla*, 312 Phil. 721, 737 (1995), where the Court ruled that dwelling is an aggravating circumstance in rape.

[73] REVISED PENAL CODE, Article 64(3).

of the indeterminate sentence should therefore be within the range of 12 years and 1 day to 14 years and 8 months.[74]

For the crime of sexual assault under Article 266-A (2) of the RPC in relation to Section 5 (b) of R.A. No. 7610, the Court hereby imposes upon the accused–appellant the indeterminate prison term of 14 years and 8 months of *reclusion temporal* as minimum to 17 years, 4 months of *reclusion temporal* as maximum.

In accordance with recent jurisprudence, the accused-appellant is also liable to pay AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as exemplary damages, and ₱50,000.00 as moral damages.[75] All damages shall earn interest at the rate of six percent (6%) *per annum* from the date of finality of this Decision until fully paid.[76]

WHEREFORE, in view of the foregoing, the appeal is hereby **DISMISSED**. Accordingly, the Decision dated September 30, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 07488 is hereby **AFFIRMED with MODIFICATION**, as follows:

A. The accused-appellant Glenn Barrera *y* Gelvez is hereby found **GUILTY** of the crime of robbery by the use of force upon things, defined and penalized by Article 299 of the Revised Penal Code, as amended by Republic Act No. 10951. He is hereby sentenced to suffer the indeterminate penalty of imprisonment of six (6) years of *prision correccional* as minimum and seven (7) years and four (4) months of *prision mayor* as maximum.

B. The accused-appellant Glenn Barrera *y* Gelvez is also found **GUILTY** of the crime of sexual assault under Article 266-A (2) of the Revised Penal Code in relation to Section 5 (b) of Republic Act No. 7610. He is hereby sentenced to suffer the indeterminate penalty of imprisonment of fourteen

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[74] REVISED PENAL CODE, Article 64(1), *People v. Tulagan*, supra note 34; *Quimvel v. People*, 808 Phil. 889, 936-937 (2017).

[75] *People v. Tulagan*, id.

[76] *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

(14) years and eight (8) months of *reclusion temporal* as minimum to seventeen (17) years and four (4) months of *reclusion temporal* as maximum. In addition, in accordance with recent jurisprudence,[77] accused-appellant is ordered to **PAY** the private complainant AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as exemplary damages, and ₱50,000.00 as moral damages.

All monetary awards shall earn interest at the rate of six percent (6%) *per annum* from the date of finality of this Decision until fully paid.[78]

SO ORDERED.

Peralta, C.J., Gesmundo, Hernando, Carandang, Lazaro-Javier, Zalameda, Lopez, and *Rosario, JJ.,* concur.

Caguioa, J., see concurring & dissenting opinion.

Inting, J., no part.

Perlas-Bernabe, Leonen, and *Delos Santos, JJ.,* on official leave.

CONCURRING AND DISSENTING

CAGUIOA, *J.*:

I concur in the result — that the accused Glenn Barrera y Gelvez (the accused) should stand criminally liable for the t wo distinct crimes of Robbery with force upon things under Article 299 (A) (2) and Sexual Assault under Article 266-A (2) of the Revised Penal Code (RPC). I disagree, however, with the rationalizations of the *ponencia*.

Brief review of the facts

The accused was charged under an Information dated February 4, 2013, the accusatory portion of which reads:

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[77] *People v. Tulagan, supra* note 34.

[78] *Nacar v. Gallery Frames, supra* note 76.

That on or about 5:30 a.m. of 02 February 2013 at XXX, Calamba City and within the jurisdiction of the Honorable Court, the above-named accused, **with intent to gain by means of force upon things**, did then and there willfully, unlawfully and feloniously entered the house of the private complainant and once inside, take, steal one (1) portable DVD worth Php2,500 and one (1) TCL 21 inches television, owned by BBB, to the damage and prejudice of the latter.

That on occasion thereof, the said accused, with lewd design, sexually assaulted AAA, a seven (7)-year old minor, against her will, **by pulling down her short and inserting his tongue inside the vagina of the said minor**, to the damage and prejudice of the minor.

CONTRARY TO LAW.[1] (Emphasis supplied)

It was established during the course of the trial that in the early morning of February 2, 2013, the accused, by removing one of the jalousies of a window, broke into the house where BBB,[2] his wife CCC,[3] and their seven-year-old daughter AAA[4] were residing.[5] Once inside, the accused took a DVD player and a television set.

Thereafter, the accused managed to find AAA, who was then sleeping on the second floor, and violated her by taking off her shorts, licked her private parts and inserted his tongue.[6] After the ordeal, AAA yelled which roused CCC and BBB. The attempted escape of the accused was foiled by BBB and CCC with the help of their relatives living in the same compound.

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[1] *Ponencia*, p. 2.

[2] 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.

[3] *Id.*

[4] *Id.*

[5] *Ponencia*, p. 2; *rollo*, p. 3.

[6] *Ponencia*, p. 3; *rollo*, p. 4.

BBB sought the aid of the Barangay Tanod and the accused was turned over to the police.[7]

After trial, the trial court held the accused guilty of the special complex crime of Robbery with Rape under Article 293, in relation to Article 294, of the RPC, and imposed upon him the penalty of *reclusion perpetua*.[8]

On appeal, the Court of Appeals affirmed the conviction with the modification that the accused shall not be eligible for parole pursuant to Republic Act (R.A.) No. 9346[9] and the awards of civil indemnity and moral damages were each increased to ₱75,000.00.[10] The accused then filed the present appeal.

The *ponencia* holds the accused liable for two separate crimes, namely (1) "Robbery by the use of force upon things, defined and penalized by Article 299 of the RPC"[11] and (2) "Sexual Assault under Article 266-A (2) of the RPC in relation to Section 5(b) of R.A. No. 7610."[12]

As previously mentioned, I concur in the result that the accused is liable for two distinct crimes. I respectfully disagree, however, in the disquisitions of the *ponencia* in arriving at the said conclusion. It is my view that the present case — based on the allegations in the Information, as well as the facts proven — does not even involve the special complex crime of "Robbery with Rape" defined under Article 294 of the RPC, as amended. Accordingly, the discourse in the *ponencia* as to what kind of rape is included in "Robbery with Rape" is uncalled for.

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[7] *Ponencia*, p. 3; *rollo*, p. 4.

[8] *Ponencia*, p. 4; *rollo*, pp. 4-5.

[9] AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES, approved June 24, 2006.

[10] *Ponencia*, p. 4; *rollo*, p. 9.

[11] *Ponencia*, p. 22.

[12] *Id.*

The crime of Robbery and the special complex crime of Robbery with Rape

Robbery is a crime committed in one of two ways as defined under Article 293 of the RPC:

> Art. 293. *Who are guilty of robbery*. — Any person who, with intent to gain, shall take any personal property belonging to another, by means of violence against or intimidation of any person, **or** using force upon anything, shall be guilty of robbery. (Emphasis and underscoring supplied)

The elements of the crime of robbery are therefore: (1) there is taking of personal property; (2) the personal property belongs to another; (3) the taking is with *animus lucrandi* or intent to gain; and (4) **the taking is with violence against or intimidation of persons OR with force upon things**.[13] "Violence against or intimidation of persons" and "force upon things" are two different modes of committing Robbery. The RPC itself even defines and deals with them separately, *i.e.*, Articles 294-298 for Robbery through violence against or intimidation of persons and Articles 299-303 for Robbery through force upon things.

The **taking by either of these two means** is the gravamen of the felony. When one removes the means of commission (violence or intimidation against persons, or force upon things) from the material act of taking, the crime committed ceases to be robbery. In the commentaries of Justice Luis B. Reyes on robbery, he reiterated that there should be violence exerted to accomplish the taking. If the violence, for instance, is for a reason entirely foreign to the fact of taking, then there can be no robbery:

> Where there is nothing in the evidence to show that some kind of violence had been exerted to accomplish the snatching, and the offended party herself admitted that *she did not feel anything at the*

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[13] *People of the Philippines v. Mamalayan*, 420 Phil. 880, 891 (2011).

time her watch was snatched from her left wrist, the crime committed is not robbery but only simple theft.[14] (Italics in the original)

The fact that the owner of the money was tied at the time the money was taken cannot be considered as violence for the purpose of classifying the same as robbery. The offended party was tied for some hours previously for a reason entirely foreign to the act of taking money.[15]

Simply put, to qualify the crime as robbery, the **violence against or intimidation of persons should have been present in the taking of personal property**.[16]

From this discussion, it is important to point out that the special complex crime of Robbery with Rape is ***peculiar*** to robberies committed through violence against or intimidation of persons. The special complex crime of Robbery with Rape is defined in Article 294 (1) of the RPC, as amended by R.A. No. 7659,[17] which provides:

> 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, or **when the robbery shall have been accompanied by rape** or intentional mutilation or arson. (Emphasis and underscoring supplied)

It is worth noting that no similar provision can be found in the articles of the RPC dealing with Robbery through force upon things, *i.e.*, Articles 299-303. **Thus, as defined**, to support

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[14] REYES, LUIS B. THE REVISED PENAL CODE, BOOK TWO, 2008 ed., p. 681, citing *People vs. Joson*, C.A., 62 O.G. 4604.

[15] REYES, LUIS B. THE REVISED PENAL CODE, BOOK TWO, 2012 ed., p. 744, citing *U.S. v. Birueda*, 4 Phil. 229 (1905).

[16] According to J. Reyes, "the violence or intimidation must be present before the taking of personal property is complete." (*Id.* at 662)

[17] AN ACT TO IMPOSE THE DEATH PENALTY ON CERTAIN HEINOUS CRIMES AMENDING FOR THAT PURPOSE THE REVISED

a conviction for the special complex crime of Robbery with Rape, the following elements must be proven:

(a) The taking of personal property is committed **with violence or intimidation against persons**;

(b) The personal property taken belongs to another;

(c) The taking is with intent to gain; and

(d) The robbery is accompanied by rape.[18]

Application of the foregoing in the present case

Of the four elements of the special complex crime, the **element that the taking of property be committed with violence or intimidation against persons** is absent in the present case. The Information filed against the accused made no allegation whatsoever that the robbery itself was committed through violence or intimidation against persons. As well, the evidence of the prosecution did not establish this.

Instead, alleged in the Information and proven beyond reasonable doubt was the commission of robbery **with force upon things**, defined and penalized under Article 299 (a) (2) of the RPC, as amended by R.A. No. 10951,[19] which provides:

Art. 299. *Robbery in an inhabited house or public building or edifice devoted to worship*. — Any armed person who **shall commit robbery in an inhabited house** or public building or edifice devoted to religious worship, shall be punished by *reclusion temporal*, if the

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PENAL LAWS, AS AMENDED, OTHER SPECIAL PENAL LAWS, AND FOR OTHER PURPOSES, approved December 13, 1993.

[18] *People v. Bongos*, 824 Phil. 1004, 1012 (2018); *People v. Evangelio*, 672 Phil. 229, 242 (2011); *People v. Amper*, 634 Phil. 283, 291 (2010); *People v. Arellano*, 418 Phil. 479, 490 (2001).

[19] AN ACT ADJUSTING THE AMOUNT OR THE VALUE OF PROPERTY AND DAMAGE WHICH A PENALTY IS BASED, AND THE FINES IMPOSED UNDER THE REVISED PENAL CODE, AMENDING FOR THE PURPOSE ACT NO. 3815 KNOWN AS "THE REVISED PENAL CODE," AS AMENDED, dated August 29, 2017.

value of the property taken shall exceed Fifty thousand pesos (Php50,000.00), and if —

(a) The **malefactor shall enter the house** or building in which the robbery was committed, by any of the following means:

1. Through an opening not intended for entrance or egress;
2. **By breaking any wall, roof, or floor, or breaking any door or window**;
3. By using false keys, picklocks, or similar tools;
4. By using any fictitious name or pretending the exercise of public authority.

x x x x

When the offenders do not carry arms, and the value of the property taken exceeds Fifty thousand pesos (PhP50,000.00), the penalty next lower in degree shall be imposed.

The same rule shall be applied when the offenders are armed, but the value of the property taken does not exceed Fifty thousand pesos (PhP50,000.00).

When said offenders do not carry arms and the value of the property taken does not exceed Fifty thousand pesos (PhP50,000.00), they shall suffer the penalty prescribed in the two next preceding paragraphs, in its minimum period. (Emphasis supplied)

All the elements of Article 299(a)(2) of the RPC, as amended by R.A. No. 10951, concur: *first*, the accused entered an inhabited house where BBB and his family were residing; *second*, the accused entered such house by removing one of the jalousies of a window; and *third*, once inside the house, the accused took personal property the value of which appears to not exceed ₱50,000.00, *i.e.*, "one (1) portable DVD worth PhP2,500.00 and one (1) TCL 21 inches television."[20]

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[20] *Ponencia*, p. 2. I note that the *ponencia* correctly characterized the crime committed as one of robbery with force upon things in its final disposition (*id.* at 17).

Since the special complex crime of Robbery with Rape does not exist for robberies committed through force upon things, the sexual acts done by the accused to the minor AAA necessitates a separate conviction for the crime of Rape by Sexual Assault under Article 266-A (2) of the RPC.[21]

Having two separate convictions is possible in this case because the Information filed alleged the commission of two distinct crimes. Normally, the Information would be susceptible to a challenge in a motion to quash under the vice of duplicity of offenses. It appears, however, that the accused failed, before arraignment, to move for the quashal thereof.[22] This being the case, any objection to the defective Information was thereby waived and the accused may be found guilty of as many offenses as those proved during trial.[23]

The ponencia's redefinition of Rape as a component crime of the special complex crime of Robbery with Rape is obiter dicta

To my mind, the issues presented by the appeal are straightforward and the foregoing framework would have judiciously disposed of the issues therein. On the basis of the foregoing, I thus disagree with the *ponencia*'s discussions

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[21] While rape was committed on occasion of the Robbery, the former cannot be complexed with the latter as a special complex crime of Robbery with Rape under Article 294 of the RPC since, as I have pointed out earlier, the Robbery was not committed through violence or intimidation against persons. Neither out earlier, the Robbery was not committed through violence or intimidation against persons. Neither can both felonies be complexed under Article 48 of the RPC since the accused committed two separate criminal acts and Rape cannot be considered as a necessary means for committing the Robbery. As such, the accused should be held separately liable for Rape by Sexual Assault.

[22] *People v. Tamayo*, 434 Phil. 642, 655 (2002).

[23] *People v. Tamayo*, 387 Phil. 465, 487 (2000), citing *People v. Manalili*, 335 Phil. 652 (1998) and *People v. Bugayong*, 299 Phil. 556 (1998).

redefining the nature of rape as a component of the special complex crime of Robbery with Rape defined under Article 294 of the RPC — which, again, is a crime completely distinct from the crimes alleged in the Information and proven by the prosecution.

The *ponencia*'s redefinition of the nature of rape as a component of the special complex crime of Robbery with Rape is therefore unnecessary in the resolution of the instant appeal and thus mere *obiter dicta*.

As previously discussed, the special complex crime of Robbery with Rape exists only in robberies committed through violence against or intimidation of persons. Verily, before the Court can even begin considering, discussing, and resolving the nature of rape as a component of the special complex crime of Robbery with Rape, it must first be established that the **Robbery must have been done through violence against or intimidation on persons.**

In contrast, the Information in this case did not allege — and the evidence presented did not at all prove — that there was violence or intimidation against persons to accomplish the taking of personal property. This case, therefore, clearly does not involve the **special complex crime of "Robbery with Rape" because, to reiterate, it does not exist when the taking of personal property was done with force upon things**, instead of through violence against or intimidation on persons. Any discussion redefining said special complex crime as being confined only to penile rape is thus inconsequential in the resolution of the appeal. Any deliberation and pronouncement on the same will be no more than an advisory opinion, mere *obiter dicta* at once premature and unwarranted,[24] as the

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[24] See *Dee v. Harvest All Investment Limited*, 807 Phil. 572, 583 (2017):

> [An *obiter dictum*] is a remark made, or opinion expressed, by a judge, in his decision upon a cause by the way, that is, incidentally or collaterally, and not directly upon the question before him, or upon a point not necessarily involved in the determination of the cause, or introduced by way of illustration, or analogy or argument. It does not embody the resolution or determination of the court,

established facts of this case do not bear out the need to revisit the relevant penal provisions and overturn decided cases by the Court.

Ultimately, the *ponencia*'s discussions on pages 6 to 14 on the intent of the legislature to maintain the dichotomy between rape by carnal knowledge and rape by sexual assault and how it should be applied in the special complex crime of Robbery with Rape, is mere *obiter dictum*.

Indeed, "[j]usticiability demands that issues and judicial pronouncements be properly framed in relation to established facts."[25] That the liberty and freedom of an accused is at stake and that the question is of extreme importance and is certainly worth of this Court's time and attention are not enough — for the Constitution is clear that the "duty of the courts of justice [is] to settle **actual controversies** involving rights which are legally demandable and enforceable[;]"[26] and in the final analysis, the contours of Article 294(1) of the RPC is not part of the actual controversy in this case because, as illustrated above, Article 299(a)(2) of the RPC is the applicable law in the given set of facts.

Given, however, that the majority has seen it proper for the *ponencia* to discuss the exclusion of rape by sexual assault as a component of the special complex crime of Robbery with Rape, I hereby offer a contrary view that based on the plain text and the intent of the RPC, as amended by R.A. No. 7659 and R.A. No. 8353, the special complex crime of Robbery with Rape includes Rape by Sexual Assault.

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and is made without argument, or full consideration of the point. It lacks the force of an adjudication, being a mere expression of an opinion with no binding force for purposes of *res judicata*. (Emphasis and underscoring omitted)

[25] *Falcis III v. Civil Registrar General*, G.R. No. 217910, September 3, 2019, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/165744>.

[26] CONSTITUTION, Art. VIII, Sec. 1. (Emphasis supplied)

In other words, based on my review of the legal principles involved, I believe that the special complex crime of Robbery with Rape may likewise be committed even if the sexual act done by the accused constitutes Rape by Sexual Assault and not by carnal knowledge.

A. Foremost rule in construing a statute is verba legis; thus, when a statute is clear and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation

When the statute speaks unequivocally, there is nothing for the courts to do but to apply it.[27] The duty of the Court is to apply the law the way it is worded.[28] There is simply no room for statutory construction when the letter of the law is clear. Otherwise stated, a condition *sine qua non* before the court may construe or interpret a statute is that there be doubt or ambiguity in its language.[29]

At the time of the commission of the crime in 2013, Article 294(1) of the RPC, as amended, **as written**, was unambiguous. It states that "[t]he penalty of *reclusion perpetua* to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed, or **when the robbery shall have been accompanied by rape** or intentional mutilation or arson."

Similarly, at the time of the commission of the crime in 2013, **Rape was defined by the RPC *as already including rape by sexual assault***:

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[27] *Tawang Multi-Purpose Cooperative v. La Trinidad Water District*, 661 Phil. 390, 400 (2011).

[28] *Id.*

[29] *United Paracale Mining Co., Inc. v. Dela Rosa*, 293 Phil. 117, 123-124 (1993).

> Article 266-A. *Rape; When and How Committed.* — **Rape is committed:**
>
> 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
>
> a) Through force, threat, or intimidation;
>
> b) When the offended party is deprived of reason or otherwise unconscious;
>
> c) By means of fraudulent machination or grave abuse of authority; and
>
> d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.
>
> 2) **By any person who**, under any of the circumstances mentioned in paragraph 1 hereof, **shall commit an act of sexual assault by inserting his penis into another person's mouth** or anal orifice, **or any** instrument or **object, into the genital** or anal **orifice of another person**. (Emphasis and underscoring supplied)

In 2013, it was clear that Rape may be committed by any of the following ways, namely: (1) by a man having carnal knowledge — penile penetration of the vagina — of a woman, or (2) by a man inserting his penis into another person's, whether a man's or a woman's, mouth, or (3) by any person, whether a man or a woman, who inserts any instrument or object into the genital or anal orifice of any person, whether a man or a woman.

While Rape by sexual intercourse has a heavier penalty[30] than "Rape by Sexual Assault," the law nevertheless treats both of those acts as Rape — ***without distinction***.

To reiterate, the letter of the law, as quoted above, is clear: "Rape is committed x x x [b]y any person who x x x shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object,

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[30] Article 266-A (1) in relation to Article 266-B of the RPC.

into the genital or anal orifice of another person." Thus, to exclude the second paragraph of Article 266-A from the definition of "Rape" in "Robbery with Rape" would be to construe the law contrary to its express letter.

The "ambiguity" that is sought to be addressed in this case was seemingly brought about by the fact that R.A. No. 7659 which amended Article 294 of the RPC, thereby creating, among others, the special complex crime of "Robbery with Rape" — and categorizing the same as a heinous crime and imposing the death penalty — was passed earlier, or in 1993, or four years before the article on Rape was amended by R.A. No. 8353[31] in 1997. This, however, does not, I believe, give rise to any kind of ambiguity. To be sure, it is ***extraneous***, to the letter of the law at the time of the commission of the crime.

It is worth reiterating that when a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. To do otherwise would be to engage in judicial legislation. As the Court in an early case said:

> In substantiation of what has just been said, it is of course fundamental that the determination of the legislative intent is the primary consideration. **However, it is equally fundamental that that legislative intent must be determined from the language of the statute itself. This principle must be adhered to even though the court be convinced by extraneous circumstances that the Legislature intended to enact something very different from that which it did enact. An obscurity cannot be created to be cleared up by construction and hidden meanings at variance with the language used cannot be sought out. To attempt to do so is a perilous undertaking, and is quite apt to lead to an amendment of a law by judicial construction.** To depart from the meaning

[31] AN ACT EXPANDING THE DEFINITION OF THE CRIME OF RAPE, RECLASSIFYING THE SAME AS A CRIME AGAINST PERSONS, AMENDING FOR THE PURPOSE ACT NO. 3815, AS AMENDED, OTHERWISE KNOWN AS THE REVISED PENAL CODE AND FOR OTHER PURPOSES, or The Anti-Rape Law of 1997, September 30, 1997.

expressed by the words is to alter the statute, is to legislate not to interpret.[32] (Emphasis and underscoring supplied)

B. Even with the application of the aids of statutory construction, the Court would still arrive at the same conclusion

Even if the Court were to ascertain the legislative intent of the laws by secondary aids of construction, the conclusion remains the same that **after 1997**, upon the passage of R.A. No. 8353, the definition of rape under our criminal laws had purposefully been changed or expanded to include "acts of sexual assault."

B.1. The title of R.A. No. 8353 expresses the legislative intent to expand the definition of Rape

R.A. No. 8353 is titled "An Act ***Expanding the Definition of Rape***, Reclassifying the Same as a Crime Against Persons, Amending for the Purpose Act No. 3815, as Amended, Otherwise Known as the Revised Penal Code and for Other Purposes."[33]

The title alone reflects the intention of the legislature to set a new definition; to consider as Rape those acts which were previously not considered as such. Part of the reason behind the enactment of the law was to move from the "traditional" concept of Rape, which is limited only to carnal knowledge or penile penetration of the vagina, to an expanded definition where other sexual acts that similarly violate the bodily autonomy of the victim are also covered. In the Explanatory Note of one of the bills filed in the House of Representatives (House) that eventually became R.A. No. 8353, it was stated that:

> The current definition of rape is inadequate inasmuch as it uses penile penetration of the vagina as the index in determining its

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[32] *Tañada v. Yulo*, 61 Phil. 515, 518 (1935).

[33] Emphasis supplied.

> commission. But rape law, to be reflective of the guarantee of equality found in the Constitution, must be concerned with vindicating the violated rights of a human being. It must surmount the current penile penetration-centered framework to encompass sexual violations using objects or targeting other orifices of the human body. This new approach would also end the notion that only a woman can be a rape victim.[34]

The "expanded" definition of Rape was met with opposition when it was being deliberated in the House. The members of the House were not opposed to the idea of punishing the acts that now constitute Rape by Sexual Assault. However, for the members of the House, the "traditional" definition of Rape ought to be "preserved" because (1) that has always been the case and (2) it seemed "unfair" to punish with the same gravity — with *reclusion perpetua* to death — both Rape by carnal knowledge and Rape by sexual assault. Some of the members of the House viewed the two crimes to be different because, especially with "object rape" and bestiality,[35] the perpetrator experiences sexual pleasure not directly, but vicariously. Advocates of the law in the House urged other members to view the crime of rape from the perspective of the victim — the physical, emotional, and psychological trauma that it brings to the victim — and not from the lens of the pleasure brought to the perpetrator. As a form of compromise, advocates of the law in the House eventually agreed to retain the "traditional" definition of Rape and to have the other acts punished as "sexual assault." Thus, the title of the bill after the second reading of the bill in the House read:

> AN ACT TO AMEND ARTICLE 335[36] OF THE REVISED PENAL CODE, AS AMENDED, AND DEFINING AND PENALIZING THE CRIME OF SEXUAL ASSAULT.

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[34] 8th paragraph, Explanatory Note of House Bill No. 2439.

[35] Forcing another person to have sex with an animal. This was an act punished under the original draft of the bill/s filed in the House.

[36] The article number of Rape under the RPC prior to the enactment of R.A. No. 8353.

The title of the House Bill above is different from what the official title of R.A. No. 8353 eventually became. The title above is reflective of the position of the House that the "traditional" definition of Rape had to be "preserved."

In stark contrast, the title of R.A. No. 8353 explicitly states that it was expanding the definition of Rape. The title was changed because Section 2 of R.A. No. 8353, amending Article 335 of the RPC into Article 266-A, treats all the acts therein as Rape, whether it be by sexual intercourse or by sexual assault.

The change in Section 2 of R.A. No. 8353 was a result of a compromise reached in the Bicameral Conference Committee (Bicam) between the two houses of Congress. In contrast with their counterparts in the House, the Senators who were present in the Bicam were adamant that the definition of Rape ought to be expanded. Influenced by developments in other areas of study, the Senators were of the view that, at its core, rape is an issue of power. It is the violation of the lack of consent to the sexual act, and the imposition of power by the perpetrator against the other person, that qualifies the act into rape. To the Senators, therefore, it should be immaterial whatever the sexual act was committed as what was being punished was the intrusion of the victim's bodily autonomy. As a form of compromise, therefore, the legislators agreed to lump together the sexual acts — both those constituting sexual intercourse and those constituting sexual assault — in one section and called it all "Rape," and then simply imposed different penalties as a concession to the members of the House in the Bicam.

Thus, the title of R.A. No. 8353 is what it is because the legislative intent, particularly of the Senate, is to treat all the sexual acts, when done with the attendant circumstances,[37] as Rape, without distinction.

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[37] 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.

B.2. The legislative deliberations reveal the intent to expand the definition of Rape

In this connection, R.A. No. 8353's title is not the only basis for saying that the intent was indeed to expand the definition of Rape. In fact, the Congressional deliberations themselves clearly reveal the said intention. In the Bicam, Senators Anna Dominique M.L. Coseteng and Leticia Ramos Shahani explained the position of the Senate in this wise:

CHAIRPERSON COSETENG. I think that for us to be able to even get to first base in this bicameral conference committee meeting, we should confine ourselves to the issues right here.

I would like to know exactly, since you brought this up, Congressman Damasing, you said several things which I took down. The mouth and the anus are not sexual organs so that you cannot call the insertion of a man's penis into a woman's mouth forcibly without her consent plus all the factors mentioned here, as rape. You don't classify as a rape. Suppose there is consent, is there pleasure, sexual pleasure obtained from the insertion of a man's penis into a woman's mouth? Is the mouth not a source of sexual pleasure when there is consent? Is the anus, for example, with consent, does the penetration of a penis into the woman's anus, is this a source of sexual pleasure when there is consent? Because the reason I think that you're saying it is not a sexual organ is because under the situation[,] you don't believe there is pleasure[.] [N]either is there pleasure, for example, when you force yourself into a woman through her vagina. But if a woman consents to inserting a man's penis into her mouth with consent, is it not a pleasurable act?

I'm only making this analogy, Congressman, because it is not the pleasure or the lack of it that determines whether or not it's a sexual organ.

HON. DAMASING. Madam?

CHAIRPERSON COSETENG. Yes, Congressman.

HON. DAMASING. When a man forces the woman to hold his organ and masturbate the organ, there's pleasure. But I don't see that as a rape. That is not rape, but there is pleasure.

x x x x

x x x So, in other words, we have to be reasonable because I for one would be the first one to defend the woman's right. But we have to be reasonable. For instance, in this version of the Senate, insertion of the finger into the anus is already rape.

CHAIRPERSON COSETENG. Forcible.

HON. DAMASING. Yes, you call it rape. Imagine that!

x x x x

CHAIRPERSON COSETENG. In other words, why are we listening to the men talk about what they feel when the men are the criminals, the men are the violators? I don't want to say that all men are rapists, but I have yet to see a man stand up and say, "I was raped by this woman."

What I'm saying is, can we not listen to the women since the women are the victims? **If the women feels** *(sic)* **that it is considered a violation and she considers it rape if a male's organ is forced into her mouth, should we not listen to the women who are the ones violated** and not just say it's laughingstock because it does not fit into our traditional concepts of what rape is all about?

HON. DAMASING. Madam, it's not only the women that we are protecting in this Bill, even the men.

x x x x

HON. SHAHANI. Because I think the crime of rape is rape. I mean, we feel that if violence is done to a woman, it is rape. And it is not sexual assault. You see[,] by saying sexual assault, you lighten it. That is the interpretation, you see. **The use of violence, the use of force without her consent whether it is carnal knowledge or introduction of foreign object. The fact that there is violence in that act and that it is done against her will, for women, that is rape.** I think that is, this is a fundamental difference.

CHAIRMAN SATOR. We have discussed the meaning of rape in our group. We are agreed that the real meaning of rape is committed on the reproductive organ of a woman by the reproductive organ of the man. I think that we have to distinguish the reproductive organs from those which are not. So we have to classify those which are not done to the reproductive organs as not rape. Because that has always

been the meaning, wherever we go, whether in the Philippines or anywhere in the world. The crime of rape has always been on the sexual organs. Because it will put an outsider to the family or to the woman. For example, she will bear a child or the woman is married, an outsider will come in into that family. So the traditional meaning has always been that way. It will really be very difficult for us to foresee that the crime of rape will include these other acts that we are describing now as sexual assault.

HON. SHAHANI. Well, I think if you might want to put it this way, the repertoire of sexual practice has been enlarged over the years. I mean, just to confine it I think to the genital parts does not reflect what scientists like Floyd have discovered. I am sure you have heard about the sexual book of Masters and Johnson. I mean, it's not just like the genitals. There are ways of violating a body of a woman. And when you say, sex, I mean I think I would agree with what Senator Coseteng says. **I mean, the other parts of the body are sexually sensitive. I mean, they may not lead to pregnancy. But their manipulation can mean an assault or violation of the woman without her consent.** Why do you have to always go by tradition? I mean a lot of crimes precisely have been done. Women have been violated. We could see these as violation against women.[38] (Emphasis and underscoring supplied)

Because of the differing views put forth by the Senators and the members of the House, Senator Raul Roco tried to reconcile the points by suggesting that all the acts be called Rape, in line with the position of the Senate, but, as a concession to the House, the penalties would be different:

HON. ROCO. But we may satisfy everybody already by saying that rape is committed through forced sexual intercourse, bestiality or sodomy or acts of sexual assault. Then you say this way.

x x x x

HON. ROCO. **The three are all rape, then you define them separately.**

x x x x

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[38] Bicameral Conference Committee, February 19, 1997.

HON. ROCO. **A is rape as the traditional; B is bestiality, rape as bestiality; C is rape as sexual assault.** I think, pati na — lahat na should be happy.

x x x x

HON. ROXAS. The alternative, as they do this, no, where rape is the general term and then you have the specifies for each one. May be they can also do parallel what is the House construct which is sexual assault as the genus and the, and then rape and all these other, as the aggravating.

x x x x

HON. ROCO. That's why I am suggesting that one of our justifications is there was nothing to reconcile. Tugma, eh. Parang we just like to accept but we combine it under one genus. Di ba? Because, and it happens, it has happened that when your version is totally different from ours, just put them together. In other words, parang it was out of our hands. It was the way it evolved. So we just say since kami one definition lang, kayo two, we combine it and make it three. And that is really reconciliation. But when you are charged in court you will be charged as a violation of 266 under sexual assault. But,

HON. APOSTOL. Ang ginagawa natin, ang general classification is rape tapos ang sexual assault becomes only a part of it. Actually ang general classification nito ay sexual assault, eh. Then we go, ang particulars is rape.

HON. ROCO. Because this is an anti-rape bill. That's the reason I am suggesting, hindi ba? We did not start out with an anti-sexual assault.

HON. SHAHANI. Yes.

HON. ROCO. We wanted to upgrade the rape as a crime. So when you downgrade rape and it is component of sexual assault, parang di hindi na-achieved yung goal.

HON. [APOSTOL]. No, it's still ano, eh, you still move it up to the section which is crime against persons. You attain that. It's just what you call it, eh. But it's still moved up in the Revised Penal Code to the section that is crimes against persons. So their upgrading was attained.

HON. ROCO. No, but it is the anti-rape bill nga, eh. It is a reaction.

HON. DAMASING. No, no, if we follow your suggestion, there will be no more left for sexual assault.

HON. ROCO. No.

HON. DAMASING. Because under the Senate version, all are rape.

HON. ROCO. No, no, we're classifying this as para we reconcile. We are classifying it para naman yung justification.[39] (Emphasis and underscoring supplied)

After another meeting, the conference committee report, which reflects how R.A. No. 8353 is currently worded, was drafted. When the conference committee report was read to the rest of the members of the House for approval, Rep. Erasmo Damasing had the following clarificatory questions:

MR. DAMASING. Madam Speaker. Your Honor. I want this clarified. If one is charged under paragraph 2, will he be charged with sexual assault or he will be charged with rape?

MR. LARA. Sexual assault, Madam Speaker.

MR. DAMASING. Your Honor, if you read Article 266-A, **there is no such crime denominated as sexual assault, it is all rape because at the start rape is committed by (1) and by (2). The No. 2 is only through sexual assault, but the crime is still known as rape. Look at how it is worded.**

Rape, when and how committed? Rape is committed: (1), and then No. 2, this is against the House version, because the House version stated specifically that there are two ways of committing crimes which are sexually-related: rape and sexual assault. But here, it is lumped into one as rape. Is that correct, Your Honor?

MR. LARA. Madam Speaker.

MR. DAMASING. Let us not anymore try to go around.

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[39] *Id.*

MR. LARA. Madam Speaker, I believe that the principal concern that we must have here is that the **House Panel succeeded in separating the penalties**. What we should see here was the concern of the House that sexual assault must not be penalized with death penalty as the Senate version proposed. So, in the Bicameral Conference, the House Panel succeeded in separating that. **Be that as it may, I think this is just a matter of lumping together. In that context, it is lumping together and calling it, generally, as rape.** I would have the tendency to agree with my colleague from Cagayan de Oro City. So, probably, the Speaker was suggesting that he would coauthor with us and probably joined by the Gentleman from Cagayan de Oro City, a way to remedy this particular situation. But, probably in that context, we — the Gentleman from Cagayan de Oro City and myself — are in agreement, Madam Speaker.

MR. DAMASING. **So, Madam Speaker, Your Honor, it is therefore now clear that all sexual related crimes are now denominated as rape, regardless of the penalties. We want that clarified. Is that correct, Your Honor?**

MR. LARA. **Yes, with different penalties.**

MR. DAMASING.

Yes. To me it is regardless of the penalties. It is just that I wanted to clarify that all [sexually related] crimes are now denominated as rape, there is no such thing as sexual assault, but rape committed through sexual assault?

MR. LARA. **Yes.**

MR. DAMASING. Okay.[40] (Emphasis and underscoring supplied)

Another member of the House sought clarification and it was answered in the same manner:

MR. ISIDRO. Your Honor, at the time that we were discussing this during the period of amendments, this Representation submitted amendments to clarify the definition of the crime of rape in order that rape can only be committed by a man against a woman because of carnal knowledge.

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[40] I RECORD, HOUSE 10TH CONGRESS 3RD SESSION 789 (September 3, 1997).

MR. APOSTOL. Yes, Your Honor.

MR. ISIDRO. And my amendment was carried . . .

MR. APOSTOL. Yes, Your Honor.

MR. ISIDRO. . . . unanimously by this body. Now, I was startled to see that it came back in another form that is in paragraph 2 of Article 266-A so that rape under this definition is not confined to carnal knowledge. It includes sexual assault so that under this bill, rape can now be committed by a man against another man.

MR. APOSTOL. Under paragraph 2.

MR. ISIDRO. Yes. It can also be committed by a woman against another woman.

MR. APOSTOL. Yes, under paragraph 2.

MR. ISIDRO. It can also be committed by a woman against a man.

MR. APOSTOL. Yes, under paragraph 2.

MR. ISIDRO. Now, is this not startling in the sense that it revolutionizes the crime of rape so that for the first time in our history in this jurisdiction, a woman can now charge another woman of rape. A man can charge another man with rape. And a man can charge a woman with rape. Are we ready to accept these changes?

MR. APOSTOL. Your Honor, paragraph (2) is basically an act of sexual assault. Though it is a part, that is paragraph (2) of Section 2, Article 266-A, but this is basically sexual assault. So when we try to revolutionize rape, it is not really revolutionizing rape, it is more sexual assault.

MR. ISIDRO. Your Honor, there is no such crime of sexual assault in this bill, sexual assault is an act in this bill, not a crime.

MR. APOSTOL. Rape by sexual assault.

MR. ISIDRO. What is a crime is the crime of rape which is defined *(sic)***. I am only referring to that particular matter, Your Honor.**

MR. APOSTOL. Yes, Your Honor.

MR. ISIDRO. So that. That is why I am only asking whether we are ready to accept these changes insofar as rape is concerned.

MR. APOSTOL. Yes, Your Honor, we are ready.

MR. ISIDRO. Oh?

MR. APOSTOL. If we will approve it now, we are ready already.

MR. ISIDRO. You mean, the people will not be surprised when a woman charges another woman with rape[?]

MR. APOSTOL. Yes, in fact this is the clamor of women to make rape genderless. But since we could not accept this through your amendment that rape is genderless, we have to agree and accept your amendment on paragraph (1).

MR. ISIDRO. And a man can also charge another man with rape? And that is also the clamor of women?

MR. APOSTOL. Yes, genderless.

MR. ISIDRO. Your Honor, I do not know if these are matter[s] which according to Congressman Damasing, would be subject of future amendments when the time comes. But I feel that matters like [these] which [change] the universal definition of rape should be corrected. Because for the first time we are introducing by Filipino definition, not the universal definition, the crime of rape where it can be committed by either sex against either sex.

MR. APOSTOL. I think, Your Honor, this will be one of those to be amended by Congressman Damasing. Because Congressman Damasing does not agree that paragraph (2) be called rape, it should really be called sexual assault. That is what he was saying.[41] (Emphasis and underscoring supplied)

Despite the clarifications and reservations of the members of the House, the conference committee report was approved overall,[42] although there were some who voted to reject the report. One of those who rejected the report, Rep. Didagen Dilangalen, explained his vote:

MR. DILANGALEN. Thank you very much, Madam Speaker. I am voting against this Committee Report because while under House

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[41] *Id.* at 794-795.

[42] *Id.* at 759-798.

Bill No. 6365, the crime of sexual assault was clearly defined[.] **[U]nder the Committee Report, there is no more crime of sexual assault. We only have rape committed in two ways: by a man who shall have carnal knowledge of a woman under any of the following circumstances, which means to say, the orthodox definition as provided under the Revised Penal Code, and No. 2, by any person who, under any of these circumstance mentioned in paragraph 2 hereof shall commit an act of sexual assault, etc. etc.** So, for this reason, Madam Speaker, considering that what we have agreed here in the lower House has not been carried on in the Bicameral Conference Committee, I am registering my vote against this Committee Report.

Thank you very much, Madam Speaker.[43] (Emphasis and underscoring supplied)

Undoubtedly, therefore, the understanding and intent of both houses of Congress was that with the enactment of R.A. No. 8353, the definition of Rape would be expanded from the traditional definition of Rape that was limited only to penile penetration of the vagina, to the more modern definition that now includes other acts of sexual assault.

In sum, therefore, from the enactment of R.A. No. 8353 in 1997, it was the intent of our criminal laws to understand rape as a crime that may be committed in several ways.

This change in the understanding of what rape is, and what acts are included in this understanding/definition of rape was set in the law **with full knowledge and understanding of all previous laws that dealt with rape** — including, but not limited to, R.A. No. 7659. Accordingly, when Congress passed R.A. No. 8353 — *acknowledged to be a reaction to the clamor of women for protection from acts that were not traditionally viewed as violations of their rights simply because they do not fall under the orthodox but antiquated view that rape should involve her and her assailant's genitalia, and a recognition that as sexual practices evolve, these practices could be, and are used to further degrade or debase another human being* — then it

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[43] *Id.* at 796-797.

was with full knowledge that the crime of "Robbery with Rape" under R.A. No. 7659 would necessarily be understood as also including the other kinds of rape. Thus, the Court cannot ignore the same or give a construction that would render nugatory the letter, intent, and purpose underlying the radical change introduced by R.A. No. 8353.

Conclusion

In sum, while I agree in the result of the case, I submit in this Opinion that:

(1) This is an improper case, given the factual circumstances involved, to discuss the contours of the special complex crime of Robbery with Rape, defined under Article 294 (1) of the RPC, as amended. As this is a case involving a robbery through force upon things, the applicable provision of the RPC is Article 299 (a) (2). For the sexual acts done against the minor victim, Article 266 (a) (2) of the RPC should be applied.

(2) In any event, the rape component of the special complex crime of Robbery with Rape includes acts constituting rape by sexual assault. This interpretation that acts constituting rape by sexual assault are nevertheless considered "Rape" is supported not just by plain reading of the letter of the RPC, as amended by R.A. No. 7659 and R.A. No. 8353, but also by the legislative intent of R.A. No. 8353 as exhibited by its title, structure, and the legislative deliberations.

Based on these premises, I vote to **AFFIRM** with **MODIFICATION** the conviction of petitioner **GLENN BARRERA Y GELVEZ**. Accordingly, he should be convicted of one (1) count of Robbery by the use of force upon things under Article 299 of the Revised Penal Code, as amended by R.A. No. 10951, and one (1) count of Sexual Assault under Article 266-A (2) of the Revised Penal Code in relation to Section 5(b), R.A. No. 7610.

For the *ponente*'s consideration.

EN BANC

[G.R. No. 232199. December 1, 2020]

NATIONAL TRANSMISSION CORPORATION, *Petitioner*, *v.* **COMMISSION ON AUDIT and COA CHAIRPERSON MICHAEL G. AGUINALDO**, *Respondents*.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner TransCo.

The Solicitor General for respondents.

D E C I S I O N

INTING, *J.*:

This resolves the Petition for *Certiorari*[1] under Rule 65, in relation to Rule 64, of the Rules of Court filed by the National Transmission Corporation (TRANSCO) assailing the Decision No. 2017-154[2] dated May 18, 2017 of the Commission on Audit (COA). In the assailed Decision, the COA Proper upheld the Notice of Disallowance No. (ND) TC-10-004(09) dated June 16, 2010 on the payment of excessive separation benefits to Mr. Sabdullah T. Macapodi (Macapodi) amounting to ₱883,341.63.[3]

The Antecedents

Congress enacted Republic Act No. (RA) 9136, or the Electric Power Industry Reform Act of 2001 (EPIRA),[4] to install reforms in the electric power industry which is composed of four sectors,

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

[2] *Id.* at 22-28; penned by Commission on Audit (COA) Chairperson Michael G. Aguinaldo with Commissioners Jose A. Fabia and Isabel D. Agito, concurring.

[3] *Id.* at 27.

[4] Approved on June 8, 2001.

viz.: *generation, transmission, distribution, and supply*.[5] The EPIRA paved the way for the privatization of National Power Corporation (NPC)'s assets and liabilities.

Pursuant to this objective, the EPIRA created the following entities: (1) TRANSCO, which shall acquire NPC's *transmission* assets and be responsible "for the planning, construction and centralized operation and maintenance of its high voltage transmission facilities, including grid interconnections and ancillary services";[6] and (2) Power Sector Assets and Liabilities Management Corporation (PSALM), a government-owned and

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[5] Section 5 of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA) reads:

> SECTION 5. *Organization*. — The electric power industry shall be divided into four (4) sectors, namely: generation; transmission; distribution and supply.

[6] Section 8, EPIRA reads:

> SECTION 8. *Creation of the National Transmission Company*. — There is hereby created a National Transmission Corporation, hereinafter referred to as TRANSCO, which shall assume the electrical transmission functions of the National Power Corporation (NPC), and have the powers and functions hereinafter granted. The TRANSCO shall assume the authority and responsibility of NPC for the planning, construction and centralized operation and maintenance of its high voltage transmission facilities, including grid interconnections and ancillary services.
>
> Within six (6) months from the effectivity of this Act, the transmission and subtransmission facilities of NPC and all other assets related to transmission operations, including the nationwide franchise of NPC for the operation of the transmission system and the grid, shall be transferred to the TRANSCO. The TRANSCO shall be wholly owned by the Power Sector Assets and Liabilities Management Corporation (PSALM Corp.)
>
> The subtransmission functions and assets shall be segregated from the transmission functions, assets and liabilities for transparency and disposal: *Provided*, That the subtransmission assets shall be operated and maintained by TRANSCO until their disposal to qualified distribution utilities which are in a position to take over the responsibility for operating, maintaining, upgrading, and expanding said assets. All transmission and subtransmission related liabilities of NPC shall be transferred to and assumed by the PSALM Corp.

controlled corporation (GOCC), "which shall take ownership of all existing NPC *generation* assets, liabilities, [independent power producer] contracts, real estate and all other disposable assets."[7]

TRANSCO shall negotiate with and thereafter transfer such functions, assets, and associated liabilities to the qualified distribution utility or utilities connected to such subtransmission facilities not later than two (2) years from the effectivity of this Act or the start of open access, whichever comes earlier: *Provided*, That in the case of electric cooperatives, the TRANSCO shall grant concessional financing over a period of twenty (20) years: *Provided, however*, That the installment payments to TRANSCO for the acquisition of subtransmission facilities shall be given first priority by the electric cooperatives out of the net income derived from such facilities. The TRANSCO shall determine the disposal value of the subtransmission asset based on the revenue potential of such assets.

In case of disagreement in valuation, procedures, ownership participation and other issues, the ERC shall resolve such issues.

The take over by a distribution utility of any subtransmission asset shall not cause a diminution of service and quality to the end-users. Where there are two or more connected distribution utilities, the consortium or juridical entity shall be formed by and composed of all of them and thereafter shall be granted a franchise to operate the subtransmission assets by the ERC.

The subscription rights of each distribution utility involved shall be proportionate to their load requirements unless otherwise agreed by the parties.

Aside from the PSALM Corp., TRANSCO and connected distribution utilities, no third party shall be allowed ownership or management participation, in whole or in part, in such subtransmission entity.

The TRANSCO may exercise the power of eminent domain subject to the requirements of the Constitution and existing laws. Except as provided herein, no person, company or entity other than the TRANSCO shall own any transmission facilities.

Prior to the transfer of the transmission functions by NPC to TRANSCO, and before the promulgation of the Grid Code, ERC shall ensure that NPC shall provide to all electric power industry participants open and non-discriminatory access to its transmission system. Any violation thereof shall be subject to the fines and penalties imposed herein.

[7] Section 49, EPIRA reads:

SECTION 49. *Creation of Power Sector Assets and Liabilities Management Corporation*. — There is hereby created a government-owned and -controlled corporation to be known as the "Power Sector

PSALM was tasked to initiate TRANSCO's privatization and "award, in open competitive bidding, the transmission facilities, including grid interconnections and ancillary services to a qualified party either through an outright sale or a concession contract."[8] In view of this, PSALM entered into a 25-year concession contract with the National Grid Corporation of the Philippines (NGCP).[9]

Assets and Liabilities Management Corporation," hereinafter referred to as the "PSALM Corp.," which shall take ownership of all existing NPC generation assets, liabilities, IPP contracts, real estate and all other disposable assets. All outstanding obligations of the NPC arising from loans, issuances of bonds, securities and other instruments of indebtedness shall be transferred to and assumed by the PSALM Corp. within one hundred eighty (180) days from the approval of this Act.

[8] Section 21, EPIRA reads.

SECTION 21. *TRANSCO Privatization*. — Within six (6) months from the effectivity of this Act, the PSALM Corp. shall submit a plan for the endorsement by the Joint Power Commission and the approval of the President of the Philippines. The President of the Philippines thereafter shall direct PSALM Corp. to award, in open competitive bidding, the transmission facilities, including grid interconnections and ancillary services to a qualified party either through an outright sale or a concession contract. The buyer/concessionaire shall be responsible for the improvement, expansion, operation, and/or maintenance of its transmission assets and the operation of any related business. The award shall result in maximum present value of proceeds to the national government. In case a concession contract is awarded, the concessionaire shall have a contract period of twenty-five (25) years, subject to review and renewal for a maximum period of another twenty-five (25) years.

In any case, the awardee shall comply with the Grid Code and the TDP as approved. The sale agreement/concession contract shall include, but not limited to, the provision for performance and financial guarantees or any other covenants which the national government may require. Failure to comply with such obligations shall result in the imposition of appropriate sanctions or penalties by the ERC.

The awardee shall be financially and technically capable, with proven domestic and/or international experience and expertise as a leading transmission system operator. Such experience must be with a transmission system of comparable capacity and coverage as the Philippines.

[9] A consortium composed of Monte Oro Grid Resources Corporation, Calaca High Power Corporation, and State Grid Corporation of China, *rollo*, p. 50.

In turn, Congress enacted RA 9511,[10] granting a franchise to NGCP to take over TRANSCO's *transmission* functions and assets[11] which it had previously acquired from NPC. Upon the concession contract's formal implementation, TRANSCO's employees were separated from service, effective June 30, 2009.

The displacement or separation of NPC and TRANSCO employees was part and parcel of the EPIRA's objective of privatizing NPC's *generation* and *transmission* assets. Thus, the law granted separation pay to those employees affected by the electric power industry reorganization, *viz.*:

Sec. 63. Separation Benefits of Officials and Employees of Affected Agencies. — National Government employees displaced or separated

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[10] Entitled, "An Act Granting the National Grid Corporation of the Philippines a Franchise to Engage in the Business of Conveying or Transmitting Electricity Through High Voltage Back-Bone System of Interconnected Transmission Lines, Substations and Related Facilities, and for Other Purposes," Approved on December 1, 2008.

[11] Section 1 of Republic Act No. 9511 provides, "[s]ubject to the provisions of the Constitution and applicable laws, rules and regulations, and subject to the terms and conditions of the concession agreement and other documents executed with the National Transmission Corporation (TRANSCO) and the Power Sector Assets and Liabilities Management Corporation (PSALM) pursuant to Section 21 of Republic Act No. 9136, which are not inconsistent herewith, there is hereby granted to the National Grid Corporation of the Philippines, hereunder referred to as the Grantee, its successors or assigns, a franchise to operate, manage and maintain, and in connection therewith, to engage in the business of conveying or transmitting electricity through high voltage back-bone system of interconnected transmission lines, substations and related facilities, systems operations, and other activities that are necessary to support the safe and reliable operation of a transmission system and to construct, install, finance, manage, improve, expand, operate, maintain, rehabilitate, repair and refurbish the present nationwide transmission system of the Republic of the Philippines. The Grantee shall continue to operate and maintain the subtransmission systems which have not been disposed by TRANSCO. Likewise, the Grantee is authorized to engage in ancillary business and any related business which maximizes utilization of its assets such as, but not limited to, telecommunications system, pursuant to Section 20 of Republic Act No. 9136. The scope of the franchise shall be nationwide in accordance with the Transmission Development Plan, subject to amendments or modifications of the said Plan, as may be approved by the Department of Energy of the Republic of the Philippines."

from the service as a result of the restructuring of the electricity industry and privatization of NPC assets pursuant to this Act, *shall be entitled to either a separation pay and other benefits in accordance with existing laws, rules or regulations or be entitled to avail of the privileges provided under a separation plan which shall be one and one-half month salary for every year of service in the government: Provided, however*, That those who avail of such privileges shall start their government service anew if absorbed by any government-owned successor company. In no case shall there be any diminution of benefits under the separation plan until the full implementation of the restructuring and privatization.

Displaced or separated personnel as a result of the privatization, if qualified, shall be given preference in the hiring of the manpower requirements of the privatized companies.

The salaries of employees of NPC shall continue to be exempt from the coverage of Republic Act No. 6758, otherwise known as "The Salary Standardization Act."

With respect to employees who are not retained by NPC, the Government, through the Department of Labor and Employment, shall endeavor to implement re-training, job counseling, and job placement programs. (Italics supplied.)

While the EPIRA provided the computation for separation pay, the law empowered TRANSCO's Board of Directors (Board) to fix the compensation, allowance, and benefits of TRANSCO employees.[12] Pursuant to this, thru Resolution No. 2009-005 dated February 26, 2009, the Board implemented an *Early Leavers Program* to facilitate the payment of separation pay

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[12] Section 12 (c), EPIRA reads:

SECTION 12. Powers and Duties of the Board. — The following are the powers of the Board:

x x x x

(c) To organize, re-organize, and determine the organizational structure and staffing pattern of TRANSCO; abolish and create offices and positions; fix the number of its officers and employees; transfer and re-align such officers and personnel; fix their compensation, allowance, and benefits.

due to employees separated from TRANSCO.[13] In Resolution No. TC 2009-007[14] dated February 26, 2009, the Board reiterated the separation pay computation provided by the EPIRA, *viz.*:

> Separation Pay = Basic Salary x Length of Service x 1.5
>
> Where:
>
> a. Basic Salary shall include 13th month pay (equivalent to 1 ½ Monthly Basic Salary [Sec. 3 of Rule 33 of the EPIRA IRR]).
>
> b. Length of Service — multiplier is defined number of years of government service. A fraction of one (1) year, equivalent to six months or more, shall be considered as one (1) whole year.
>
> The Separation Benefit package shall be exempt from taxes in accordance with the relevant prevailing Bureau of Internal Revenue (BIR) laws, rules and regulations.[15]

Subsequently, TRANSCO President and Chief Executive Officer Arthur N. Aguilar issued Circular No. 2009-0010[16] dated May 6, 2009 setting forth the rules and regulations in implementing the separation program. In addition to the 1.5 multiplier to be applied to the basic salary as provided by the EPIRA (Basic Salary Multiplier), Circular No. 2009-0010 granted another 1.5 multiplier to be applied in the computation of length of service (Length of Service Multiplier), to wit:

> 3.2 *Separation Pay Formula*. — x x x
>
> x x x x
>
> On exceptional cases, employees who came from government offices other than NPC, NEA or ERB, their length of service shall be converted based on the following:

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[13] *Rollo*, p. 51.

[14] *Id.* at 82-86.

[15] *Id.* at 83.

[16] *Id.* at 87-90.

Government Service	Conversion Factor
First 20 years	1.0
21 years to 30 years	1.5
31 years and above	2.0[17]

When TRANSCO implemented its separation program, Macapodi was a legal researcher receiving a basic salary of ₱30,150.00 per month.[18] On October 21, 2009, as payment for his separation benefits, TRANSCO issued a check payable to Macapodi amounting to ₱2,988,618.75, computed as follows:

Basic salary	₱30,150.00
Add 13th month pay (basic salary divided by 12)	2,512.50
Subtotal	₱32,662.50
Multiply by length of service	*61.00000*
	₱1,992,412.50
Multiply by Basic Salary Multiplier under the EPIRA	1.50
Amount paid to Macapodi	₱2,988,618.75

TRANSCO credited Macapodi with 61 years of service, by applying the Length of Service Multiplier to his 42.97032 actual service years.

However, upon post-audit, COA Supervising Auditor Corazon V. Españo (COA Auditor Españo) issued ND TC-10-004(09)[19] dated June 16, 2010, addressed to the TRANSCO President and CEO,[20] disallowing a portion of Macapodi's separation benefits amounting to ₱883,341.63 computed as follows:

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[17] *Id.* at 88.

[18] *Id.* at 29.

[19] *Id.* at 30-31.

[20] Then incumbent President and CEO Moslemen T. Macarambon, *id.* at 30.

Basic salary	₱30,150.00
Add 13th month pay (basic salary divided by 12)	2,512.50
Subtotal	₱32,662.50
Multiply by Actual length of service	*42.97032*
	₱1,403,518.08
Multiply by Basic Salary Multiplier under the EPIRA	1.50
Adjusted amount of separation pay	₱2,105,277.12
Less Amount paid to Macapodi	2,988,618.75
Disallowed amount	₱883,341.63

In arriving at the adjusted amount of separation pay, COA Auditor Españo used Macapodi's *actual length of service*. Españo did not round up any fractional figures or multiply such length of service with 1.5. Españo reasoned out that "the adoption of multipliers [in addition to the] 1.5 monthly salary per year of service" effectively increased the employee's length of service.

As a result, COA Auditor Españo held Macapodi liable for receiving an amount of separation benefits in excess of what is provided under the law. Apart from Macapodi, Españo also found the following individuals liable for the disallowed amount: (1) Susana H. Singson (Singson), Division Manager, General Accounting and Financial Reporting, for *verifying* that the disbursement voucher covering the subject check was supported by the necessary documents; and (2) Jose Mari M. Ilagan (Ilagan), Manager, Administrative Department, for *certifying* that the subject expense was necessary, lawful, and incurred under his direct supervision.

TRANSCO, through its Vice President and General Counsel Noel Z. De Leon,[21] appealed the disallowance to the COA Director.

Ruling of the COA Director

In Corporate Government Sector — Cluster 3 Decision No. 12[22] dated August 4, 2014, COA Director IV Rufina S.

[21] *Id.* at 48.

[22] *Id.* at 49-54.

Laquindanum (Laquindanum) denied TRANSCO's appeal.[23] In affirming the ND, Laquindanum reiterated that applying "the multiplier under RA 1616 on top of the 1.5 monthly salary per year of service provided under [EPIRA] in the computation of Mr. Macapodi's separation benefits is unwarranted and without legal basis."[24]

Aggrieved, TRANSCO brought the matter before the COA Proper *via* a petition for review.[25]

Ruling of the COA Proper

In the assailed Decision[26] dated May 18, 2017, the COA Proper upheld the disallowance, *viz.*:

> WHEREFORE, premises considered, the Petition for Review of National Transmission Corporation, Quezon City, through counsel, is DENIED for lack of merit. Accordingly, Notice of Disallowance (ND) No. TC-10-004(09) dated June 16, 2010, on the payment of excessive separation benefits to Mr. Sabdullah T. Macapodi in the total amount of P883,341.63, is hereby AFFIRMED with MODIFICATION, in that Mr. Macapodi need not refund the said amount.
>
> The other persons named liable in the ND shall remain liable, including the members of the Board of Directors, who authorized the payment of the disallowed separation benefits.
>
> The Audit Team Leader and Supervising Auditor are instructed to issue a Supplemental ND to include the members of the Board of Directors, who approved the resolutions authorizing said retirement/separation payment scheme, as persons liable.[27]

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[23] Copies of the COA Director's ruling were served upon TRANSCO's President, General Counsel, and the payee. *Id.* at 54.

[24] *Id.* at 53.

[25] *Id.* at 55-70.

[26] *Id.* at 22-28.

[27] *Id.* at 27.

The COA Proper ruled as follows: *first*, as ruled in *Herrera, et al. v. National Power Commission, et al.*,[28] employees separated from TRANSCO are entitled to either separation benefits under the EPIRA or retirement benefits under RA 1616,[29] but not to both.[30] *Second*, TRANSCO's policy allowing the fraction of one year to be considered as one whole year (round up) in the computation of length of service does not have legal basis.[31] *Third*, the following are jointly and severally liable for the amount disallowed: (a) Singson and Ilagan as approving officers; and (b) TRANSCO's Board for issuing resolutions allowing the excessive payment of separation benefits.[32] However, Macapodi is no longer required to refund the amount, he being a mere passive recipient thereof.[33]

Undaunted, TRANSCO, represented by the Office of the General Counsel,[34] filed the present petition.

Issues

The Court shall resolve two issues: (1) Did the COA Proper gravely abuse its discretion in issuing its assailed Decision? (2) Who shall be liable for the disallowed amount, if any?

TRANSCO insists that: (a) the use of multipliers under RA 1616 in addition to the EPIRA rate (*i.e.*, 1.5 monthly salary per year of service) was lawful; and (b) the *Board and management* exercised utmost good faith, and acted within their powers in issuing the subject board resolutions.

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[28] 623 Phil. 383 (2009).

[29] Entitled, "An Act Further Amending Section Twelve of Commonwealth Act Numbered One Hundred Eighty-Six, as Amended, by Prescribing Two Other Modes of Retirement and for Other Purposes," approved on May 31, 1957.

[30] *Rollo*, p. 24.

[31] *Id.* at 25.

[32] *Id.* at 27.

[33] *Id.*

[34] *Id.* at 17.

The Court's Ruling

The Court holds that the COA Proper did not commit grave abuse of discretion, but *modifies* its ruling as to the liability of the persons involved.

The COA properly disallowed a portion of the separation benefits paid to Macapodi for violating the EPIRA.

The law mandates that ''[n]o money shall be paid out of any public treasury or depository except in pursuance of an appropriation law or other specific statutory authority."[35] A disbursement of government funds that is contrary to law *shall be disallowed* for being an *illegal expenditure*.[36] The overpayment of Macapodi's separation benefits to the extent of ₱883,341.63 is illegal because it violated Sections 63 and 12(c) of the EPIRA.

First, Section 63 of the EPIRA provides that an affected employee's separation pay shall be equal to "one and one-half month salary for every year of service in the government." In other words, the formula only has three components, *viz.*: (a) base amount consisting of the monthly salary; (b) multiplier of one and one-half or 1.5; and (c) length of service.[37]

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[35] Presidential Decree No. 1445 otherwise known as the "Government Auditing Code of the Philippines," [June 11, 1978].

[36] Section 10.1 and 10.1.1, Rules and Regulations on Settlement of Accounts, as prescribed by COA Circular No. 006-09, [September 15, 2009]:

SECTION 10. *Notice of Disallowance (ND).* —

10.1 The Auditor shall issue an ND-Form 3 — for transactions which are irregular/unnecessary/excessive and extravagant as defined in COA Circular No. 85-55A as well as other COA issuances, and those which are illegal and unconscionable.

10.1.1 Illegal expenditures are expenditures which are contrary to law.

[37] See *NPC Drivers and Mechanics Assn. (NPC DAMA), et al. v. The National Power Corporation (NPC), et al.*, 821 Phil. 62.

Contrary to the EPIRA formula, which has only one multiplier, TRANSCO's formula uses two multipliers: (a) the Length of Service Multiplier crediting Macapodi with 61.0000 instead of only 42.9703 years; and (b) the Basic Salary Multiplier under the EPIRA, granting him a base amount equal to one and one-half of his basic salary.

And *second*, under Section 12 (c) of the EPIRA, the power to fix the compensation, allowance, and benefits of TRANSCO employees rests upon its Board.[38] In other words, to be valid, salaries and benefits of TRANSCO employees must be determined *via* a board resolution. However, to recall, the Length of Service Multiplier was incorporated to TRANSCO's separation pay computation thru Circular No. 2009-0010 issued by TRANSCO's President and CEO.

Certainly, the Length of Service Multiplier results in *excessive benefits* and was prescribed *without the requisite authority*, in direct contravention of the EPIRA. Thus, the COA properly disallowed the payment of ₱883,341.63 for being illegal.

TRANSCO's President and CEO and Macapodi shall be liable for the illegal disbursement.

Book VI, Chapter V, Section 43 of Executive Order No. 292, or the Administrative Code of 1987, enumerates the persons liable for an illegal expenditure, to wit:

Sec. 43. *Liability for Illegal Expenditures. — Every expenditure or obligation authorized or incurred in violation of the provisions*

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[38] Section 12 (c), EPIRA reads:

SECTION 12. Powers and Duties of the Board. — The following are the powers of the Board:

x x x x

(c) To organize, re-organize, and determine the organizational structure and staffing pattern of TRANSCO; abolish and create offices and positions; fix the number of its officers and employees, transfer and re-align such officers and personnel; fix their compensation, allowance, and benefits.

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.

Thus, the general rule is that "public officials who are *directly* responsible for, or participated in making the illegal expenditures, as well as those who actually received the amounts therefrom shall be solidarily liable for their reimbursement."[39]

In turn, the COA determines the extent of one's liability for each illegal expenditure as follows:[40]

Sec. 16. Determination of Persons Responsible/Liable. —

16.1 The Liability of public officers and other persons for audit disallowances/charges shall be determined on the basis of (a) the nature of the disallowance/charge; (b) the duties and responsibilities or obligations of officers/employees concerned; (c) the extent of their participation in the disallowed/charged transaction; and (d) the amount of damage or loss to the government, thus:

16.1.1 x x x

16.1.2 Public officers who certify as to the necessity, legality and availability of funds or adequacy of documents shall be liable according to their respective certifications.

16.1.3 Public officers who approve or authorize expenditures shall be liable for losses arising out of their negligence or failure to exercise the diligence of a good father of a family.

16.1.4 x x x

16.1.5 The payee of an expenditure shall be personally liable for a disallowance where the ground thereof is his failure to submit

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[39] See *Phil. Health Insurance Corp. v. Commission on Audit*, 801 Phil. 427 (2016).

[40] Rules and Regulations on Settlement of Accounts, as prescribed in COA Circular No. 006-09, [September 15, 2009].

> the required documents, and the Auditor is convinced that the disallowed transaction did not occur or has no basis in fact.

Based on these rules, the following *may* be held jointly and severally liable for the overpayment of separation benefits in this case: (1) Macapodi, as the payee or recipient of the amount; (2) Singson and Ilagan, as the officers who approved and certified the specific transaction, respectively; and (3) the members of TRANSCO's Board and/or its President and CEO, as the officials who issued directives to pay separation benefits.

1. Macapodi's liability

The Court holds Macapodi liable for the disallowed amount.

Notably, the COA Rules and Regulations on Settlement of Accounts holds a payee personally liable for a disallowed amount, provided the following conditions concur: (a) The payee failed to submit required documents, and (b) the disallowance was grounded on such failure. However, we cannot impute liability to Macapodi based on this rule. The disallowance here was grounded on the expenditure's *illegality* (*i.e.*, violating the EPIRA), not on Macapodi's failure to submit documents.

Macapodi's liability to return the disallowed amount is grounded not on the COA rules as cited above, but on the basic principle that no one can be unjustly enriched by money mistakenly paid to him.[41]

To be sure, a government instrumentality's disbursement of salaries that contravenes the law is a *payment through error or mistake*. A person who receives such erroneous payment has the *quasi-contractual* obligation to return it[42] because no one shall be unjustly enriched at the expense of another,[43] especially

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[41] Article 2154 of the Civil Code of the Philippines (Civil Code) provides, "[i]f something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arrives."

[42] Article 2154 of the Civil Code, *id.*

[43] Article 22 of the Civil Code provides, "[e]very person who through an act of performance by another, or any other means, acquires or comes

if public funds are at stake. The law constitutes the person receiving money through mistake a trustee of a *constructive trust* for the benefit of the person from whom the property comes,[44] which, in this case, is the government.[45]

That the amount was already released to the employee through no fault of his own does not diminish the payment's patent illegality or cure its defect. His obligation to return arose because the payment was a clear mistake. He has no right to retain the amount, irrespective of his good faith in receiving it.

In the recent case of *Madera v. Commission on Audit*[46] (*Madera*), the Court "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." In the absence of *bona fide* exceptions manifest on the record, the Court shall remain stringent in appreciating the defense of good faith when determining a *payee's* liability over disallowed expenses.

Following the Court's pronouncement in *Madera*, it is clear that we shall no longer settle with the lax notion that a payee's receipt, coupled by an honest belief that he is entitled to the payment, amounts to good faith, which exonerates him from his obligation. To be sure, the Court's decision to excuse a civil servant from his liability to refund the salaries clearly received by virtue of a patently illegal directive to disburse and, thus, by mistake must rest on "truly exceptional circumstances."[47]

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into possession of something at the expense of the latter without just or legal ground, shall return the same to him."

[44] See *Philippine National Bank v. Court of Appeals*, 291 Phil. 356 (1993). See also Article 1456, Civil Code.

[45] See *Dubongco v. Commission on Audit*, G.R. No. 237813, March 5, 2019.

[46] G.R. No. 244128, September 8, 2020.

[47] Concurring Opinion of Associate Justice Henri Jean Paul B. Inting in *Madera v. Commission on Audit, id.*

2. Singson and Ilagan's liability

The Court absolves Singson and Ilagan from liability.

In the present case, Singson *verified* that the disbursement voucher covering the subject check was supported by the necessary documents. On the other hand, Ilagan *certified* that subject expense was necessary, lawful, and incurred under his direct supervision.

The general rule is that a verifier and/or certifier of an illegal disbursement is/are liable for audit disallowances under the above-quoted provisions of Sections 16.1.2 and 16.1.3 of COA Circular No. 006-09, respectively. However, this liability does not "automatically attach simply because one took part in the disbursement approval process."[48]

Significantly, a verifiers/certifier's authority to approve a disbursement is subordinate only to a higher official's authority to direct or instruct the payment *per se*.[49] Upon the higher authority's instruction to disburse funds, a *verifier* shall evaluate the disbursement "in accordance with the applicable internal control procedures and rules mandated by the COA and/or the government instrumentality itself."[50] On the other hand, a *certifier* would independently review the transaction for purposes of attesting "that funds are available for the disbursement, x x x that the corresponding allotment may be charged, and x x x that the expense/disbursement is valid, authorized, and supported by sufficient evidence."[51]

Thus, according to the nature of their participation, Singson and Ilagan performed their respective duties based on a superior

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[48] Concurring and Dissenting Opinion of Associate Justice Arturo B. Brion in *TESDA v. COA Chairperson Tan, et al.*, 729 Phil. 60, 92 (2014).

[49] Concurring Opinion of Associate Justice Henri Jean Paul B. Inting in *Madera v. Commission on Audit, supra* note 46.

[50] *Id.*

[51] Concurring and Dissenting Opinion of Associate Justice Arturo B. Brion in *TESDA v. COA, supra* note 48.

officer's directive. At that time, they approved the disbursement in the honest belief that it was supported by a valid exercise of corporate powers.

Inasmuch as these personnel are public officers, they are presumed to have performed their duties *regularly*[52] and *in good faith*. Absent proof of "bad faith or malice, public officers are not personally liable for damages resulting from the performance of official duties."[53] In the present case there is no evidence showing that either Ilagan or Singson performed their duties in bad faith or negligently. Thus, there is no reason for the Court to dispel the presumption of regularity and good faith favoring them.

3. The Board and/or the President/CEO's liability

The root of the illegal disbursement in the present case is a mere circular issued by the President and CEO, not a board resolution. A closer look at the factual antecedents would reveal that the board resolutions related to TRANSCO's separation program echoed the same formula under the EPIRA. It was only Circular No. 2009-0010 that incorporated the Length of Service Multiplier into TRANSCO's computation of separation pay.

Inasmuch as Circular No. 2009-0010 directly defied the EPIRA, the issuance thereof was *ultra vires* and negligent. That the act was unauthorized negates *good faith* in the performance of duties. As the flawed circular was, however, not issued by the members of the Board but by President and CEO Arthur N. Aguilar alone, who was not made a party to this case, We must modify the COA Proper Decision in that the former are exonerated from liability.

To summarize, the COA properly disallowed the excessive and illegal payment of separation benefits to Macapodi in the

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[52] Section 3(m), Rule 131, RULES OF COURT.

[53] *Blaquera v. Hon. Alcala*, 356 Phil. 678, 765 (1998), citing *Mayor Yulo v. Civil Service Commission*, 292 Phil. 465, 472 (1993).

amount of ₱883,341.63. However, the COA should not have excused him from reimbursing it. He is civilly liable to return the disallowed amount pursuant to the legal prohibition against unjust enrichment. In addition, the President and CEO's Circular No. 2009-0010, not Board Resolution No. TC 2009-007, caused the illegal disbursement by prescribing a computation violative of the law. Consequently, the members of the Board are not civilly liable, without prejudice to the filing of the appropriate action against President and CEO Arthur N. Aguilar.

WHEREFORE, the COA Proper Decision No. 2017-154 dated May 18, 2017 is **AFFIRMED WITH MODIFICATION** in that Sabdullah T. Macapodi is liable to return the disallowed amount of ₱883,341.63 *via* a mode of payment deemed just and proper by the Commission on Audit. This pronouncement is without prejudice to the institution of the appropriate action against Arthur N. Aguilar, the official responsible for the illegal disbursement.

The members of the Board, Susana H. Singson, and Jose Mari M. Ilagan are absolved from liability.

SO ORDERED.

Peralta, C.J., Gesmundo, Hernando, Carandang, Lazaro-Javier, Zalameda, Lopez, Gaerlan, and *Rosario, JJ.*, concur.

Caguioa, J., see concurring opinion.

Perlas-Bernabe, J., on official leave, left a concurring vote.

Leonen and *Delos Santos, JJ.*, on official leave.

CONCURRING OPINION

CAGUIOA, *J.*:

I write to express and explain my concurrence with the *ponencia*. I agree that the Commission on Audit (COA) correctly disallowed the payment of excess separation benefits;

consequently, the payee and any authorizing or certifying officer clearly shown to have acted in bad faith or gross negligence should be solidarily liable for the amount of the disallowance.

I understand the facts of the case as follows:

Pursuant to the privatization of the National Transmission Corporation's (NTC) transmission assets under the Electric Power Industry Reform Act (EPIRA), the NTC Board of Directors (BOD) — which is empowered to fix the compensation and benefits of its employees under Section 12 (c) of the EPIRA — issued a resolution authorizing the payment of separation benefits following the formula under Section 63 of the same law. Section 63 provided the formula as follows: ((monthly salary x 1.5) x years of service).

Subsequently, the NTC President/CEO (Chief Executive Officer) issued a Circular modifying the calculation for years of service as a multiplier. The resulting formula under the Circular was thus: ((monthly salary x 1.5) x (years of service x 1.5)). This led to the overpayment of around P883,341.63 to the payee Sabdullah T. Macapodi (Macapodi) who was credited 61 instead of 42.9 years of service.

The resident auditor disallowed the payment of separation benefits to the extent of the excess based on the EPIRA formula. The payee and the verifying/certifying persons were held liable for the disallowed amount. This was affirmed by the COA Director.

The COA Commission Proper affirmed the Notice of Disallowance (ND) with modification. It ruled that the payee no longer needs to return the amount, the verifying/certifying officers are liable and that a supplemental ND should be issued holding the BOD liable.

The *ponencia* partly granted the petition. It held that the COA correctly disallowed the payment because it violated Sections 63 and 12(c) of the EPIRA. In determining the liability of the persons identified in the ND, it held the payee responsible to return

based on *Dubongco v. COA*[1] (*Dubongco*); absolved the verifying and certifying officers who merely relied upon the directives of their superiors, and the BOD who followed the EPIRA formula; and, it found the President/CEO who introduced the unlawful multiplier via a Circular as responsible either criminally or administratively, as the case may be.

This disposition applies *Madera v. COA*,[2] (*Madera*) and has my full concurrence. In *Madera,* the Court promulgated the Rules on Return, 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 of 1987.

    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

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[1] G.R. No. 237813, March 5, 2019.

[2] G.R. No. 244128, September 8, 2020.

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.[3]

These rules were based on the newer precedents including *Dubongco DPWH v. COA*,[4] *Chozas v. COA*,[5] and *Rotoras v. COA*,[6] (*Rotoras*) which ordered the return of the disallowed amounts by the payees — including passive recipients — on the basis of *solutio indebiti* and unjust enrichment. To reiterate, through these new precedents and most comprehensively in *Madera*, "the Court x x x 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."[7]

Limiting the application of the principles of *solutio indebiti* and unjust enrichment to certain kinds of benefits (or under a specific set of facts as in *Dubongco* and *Rotoras*) or treating the good faith of a payee as justification to retain disallowed amounts have been abandoned with the promulgation of *Madera*, where the Court unanimously resolved to fix the liability of payees to return amounts unduly received except if the refund will result in unjust enrichment on the part of government.

Thus, I agree with the *ponencia* that the payee is liable to return the excess separation benefits he received — consistent with Rule 2 (c) of *Madera*. Verily, I fully share the esteemed *ponente's* position that good faith is not an effective defense

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[3] *Id.* at 35-36.

[4] G.R. No. 237987, March 19, 2019.

5 G.R. Nos. 226319 & 235031, October 8, 2019.

[6] G.R. No. 211999, August 20, 2019.

[7] *Madera v. COA, supra* note 2, at 33-34.

to excuse recipients from the obligation to refund the disallowed amount, and the payee's seemingly passive stance and lack of privity to the government instrumentality's internal policy-making and disbursement processes cannot justify holding onto or keeping an amount that was never his in the first place, as he shared during the deliberations.

This also fully squares with the concept of payee participation in *Madera*, thus:

> As may be gleaned from Section 16 of the RRSA, "the extent of their participation [or involvement] in the disallowed/charged transaction" is one of the determinants for liability. The Court has, in the past, taken this to mean that payees should be absolved from liability for lack of participation in the approval and disbursement process. However, under the MCSB and the RRSA, a "transaction" is defined as "[a]n event or condition the recognition of which gives rise to an entry in the accounting records."[8] 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 payees' favor. Notably, when the COA includes payees as persons liable in an ND, the nature of their participation is stated as "received payment."
>
> Consistent with this, "the amount of damage or loss [suffered by] the government [in the disallowed transaction],"[9] another determinant of liability, is also indirectly attributable to payees by their mere receipt of the disallowed funds. This is because the loss incurred by the government stated in the ND as the disallowed amount corresponds to the amounts received by the payees. Thus, cogent with the application of civil law principles on unjust enrichment and *solutio indebiti*, the return by payees primarily rests upon this conception of a payee's undue receipt of amounts as recognized **within the government auditing framework**. In this regard, it bears repeating that the extent

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[8] Sections 3.19 and 4.28 of the COA Circular No. 94-001 dated January 20, 1994 and the COA Circular No. 2009-006 dated September 15, 2009 (RRSA), respectively.

[9] The RRSA, Section 16.1.

of liability of a payee who is a passive recipient is only with respect to the transaction where he participated or was involved in, *i.e.*, only to the extent of the amount that he unduly received. This limitation on the scope of a payee's participation as only corresponding to the amount he received therefore forecloses the possibility that a passive recipient may be held solidarily liable with approving/certifying officers beyond the amount that he individually received.[10]

It also bears noting that the amount of excess separation benefits received by the payee Macapodi can by no means be considered *de minimis* or a reasonable amount that the Court can excuse for any "exempting circumstance"[11] under Rule 2 (d).

Proceeding to the question of the liability of officers, I submit that only officers who were clearly shown to have acted in bad faith or with gross negligence should be held solidarily liable for the disallowed amount, as provided in Rule 2 (b) of *Madera*.

Accordingly, I vote to **PARTLY GRANT** the petition. The payee is liable to refund the properly disallowed excess separation benefits he received. Only officers clearly shown to have acted in bad faith or with gross negligence should be held solidarily liable therefor.

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[10] *Madera v. COA, supra* note 2, at 30-31.

[11] To borrow J. Inting's phrase in his Concurring Opinion, p. 11 in *Madera*.

FIRST DIVISION

[G.R. No. 205559. December 2, 2020]

NICASIO MACUTAY, *Petitioner, v.* **SOSIMA SAMOY, ALFREDO GRANIL, RENE ACORDA, NOBLITO SAMOY and SIBIRINO[*] ROQUE**, *Respondents*.

APPEARANCES OF COUNSEL

BELENO & BELENO LAW OFFICES for petitioner.
Grace Manaloto for respondents.

D E C I S I O N

CAGUIOA, *J.*:

The Case

This is a Petition for Review on *Certiorari*[1] (Petition) filed under Rule 45 of the Rules of Court against the Decision[2] dated June 27, 2012 (assailed Decision) and Resolution[3] dated January 22, 2013 (assailed Resolution) in CA-G.R. CV No. 94612 rendered by the Court of Appeals[4] (CA).

The assailed Decision and Resolution affirmed the Decision[5] dated April 30, 2009 of the Regional Trial Court (RTC) of Cabagan, Isabela, Branch 22 in Civil Case No. 22-1063

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[*] "Silvino" in some parts of the *rollo*.

[1] *Rollo*, pp. 6-18, excluding Annexes.

[2] Id. at 19-36. Penned by Associate Justice Agnes Reyes Carpio, with the concurrence of Associate Justices Jose C. Reyes, Jr. (now a retired Member of the Court) and Priscilla J. Baltazar-Padilla (also a retired Member of the Court).

[3] Id. at 37.

[4] Tenth Division and Former Tenth Division, respectively.

[5] *Rollo*, pp. 85-91. Penned by Judge Felipe Jesus Torio II.

dismissing the "*Accion Reivindicatoria* with Damages" (RTC Complaint) filed by petitioner Nicasio Macutay (Nicasio) against respondents Sosima Samoy (Sosima), Alfredo Granil (Alfredo), Rene Acorda (Rene), Noblito Samoy (Noblito) and Sibirino Roque (Sibirino).

The Facts

This case is an offshoot of a long-running land dispute between the parties' predecessors-in-interest, Fortunato Manuud (Fortunato) and Urbana Casasola (Urbana).

Nicasio is the registered owner of a parcel of land located in Barangay Liwanag, Tumauini, Isabela with an area of twelve (12) hectares. Said parcel is covered by Original Certificate of Title (OCT) No. P-20478.[6] **Nicasio traces his ownership and right of possession to his stepfather, Fortunato**.[7]

Sosima, Alfredo, Rene, Noblito and Sibirino (collectively, respondents) are in possession of specific areas of a parcel of land in Tumauini, Isabela, with a total area of three (3) hectares (Disputed Portion). **Respondents assert that they have been cultivating the Disputed Portion as tenants of Urbana and her son, Eugenio Vehemente (Eugenio)**[8] — the successive owners of a parcel of land registered under OCT No. P-4319, and Transfer Certificate of Title (TCT) No. T-8058, respectively. Said parcel, in turn, allegedly includes the Disputed Portion.[9]

The records show that on December 9, 1946, Urbana filed a homestead application over a parcel of land in Tumauini, Isabela with an area of 16.75 hectares.[10] This application was approved by the Director of Lands on September 11, 1947.[11]

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[6] Id. at 20.

[7] Id. at 22.

[8] See id.

[9] See id. at 59, 87-88.

[10] Id. at 58, 63.

[11] Id. at 63.

Accordingly, an order directing the issuance of a homestead patent in Urbana's favor was issued on December 3, 1951.[12]

Nevertheless, Homestead Patent No. V-41498 was issued only on January 4, 1955, and later transmitted to the Register of Deeds (RD) of Isabela on February 7, 1955.[13] On the same date, OCT No. P-4319 was issued in Urbana's name.[14]

On June 13, 1955, Fortunato sent a telegram to then President Ramon Magsaysay protesting the issuance of Homestead Patent No. V-41498, as he had allegedly been in possession of a four (4)-hectare portion of the land covered by Urbana's Homestead Patent No. V-41498 since 1936 "even before the outbreak of the last World War."[15]

Fortunato sent another telegram to the Presidential Complaints and Action Committee (PCAC) on October 24, 1955 reiterating his protest.[16] Subsequently, the PCAC referred the matter to the Bureau of Lands for investigation.[17]

On January 23, 1957, prior to the reception of the parties' evidence, and upon Urbana's motion, the Director of Lands dismissed Fortunato's protest,[18] there being "no *prima facie* showing that fraud has been committed in the issuance of the patent in favor of [Urbana]."[19]

Fortunato's appeal and subsequent motion for reconsideration filed with the Secretary of Agriculture and Natural Resources were also denied on June 23, 1958 and June 20, 1959, respectively.[20]

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[12] Id. at 58, 63-64.

[13] Id. at 59, 64.

[14] Id.

[15] Id. at 57, 59, 64.

[16] Id. at 60, 64.

[17] Id.

[18] Id. at 64-65.

[19] Id. at 63.

[20] Id. at 65.

In the interim, Fortunato and Urbana passed away. Homestead Patent No. V-41498 was later transferred to Urbana's sole heir Eugenio, through TCT No. T-8058.[21]

Meanwhile, Fortunato's heirs, represented by his surviving wife Maria Bartolome, filed a petition for *certiorari* with the Court of First Instance (CFI) assailing the adverse orders issued by the Director of Lands and Secretary of Agriculture and Natural Resources.[22] The CFI dismissed said petition on June 6, 1960.[23]

The CA reversed on appeal and remanded the petition for *certiorari* to the CFI for reception of evidence relative to the conflicting claims between the parties.[24]

On June 20, 1977, the CFI issued a Decision, this time granting the petition for *certiorari* and directing the reinstatement of Fortunato's protest, among others.[25] **Despite the favorable Decision of the CFI, however, Fortunato's heirs did not pursue the protest**.[26]

Nevertheless, Fortunato's stepson, herein petitioner Nicasio, managed to secure OCT No. P-20478 sometime in 1972.

RTC Complaint

Thirty-four (34) years later, Nicasio filed the RTC Complaint. Therein, Nicasio alleged that respondents are "all in actual possession of [the] [n]orthern portions of the [land covered by OCT No. P-20478] with an area of more or less three (3) hectares without any legal right to possess the same and against the

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[21] Id. at 31.

[22] See id. at 53.

[23] Id. at 49.

[24] Id. at 47-52. Decision dated June 23, 1967 in CA-G.R. No. 31400-R, penned by Associate Justice Antonio Cañizares, with the concurrence of Associate Justices Francisco R. Capistrano and Nicasio A. Yatco.

[25] Id. at 82-83.

[26] See respondents' Answer to the RTC Complaint, *rollo*, p. 45.

will of [Nicasio],"[27] and that respondents have refused to surrender possession despite repeated demands.[28]

Nicasio thus prayed that judgment be rendered ordering respondents to surrender actual and physical possession of the Disputed Portion, and pay damages and costs of suit.[29]

In their·Answer, respondents averred that the Disputed Portion is covered by Urbana's OCT No. P-4319 and later, Eugenio's TCT No. T-8058, and that Eugenio recognized the "possession and ownership" of their respective predecessors-in-interest during his lifetime. Respondents further alleged that they have been cultivating the Disputed Portion since 1969, and have built significant improvements on the areas they respectively possess.[30]

In this connection, respondents argued that Nicasio's Torrens title is null and void, since: (i) it covers a portion of private land that had already been registered under Urbana's OCT No. P-4319 decades prior to the issuance of Nicasio's OCT No. P-20478, and has since been declared for taxation purposes in Urbana's name;[31] (ii) Lot 647, within which the Disputed Portion falls, is shown to be in the name of Urbana in the Tumauini Public Land Subdivision Plan Pls-964.[32]

As counterclaim, respondents prayed that Nicasio be ordered to pay actual damages, attorney's fees, and costs of suit.[33]

On April 30, 2009, the RTC issued a Decision (RTC Decision), the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of [respondents] and against [Nicasio,] and the [RTC]

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[27] Id. at 40.

[28] Id.

[29] Id. at 41.

[30] Id. at 45.

[31] Id. at 45-46.

[32] Id. at 46.

[33] Id.

Complaint is hereby ordered DISMISSED. Similarly, the counterclaim of [respondents] is ordered DISMISSED for lack of evidence in support thereof.

SO ORDERED.[34]

While the RTC recognized that the Disputed Portion is embraced in Nicasio's Torrens title, it observed that no evidence had been presented to establish that he had ever been in possession of the Disputed Portion. Moreover, Nicasio was unable to show that he acquired the Disputed Portion through any of the modes of acquiring ownership recognized by the Civil Code. On such basis, the RTC held that Nicasio's Torrens title only serves as conclusive proof of ownership over the land in his possession, which, based on the evidence on record, excludes the Disputed Portion.[35]

Nicasio filed a motion for reconsideration claiming that his Torrens title serves as conclusive proof of ownership of the land it covers, and that it cannot be collaterally attacked except in a direct proceeding instituted for the purpose.[36] The RTC denied said motion through its December 29, 2009 Order.[37]

CA Proceedings

Aggrieved, Nicasio filed an appeal with the CA *via* Rule 42 of the Rules of Court, insisting on the strength of his Torrens title.[38]

The CA denied the appeal through the assailed Decision on the ground of laches, ruling as follows:

x x x [Nicasio], through laches, has lost his right to lay claim on the [Disputed Portion] for having slept on his rights for more than

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[34] Id. at 91.

[35] Id. at 90.

[36] Id. at 92-97.

[37] Id. at 98.

[38] See id. at 23.

thirty-four (34) years. *Vigilantibus sed non dormientibus jura subverniunt.* The law aids the vigilant, not those who sleep on their rights.

Having determined that laches had already set in, [the CA] finds it no longer necessary to address [Nicasio's] assigned errors on this appeal.

WHEREFORE, premises considered, the instant appeal is hereby **DENIED**.[39]

The CA denied Nicasio's subsequent motion for reconsideration through the assailed Resolution, which Nicasio received on February 5, 2013.[40]

On February 19, 2013, Nicasio filed this Petition.

In compliance with the Court's directive, respondents filed their Comment[41] to the Petition on June 21, 2013, while Nicasio filed his Reply[42] on December 9, 2013.

The Court issued a Resolution[43] directing the parties to file their respective memoranda. After submission of the required memoranda, the case was deemed submitted for resolution.

Foremost, Nicasio argues that the defense of laches is not available to respondents since they are mere intruders who have not shown any color of title to the Disputed Property.[44] Hence, Nicasio argues that the CA erred when it denied his appeal solely on this ground.

Nicasio also maintains that the RTC erroneously permitted a collateral attack against his Torrens title when it upheld respondents' right of possession due to his failure to substantiate his claim of ownership over the Disputed Portion.[45]

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[39] Id. at 35-36.

[40] Id. at 7.

[41] Id. at 129-142.

[42] Id. at 150-155.

[43] Id. at 162-163.

[44] See id. at 168-174.

[45] See id. at 174-176.

For their part, respondents insist on their right to possess the Disputed Portion upon Eugenio's authority. As evidence of such authority, respondents rely on a private document dated February 8, 1955 purportedly executed by Eugenio, which, in turn, had been presented by respondent Noblito during cross-examination before the RTC.[46]

The Issues

The issues presented for the Court's resolution are:

1. Whether the validity of Nicasio's Torrens title may be assailed in the present case; and
2. Whether Nicasio has the right to recover possession of the Disputed Portion in this case.

The Court's Ruling

The Petition is denied.

At the outset, the Court observes that even as Nicasio's RTC Complaint is captioned as an "*Accion Reivindicatoria* with Damages," it does *not* include a prayer for recovery of ownership or annulment of the title relied upon by respondents. To quote:

> [Nicasio] and his children are in actual possession of a parcel of land located along the National Highway of Barangay Liwanag, Tumauini, Isabela containing an area of One Hundred Twenty Seven Thousand Five [Hundred] Eighty Seven (127,587) [square meters], more or less, registered in his name and embraced under [OCT] No. P-20478 issued by the Registry of Deeds of the Province of Isabela on May 4, 1972, and which parcel of land is more particularly described as follows x x x:
>
> x x x x
>
> The [respondents] are all in actual possession of [n]orthern portions of the afore-described parcel [of] land with an area of more or less three (3) hectares without any legal right to possess the same and against the will of [Nicasio];

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[46] Neither the actual document presented during cross-examination nor its contents form part of the records of the case.

x x x x

Repeated demands were made by [Nicasio] to the [respondents] for them to peacefully surrender actual possession of the land but the [respondents] refuse[d] to accede to the legal and rightful demand of [Nicasio] to his damage and prejudice;

x x x x

In compliance with the provision of the Local Government Code of 1991, the matter was brought to the Lupon of Barangay Liwanag, Tumauini, Isabela, for conciliation [by] the parties [but they could not] agree to any [of the] terms that might resolve the dispute. x x x

WHEREFORE, [Nicasio] prays for judgment ordering [respondents] to fully surrender their actual and physical possession of the portions of the land to [Nicasio] AND [o]rdering [respondents] to pay [Nicasio] joint and severally[,] an amount that is submitted to the discretion of the [RTC] representing the costs of the suit.

[Nicasio] prays for such other reliefs as may be just and equitable in the premises.[47] (Emphasis supplied)

These allegations indicate that the RTC Complaint is essentially an action for recovery of possession, or *accion publiciana*.

That the RTC Complaint is one for recovery of possession is further confirmed by the allegations in the present Petition, thus:

1. [Nicasio] is a registered owner of a parcel of land located in barangay Liwanag, Tumauini, Isabela with an area of twelve (12) hectares which parcel of land is covered by Original Certificate of Title No. P-20478;

2. [Nicasio] was in actual possession of the said parcel of land since birth up to present;

3. However, more or less three (3) hectares on the northern portion of the said parcel of land was occupied by

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[47] *Rollo*, pp. 39-41.

[r]espondents without any right to posses[s] the same, which possession is against the will of [Nicasio];

4. Repeated demands were given to [r]espondents to peacefully vacate the said land but they refused to comply with the said demands to vacate;

5. **On January 16, 2007, [Nicasio] was constrained to institute the instant case against [r]espondents to recover possession of said three (3) hectares presently occupied by them, which was answered by [r]espondents.** x x x[48] (Emphasis and underscoring supplied)

In *The Heirs of Alfredo Cullado v. Gutierrez*[49] (*Heirs of Cullado*), the Court *En Banc* clarified the distinctions between and among the usual actions to recover real property. The pronouncements in *Heirs of Cullado*, particularly with regard to *accion reivindicatoria* and *publiciana*, lend guidance:

Proceeding now to the main issue, it may be recalled that the three usual actions to recover possession of real property are:

1. *Accion interdictal* or a summary ejectment proceeding, which may be either for forcible entry (*detentacion*) or unlawful detainer (*desahucio*), for the recovery of physical or material possession (possession *de facto*) where the dispossession has not lasted for more than one year, and should be brought in the proper inferior court;

2. *Accion publiciana* or the plenary action to recover the better right of possession (possession *de jure*), which should be brought in the proper inferior court or Regional Trial Court (depending upon the value of the property) when the dispossession has lasted for more than one year (or for less than a year in cases other than those mentioned in Rule 70 of the Rules of Court); and

3. *Accion reivindicatoria* or *accion de reivindicacion* or reivindicatory action, which is an action for recovery of ownership which must be brought in the proper inferior court or Regional Trial Court (depending upon the value of the property).

x x x x

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[48] Id. at 7-8.

[49] G.R. No. 212938, July 30, 2019.

In an *accion reivindicatoria*, the cause of action of the plaintiff is to recover possession by virtue of his ownership of the land subject of the dispute. This follows that universe of rights conferred to the owner of property, or more commonly known as the attributes of ownership. x x x

x x x x

Jus vindicandi [or the right to vindicate or recover,] is expressly recognized in paragraph 2 of Article 428, Civil Code, *viz.*: "The owner has also a right of action against the holder and possessor of the thing in order to recover it."

If the plaintiff's claim of ownership (and necessarily, possession or *jus possidendi*) is based on his Torrens title and the defendant disputes the validity of this Torrens title, then the issue of whether there is a direct *or* collateral attack on the plaintiff's title is also irrelevant. This is because the court where the reivindicatory or reconveyance suit is filed has the requisite jurisdiction to rule definitively or with finality on the issue of ownership — it can pass upon the validity of the plaintiff's certificate of title.

x x x x

As to *accion publiciana*, this is an ordinary civil proceeding to determine the better right of possession of real property independently of title. It also refers to an ejectment suit filed after the expiration of one year from the accrual of the cause of action or from the unlawful withholding of possession of the real property.

x x x x

The issue in an *accion publiciana* is the "better right of possession" of real property independently of title. <u>This "better right of possession" may or may not proceed from a Torrens title</u>. Thus, a lessee, by virtue of a registered lease contract or an unregistered lease contract with a term longer than one year, can file, as against the owner or intruder, an *accion publiciana* if he has been dispossessed for more than one year. **In the same manner, a registered owner or one with a Torrens title can likewise file an *accion publiciana* to recover possession if the one-year prescriptive period for forcible entry and unlawful detainer has already passed.**

While there is no express grant in the Rules of Court that the court wherein an *accion publiciana* is lodged can provisionally resolve the issue of ownership, unlike an ordinary ejectment court which is

expressly conferred such authority (albeit in a limited or provisional manner only, *i.e.*, for purposes of resolving the issue of possession), there is ample jurisprudential support for upholding the power of a court hearing an *accion publiciana* to also rule on the issue of ownership.

In *Supapo v. Sps. de Jesus (Supapo)*, the Court stated:

> In the present case, the Spouses Supapo filed an action for the recovery of possession of the subject lot but they based their better right of possession on a claim of ownership [based on Transfer Certificate of Title No. C-28441 registered and titled under the Spouses Supapo's names].
>
> **This Court has held that the objective of the plaintiffs in *accion publiciana* is to recover possession only, not ownership. However, where the parties raise the issue of ownership, the courts may pass upon the issue to determine who between the parties has the right to possess the property.**
>
> This adjudication is not a final determination of the issue of ownership; it is only for the purpose of resolving the issue of possession, where the issue of ownership is inseparably linked to the issue of possession. The adjudication of the issue of ownership, being provisional, is not a bar to an action between the same parties involving title to the property. The adjudication, in short, is not conclusive on the issue of ownership.

The Court, recognizing the nature of *accion publiciana* as enunciated above, did not dwell on whether the attack on Spouses Supapo's title was direct or collateral. It simply, and rightly, proceeded to resolve the conflicting claims of ownership. The Court's pronouncement in *Supapo* upholding the indefeasibility and imprescriptibility of Spouses Supapo's title was, however, subject to a Final Note that emphasized that even this resolution on the question of ownership was not a final and binding determination of ownership, but merely provisional[.][50] (Emphasis and underscoring supplied; citations omitted)

Bearing these principles in mind, the Court now resolves the issues raised by the parties.

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[50] Id. at 5-12.

There is no collateral attack on Nicasio's title.

Nicasio argues that the RTC Decision sanctioned an impermissible collateral attack on his Torrens title. This assertion lacks merit.

As explained, the RTC Complaint is in the nature of an *accion publiciana* which is limited to the recovery of the better right of possession *independent* of title or ownership. Since an *accion publiciana* solely involves the issue of better right of possession, any determination of ownership made in such connection is neither final nor binding, but rather, merely provisional.

A provisional determination of ownership, whether made in an ejectment or *publiciana* proceeding, does not pose a "real attack" on the Torrens title in dispute since courts do not possess the jurisdiction to order the alteration, modification or cancellation of Torrens titles in such cases. This is because Section 48 of Presidential Decree No. 1529[51] (PD 1529) explicitly bars the alteration, modification or cancellation of a certificate of title, "except in a direct proceeding in accordance with law."[52] Again, as held in *Heirs of Cullado*:

> Forcible entry and unlawful detainer cases are governed by the rules on summary procedure. The judgment rendered in an action for forcible entry or unlawful detainer is conclusive with respect to the possession only, will not bind the title or affect the ownership of the land or building, and will not bar an action between the same parties respecting title to the land or building. When the issue of ownership is raised by the defendant in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession.

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[51] AMENDING AND CODIFYING THE LAWS RELATIVE TO REGISTRATION OF PROPERTY AND FOR OTHER PURPOSES, otherwise known as the PROPERTY REGISTRATION DECREE, June 11, 1978.

[52] Section 48 of PD 1529 states:

> SEC. 48. *Certificate not subject to collateral attack.* — A certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or cancelled except in a direct proceeding in accordance with law.

When the ejectment court thus resolves the issue of ownership based on a certificate of title to determine the issue of possession, the question is posed: is this a situation where the Torrens title is being subjected to a collateral attack proscribed by Section 48 of [PD] 1529 or the Property Registration Decree, *viz.*: "A certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or cancelled except in a direct proceeding in accordance with law." The answer to this is "No" because there is no real attack, whether direct or collateral, on the certificate of title in question for the simple reason that the resolution by the ejectment court cannot alter, modify, or cancel the certificate of title. **Thus, the issue of whether the attack on a Torrens title is collateral or direct is immaterial in forcible entry and unlawful detainer cases because the resolution of the issue of ownership is allowed by the Rules of Court on a provisional basis only. To repeat: when the issue of ownership is raised by the defendant in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession**.

x x x x

As to *accion publiciana*, this is an ordinary civil proceeding to determine the better right of possession of real property independently of title. It also refers to an ejectment suit filed after the expiration of one year from the accrual of the cause of action or from the unlawful withholding of possession of the real property.

x x x x

x x x [T]he Court thus clarifies here that in an *accion publiciana*, the defense of ownership (*i.e.*, that the defendant, and not the plaintiff, is the rightful owner) will not trigger a collateral attack on the plaintiff's Torrens or certificate of title because the resolution of the issue of ownership is done only to determine the issue of possession.[53] (Emphasis supplied)

Respondents have the better right of possession.

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[53] *Heirs of Cullado v. Gutierrez*, supra note 49, at 7-12.

In the assailed Decision, the CA anchored the denial of Nicasio's appeal on the principle of laches. Specifically, the CA held that Nicasio has lost his right to lay claim on the Disputed Portion as he had slept on his right to do so for more than thirty-four (34) years following the issuance of his Torrens title.[54]

Nicasio disputes the ruling of the CA by claiming that respondents have no colorable title or any valid claim of ownership over the Disputed Portion, and are "mere squatters, whose possession, no matter how long, could not prevail over [his] certificate of title."[55] He cites *Bishop v. Court of Appeals*,[56] where the Court held that owners of registered land have the imprescriptible right to eject any person illegally occupying their property, and that such right is never barred by laches.[57]

The Court notes, however, that the Disputed Portion appears to have been registered under two (2) overlapping titles issued in the name of two (2) different persons namely, respondents' predecessor-in-interest Urbana, and herein petitioner Nicasio. This situation has been squarely addressed by the Court in the early case of *Legarda v. Saleeby*,[58] thus:

> The rule, we think, is well settled that the decree ordering the registration of a particular parcel of land is a bar to future litigation over the same between the same parties. In view of the fact that all the world are parties, it must follow that future litigation over the title is forever barred; there can be no persons who are not parties to the action. This, we think, is the rule, except as to rights which are noted in the certificate or which arise subsequently, and with certain other exceptions which need not be discussed at present. A title once registered can not be defeated, even by an adverse, open, and notorious possession. Registered title under the [T]orrens system

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[54] See *rollo*, p. 35.

[55] Id. at 10.

[56] 284-A Phil. 125 (1992).

[57] *Rollo*, pp. 11-12.

[58] 31 Phil. 590 (1915).

can not be defeated by prescription x x x. The title, once registered, is notice to the world. All persons must take notice. No one can plead ignorance of the registration.

x x x x

We have in this jurisdiction a general statutory provision which governs the right of the ownership of land when the same is registered in the ordinary registry in the name of two different persons. Article 1473 of the Civil Code provides, among other things, that when one piece of real property has been sold to two different persons it shall belong to the person acquiring it, who first inscribes it in the registry. This rule, of course, presupposes that each of the vendees or purchasers has acquired title to the land. The real ownership in such a case depends upon priority of registration. While we do not now decide that the general provisions of the Civil Code are applicable to the Land Registration Act, even though we see no objection thereto, yet we think, in the absence of other express provisions, they should have a persuasive influence in adopting a rule for governing the effect of a double registration under said Act. **Adopting the rule which we believe to be more in consonance with the purposes and the real intent of the [T]orrens system, we are of the opinion and so decree that in case land has been registered under the Land Registration Act in the name of two different persons, the earlier in date shall prevail**.[59] (Emphasis supplied)

As narrated above, Urbana's OCT No. P-4319 was issued on February 7, 1955 pursuant to Homestead Patent No. V-41498. On the other hand, Nicasio's OCT No. P-20478 was issued decades later, in 1972. Notably, the fact that the Disputed Portion is covered by OCT No. P-4319 *and* OCT P-20478 does not appear to be in dispute. Respondents' possession must thus be respected, as it is anchored on the ownership of the first registrant Urbana and the latter's son and transferee, Eugenio.

Nicasio attempts to evade the issue of double registration by insisting on respondents' alleged failure to present proof of their authority to occupy and cultivate the Disputed Portion as Eugenio's tenants. Suffice it to state, however, that in actions involving real property, petitioners must rely on the strength

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[59] Id. at 594-597.

of their own title, and not on the weakness of respondents' claim.[60] The Court echoes the keen observations of the RTC:

> It is extant from the allegations of the [RTC Complaint], as it is from the evidence adduced in support thereof, that [Nicasio] is not shown to have ever been in possession of the contested northern portion of Lot 647. Additionally, the contested lot is declared for taxation purposes in the name of [Urbana]. Neither (*sic*) is there any showing in the evidence on record that [Nicasio] acquired the [Disputed Portion] of Lot 647 by any of the modes of acquiring ownership under the Civil Code. The law defines the modes through which ownership may be acquired as it states:
>
> > "Ownership and other real rights over property are acquired and transmitted by law, by donation, by testate and intestate succession and in consequence of certain contracts, by tradition.
> >
> > They may also be acquired by means of prescription."
>
> In the present case, there is no showing that [Nicasio] did acquire the contested portions of the land now in possession of the [respondents], through a mode of acquisition recognized by Article 712 of the New Civil Code.[61]

Moreover, while Nicasio alleges that he had been "in actual possession of the [Disputed Portion] since birth up to the present,"[62] he failed to explain how respondents managed to wrest possession of the Disputed Portion. To the mind of the Court, Nicasio's failure to explain the circumstances of his alleged dispossession sheds serious doubt on the veracity of his claims.

The issue of ownership can only be determined with finality in an accion reivindicatoria filed against the proper party.

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[60] *Catapusan v. Court of Appeals*, 332 Phil. 586, 592 (1996).

[61] *Rollo*, p. 90.

[62] Id. at 7.

As a final note, the Court reiterates its closing remarks in *Supapo v. Sps. de Jesus*,[63] as it did in *Heirs of Cullado*:

> As a final note, we stress that our ruling in this case is limited only to the issue of determining who between the parties has a better right to possession. **This adjudication is not a final and binding determination of the issue of ownership. As such, this is not a bar for the parties or even third persons to file an action for the determination of the issue of ownership.**[64] (Emphasis supplied)

The proper action for the final determination of ownership and possession (as a consequence of such ownership), particularly with regard to the overlapping portion covered by OCT Nos. P-4319 (now TCT No. T-8058) and P-20478 is an *accion reivindicatoria* that may be filed against Eugenio, the registered owner of the land covered by TCT No. T-8058.

WHEREFORE, premises considered, the Petition is **DENIED**. The Decision and Resolution respectively dated June 27, 2012 and January 22, 2013 rendered by the Court of Appeals in CA-G.R. CV No. 94612 are **AFFIRMED**.

SO ORDERED.

Peralta, C.J. (Chairperson), Carandang, Zalameda, and *Gaerlan, JJ.*, concur.

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[63] 758 Phil. 444 (2015).

[64] *Id.* at 467.

FIRST DIVISION

[G.R. No. 213816. December 2, 2020]

ERNESTO C. LUCES, ANDRES G. GUINTO, LAMBERTO B. SORIANO, NOLY T. TALARO, SERAFIN A. SABILLO JR., EDUARDO C. CHICA, JOSEPH N. OAQUIERA, ELESEO P. PAROHINOG, HERNIE M. ESCOMEN, LITO REMOLANO, DANIEL VERGARA, ORLANDO C. VERGARA, ALEJANDRO M. GERONIO, ALMEN R. ABELLERA, DENNIS A. SENCIO, JESUS R. PENASO JR., ALBERT TALA-OC, ANGELITO L. BARES, JERRY V. DELLOSA, CHARLON R. TADALAN, CHARLITO E. ALIGATO, JESSIE C. MABUTE, REY P. MOJADOS, MARLON Z. BERNARDINO, ZALDY O. SILLAR, WILLIAM NICDAO, *Petitioners*, *v.* **COCA-COLA BOTTLERS PHILS., INC., INTERSERVE MANAGEMENT MANPOWER RESOURCES, INCORPORATED, AND HOTWIRED MARKETING SYSTEMS, INC.,** *Respondents*.

APPEARANCES OF COUNSEL

Imperial Mediavillo Fernandez & Tibayan Law Offices for petitioners.

Angara Abello Concepcion Regala & Cruz for respondent CCBPI.

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 seeking to set aside the Decision[2]

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[1] *Rollo*, pp. 8-18.

[2] Penned by Edwin D. Sorongon, with the concurrence of Associate Justices Hakim S. Abdulwahid and Marlene Gonzales-Sison; id. at 19-30.

dated September 26, 2013 and the Resolution[3] dated May 5, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 116615 affirming the Decision[4] dated March 31, 2010 and the Resolution[5] dated August 12, 2010 of the National Labor Relations Commission (NLRC). The NLRC affirmed the Decision[6] dated September 22, 2008 of the Labor Arbiter (LA) dismissing the complaint of petitioners for regularization and illegal dismissal against the private respondents Coca-Cola Bottlers Philippines, Inc. (CCBPI), Interserve Management Manpower Resources, Inc. (Interserve) and Hotwired Marketing Systems, Inc. (Hotwired).

Facts of the Case

On December 11, 2007, the following petitioners filed a case for regularization and claim for fringe benefits and other benefits from Collective Bargaining Agreement (CBA) against respondents CCBPI, Interserve and Hotwired,[7] to wit:

Name	Position	Agency
Ernesto C. Luces	Driver	Interserve
William F. Nicdao	Helper	Interserve/Hotwired
Almen R. Abellera	Helper	Interserve/Hotwired
Jerry V. Dellosa	Helper	Interserve/Hotwired
Angelito L. Barres	Helper	Hotwired
Albert Talaoc	Helper	Hotwired
Lamberto Soriano	E/C Operator	D&Y Services/Hotwired

[3] Id. at 31-32.

[4] Penned by Commissioner Isabel G. Panganiban-Ortiguerra, with the concurrence of Presiding Commissioner Benedicto R. Palacol and Commissioner Nieves Vivar-De Castro; id. at 62-72.

[5] Id. at 74-77.

[6] Penned by Executive Labor Arbiter Fatima Jambardo-Franco; id. at 211-228.

[7] Id. at 79-103.

Jesus Bayani	Helper	Enter/Hotwired
Aldous Domingo	Helper & Driver	(blank)
Allan Domingo	Helper & Driver	(blank)
Joseph Oaquiera	Helper	Interserve
Renan Garcia	Helper	Interserve
Andres G. Guinto	Helper & Driver	CCBPI/Interserve
Noel Cordova	Helper	CCBPI/Interserve
Eduardo Chica	Helper & Driver	CCBPI/Interserve/ Hotwired
Mamerto San Roman	Route Helper	Hotwired
Rolly D. Alabat	Driver	Hotwired
Roderick Edmund	Driver	Hotwired
Dominador Banogon	Driver	Hotwired
Zaldy Sillar	Helper	Interserve/Hotwired
Jessie C. Mabute	Helper	Hotwired
Marlon Bernardino	Helper	Hotwired
Serafin Sabilo Jr.	Driver	Genesis/Interserve/ Hotwired
Rio Coralde	Helper	Interserve
Ricardo Coralde	Helper	Interserve
Alejandro Geronio	Forklift Operator	Genesis
Lito Remolano	Driver	Hotwired/Interserve
Jay Martos	Helper	Hotwired
Jesus Panaso Jr.	Route Helper	Hotwired/CCBPI
Alvin Labrador	Helper	Hotwired

Rey Mojados	Helper	Hotwired
Arthur Balubar	Helper	Hotwired
Orlando Bertol	Helper	Hotwired
Arturo Aclao	Forklift Operator	(blank)
Dondon Fabricante	Leadman	Interserve/Hotwired
Dennis Cencio	Helper	Interserve/Hotwired
Rhoderick Garcia	Helper	Interserve
Charlito Aligato	Driver	Hotwired
Garizaldy Calderon	Messenger	Interserve/Union Services
Mauro Paniamogan	Helper	Hotwired[8]

In their original Complaint,[9] petitioners sought their regularization as employees of CCBPI arguing that Interserve and Hotwired are labor-only contractors. Petitioners averred that they have been continuously rendering services to CCBPI despite having been re-employed by at least five different contractors such as: Excellent Partners Cooperative, Genesis, Inc., Holgado, United Utility, Interserve and Hotwired. They alleged that the functions they perform, particularly as route helpers, drivers, messengers, and forklift operators, are directly related to the business of CCBPI, which is the manufacture, sales and distribution of soft drinks. They likewise use the delivery trucks owned by CCBPI and work within the premises the company owns. They are also under the supervision of CCBPI's authorized salesmen.[10]

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[8] *Sama-samang Pahayag ng Pagsapi at Autorisasyon na Ibinigay Namin sa Abogado at Opisyales ng National Organization of Workingmen (N.O.W.M.)*; id. at 92-103.

[9] Id. at 79-103.

[10] Id. at 81-84.

Further, they argued that their current employment as contractual worker is contrary to labor laws and that they are being deprived of their security of tenure and the benefits and emoluments entitled to a regular worker of CCBPI. They contend that Interserve and Hotwired are labor-only contractors being utilized by CCBPI in order to deny them of the rights accorded by law to a regular employee.[11]

On January 30, 2008, an additional 27 employees filed a Supplemental Complaint[12] joining the 40 employees in the original complaint and adopting their statement of facts and arguments in support of their complaints, being in the same situation and having common issues and claims.[13] The following are the 27 employees:

Name	Position	Agency
Daniel Vergara	Helper	Interserve
Hernie Escomen	Forklift Operator/Mechanic	D&Y/Interserve
Elesco Parohinog	Helper	Interserve/Hotwired
Dennis Maglaqui	Helper	Interserve
Erick F. Gozarin	Helper	Hotwired
Allan G. Gonzales	Helper	Hotwired
Rojen S. Cervana	Helper	Hotwired
Aldwin M. Depaz	Helper	Hotwired
Francis Manlangit	Helper	Hotwired
Jonnie A. Siervo	Helper	Hotwired
Orlando Vergara	Helper	Interserve

[11] Id. at 84-85.

[12] Id. at 104-115.

[13] Id. at 104-105.

Charlon R. Tadalan	Driver	Interserve/Hotwired
Noly T. Talaro	Checker	
Jayson C. Soliman	Utility	Hotwired
Dennis Venus	Helper	Interserve/Hotwired
Romnick Rebellon	Helper	Hotwired
Rolando L. Baba	Leadman	Hotwired
Thomas John Felarca	Helper	Hotwired
Jaime C. Malimata Jr.	Helper	Interserve/Hotwired
Aurelio J. Olana	Helper	Interserve/Hotwired
Ronie G. Villar	Dispatcher	Genesis/Interserve/ Hotwired
Chito M. Mangonti	Helper	Interserve/Hotwired
Alfredo Laqui	Helper	Hotwired
Michael Abad	Helper	Hotwired
Romeo Berdera	Driver	Genesis/Interserve/ Hotwired
Joey Sarte	Helper	Hotwired
Joenniefer Sabilla	Driver	Hotwired[14]

On March 27, 2008, all 67 petitioners, through the National Organization of Workingmen, filed a Second Supplemental Complaint[15] invoking illegal dismissal against CCBPI, Interserve, and Hotwired.[16]

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[14] *Sama-samang Pahayag ng Pagsapi at Autorisasyon na Ibinigay Namin sa Abogado at Opisyales ng National Organization of Workingmen (N.O.W.M.)*; id. at 108-115.

[15] Id. at 116-118.

[16] Id.

Allegedly, Interserve and Hotwired informed them that CCBPI will soon close the Almanza I Sales Outlet in Las Piñas City and that petitioners should transfer to other outlets particularly in Sta. Rosa, Laguna. However, before they could be transferred, petitioners needed to withdraw their complaint against CCBPI first, to which petitioners did not agree. Thus, on January 30, 2008, they were all banned from reporting to their duties forcing them to file the Illegal Dismissal complaint.[17]

The case was raffled to Executive Labor Arbiter Fatima J. Franco docketed with case number NLRC NCR Case No. 12-13087-07. Having failed to arrive at a compromise settlement, the LA directed the parties to file their respective position papers. Petitioners adopted their Original Complaint and Supplemental Complaints as their position paper,[18] while respondents CCBPI, Interserve, and Hotwired separately submitted their own.[19]

In its Position Paper/Motion to Dismiss,[20] CCBPI rebutted the claims of petitioners. *Firstly*, CCBPI contended that the LA has no jurisdiction over the complaint because there is no employer-employee relationship between CCBPI and petitioners.[21]

CCBPI discussed the four-fold test in determining whether there exists an employer-employee relationship between them and petitioners. For the selection and hiring of the employees, CCBPI argued that it had no participation or say therein and it was solely the discretion of Interserve and Hotwired how the employees were screened, selected and hired. Each of the employees executed employment contracts with Interserve or Hotwired and not with CCBPI. For the payment of the wages, it was also Interserve and Hotwired who regularly paid their employees.[22]

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[17] Id. at 117.

[18] Id. at 202-203.

[19] Id. at 119-169, 176-183, 204-208.

[20] Id. at 119-169.

[21] Id. at 120-121.

[22] Id. at 138-144, 147-148.

For the discipline and termination of the employees, such power lies with Interserve and Hotwired. The complaints of CCBPI against the work of the employees were just coursed through the representatives of Interserve and Hotwired, who still decides on how to discipline them.[23]

For the power of control, CCBPI submitted the Sworn Statements of Howard Clidera (Clidera), operations manager of Hotwired, and Carmelito Bunagan (Bunagan), coordinator of Interserve. Clidera stated that he was responsible for assigning the forklift operators and helpers who would discharge the products from the hauler trucks to the warehouse. He was also in charge of assigning the helpers and drivers who would deliver the products in designated areas for maximized use of facilities. He was also responsible for monitoring the inventory of goods in the warehouse and for informing CCBPI whenever there is shortage or surplus in the supply.[24] Likewise, Bunagan stated that he was in charge of overseeing the work of the route helpers. He would assign them to specific delivery trucks and would monitor their attendance.[25]

Hence, CCBPI held that since it does not exercise any of the powers enumerated under the four-fold test, it is not considered as employer of petitioners. Further, it held that the true employers of petitioners are either Interserve or Hotwired, the latter exercising control and supervision over the manner and method of performing their duties.[26]

Secondly, CCBPI averred that Interserve and Hotwired are legitimate job contractors and not labor-only contractors. To support their claim, CCBPI submitted documents to prove the substantial capitalization of Interserve and Hotwired, some of which are the following: (1) Affidavit of Mr. Howard Clidera (the Operations Manager of Hotwired); (2) Affidavit of Mr.

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[23] Id. at 127, 133, 144-145, 148-149.

[24] Id. at 128-130, 145-147.

[25] Id. at 132-133, 149-150.

[26] Id. at 127-135, 152-153, 157.

Carmelito Bunagan (the Designated Coordinator of Interserve); (3) Warehousing Management Agreement with Hotwired; (4) Delivery Agreement with Hotwired; (5) Articles of Incorporation of Hotwired; (6) Balance Sheet and Income Statement of Interserve; and (7) Service Agreements with Interserve.[27]

According to CCBPI, Hotwired possesses at least 15 delivery trucks used for the warehousing and delivery services rendered to it. Hotwired has an authorized capital stock amounting to ₱10,000,000.00, out of which ₱2,500,000.00 had been subscribed and paid up.[28] Meanwhile, Interserve has capitalization amounting to ₱21,658,220.26. It has a total assets amounting to ₱27,509,716.32 with investment in properties, tools, and equipment worth ₱12,538,859.55.[29] Finding that Interserve and Hotwired exercised the power of control over the employees and that both have substantial capital or investment, they are considered legitimate job contractors.[30]

Thirdly, CCBPI contended that the claims of some of the petitioners have prescribed for having been filed beyond the 4-year prescriptive period. CCBPI enumerated petitioners whose claims were filed beyond the period allowed by law.[31]

Lastly, CCBPI argued that the case of *Magsalin & Coca-Cola Bottlers Phils., Inc. v. National Organization of Working Men (Magsalin)*[32] is not applicable in this case because of different factual milieu. In the case of *Magsalin*, the claimant-employees were directly hired by CCBPI as opposed to petitioners who were hired by Interserve or Hotwired. Further, the employees in the case of *Magsalin* were engaged on a day-to-day basis while petitioners are engaged by Interserve or Hotwired on a contractual arrangement.

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[27] Id. at 127-136.

[28] Id. at 125.

[29] Id. at 131-132.

[30] Id. at 125-131.

[31] Id. at 159-162.

[32] 451 Phil. 254 (2003).

Meanwhile, in the Position Paper of Interserve,[33] it claimed that it is a legitimate job contractor whose continued operation in business is dependent upon the contracts it is able to secure from principals, such as CCBPI. Thus, it held that it can only offer a contractual employment to petitioners and that petitioners were informed prior to signing their contracts that their employment is for a limited duration only. It also argued that as employer of petitioners, it provides them with training and practical lessons which they utilize at work. Petitioners are under the direct control and supervision of Interserve through its supervisors. Further, it did not dismiss petitioners but some of them actually resigned while others had their contracts expired.[34]

In the Position Paper[35] of Hotwired, it contended that it did not dismiss petitioners but the latter abandoned their work by not reporting at the Sta. Rosa, Laguna plant. Some of the petitioners actually applied directly with CCBPI and another job contractor, Aero Plus. It averred that petitioners are using the illegal dismissal complaint as leverage to gain employment at CCBPI which connotes gross bad faith and selfish intent on petitioner's part.[36]

Ruling of the Labor Arbiter

On September 22, 2008, the LA rendered a Decision[37] dismissing the complaint against CCBPI for lack of jurisdiction and dismissing the complaint against Interserve and Hotwired for lack of merit, the dispositive portion of which reads:

WHEREFORE, premises considered, the instant complaint is hereby **DISMISSED** for lack of jurisdiction insofar as respondent **Coca-Cola Bottlers Philippines, Inc. (CCBPI)** is concerned, and for lack of merit insofar as respondents **Hotwired Marketing Systems,**

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[33] *Rollo*, pp. 176-183.

[34] Id. at 180-183.

[35] Id. at 204-208.

[36] Id. at 206-208.

[37] Supra note 6.

Incorporated and **Interserve Management and Manpower Resources, Incorporated** are concerned.

SO ORDERED.[38] (Emphasis in the original)

The LA gave credence to the arguments of CCBPI. It ruled that petitioners failed to substantiate their claim that CCBPI exercised control and supervision over them. Petitioners merely denied the statements of Clidera and Bunagan whose affidavits detailed the supervision they do over the work of petitioners.[39]

Further, the LA found that the evidence submitted prove that both Interserve and Hotwired are legitimate job contractors. It relied on the Position Paper of CCBPI showing that Interserve and Hotwired have substantial capitalization or investment, that they exercise power of control over petitioners, and that they carry businesses independent, separate and distinct from CCBPI.[40]

It ruled that there is nothing in law or jurisprudence that necessitates that a contractual employment be set in a fixed or pre-determined period. Thus, even though the contractual arrangement of petitioners with Interserve or Hotwired does not have a fixed or pre-determined period, the same is still valid. The LA gave notice on the fact that Interserve or Hotwired relies on the contract it secures from its principals, such as CCBPI. Thus, these job contractors cannot assure definite employment to its workers.[41]

Lastly, the LA ruled that Article 280 of the Labor Code is inapplicable in the case at hand because, as established before, there is no employer-employee relationship between CCBPI and petitioners. Thus, the necessary or desirable test to determine whether petitioners are regular or casual employees finds no application to petitioners.[42]

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[38] *Rollo*, p. 228.

[39] Id. at 222-223.

[40] Id. at 223-225.

[41] Id. at 225-226.

[42] Id. at 226-227.

Aggrieved, the 67 petitioners filed an appeal before the NLRC.[43]

Ruling of the National Labor Relations Commission

On March 31, 2010, the NLRC issued a Decision[44] affirming the dismissal of the complaint, to wit:

> **WHEREFORE**, premises considered, the instant appeal is DISMISSED for lack of merit and the Decision dated 22 September 2008 is hereby AFFIRMED.
>
> **SO ORDERED**.[45] (Emphasis in the original)

NLRC affirmed the findings of the LA that Interserve and Hotwired are legitimate job contractors having shown that they have substantial capitalization and that they perform business independent and different from the business of CCBPI.[46]

Also, NLRC found that petitioners did not perform tasks that are indispensable in carrying out the principal business of CCBPI. It ruled that under the Warehouse Management Contract, petitioners were in charge of stock handling and storage, loading and unloading of goods. Meanwhile, CCBPI is engaged in the business of manufacturing, distributing and marketing of softdrinks. NLRC held that petitioners' tasks were not pivotal to the main business of CCBPI.[47]

Lastly, NLRC ruled that CCBPI did not exercise the power of control over the work of petitioners. The power of control was exercised by the representatives of Interserve and Hotwired, Bunagan and Clidera, respectively. CCBPI did not have a hand on the manner of delivery, loading, and unloading of the products. Likewise, it did not have supervision over petitioners.[48]

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[43] Id. at 229-234.

[44] Supra note 4.

[45] *Rollo*, pp. 71-72.

[46] Id. at 69.

[47] Id. at 69-70.

[48] Id. at 70-71.

Aggrieved, petitioners filed a Motion for Reconsideration (MR) of the Decision of the NLRC. On August 12, 2010, the NLRC issued a Resolution[49] denying the MR for lack of merit.[50]

Undaunted, herein petitioners filed a Petition for *Certiorari*[51] under Rule 65 before the CA. The other 41 petitioners no longer filed a petition to contest the decision of the NLRC.

Ruling of the Court of Appeals

On September 26, 2013, the CA issued a Decision[52] denying the petition for *certiorari* filed by petitioners and affirming the decision of the NLRC, *viz.*:

> **WHEREFORE**, there being no grave abuse of discretion on the part of the NLRC in rendering the assailed decision, the petition for certiorari is hereby **DENIED**. The impugned decisions of both labor tribunals are **AFFIRMED** IN TOTO.
>
> **SO ORDERED**.[53] (Emphasis in the original)

The CA affirmed the NLRC and the LA in ruling that Hotwired and Interserve are legitimate independent job contractors. It ruled that the NLRC did not commit grave abuse of discretion in finding that Interserve and Hotwired had substantial capitalization as evidenced in the Certification from the Department of Labor and Employment (DOLE). Likewise, the Certification gives the presumption that they are not labor-only contractors which petitioners failed to dispute.[54]

Further, the CA ruled that the extension of service contract between the independent contractors and CCBPI is not a source of employer-employee relationship with respect to CCBPI and

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[49] Supra note 5.

[50] *Rollo*, p. 76.

[51] Id. at 33-59.

[52] Supra note 2.

[53] *Rollo*, p. 30.

[54] Id. at 26.

petitioners. CA reiterated the findings of NLRC and LA in establishing that there was no employer-employee relationship between CCBPI and petitioners using the four-fold test.[55]

On the issue of illegal dismissal, CA stated that it cannot pass upon the issue raised for the first time on appeal and affirmed the LA finding that petitioners failed to raise the illegal dismissal complaint with respect to Interserve and Hotwired. Assuming it can decide on such issue, CA agreed with the LA that petitioners were not dismissed but actually, petitioners had an expiration of contract by virtue of the expiration of the service contract between the contractors and CCBPI.[56]

Petitioners filed an MR on October 16, 2013, which was denied in a Resolution[57] dated May 5, 2014.

Hence, this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court.

In its Petition dated October 2, 2014, petitioners raised this sole issue:

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION, WHICH IF NOT CORRECTED, WOULD CAUSE GRAVE OR IRREPARABLE DAMAGE OR INJURY TO HEREIN PETITIONERS WHEN IT HELD THAT RESPONDENTS INTERSERVE AND HOTWIRED ARE LEGITIMATE INDEPENDENT CONTRACTORS.

Petitioner's Arguments

Petitioners argued that the CA erred in not applying the case of *Coca-Cola Bottlers Phils., Inc. v. Agito (Agito)*,[58] wherein the Court found that Interserve was a labor-only contractor.[59] Petitioners averred that petitioners and respondents in this case

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[55] Id. at 27-29.

[56] Id. at 29-30.

[57] Supra note 3.

[58] 598 Phil. 909 (2009).

[59] Id. at 930.

and the case of *Agito* are similarly situated and the issues raised are the same; thus, in consonance with the principle of *stare decisis,* the ruling in *Agito* must be likewise applied in their case.[60]

Petitioners also pointed out that their employment has not been fixed for a specific project of undertaking. Their services were continuously utilized by CCBPI through the intermediation of several labor-only contractors. Thus, they are considered employees of CCBPI.[61]

Lastly, on the issue of illegal dismissal, petitioners contended that the CA erred in holding that they were not illegally dismissed. CCBPI merely used the labor-only contractors to remove the employees who filed the regularization cases against them. Assuming that they were not illegally dismissed, CCBPI failed to follow the notice before termination provided under Article 283 of the Labor Code.[62]

Respondent's Comment

CCBPI filed its Comment[63] dated January 30, 2015 debunking the arguments raised by petitioners. It raised that the arguments in the petition were mere rehash of the issues raised by petitioners before the CA, NLRC and LA. These issues have been squarely ruled upon by these courts, and thus, the petition lacks merit.[64]

CCBPI averred that the CA did not commit grave abuse of discretion in finding that Interserve and Hotwired are legitimate job contractors. Both contractors have independent business from CCBPI and have substantial capitalization. According to CCBPI, in order for there to be a finding of a labor-only contracting, petitioners must establish that Interserve and Hotwired do not have a substantial capital or investment, the workers are performing jobs directly related to the principal's

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[60] *Rollo,* pp. 57-58.

[61] Id. at 54-57.

[62] Id. at 56-57.

[63] Id. at 284-332.

[64] Id. at 303-304.

main business and the contractor does not exercise control over the workers. So even if workers are performing jobs directly related to the business of the principal, absent the element of lack of substantial capital and power of control, there is no labor-only contracting.[65]

Further, CCBPI argued that the cases cited by petitioners, particularly the case of *Magsalin* and *Agito* do not apply to the case at hand. The circumstances of petitioners are entirely different from the employees involved in those cases.[66]

Lastly, CCBPI reiterated its contention that there is no employer-employee relationship between them and petitioners, applying the four-fold test. Thus, it cannot be held liable for the illegal dismissal of petitioners and non-compliance with the provisions of Article 283 of the Labor Code on notice before termination.[67]

Issues

Upon review of the entire records of the case, this Court will discuss the following main issues, to wit:

1. Whether Interserve and Hotwired are labor-only contractors? Corollarily, whether or not there is an employer-employee relationship between CCBPI and petitioners

2. Whether petitioners were illegally dismissed by CCBPI/ Interserve/Hotwired

Ruling of the Court

The petition is meritorious.

As a rule, the determination of whether an employer-employee relationship exists between the parties involves factual matters that are generally beyond the ambit of this Petition as only questions of law may be raised in a petition for review on

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[65] Id. at 304-313.

[66] Id. at 313-318.

[67] Id. at 318-329.

certiorari. However, this rule allows certain exceptions, such as: (1) when the findings are grounded entirely on speculation, surmises or conjectures; **(2) when the inference made is manifestly mistaken, absurd or impossible;** (3) when there is grave abuse of discretion; **(4) when the judgment is based on a misapprehension of facts;** (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[68] In this case, We hold that the second and fourth exceptions are present thus, this Court deems it proper to reassess the findings in order to arrive at a proper and just conclusion.

Labor-only contracting refers to the arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job or work for a principal. Under Sec. 5 of the DOLE Department Order (DO) No. 174, series of 2017,[69] there is labor-only contracting when: (a) the contractor or subcontractor does not have substantial capital or does not have investment in tools, equipment, machineries, supervision and work premises and the employees are performing activities which are directly related to the main business of the principal; **or** (b) the contractor or subcontractor does not exercise the right of control over the work of the employees except as to the result thereto.

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[68] *Sps. Almendrala v. Sps. Ngo*, 508 Phil. 305, 315-316 (2005).

[69] Rules Implementing Articles 106-109 of the Labor Code, as amended.

Accordingly, there are two instances when a contractor or subcontractor is deemed to be engaged in labor-only contracting. In the first instance, there are two indicators: (1) the contractor or subcontractor does not have substantial capitalization or it does not have investment in tools, equipment, machineries, supervision and work premises and (2) its employees are performing activities or jobs which are directly related and indispensable to the main business of the principal. In the second instance, the principal, not the contractor or subcontractor, exercises the power of control over the manner and method of the employees' work.

Upon review of the records, We rule that Interserve and Hotwired are engaged in labor-only contracting under the first instance. As petitioners pointed out, Interserve and Hotwired do not have investment or capitalization in tools, equipment, machineries, supervision and work premises. Petitioners worked in the premises owned by CCBPI. The tools, machineries and equipment they use all belong to CCBPI. Neither Interserve nor Hotwired submitted any evidence to show that they own the delivery trucks, machineries and equipment used by the employees in storing and delivering the softdrinks. At the jobsite, petitioners were given tasks and assignments by the sales supervisors and salesmen of CCBPI. These facts belie the claim that Interserve or Hotwired has substantial capitalization in tools, machineries, equipment, supervision and work premises.

CCBPI submitted the following evidence to prove that Interserve had substantial capitalization: (1) Service Agreement between Interserve and CCBPI; and (2) Interserve's Balance Sheet and Income Statement. Meanwhile, the following documents were submitted for Hotwired: (1) Hotwired's Articles of Incorporation; (2) Warehouse Management Agreement between Hotwired and CCBPI; and (3) Delivery Agreement between Hotwired and CCBPI. From these documents, CCBPI averred that Interserve has total capitalization of ₱21,658,220.26 and total assets of ₱27,509,716.32 with property and equipment worth ₱12,538,859.55. On the other hand, CCBPI raised that Hotwired has a total authorized capital stock of ₱10,000,000.00, out of which ₱2,500,000.00 is subscribed and paid up.

However, having substantial capitalization does not easily convince this Court that Interserve and Hotwired are legitimate job contractors. Jurisprudence has established that this Court does not set an absolute figure for what it considers substantial capital for an independent job contractor, but it measures the same against the type of work which the contractor is obligated to perform for the principal. In this case, Interserve entered into a Service Agreement with CCBPI wherein it will provide pool of relievers to the latter in case there would be absent employees or there would be an upsurge in the workload.[70] Hotwired was engaged for warehousing management and delivery services.[71]

Be that as it may, neither Interserve nor Hotwired presented evidence to show that they possess tools and equipment necessary in the performance of the agreements they entered into with CCBPI. Interserve merely provides manpower to CCBPI which is tantamount to labor-only contracting. Hotwired does not have any tool or equipment it uses in the warehouse management. It did not show that it owns any forklift or trucks used in the loading and unloading of the products. The warehouse being used as storage of the goods was owned by CCBPI. Further, it failed to show evidence of ownership/possession of delivery trucks sufficient to fulfill the delivery operations under the Delivery Agreement.

A finding that a company has substantial capitalization does not automatically result to a finding that it is an independent job contractor. In the case of *San Miguel Corp. v. MAERC Integrated Services, Inc.*,[72] the investment of MAERC, the contractor therein, in the form of buildings, tools, and equipment of more than ₱4,000,000.00 did not impress this Court, which still declared MAERC to be a labor-only contractor.[73] Likewise,

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[70] *Rollo*, p. 131.

[71] Id. at 123-124.

[72] 453 Phil. 543 (2003).

[73] Id. at 566.

in the case of *DOLE Philippines, Inc. v. Esteva*,[74] this Court did not recognize the contractor therein as a legitimate job contractor, despite its paid-up capital of over ₱4,000,000.00, in the absence of substantial investment in tools and equipment used in the services it was rendering.[75]

Similar to the above-cited cases, We are not convinced that Interserve and Hotwired are legitimate job contractors in absence of proof that they have substantial investment in tools, equipment, machineries among others.

Moreover, the fact that the petitioners are performing activities directly related and indispensable to the main business of CCBPI is well-established. According to CCBPI, it is engaged in the business of manufacturing, distributing and marketing of soft drinks and beverage products. Meanwhile, the petitioners, as route helpers, delivery truck drivers and forklift operators are doing tasks necessary, pertinent and vital to the operations of CCBPI. They are in charge of preparing the products from the warehouse, loading and unloading the products to the delivery trucks, deliver the soft drinks to the clients in the assigned areas and bring back the undelivered goods to the warehouse. These tasks are indispensable in the aspect of distribution and marketing of soft drinks, which is the main business of CCBPI.

As a matter of fact, jurisprudence has established the relationship between the nature of the work of route helpers, drivers and forklift operators with respect to the principal business of CCBPI. As early as the case of *Magsalin v. National Organization of Working Men*[76] this Court has ruled that route helpers perform activities that are necessary and desirable in the usual business or trade of CCBPI that could qualify them as regular employees.[77]

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[74] 538 Phil. 817 (2006).

[75] Id. at 867.

[76] 451 Phil. 254 (2003).

[77] Id. at 262.

The employees in *Magsalin* are sales route helpers employed by CCBPI on a day-to-day basis to work as relievers or substitutes to absent employees or whenever CCBPI would need more workers in times of high demand from clients. They claimed for regularization which CCBPI refused to grant.[78]

According to the Court in the *Magsalin* case, the applicable test is the reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer. The standard, supplied by the law itself, is whether the work undertaken is necessary or desirable in the usual business or trade of the employer, a fact that can be assessed by looking into the nature of the services rendered and its relation to the general scheme under which the business or trade is pursued in the usual course.[79] Looking at the nature of the services rendered by the route helpers in that case, the Court concluded that they perform activities indispensable to the main operations of the CCBPI. The Court held:

> The argument of petitioner (CCBPI) 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 and not on a confined scope.
>
> The repeated rehiring of respondent workers and the continuing need for their services clearly attest to the necessity or desirability of their services in the regular conduct of the business or trade of petitioner company.[80]

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[78] Id. at 258-259.

[79] Id. at 260-261.

[80] Id. at 261-262.

The ruling in *Magsalin* was reiterated in the case of *Pacquing v. Coca-Cola Philippines, Inc.*[81] wherein the Court applied the principle of *stare decisis*. In the case of *Pacquing*, the petitioners were also sales route helpers who claimed for regularization but later were illegally dismissed.[82] CCBPI argued that petitioners therein were not regular employees but temporary workers engaged for a five-month period to work as substitutes to regular employees.[83] The Court therein ruled:

> Under the principle of *stare decisis et non quieta movere* (follow past precedents and do not disturb what has been settled), it is the Court's duty to apply the previous ruling in Magsalin to the instant case. Once a case has been decided one way, any other case involving exactly the same point at issue, as in the case at bar, should be decided in the same manner. Else, the ideal of a stable jurisprudential system can never be achieved.[84]

Thus, it was held in *Pacquing* that sales route helpers are considered regular employees of CCBPI because the nature of their work is necessary and desirable in the main business or trade of CCBPI.[85]

A similar issue was raised in the case of *Coca-Cola Bottlers Phils., Inc. v. Agito*.[86] But in this case, the employees affected are salesmen assigned at the Lagro Sales Office of CCBPI. In the case of *Agito*, the workers filed a complaint for reinstatement after they had been unjustly dismissed from their employment. They averred that they are regular employees of CCBPI. On the other hand, CCBPI argues that it is not the employer of the workers but instead, they are the employees of Interserve, a legitimate job contractor.[87]

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[81] 567 Phil. 323 (2008).

[82] Id. at 328-329.

[83] Id. at 329.

[84] Id. at 340-341.

[85] Id. at 339-340.

[86] 598 Phil. 909 (2009).

[87] Id. at 915.

The Court in that case ruled that salesmen are performing tasks which are necessary and indispensable to the business or trade of CCBPI, to wit:

> "Respondents [Agito, et al.] worked for petitioner (CCBPI) as salesmen, with the exception of respondent Gil Francisco whose job was designated as leadman. In the Delivery Agreement between petitioner and TRMD, Incorporated, it is stated that petitioner is engaged in the manufacture, **distribution and sale** of softdrinks and other related products. The work of respondents, constituting distribution and sale of Coca-Cola products, is clearly indispensable to the principal business of petitioner. The repeated re-hiring of some of the respondents supports this finding. Petitioner also does not contradict respondents' allegations that the former has Sales Departments and Sales Offices in its various offices, plants, and warehouses; and that petitioner hires Regional Sales Supervisors and District Sales Supervisors who supervise and control the salesmen and sales route helpers."[88] (Emphasis in the original)

In addition to that, the Court therein categorically ruled that Interserve was engaged in labor-only contracting.

Consequently, in another case, the Court reiterated the ruling in *Magsalin* wherein it was held that route helpers are regular employees of CCBPI. In *Coca-Cola Bottlers Phils., Inc. v. Dela Cruz*,[89] the workers therein filed a complaint for regularization and impleaded CCBPI and its contractors Peerless Integrated Service, Inc. and Excellent Partners Cooperative, Inc. They alleged that they have been working for CCBPI and that they have been hired directly by CCBPI or through its contractors. They posited that they have been performing tasks which are directly related to the business of CCBPI. The company contends that the workers are employees of either Peerless or Excellent and that these companies are independent job contractors.[90]

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[88] Id. at 925-926.

[89] 622 Phil. 886 (2009).

[90] Id. at 893-895.

The Court ruled in *Dela Cruz* that the sales route helpers were doing tasks that are related to the distribution and sale of CCBPI's products, which is part of its usual business or trade, to wit:

> In plainer terms, the contracted personnel (acting as sales route helpers) were only engaged in the marginal work of helping in the sale and distribution of company products; they only provided the muscle work that sale and distribution required and were thus necessarily under the company's control and supervision in doing these tasks.
>
> Still another way of putting it is that the contractors were not independently selling and distributing company products, using their own equipment, means and methods of selling and distribution; they only supplied the manpower that helped the company in the handing of products for sale and distribution. In the context of D.O. 18-02, the contracting for sale and distribution as an independent and self-contained operation is a legitimate contract, but the pure supply of manpower with the task of assisting in sales and distribution controlled by a principal falls within prohibited labor-only contracting.[91]

The case of *Basan v. Coca-Cola Bottlers Philippines, Inc.*[92] is similar to the case of *Pacquing* wherein CCBPI hired temporary route helpers to act as substitutes for absent regular employees or to report in case there is a high volume of work.[93] The Court in that case reiterated the ruling in *Pacquing* and *Magsalin* that route helpers are regular employees because their work is necessary or desirable to the usual business or trade of CCBPI.[94]

More recently, the Court has decided similar issues in the cases of *Quintanar v. Coca-Cola Bottlers, Philippines, Inc.*[95] and *Lingat v. Coca-Cola Bottlers Philippines, Inc.*[96] which find application in the case at hand.

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[91] Id. at 906.

[92] 753 Phil. 74 (2015).

[93] Id. at 78-79.

[94] Id. at 86.

[95] 788 Phil. 385 (2016).

[96] G.R. No. 205688, July 4, 2018.

In *Quintanar*, the workers involved are route helpers who were tasked to distribute Coca-Cola products to the stores and customers in their assigned areas/routes. They were directly hired by CCBPI at first and then transferred to the different contractors, namely: Lipercon Services, Inc., People's Services, Inc., ROMAC and now Interserve Management Manpower Resources. They filed claims before the DOLE asserting that they are regular employees of CCBPI and are entitled to the benefits and emoluments accorded to regular employees. They were dismissed by CCBPI upon learning of the claims they filed before DOLE. CCBPI counters that Interserve is an independent job contractor and that it is not the employer of the workers.[97]

The Court in *Quintanar* ruled that the characterization of the relationship between route helpers and CCBPI is no longer a novel issue. Citing the case of *Magsalin*, the Court reiterated the finding that "the repeated rehiring of respondent workers and the continuing need for their services clearly attest to the necessity or desirability of their services in the regular conduct of the business or trade of the petitioner company."[98] Similar to the case of *Pacquing*, the Court applied the principle of *stare decisis* and held that an issue already decided must be upheld absent any strong or compelling reason to abandon the same. In that case, CCBPI failed to show any strong or compelling reason to abandon the ruling established in the *Magsalin* case. Thus, the Court ruled that route helpers are considered regular employees of CCBPI as held in *Magsalin* and *Pacquing*.[99]

Meanwhile, in the case of *Lingat*, Lingat was hired as a plant driver and forklift operator while Altiveros was assigned as a segregator/mixer. They were employees of CCBPI for more than a year and then they were transferred from one agency to another which included Lipercon Services, Inc., People Services,

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[97] Supra note 95.

[98] Id. at 403.

[99] Id. at 404.

Inc., Interserve Management Manpower Resources, Inc., and Monte Daples Trading Corp. (MDTC). They contended that the agencies were labor-only contractors and that they didn't have any equipment, machinery and work premises for warehousing purposes. CCBPI owned the warehouse they were working at and the supervisors who were overseeing their work were employees of CCBPI. They were illegally dismissed by CCBPI for 'overstaying.' On the other hand, CCBPI contends that it is not the employer of Lingat and Altiveros and that MDTC has an independent business separate from CCBPI.[100]

The Court therein ruled that *Lingat* are regular employees of CCBPI and not of MDTC because they were performing tasks necessary and indispensable to the business of CCBPI, to wit:

> Here, based on their Warehousing Management Agreement, CCBPI hired MDTC to perform warehousing management services, which it claimed did not directly relate to its (CCBPI's) manufacturing operations. However, it must be stressed that CCBPI's business *not* only involved the manufacture of its products but also included their distribution and sale. Thus, CCBPI's argument that petitioners were employees of MDTC because they performed tasks directly related to "warehousing management services," lacks merit. On the contrary, records show that petitioners were performing tasks directly related to CCBPI's distribution and sale aspects of its business.
>
> To reiterate, CCBPI is engaged in the manufacture, distribution, and sale of its products; in turn, as plant driver and segregator/mixer of soft drinks, petitioners were engaged to perform tasks relevant to the distribution and sale of CCBPI's products, which relate to the core business of CCBPI, not to the supposed warehousing service being rendered by MDTC to CCBPI. Petitioners' work were (sic) directly connected to the achievement of the purposes for which CCBPI was incorporated. Certainly, they were regular employees of CCBPI.[101]

Similar to the above-mentioned cases, the petitioners herein are route helpers, delivery truck drivers and forklift operators.

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[100] Supra note 96 at 98.

[101] Supra note 96.

Similar to the cases of *Agito, Dela Cruz, Quintanar* and *Lingat*, the petitioners were hired by contractors who had warehouse management agreements, delivery agreements and service agreements with CCBPI. In these four cases, the Court ruled that the contractors engaged by CCBPI were labor-only contractors and the workers were doing tasks that are directly related and indispensable to the business or trade of CCBPI, particularly in the aspect of distribution and sale of its products. Hence, the Court held that as such, the workers were considered regular employees of CCBPI.

Accordingly, the issue of whether route helpers are regular employees of CCBPI has long been resolved in a long line of cases starting with the case of *Magsalin* as early as May 2003. It is worthy to note that the Court has been consistent with its rulings in accordance with the principle of *stare decisis*. This Court held in one case that the *stare decisis* rule bars the relitigation of an issue long settled except when strong and compelling reasons arise to reconsider it anew, *viz.*:

> Time and again, the court has held that **it is a very desirable and necessary judicial practice** that when 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 in which the facts are substantially the same. *Stare decisis et non quieta movere*. Stand by the decisions and disturb not what is settled. *Stare decisis* simply means that **for the sake of certainty, a conclusion reached in one case should be applied to those that follow if 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 the 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**. [102] (Emphasis and italics supplied)

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[102] *Chinese Young Men's Christian Association of the Philippine Islands v. Remington Steel Corporation*, 573 Phil. 320 (2008), citing *Ty v. Banco Filipino Savings & Mortgage Bank*, 511 Phil. 510, 520-521 (2005).

As follows, We rule that the petitioners who are performing tasks indispensable to the usual business or trade of CCBPI are considered regular employees. Interserve and Hotwired, which are found to lack investment in tools, equipment, machineries, supervision and work premises, are considered engaged in labor-only contracting.

Under Section 7 of D.O. No. 174, s. 2017, a principal is deemed as the employer of the contractor's or subcontractor's employees upon a finding that the latter is a labor-only contractor, to wit:

> **Section 7. When principal is deemed the direct employer of the contractor's or subcontractor's employees.** — In the event that there is a finding that the contractor or subcontractor is engaged in labor-only contractor under Section 5 and other illicit forms of employment arrangements under Section 6 of these Rules, the principal shall be deemed the direct employer of the contractor's or subcontractor's employees. (Emphasis supplied)

Thus, the LA, as affirmed by NLRC and CA, erred in dismissing the complaint with respect to CCBPI for lack of jurisdiction. **CCBPI is the direct employer of the petitioners, thus it is liable for their claims.**

On the issue of illegal dismissal, it is not contended that the petitioners were dismissed from their respective positions upon the alleged termination of the Warehousing Management Agreement and Service Agreement with Hotwired and Interserve, respectively. They were refused entry to the work premises of CCBPI. CCBPI argues that it was because of the expiration of the contract with Interserve and Hotwired that petitioners no longer reported to work. However, this is not a just or authorized cause to dismiss petitioners' services. Articles 282-284 of the Labor Code provide:

> **Article 282. Termination by employer.** — An employer may terminate an employment for any of the following causes:
>
> a. Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

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.

Article 283. 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 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 (½) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

Article 284. Disease as ground for termination. — An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one-half (½) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year. (Emphasis supplied)

Nowhere in these just or authorized causes mention expiration of contract. **Thus, it was illegal for CCBPI to terminate the petitioners.** At the same time, there was no clear showing that petitioners were afforded due process when they were terminated.

As a matter of fact, the petitioners pointed out that CCBPI did not comply with the provisions of Art. 283 of the Labor Code on notice before dismissal. Therefore, their dismissal was without valid cause and due process of law; as such, the same was illegal.

Considering that petitioners were illegally terminated, **CCBPI, Interserve and Hotwired are solidarily liable for the rightful claims of petitioners.**

Settled is the rule that 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 up to the time of actual reinstatement. If reinstatement is not possible, however, the award of separation pay is proper.[103]

Backwages are granted on grounds of equity to workers for earnings lost due to their illegal dismissal from work. They are a reparation for the illegal dismissal of an employee based on earnings which the employee would have obtained, either by virtue of a lawful decree or order, as in the case of a wage increase under a wage order, or by rightful expectation, as in the case of one's salary or wage. The outstanding feature of backwages is thus the degree of assuredness to an employee that he would have had them as earnings had he not been illegally terminated from his employment.[104]

Petitioners herein were unjustly dismissed by CCBPI when they were prevented from entering the work premises on January 30, 2008. The petitioners have lost the earnings they should have been entitled to had they not been illegally dismissed. Thus, the **petitioners are entitled to their <u>full backwages inclusive of all allowances and other benefits</u> from the time that they were illegally dismissed or on January 30, 2008**

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[103] *ICT Marketing Services, Inc. v. Sales*, 769 Phil. 498, 524 (2015).

[104] *Equitable Banking Corporation (EQUITABLE-PCI BANK) v. Sadac*, 523 Phil. 781, 819 (2006), citing *Paguio v. Philippine Long Distance Telephone Co., Inc.*, 441 Phil. 679, 690-691 (2002).

when they were banned from reporting to their duty until the finality of this Decision.

However, with respect to the claims and benefits under the CBA, the same cannot be granted because of the failure to show that the petitioners are part of the bargaining unit and their failure to provide a copy of the CBA provisions. The Court cannot grant the same.

Further, similar to the case of *Lingat and Altiveros*, almost 13 years have lapsed since the inception of this case on December 11, 2007. For practical reasons and to serve the best interest of the parties, the Court deems it proper to award separation pay to the petitioners, instead of reinstatement. Thus, the **petitioners are entitled to separation pay equivalent to one month's salary for every year of service from January 30, 2008 until the finality of this Decision**.

Finally, since petitioners were compelled to litigate to protect their rights and interests, attorney's fees of 10% of the monetary award is likewise awarded. The legal interest of 6% *per annum* shall be imposed on all the monetary grants from the finality of the Decision until paid in full.

WHEREFORE, the petition is **GRANTED**. The Decision dated September 26, 2013 and the Resolution dated May 5, 2014 of the Court of Appeals in CA-G.R. SP No. 116615, affirming the Decision dated March 31, 2010 and the Resolution dated August 12, 2010 of the National Labor Relations Commission and the Decision dated September 22, 2008 of the Labor Arbiter dismissing the complaint of the petitioners are **REVERSED** and **SET ASIDE**. Accordingly, petitioners are awarded the following:

1. Full backwages, inclusive of all allowances and other benefits, from January 30, 2008 until finality of this Decision;

2. Separation pay, in lieu of reinstatement, equivalent to one month of salary for every year of service with a fraction of a year of at least six months as one whole year from January 30, 2008 until finality of this Decision; and

3. Attorney's fees equivalent to 10% of the monetary grants to them.

Let this case be **REMANDED** to the Labor Arbiter for a detailed computation of the monetary awards.

All monetary awards shall earn interest at the legal rate of six percent (6%) *per annum* from the finality of this Decision until fully paid.

Peralta, C.J., Caguioa, Zalameda, and *Gaerlan, JJ.*, concur.

FIRST DIVISION

[G.R. No. 216056. December 2, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **ROBERTO BERNARDO *y* FERNANDEZ,** *Accused-Appellant*.

APPEARANCES OF COUNSEL

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

D E C I S I O N

ZALAMEDA, *J.*:

Truth often lies in the lips of a dying man. A person aware of a forthcoming death is generally considered truthful in his words and credible in his accusation. A dying man's statements, given under proper circumstances, are treated with highest weight and credence.[1]

The Case

Before this Court is an appeal seeking the reversal of the Decision[2] dated 20 May 2014 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 04486, which affirmed the conviction of accused-appellant Roberto Bernardo (accused-appellant) for the crime of murder.

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[1] See *People v. Manguera*, G.R. No. 139906, 05 March 2003, 446 Phil. 808 (2003) [Per J. Vitug]; *People v. Lariosa*, G.R. No. L-38652, 31 July 1981, 193 Phil. 540 (1981) [Per J. De Castro].

[2] *Rollo*, pp. 2-12; penned by Associate Justice Ramon A. Cruz and concurred in by Associate Justices Hakim S. Abdulwahid and Romeo F. Barza of the Court of Appeals, Manila.

Antecedents

In an Information[3] dated 26 July 2001, accused-appellant was charged with the crime of murder under Article 248 of the Revised Penal Code (RPC), as amended by Section 6 of Republic Act No. (RA) 7659. The accusatory portion of the Information reads as follows:

> That on or about May 25, 2001, in the Municipality of Solana, Province of Cagayan and within the jurisdiction of this Honorable Court, the said accused Roberto Bernardo y Fernandez, armed with a gun, with intent to kill, with evident premeditation and treachery, did then and there, willfully, unlawfully and feloniously attack, assault and shoot one, Roger Arquero y Cudiamat Alias Rolando, inflicting upon him fatal gunshot wounds on the different parts of his body which caused his death.
>
> That in the commission of the offense the special aggravating circumstance of use of an unlicensed firearm was present.
>
> Contrary to law.

During arraignment on 06 February 2002, accused-appellant pleaded not guilty.[4]

Trial on the merits ensued after the pre-trial conference.

Version of the Prosecution

The facts, as culled from the testimony of the prosecution witnesses, are as follows:

On 25 May 2001, at around 6:00 a.m., the victim, Roger Arquero (Arquero), fetched his brother-in-law, Rolando Licupa (Licupa)[5] to go to the rice field. While they were walking towards the other side of the rice paddy, accused-appellant suddenly appeared from the hilly portion of the field and shot Arquero once using a homemade shotgun, hitting the latter on the lower

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[3] Records, p. 18.

[4] *Id.* at 33.

[5] TSN dated 22 July 2005, p. 5.

abdomen.[6] Accused-appellant ran away, while Licupa shouted for help. Dionisio Evangelista (Evangelista) arrived.[7]

Licupa and Evangelista carried Arquero using a sledge and brought him to Pedro Arquero's house before taking him to St. Paul Hospital.[8] Policemen arrived to investigate. Arquero died the same day.[9]

During trial, Licupa testified that he knew accused-appellant because he is Arquero's nephew.[10] On the other hand, Mercilyn Arquero, the victim's widow, testified that Arquero told her that accused-appellant was the one who shot him.[11] She identified a list of expenses incurred due to the victim's hospitalization and death, but did not present receipts.[12]

Meanwhile, Dr. Honorario Reyes (Dr. Reyes), the medico-legal officer testified that the victim's wounds perforated his small intestines, colon, and urinary bladder.[13]

Version of the Defense

Accused-appellant testified that in the morning of 25 May 2001, he was with his family at their house in Sitio Masin, Iraga, Solana, Cagayan.[14] They were sleeping when Arquero, Loreto Arquero, Licupa, Dionisio Arquero, Ambot Soriano and a certain Amboy fired gunshots at his house.[15] He surmised that the attack was motivated by revenge because in 1991, he was

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[6] *Id.* at 6 and 11.

[7] *Id.* at 7.

[8] *Id.* at 10.

[9] *Id.* at 11.

[10] *Id.* at 9.

[11] TSN dated 11 July 2007, p. 7.

[12] *Id.* at 9.

[13] TSN dated 31 July 2009, pp. 10-11.

[14] TSN dated 27 August 2009, p. 4.

[15] *Id.* at 5.

convicted for killing Arquero's brothers.[16] He also stated that prior to the shooting, the assailants ordered his wife and children to go out of the house.[17] When accused-appellant was the only one left inside, the assailants open fired. Accused-appellant testified that he was able to avoid the bullets because he dropped to the ground.[18] He claimed, however, that the victim was shot by his companion, Licupa,[19] and that he even reported the shooting incident to the police.[20]

Ruling of the RTC

In a Decision[21] dated 24 May 2010, the Regional Trial Court (RTC) convicted accused-appellant for the crime of murder and sentenced him to suffer the penalty of *reclusion perpetua* without possibility of parole. He was also ordered to pay Arquero's heirs the amounts of Php75,000.00 as civil indemnity, Php25,000.00 as temperate damages, Php50,000.00 as moral damages, and Php25,000.00 as exemplary damages, all with interest of six percent (6%) *per annum* from finality of the decision until full payment.

Ruling of the CA

On 20 May 2014, the CA issued a Decision,[22] affirming the RTC *in toto*.

It gave credence to the testimony of Licupa, as well as the victim's statement to the police and his wife that accused-appellant shot him. It also appreciated the presence of the

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[16] *Id.*

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

[18] *Id.* at 6.

[19] *Id.* at 7.

[20] *Id.* at 8.

[21] CA *rollo*, pp. 14-21; penned by Presiding Judge Marivic A. Cacatian-Beltran.

[22] *Supra* at note 2.

qualifying circumstance of treachery, and the special aggravating circumstance of use of unlicensed firearm.

Issues

For purposes of this appeal, the Office of the Solicitor General[23] (OSG) and the Public Attorney's Office[24] (PAO) manifested they were no longer filing their respective supplemental briefs, and prayed the briefs submitted to the CA be considered in resolving the appeal.

In his brief, accused-appellant claims that the physical evidence is consistent with his version of the events. He points to the fact that the victim sustained nine (9) gunshot wounds, contrary to Licupa's testimony that he only heard one gun shot.[25]

With this argument, the Court is tasked to determine whether the CA erred in affirming accused-appellant's conviction for murder.

Ruling of the Court

Accused-appellant failed to assail the sufficiency of the allegations of the Information

Preliminarily, this Court would address the sufficiency of the allegations in the Information.

Part of the constitutional rights guaranteed to an accused in a criminal case is to be informed of the nature and cause of the charge against him. Correlatively, the State has the obligation to sufficiently allege the circumstances constituting the elements of the crime. Thus, the Information must correctly reflect the charge against the accused before any conviction may be made.[26]

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[23] *Rollo*, pp. 21-24.

[24] *Id.* at 34-36.

[25] CA *rollo*, pp. 54-56.

[26] *See Reyes v. People*, G.R. No. 232678, 03 July 2019 [Per J. Peralta].

In *People v. Valdez*,[27] this Court made a pronouncement that in criminal cases, the State must specify in the information the details of the crime and any circumstance that may qualify the crime or aggravate an accused's liability. Hence, it is no longer sufficient to merely allege the qualifying circumstances of "treachery" or "evident premeditation" without including supporting factual averments. The prosecution must now specify in the information the acts and circumstances constituting the alleged attendant circumstance in the crime committed.

In this case, this Court notes that the Information merely alleged "with evident premeditation and treachery"[28] without supporting factual allegations on how the accused-appellant had deliberately adopted means of execution that denied to the victim the opportunity to defend himself, or to retaliate; or that the accused-appellant had consciously and deliberately adopted the mode of attack to ensure himself from any risk from the defense that the victim might make.[29]

Ordinarily, the non-allegation of a detail that aggravates his liability is to prohibit the introduction or consideration against the accused of evidence that tends to establish that detail, and the accused shall be convicted of the offense proved included in the offense charged, or of the offense charged included in the offense proved.[30] Nonetheless, this Court finds the defect in the allegations of the Information insufficient to cause the downgrade of the accused-appellant's conviction, for his failure to timely assert his right in the proceedings before the RTC and CA.

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[27] *See People v. Valdez*, G.R. No. 175602, 18 January 2012, 679 Phil. 279 (2012) [Per J. Bersamin].

[28] *Supra* at note 3.

[29] *See People v. Petalino*, G.R. No. 213222, 24 September 2018 [Per J. Bersamin].

[30] *People v. Valdez*, G.R. No. 175602, 18 January 2012, 679 Phil. 279 (2012) [Per J. Bersamin].

There are various procedural remedies available to an accused who believes that the information is vague or defective. Section 9 of Rule 116 of the Rules of Court provides that the accused may, before arraignment, move for a bill of particulars to enable him properly to plead and prepare for trial.[31] Likewise, Rule 117 thereof allows an accused to file a motion to quash a patently insufficient or defective information.[32] In both instances, Our procedural rules require the accused to avail of these remedies prior to arraignment. Hence, in order to successfully object to the information, the objection must not only be meritorious, but must also be timely exercised.

According to the guidelines set by the Court in *People v. Solar*,[33] when an information failed to state the ultimate facts relating to a qualifying or aggravating circumstance, the accused should file a motion to quash or a motion for a bill of particulars. Otherwise, his right to question the defective statement is deemed waived:

> Any Information which alleges that a qualifying or aggravating circumstance — in which the law uses a broad term to embrace various situations in which it may exist, such as but are not limited to (1) treachery; (2) abuse of superior strength; (3) evident premeditation; (4) cruelty — is present, must state the ultimate facts relative to such circumstance. Otherwise, the Information may be subject to a motion to quash under Section 3(e) (*i.e.*, that it does not conform substantially to the prescribed form), Rule 117 of the Revised Rules of Criminal Procedure, or a motion for a bill of particulars under the parameters set by said Rules.
>
> Failure of the accused to avail any of the said remedies constitutes a waiver of his right to question the defective statement of the aggravating or qualifying circumstance in the Information, and

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[31] *Romualdez v. Sandiganbayan*, G.R. No. 152259, 29 July 2004, 479 Phil. 265 (2004) [Per J. Panganiban].

[32] *See People v. Sandiganbayan*, G.R. No. 160619, 09 September 2015, 769 Phil. 378 (2015) [Per J. Jardeleza]; *Los Baños v. Pedro*, G.R. No. 173588, 22 April 2009, 604 Phil. 215 (2009) [Per J. Brion].

[33] G.R. No. 225595, 06 August 2019 [Per J. Caguioa].

consequently, the same may be appreciated against him if proven during trial.

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For cases in which a judgment or decision has already been rendered by the trial court and is still pending appeal, the case shall be judged by the appellate court depending on whether the accused has already waived his right to question the defective statement of the aggravating or qualifying circumstance in the Information, (i.e., whether he previously filed either a motion to quash under Section 3 (e), Rule 117, or a motion for a bill of particulars) pursuant to this Decision.[34]

In this case, it does not appear that accused-appellant raised any objection to the sufficiency of the allegations in the information at any stage of the case. Not only did accused-appellant fail to move for a bill of particulars or quash the information before his arraignment, he also participated in the trial. Obviously, it is too late in the proceedings to invalidate the information without unduly prejudicing the State, which was also deprived of the opportunity to amend the information[35] or submit a bill of particulars in the trial court.[36]

We now proceed to review the propriety of accused-appellant's conviction.

This Court agrees with the RTC and CA that the crime committed was murder. 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 Article 248 of the RPC; and (4) that the killing is not parricide or infanticide.

The prosecution established that accused-appellant shot Arquero

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[34] *Id.*

[35] Section 4, Rule 117 of the Rules of Court.

[36] *Enrile v. People*, G.R. No. 213455, 11 August 2015, 766 Phil. 75 (2015) [Per J. Brion].

There is no doubt that accused-appellant was the person who shot Arquero to death. He was identified by Licupa and the victim through his dying declaration to his wife.

In his testimony, Licupa was clear that accused-appellant suddenly appeared from the hilly portion of the farm to shoot Arquero while he and Licupa were walking along the rice paddy. He even prepared a sketch to show the relative locations of the rice field and the spot where accused-appellant emerged from. Interestingly, accused-appellant has not put forth any convincing argument for this Court to disregard the substance of Licupa's testimony.

Moreover, the victim himself told his wife that accused-appellant shot him. Such statement constitutes as a dying declaration sufficient to justify a conviction.

While witnesses in general can only testify to facts derived from their own perception, a report in open court of a dying person's declaration is recognized as an exception to the rule against hearsay if it is "made under the consciousness of an impending death that is the subject of inquiry in the case." It is considered as "evidence of the highest order and is entitled to utmost credence since no person aware of his impending death would make a careless and false accusation."[37] Jurisprudence[38] elaborates on the requisites of a dying declaration. For its admissibility, the following should concur:

1) the declaration must concern the cause and surrounding circumstances of the declarant's death. This refers not only to the facts of the assault itself, but also to matters both before and after the assault having a direct causal connection with it. Statements involving the nature of the declarant's injury or the cause of death; those imparting deliberation and willfulness in the attack, indicating the reason or motive for the killing; justifying or accusing the accused; or indicating the absence of cause for the act are admissible;

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[37] *People v. Umapas*, G.R. No. 215742, 22 March 2017, 807 Phil. 975 (2017) [Per J. Peralta].

[38] *People v. Mercado*, G.R. No. 218702, 17 October 2018 [Per J. Caguioa].

2) at the time the declaration was made, the declarant must be under the consciousness of an impending death. The rule is that, in order to make a dying declaration admissible, a fixed belief in inevitable and imminent death must be entered by the declarant. It is the belief in impending death and not the rapid succession of death in point of fact that renders the dying declaration admissible. It is not necessary that the approaching death be presaged by the personal feelings of the deceased. The test is whether the declarant has abandoned all hopes of survival and looked on death as certainly impending;

3) the declarant is competent as a witness. The rule is that where the declarant would not have been a competent witness had he survived, the proffered declarations will not be admissible. Thus, in the absence of evidence showing that the declarant could not have been competent to be a witness had he survived, the presumption must be sustained that he would have been competent; and

4) the declaration must be offered in a criminal case for homicide, murder, or parricide, in which the declarant is the victim.

All the above requisites are present in this case. Arquero's statement that it was accused-appellant who shot him pertained to the identity of the shooter. Further, considering the nature of Arquero's wounds, nine (9) in all, this Court presumes that he must be aware of his likely death. Indeed, the victim died the same day of the shooting. This Court also notes that the victim immediately told his wife of the assailant's identity before he was brought to the hospital. Thus, there was no opportunity for the victim to deliberate and to fabricate a false statement.[39] Neither is there evidence to show that Arquero would have been disqualified to testify had he survived. Lastly, his declaration was offered in a murder case where he was the victim.

The fact that Arquero sustained nine (9) gunshot wounds do not lessen the credibility of the prosecution's evidence. This Court has previously recognized that a single shot from a shot

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[39] *See People v. Umapas*, G.R. No. 215742, 22 March 2017, 807 Phil. 975 (2017) [Per J. Peralta].

gun can produce multiple injuries because of several pellets in one single shell.[40]

The qualifying circumstances of treachery and use of unlicensed firearm were sufficiently proven

From the evidence, and as found by the RTC and affirmed by the CA, this Court likewise rules that treachery was established. Paragraph 16 of Article 14 of the Revised Penal Code (RPC) defines treachery as the direct employment of means, methods, or forms in the execution of the crime against persons which tend directly and specially to ensure its execution, without risk to the offender arising from the defense which the offended party might make. In order for treachery to be properly appreciated, two elements must be present: (1) at the time of the attack, the victim was not in a position to defend himself; and (2) the accused consciously and deliberately adopted the particular means, methods or forms of attack employed by him.[41] The essence of treachery is the sudden and unexpected attack by an aggressor on the unsuspecting victim, depriving the latter of any chance to defend himself and thereby ensuring its commission without risk of himself.[42]

Accused-appellant has not presented contrary evidence to dispute the uniform findings of the RTC and CA that he hid behind the hilly portion of the ricefield and suddenly fired at Arquero while the latter was walking thereat. By adopting the said method, accused-appellant facilitated the success of his evil motive without risk to himself and depriving the victim a chance to put up a defense. Certainly, Arquero had no clue nor an actual opportunity to evade the attack.

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[40] *Rollo*, pp. 8-9; *see* also *People v. Domingo*, G.R. No. 184958, 17 September 2009, 616 Phil. 261 (2009) [Per J. Velasco, Jr.].

[41] *People v. Jaurigue*, G.R. No. 232380, 04 September 2019 [Per J. Perlas-Bernabe].

[42] *Id.*

Likewise, the special aggravating circumstance of use of unlicensed firearm was correctly appreciated. Under Section 1 of RA 8294, "[i]f homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance." There are two (2) requisites to establish such circumstance, namely: (a) the existence of the subject firearm; and (b) the fact that the accused who owned or possessed the gun did not have the corresponding license or permit to carry it outside his residence. The *onus probandi* of establishing these elements as alleged in the Information lies with the prosecution.[43]

In the past, this Court has ruled that the existence of the firearm can be established by testimony even without the presentation of the firearm.[44] In this case, Licupa categorically narrated that accused-appellant used a homemade shotgun in killing the victim. Moreover, the prosecution presented a Certification[45] dated 07 April 2009, issued by the Firearms and Explosive Division of the Philippine National Police stating that accused-appellant is not a licensed firearm holder.

Penalties and damages to be imposed on accused-appellant should be modified

In sum, the Court upholds the accused-appellant's conviction for the crime of murder. Under Article 248 of the Revised Penal Code, murder is punishable by *reclusion perpetua* to death. Article 63 of the same Code provides that, in all cases in which the law prescribes a penalty composed of two indivisible penalties, the greater penalty shall be applied when the commission of the deed is attended by one aggravating

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[43] *Ramos v. People*, G.R. Nos. 218466 & 221425, 23 January 2017, 803 Phil. 775 (2017) [Per J. Perlas-Bernabe].

[44] *People v. Salahuddin*, G.R. No. 206291, 18 January 2016, 778 Phil. 529 (2016) [Per J. Peralta]; *People v. Dulay*, G.R. No. 174775, 11 October 2007, 561 Phil. 764 (2007) [Per J. Carpio].

[45] Records, p. 281.

circumstance. In this case, the special aggravating circumstance of use of an unlicensed firearm was alleged in the Information and proven during the trial. The presence of such aggravating circumstances warrants the imposition of the death penalty. However, in view of the enactment of RA 9346, the death penalty should be reduced to *reclusion perpetua* "without eligibility for parole" pursuant to A.M. No. 15-08-02-SC.[46]

Lastly, this Court resolves to modify the damages. In line with the recent jurisprudence,[47] accused-appellant is also liable to pay the Arquero's heirs Php100,000.00 as civil indemnity, Php100,000.00 as moral damages, and Php100,000.00 as exemplary damages. Since no receipts or documentary evidence of burial or funeral expenses was presented in court, the amount of Php50,000.00 as temperate damages is, likewise, proper.[48]

WHEREFORE, the Decision dated 20 May 2014 of the Court of Appeals in CA-G.R. CR-H.C. No. 04486 is hereby **AFFIRMED with MODIFICATIONS**. Accused-appellant **ROBERTO BERNARDO *y* FERNANDEZ** is found **GUILTY** beyond reasonable doubt of the crime of Murder with the use of Unlicensed Firearm. He is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole, and ordered to pay the heirs of Roger Arquero the sums of Php100,000.00 as civil indemnity, Php100,000.00 as moral damages, Php100,000.00 as exemplary damages and Php50,000.00 as temperate damages.

All monetary awards for damages shall earn interest at the legal rate of six percent (6%) *per annum* from the date of finality of this judgment until fully paid.[49]

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[46] *People v. Salahuddin*, G.R. No. 206291, 18 January 2016, 778 Phil. 529 (2016) [Per J. Peralta].

[47] *People v. Jugueta*, G.R. No. 202124, 05 April 2016, 783 Phil. 806 (2016) [Per J. Peralta]; *People v. Gaborne*, G.R. No. 210710, 27 July 2016 [Per J. Perez].

[48] *Id.*

[49] *Nacar v. Gallery Frames*, G.R. No. 189871, 13 August 2013, 716 Phil. 267 (2013) [Per J. Peralta]; *Lara's Gift and Decors, Inc. v. Midtown Industrial Sales, Inc.*, G.R. No. 225433, 28 August 2019 [Per J. Carpio].

In the service of his sentence, accused-appellant, who is a detention prisoner, shall be credited with the entire period of his preventive imprisonment.

SO ORDERED.

Peralta, C.J., Caguioa, Carandang, and *Gaerlan, JJ.*, concur.

FIRST DIVISION

[G.R. No. 216151. December 2, 2020]

JESUS G. CRISOLOGO, NANETTE B. CRISOLOGO, JAMES IAN YEUNG, and MARLINA T. SHENG, *Petitioners, v.* **ALICIA HAO and GREGORIO HAO,** *Respondents.*

APPEARANCES OF COUNSEL

R.A.V. Saguisag for petitioners.
L & J Tan Law Firm for respondents.

D E C I S I O N

GAERLAN, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the 1997 Rules of Civil Procedure filed by petitioners Jesus G. Crisologo, Nanette B. Crisologo, James Ian Yeung, and Marlina T. Sheng (petitioners), seeking to annul and set aside the Decision[2] dated November 17, 2014 of the Regional Trial Court (RTC) of Davao City, Branch 16, in Civil Case No. 33, 581-10, and its Order[3] dated January 9, 2015 denying the motion for reconsideration thereof.

The antecedent facts are as follows:

The instant controversy revolves around a parcel of land initially covered by Transfer Certificate of Title (TCT) No. T-51636 (subject property), situated in the City of Davao City and registered in the name of So Keng Koc (So).[4] This particular

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[1] *Rollo*, pp. 3-18.

[2] Id. at 20-27; rendered by Presiding Judge Emmanuel C. Carpio.

[3] Id. at 28.

[4] Id. at 80, 232.

property has been the subject of various levy and attachment as a result of numerous collection cases filed against its owner So.

Among these cases is Civil Case No. 26, 513-98, a complaint for sum of money filed sometime in the year 1998, by Sy Sen Ben (Sy) against So and Robert Allan Limso (Limso) before the RTC of Davao City, Branch 8. In the course of the proceedings of the case, or on September 8, 1998, the said property was levied and a writ of attachment was recorded on its TCT.[5]

Petitioners Jesus G. Crisologo and Nanette G. Crisologo (petitioner spouses Crisologo) likewise filed two collection suits against So and Limso on September 30, 1998. The cases docketed as Civil Case Nos. 26, 810-98 and 26, 811-98 were raffled to the RTC of Davao City, Branch 15.[6] As a result of the issuance of a writ of preliminary attachment in the case, the subject property was levied by virtue of an Order issued by the RTC on October 7, 1998. Petitioner spouses Crisologo's claim was similarly recorded on TCT No. T-51636 on October 8, 1998.[7]

Subsequently, respondents Alicia Hao and Gregorio Hao (respondents) negotiated with Sy and attaching creditors of So in Civil Case No. 26, 534-98 namely, Emma Seng and Esther Sy. This resulted in the execution of a Deed of Absolute Sale involving TCT No. T-51636 by So in favor of the respondents on October 7, 1998, on even date that the same property was levied.[8]

Consequently, TCT No. T-51636 was cancelled and TCT No. T-303026 was issued in the name of the respondents. The respondents subdivided the lot which resulted in the issuance of derivative titles TCT No. T-344592 and TCT No. T-344593.[9]

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[5] Id. at 169, 175.

[6] Id. at 211.

[7] Id. at 169, 175.

[8] Id. at 232-233.

[9] Id. at 20, 80-85, 211.

Meanwhile, in the collection case filed by Sy, a compromise agreement was reached by the parties wherein So bound himself to transfer ownership of his properties to satisfy Sy's monetary claims. The agreement was approved by the RTC of Davao City, Branch 8, in its Decision dated October 19, 1998. As the Decision became final on November 18, 1998.[10]

Whereas, in Civil Case Nos. 26, 810-98 and 26, 811-98, the RTC of Davao City, Branch 15, rendered its Decision[11] on July 1, 1999, ordering So and Limso solidarily liable to pay petitioner spouses Crisologo the amount of obligation, interest, damages, and costs of suit.[12] On appeal, the CA Mindanao Station in its Decision[13] dated July 22, 2008 and Resolution[14] dated May 25, 2009, affirmed the Decision of the RTC except with respect to exemplary damages and interest. The case was then brought before the Court *via* petition for review on *certiorari*. The Court denied the petition for review and the subsequent motion for reconsideration in its Resolutions dated August 17, 2009 and January 27, 2010, respectively.[15] With the issuance of an Entry of Judgment,[16] the case was remanded to the RTC for execution. By virtue of a writ of execution,[17] the sheriff scheduled the auction sale on August 26, 2010.[18]

Notified of the sale, the respondents filed an urgent motion to exclude TCT Nos. T-344592 and T-344593 from the auction sale,[19]

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[10] Id. at 170.

[11] Id. at 30-38; rendered by Judge Jesus V. Quitain.

[12] Id. at 170-171.

[13] Id. at 39-52; penned by Justice Jane Aurora C. Lantion and concurred in by Associate Justices Edgardo T. Lloren and Michael P. Elbinias.

[14] Id. at 53-55.

[15] Id. at 56-58.

[16] Id. at 59.

[17] Issued by Judge Ridgway M. Tanjili, *id.* at 68-69.

[18] Id. at 70-73.

[19] Id. at 74-78.

but the same was denied by the RTC.[20] After petitioner spouses Crisologo filed an indemnity bond[21] in the amount of ₱20,159,800.00, the execution sale was reset to October 7, 2010. Despite the respondents' opposition, the auction sale proceeded in which petitioner Spouses Crisologo emerged as the highest/sole bidder for the parcel of land covered by TCT No. T-344593, and petitioners James Ian O. Yeung and Marlina T. Sheng for that covered by TCT No. T-344592.[22] Thereafter, certificates of sale dated October 10, 2010, were issued by Sheriff Robert M. Medialdea.[23]

On November 18, 2010, the respondents filed a Complaint for the annulment of Certificates of Sale on TCT Nos. T-344592 and T-344593. The case was docketed as Civil Case No. 33, 581-10 and raffled to the RTC of Davao City, Branch 16.[24]

On November 17, 2014, the RTC of Davao City, Branch 16, rendered the herein assailed Decision,[25] the dispositive portion of which reads:

> WHEREFORE, premises considered, Judgment is hereby rendered declaring the Sheriff's Certificate of Sale (Exhibit "E") on TCT No. T-344592 and Sheriff's Certificate of Sale (Exhibit "F") on TCT No. T-344593 as VOID and the same is hereby CANCELLED.
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> The Counterclaim is hereby DISMISSED.
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> SO ORDERED.[26]

In so ruling, the RTC held that Sheriff Medialdea should have required the petitioner spouses Crisologo to pay the winning bid in cash and should have expressly mentioned in the Certificate

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[20] Id. at 7-8, 93-96.

[21] Id. at 118.

[22] Id. at 120-121, 238, 243.

[23] Id. at 8, 120, 172. (Annexes "E" and "F" of Amended Complaint).

[24] Id. at 122-137.

[25] Id. at 20-27.

[26] Id. at 27.

of Sale the existence of the third-party claim, as required by Sections 21 and 26, Rule 39 of the Rules of Court. These, according to the RTC are mandatory and strict requirements such that non-compliance rendered the subject Certificates of Sale void.[27]

The Motion for Reconsideration of the said Decision having been denied by the RTC in its Order[28] dated January 9, 2015, the petitioners filed the instant petition for review on *certiorari*, submitting the following in support thereof:

GROUNDS TO ALLOW THE PETITION

I. [THE TRIAL] COURT ERRED IN DECLARING THE SHERIFF'S CERTIFICATES OF SALE ON TCT No. T-344592 AND TCT No. T-344593 as VOID AND IN INSISTING THAT:

   A. PAYMENT BE MADE IN CASH; and

   B. FAILURE TO MENTION THE EXISTENCE OF THIRD-PARTY CLAIM VOIDS THE SALE

   C. RUIZ V. CA SERVES AS AUTHORITY

II. [THE TRIAL] COURT ERRED IN DENYING THE COUNTER-CLAIM.[29] (Citation omitted)

Petitioners claim that the RTC erred in ordering the cancellation of the subject certificates of sale. They claim that Section 21 of Rule 39, as interpreted by the Court in *Villavicencio v. Mojares*,[30] does not require the payment of the bid in cash even when there is a third-party claim.[31]

Moreover, the petitioners argue that *Sy v. Catajan*[32] cited by the respondents, is not on all fours with the instant case. *Sy* is

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[27] Id. at 27-29.

[28] Id. at 28.

[29] Id. at 9.

[30] 446 Phil. 421 (2003).

[31] Id. at 429.

[32] 247 Phil. 262 (1988).

an administrative case wherein the sheriff was penalized for non-compliance with the requirements under Rule 39. Nowhere in the said case was it mentioned that such non-compliance renders the auction sale defective or void.[33]

Finally, petitioners submit that unlike in the case of *Ruiz, Sr. v. Court of Appeals*,[34] in here there was prior levy on attachment on October 8, 1998, before the sale. In *Ruiz*, levy came four months after the sale was consummated. More importantly, in *Ruiz*, the certificate of sale was cancelled in favor of the winning bidder as it was proven that another person possessed a better right over the same.[35]

In their Comment,[36] respondents echo the Decision of the RTC. They posit that Rule 39 strictly requires the payment of the amount of bid in cash and for the certificate of sale to contain an express declaration of the existing third-party claim and that failure to do so, as in this case, is fatal and renders the sale invalid.

In response to the respondents' arguments, the petitioners filed their Reply.[37] In essence, petitioners reiterate the arguments in their petition. As well, they advance that contrary to the respondents' submission, there was a proper levy in this case as evidenced by Entries Nos. 1127625, 1127626, 1127627, and 1127629 annotated on TCT No. 51636. The levy which proceeded from an attachment of the subject property is a proceeding in rem, it is issued against a specific property and is enforceable against the whole world, therefore, there is no need to implead the respondents.[38]

The petition is **meritorious**.

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[33] Id. at 265-266.

[34] 414 Phil. 310 (2001).

[35] Id. at 318-319.

[36] *Rollo*, pp. 210-225.

[37] Id. at 262-270.

[38] Id. at 262-263.

In this case, the Court is tasked to determine the validity of the certificate of sale on account solely on the absence of two circumstances — nonpayment of the bid in cash and the failure to explicitly state the existence of the third-party claim in the certificate of sale. In so ruling, it must be emphasized that the Court will not delve on the standing of the rights involved, or otherwise who possesses a better right over the property, as the same necessitates the determination of conflicting interests which unknown to the Court, might remain pending in the courts below. Similarly, the determination of who has the right of ownership requires the determination of factual issues that is beyond the province of this petition for review, and more importantly, beyond the issues of this case that is ventilated during trial.

The following provisions of Rule 39 of the Rules on Civil Procedure are the subject of the instant controversy:

Section 21. *Judgment obligee as purchaser.* — When the purchaser is the judgment obligee, and no third-party claim has been filed, he need not pay the amount of the bid if it does not exceed the amount of his judgment. If it does, he shall pay only the excess.

Section 26. *Certificate of sale where property claimed by third person.* — When a property sold by virtue of a writ of execution has been claimed by a third person, the certificate of sale to be issued by the sheriff pursuant to sections 23, 24 and 25 of this Rule shall make express mention of the existence of such third-party claim.

Contrary to the parties' submissions, the foregoing provisions are simple and clear. Basic is the rule in statutory construction that where the words of the law or rule are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.[39] In which case, the law or rule is applied according to its express terms; interpretation would be resorted to only where a literal interpretation would either be absurd, impossible, or would lead to an injustice.[40]

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[39] *Chavez v. Judicial and Bar Council, et al.*, 691 Phil. 173, 199-200 (2012), *Adasa v. Abalos*, 545 Phil. 168, 187-188 (2007).

[40] *Barcellano v. Bañas*, 673 Phil. 177, 187 (2011).

In this case, Section 21 is clear. To be sure, the foregoing provision has already been interpreted by the Court with respect to the same issue raised in this petition, *viz.*:

> A closer examination of Section 21, Rule 39, would reveal that there is no requirement to pay the bid in cash. What the Rule emphasizes is that in the absence of a third party claim, the purchaser in an execution sale need not pay his bid if it does not exceed the amount of the judgment, otherwise, he shall only pay the excess. By implication, **if there is a third party claim, the purchaser should pay the amount of his bid without, however, requiring that it be made in cash**.[41] (Emphasis supplied)

The mode of payment therefore does not affect the validity of the execution sale, as the rules do not specifically state that payment be made in cash.

Following the same rule of statutory construction aforementioned, as opposed to Section 21, the interpretation of Section 26 would fall under the exception. Under the premises, to demand strict compliance of the requirement under Section 26 for the certificate of sale to expressly state the existence of the third-party claim would defeat the very purpose for which the rule has been created.

In the case of *Republic v. NLRC*,[42] the Court affirmed that the raison d'être behind Section 26 (then Section 28), Rule 39 of the Rules of Court is to protect the interest of a third-party claimant. Thus, where the third-party claim has been dismissed or when such claim is adequately protected, the failure of the certificate of sale to expressly state the existence of third-party claim shall not affect the validity of the sale.[43]

In this case, an Indemnity Bond[44] was filed by petitioner spouses Crisologo to answer for the damages which the respondent third-party claimants may suffer. It therefore cannot

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[41] *Villavicencio v. Mojares*, supra note 30 at 429.

[42] 314 Phil. 507 (1995).

[43] Id. at 532-533.

[44] Annex O to the Petition.

be denied that the interest of respondents is amply protected.[45] As the purpose for which the requirement has been created is satisfied, there is no reason to nullify the execution sale for failure of the certificate of sale to expressly state the third-party claim.

Rules of procedure are created to promote the ends of justice, as such, their strict and rigid application must always be eschewed when it would subvert its primary objective.[46] The general policy of the law is to sustain the validity of execution sales. As the final stage in litigation, execution should not be frustrated except for serious reasons demanded by justice and equity.[47]

As aptly pointed out by the petitioners, the respondents cannot rely upon the case of *Sy* to support its stand that the execution sale should be nullified. Foremost, the Court in the earlier case of *Villavicencio v. Mojares*[48] categorically stated that the case of *Sy* "does not state that any execution sale shall be null and void if the purchaser did not pay his bid in cash."[49] Also, the case of *Sy* is not a precedent to the case at bar as it does not delve with the issue of validity of the certificate of sale. Rather, *Sy* is an administrative case against a Sheriff for his failure to comply with his duties under the rules in implementing a writ of execution. Non-compliance with Sections 23 and 26 in *Sy* therefore resulted in the imposition of administrative liability against the Sheriff, without any regard to the validity of the execution sale or certificate of sale. Even setting aside the variance in issues, the marked difference in the quantum of evidence to sustain an administrative case as in *Sy*, and that in civil cases as in the case at bar, suggests that the ruling in *Sy* cannot automatically be held definitive of this case.

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[45] *Cf. Republic v. NLRC*, supra note 42.

[46] *Sps. Navarra v. Liongson*, 784 Phil. 942, 954 (2016).

[47] *Republic v. NLRC*, supra note 42 at 536.

[48] Supra note 30.

[49] Id. at 430.

Considering the foregoing, the Court finds no reason to nullify the Certificates of Sale. Nevertheless, it must be stated that pursuant to the express mandate of Section 26, Rule 39 of the Rules of Court, the certificates of sale must indicate the existence of a third-party claim. The existence of a third-party claim must likewise be annotated upon the titles of the subject properties, so as to protect the interest of the respondents should their claim prosper.

The basis of the purchase by the judgment obligee is the satisfaction of a debt or obligation. On the other hand, the main consideration of the instant third-party claim is ownership based on another mode of acquisition or factual justification. The respondents, as third-party claimants, who are not joined as parties in the civil action which served as basis for the execution sale, cannot be affected thereby. Pending determination of the merit of the third-party claim therefore, its annotation on the certificate of title is necessary in order to warn other persons that while the subject properties have been redeemed by the petitioners in the execution sale, the latter's right is subject to another party's claim and may be nullified should such claim be later found meritorious.[50]

Having lodged their claim within the time provided for by law and prior to the execution sale, it follows that the certificate of sale as well as any title which may be issued pursuant thereto should indicate the existence of such claim. Particularly, as registration is the operative act that creates a lien upon the land[51] and affords protection upon the rights of the respondents as third-party claimants.[52]

In closing, finding that the respondents' claim is not entirely baseless as they pursued the subject property in accordance with an approved compromised agreement, that is similarly a result of a legal process, the Court is compelled to deny the petitioners' counterclaim for damages.

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[50] *CMS Stock Brokerage, Inc. v. CA*, 341 Phil. 787, 800 (1997).

[51] *Cf. Sps. Vilbar v. Opinion*, 724 Phil. 327 (2014).

[52] Cf. PRESIDENTIAL DECREE NO. 1529, Sec. 52.

WHEREFORE, the petition for review on *certiorari* is **GRANTED**. The Decision dated November 17, 2014 of the Regional Trial Court of Davao City, Branch 16, in Civil Case No. 33, 581-10, and its Order dated January 9, 2015 are **REVERSED and SET ASIDE**. Accordingly, the Complaint dated November 18, 2010 filed by the respondents is hereby **DISMISSED**.

SO ORDERED.

Peralta, C.J., Caguioa, Carandang, and *Zalameda, JJ.*, concur.

SECOND DIVISION

[G.R. No. 219511. December 2, 2020]

VICTORIA B. COLLADO, *Petitioner*, *v.* **DR. EDUARDO M. DELA VEGA,** *Respondent*.

APPEARANCES OF COUNSEL

Ligon Solis Mejia Florendo Law Firm for petitioner.
Zamora Poblador Vasquez & Bretaña for respondent.

R E S O L U T I O N

LOPEZ, *J.*:

Whether preponderant evidence exists to hold the accused civilly liable despite acquittal is the core issue in this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the Court of Appeals' (CA) Decision[2] dated October 2, 2014 in CA-G.R. CV No. 94532.

ANTECEDENTS

In November 1995, Mary Ann Manuel (Mary Ann) introduced Victoria B. Collado (Victoria) to Eduardo M. Dela Vega (Eduardo). Thereafter, Eduardo invested in Victoria's stock business on the promise that he would earn interest at the rate of 7.225% per month. Accordingly, Eduardo gave Victoria an initial cash out of ₱100,000.00. In turn, Victoria assured that Mary Ann will monitor Eduardo's investment which will be covered by a stock certificate. Later, Eduardo invested additional funds either by delivering cash personally to Victoria, or by

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[1] *Rollo*, pp. 34-47.

[2] *Id.* at 11-22; penned by Associate Justice Eduardo B. Peralta, Jr., with the concurrence of Associate Justices Magdangal M. De Leon and Stephen C. Cruz.

depositing the amounts to her bank accounts.[3] However, Eduardo did not receive any stock certificate. Thus, Eduardo demanded from Victoria the return of his investments. Victoria then issued checks dated October 7, 1998, in the amount of ₱340,000.00, and November 3, 1998, in the amount of ₱400,000.00. Yet, the checks were dishonored upon presentment.[4]

Aggrieved, Eduardo charged Victoria with *estafa* involving unfaithfulness or abuse of confidence under Article 315, paragraph 1 (b) of the Revised Penal Code before the Regional Trial Court (RTC) docketed as Criminal Case No. 99-2080, to wit:

> That in (sic) or about and sometime in February 1996 and subsequently thereto, in the City of Makati, Philippines and within the jurisdiction of this x x x Court, the above-named accused, received the amount of ₱5,000,000.00 and US$82,000.00 from complainant Eduardo M. Dela Vega to be invested in the money market or in stocks, but the accused once in possession of the said amount, with unfaithfulness and abuse of confidence and intent to defraud complainant, did then and there willfully, unlawfully, and feloniously misappropriate and convert the amount of ₱5,000,000.00 and US$82,000.00 to (sic) her own personal use and benefit and despite demands made upon accused to return the said amount, said accused failed and refused and still fails and refuses to do so, to the damage and prejudice of complainant in the aforementioned amount.[5]

On March 26, 2009, the RTC acquitted Victoria based on reasonable doubt, and ruled that there was no preponderant evidence to prove her civil liability, thus:

> In the case at bar, the evidence for the prosecution could not simply sustain a verdict of conviction.

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[3] *Id.* at 12-13.

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

[5] *Id.* at 150-151. Information filed by the Office of the City Prosecutor of Makati with the Regional Trial Court of Makati on September 10, 1999 as quoted in the Decision of the RTC.

What the prosecution simply adduced was the self-serving testimony of the complaining witness who incredibly gave money to Ms. Collado in huge sums without even demanding any receipt therefor. His assertion that this was so because he trusted Ms. Collado is incredulous considering that the latter was merely introduced to him by Ms. Manuel. Moreover, the testimony of Mr. Robles is not ample to pin down Ms. Collado anew, there is no proof whatsoever that Ms. Collado indeed received the money in trust for administration.

Evidently, Mr. Dela Vega does not even know what the amounts he gave to Ms. Collado were for — whether it was for investment in the stock market, investment in the "BPI Global Funds," in the "ready-to-wear" (RTW) business of Mesdames Manuel and Collado[,] or for money lending. The tentativeness on the part of Mr. Dela Vega does not augur well for the prosecution.

x x x x

The doubt of the Court vis-à-vis the guilt of the accused herein stems from the fact that the oral deposition of Ms. Collado is diametrically opposed to that of Mr. Dela Vega and in fact completely contriturates the testimony of the latter which led this Court to infer that the narration of Mr. Dela Vega as to the factual antecedents x x x may not be entirely correct and accurate for which reason the prosecution has not been able to conclusively establish the presence of the first and foremost element of the offense for which the herein accused has been charged, id est, that money was received by Ms. Collado in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return, the same.

Fact is, the defense, even with the sole testimony of Ms. Collado, succeeded in atomizing the evidence of the prosecution in such a way that it created a doubt in the mind of this Court as to the guilt of the accused herein.

x x x x

WHEREFORE, premises duly considered, on reasonable doubt the herein accused **VICTORIA B. COLLADO** (Ms. Collado) is hereby **ACQUITTED** of the crime for which she has been at present charged.

The civil liability of the herein accused Victoria B. Collado (Ms. Collado) was not also shown by preponderance of evidence by the

herein complaining witness **EDUARDO DELA VEGA** (Mr. Dela Vega) for which reason the same cannot be adjudged in his favor.

Costs de officio.

SO ORDERED.[6]

Dissatisfied, Eduardo elevated the civil aspect of the case to the CA docketed as CA-G.R. CV No. 94532. On October 2, 2014, the CA held that Eduardo's appeal to recover civil liability is proper since Victoria was acquitted on reasonable doubt. After reviewing the evidence on record, the CA found Victoria liable to pay Eduardo the total amount of ₱2,905,000.00. The CA explained that Eduardo deposited such amounts in Victoria's bank accounts as shown in the deposit slips that the prosecution formally offered in evidence without any objection from the accused. This is in addition to Victoria's acknowledgment that Eduardo delivered to her sums of money as investment in her stocks business,[7] *viz.*:

WHEREFORE, the **APPEAL** is hereby **PARTIALLY GRANTED**. Accordingly, the assailed Decision dated March 26, 2009 is hereby **REVERSED** with respect to the civil aspect of Criminal Case No. 99-2080 and appellee Victoria B. Collado is adjudged civilly liable to private complainant Eduardo B. Dela Vega in the amount of ₱2,905,000.00 only.

SO ORDERED.[8]

Victoria sought reconsideration but was denied.[9] Hence, this recourse. Victoria alleges that the CA should not have disturbed the findings of the RTC which has the best opportunity to observe the manner and demeanor of witnesses. Further, the funds she received from Eduardo were meant for investment with the expectation, but without any guarantee, of profit or return. Consequently, various factors, such as risks in any business

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[6] *Id.* at 157-161.

[7] *Id.* at 20-22.

[8] *Id.* at 22.

[9] *Id.* at 30-31.

venture, must be considered.[10] On the other hand, Eduardo maintains that Victoria raised factual issues which are beyond the ambit of a petition for review on *certiorari* under Rule 45 of the Rules of Court. At any rate, there is preponderant evidence to establish Victoria's civil liability.[11] In reply, Victoria claims that the conflicting rulings of the CA and the RTC warrant the examination of evidence.[12]

RULING

The petition is unmeritorious.

Victoria raises a question regarding the appreciation of evidence which is one of fact and is beyond the ambit of this Court's jurisdiction in a petition for review on *certiorari*. It is not this Court's task to go over the proofs presented below to ascertain if they were weighed correctly.[13] However, this rule of limited jurisdiction admits of exceptions and one of them is when the factual findings of the CA and the RTC are contradictory.[14] In this case, the RTC held that there was no preponderant evidence to hold Victoria civilly liable while the CA ruled otherwise. Considering these conflicting findings warranting the examination of evidence, this Court will entertain the factual issue on whether substantial evidence exists to prove that Victoria is civilly liable despite her acquittal.

As a rule, every person criminally liable is also civilly liable.[15] However, an acquittal will not bar a civil action in the following

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[10] *Id.* at 39-44.

[11] *Id.* at 95-100.

[12] *Id.* at 171-176.

[13] See *Gatan v. Vinarao*, 820 Phil. 257, 265 (2017); *Heirs of Teresita Villanueva v. Heirs of Petronila Syquia Mendoza*, 810 Phil. 172, 178 (2017); and *Bacsasar v. Civil Service Commission*, 596 Phil. 858, 867 (2009).

[14] *Office of the Ombudsman v. De Villa*, 760 Phil. 937, 949-950 (2015); *Miro v. Vda. de Erederos*, 721 Phil. 772, 785-786 (2013); *Office of the Ombudsman v. Dechavez*, 721 Phil. 124, 129-130 (2013).

[15] REVISED PENAL CODE, Art. 100.

cases: (1) where the acquittal is based on reasonable doubt as only preponderance of evidence is required in civil cases; (2) where the court declared that the accused's liability is not criminal, but only civil in nature; and (3) where the civil liability does not arise from, or is not based upon the criminal act of which the accused was acquitted.[16] Here, the RTC acquitted Victoria because her guilt was not proven beyond reasonable doubt. Thus, any civil liability survived because only preponderant evidence is necessary to establish it.

Notably, however, the RTC did not explain the facts why it exonerated Victoria from civil liability. It also did not mention that the act or omission from which the civil liability may arise did not at all exist. The RTC simply stated in the dispositive portion of the decision that there was no preponderant evidence to prove Victoria's civil liability.[17] In contrast, the CA reviewed the testimonial and documentary evidence in support of its conclusion that Victoria is liable to pay Eduardo the total amount of ₱2,905,000.00. We quote with approval the CA's findings, to wit:

> Based on the evidence which unfolded below, there was no doubt that a business dealing transpired between Dela Vega and Collado.
>
> Per Collado's testimony, she flatly conceded that she nodded to Dela Vega's offer of investment due to Manuel's guarantee:
>
> x x x x
>
> As consequence of her acceptance, Dela Vega invested in Collado's stock business through delivery of cash to the accused or deposits to accused's bank account, through messenger Robles. On this score, Collado confirmed that she had full authority over what was delivered by Dela Vega:
>
> x x x x
>
> **Without a categorical disclaimer of Dela Vega's allegations, the accused, in effect, acknowledged that Dela Vega delivered to her sums of money as Dela Vega's investment in her stock business.**

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[16] *Nissan Gallery-Ortigas v. Felipe*, 720 Phil. 828, 837 (2013).

[17] *Rollo*, p. 160.

x x x x

Apart from the foregoing testimonial evidence, **the prosecution likewise established that Dela Vega had deposited an aggregate amount of ₱2,905,000.00 to the bank account of the accused in Equitable Bank Account Nos. 0341000297, 0229008048, 009101001346, as reflected on the Equitable Bank [deposit] slips, and these [deposit] slips were formally offered by the prosecution without objection on the part of the accused**. x x x.

The admission in *judicio* on the part of the accused was further fortified when Collado's counsel did not refute Dela Vega's claim on the demand letter dated October 13, 1998 which requested the accused to return the amount Dela Vega invested in her business. In lieu of an outright denial of the receipt of money, the defense merely objected to its admission on the basis of secondary evidence.

Also, there was an extra-judicial admission on the part of the accused when she explicitly admitted in her counter-affidavit that private complainant gave her money under the agreement that she can invest it in any manner she sees fit, as long as it will earn profits. This counter-affidavit of the accused was formally offered by the prosecution but it was not adequately refuted by the accused.

x x x x

Thus, there was ample foundation for appellee's civil liability to the extent of ₱2,905,000.00 in favor of private complainant-appellant Dela Vega as demonstrated by the deposit slips. However, with respect to the US$82,000.00, the prosecution failed to fortify its claim with sufficient evidence.[18] (Emphases supplied and citations omitted.)

Verily, the CA's factual findings, which are borne out by the evidence on record, are binding on this Court,[19] unlike the contrary ruling of the RTC that failed to clearly state the facts from which its conclusion was drawn.

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

[19] See *Pascual v. Burgos*, 776 Phil. 167, 182 (2016).

FOR THESE REASONS, the petition is **DENIED**. The Court of Appeals' Decision dated October 2, 2014 in CA-G.R. CV No. 94532 is **AFFIRMED**.

SO ORDERED.

Gesmundo, Lazaro-Javier, and *Rosario,*[*] *JJ.*, concur.

Perlas-Bernabe, S.A.J. (Chairperson), on official leave.

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[*] Designated additional Member *per* Special Order No. 2797 dated November 5, 2020.

FIRST DIVISION

[G.R. No. 222882. December 2, 2020]

BENITO MARASIGAN, JR., *Petitioner, v.* **PROVINCIAL AGRARIAN REFORM OFFICER, LAND BANK OF THE PHILIPPINES and DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB),** *Respondents*.

APPEARANCES OF COUNSEL

Forbes And Sampayo Law Office for petitioner.

Office of the Government Corporate Counsel for respondent LBP.

The Solicitor General for public respondents.

D E C I S I O N

CAGUIOA, *J.*:

This is a Petition for Review on *Certiorari*[1] (petition) under Rule 45 of the Rules of Court (Rules) filed by Benito Marasigan, Jr. (petitioner) seeking a reversal of the Decision[2] dated November 24, 2014 (assailed Decision) and Resolution[3] dated January 6, 2016 of the Court of Appeals, Seventh Division (CA), in CA-G.R. SP No. 130431. The assailed Decision denied the petition brought by the petitioner before the CA, which sought a reversal of the Department of Agrarian Reform Adjudication Board (DARAB) Decision dated May 3, 2013.[4]

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[1] *Rollo*, pp. 13-33.

[2] Id. at 40-45; penned by Associate Justice Mario V. Lopez (now a Member of this Court) and concurred in by Associate Justices Jose C. Reyes, Jr. (a retired Member of this Court) and Socorro B. Inting.

[3] Id. at 8.

[4] Id. at 42.

Factual Antecedents

The undisputed factual milieu of the instant case revolves around portions of two parcels of land, which were compulsorily acquired for agrarian reform program coverage.

Petitioner is the registered owner of two parcels of land covered by Transfer Certificate of Title (TCT) Nos. T-24060 and T-24063 (subject lots), both located in Barangay Catmon, San Juan, Batangas, and with total areas of 13.5550 hectares and 4.5183 hectares, respectively.[5] The Department of Agrarian Reform (DAR) placed portions of said subject lots under the coverage of the Comprehensive Agrarian Reform Program (CARP) and Republic Act No. (R.A.) 6657.[6] The Land Bank of the Philippines (LBP) subsequently valued said portions accordingly[7] in the respective Field Investigation Reports both dated May 23, 2008, which identified the portions of the subject lots compulsorily acquired, as well as their valuations:[8]

Transfer Certificate of Title	Total Land Area	Area Covered by CARP	LBP valuation of CARP-covered Area
T-24060	13.5550 hectares	1.0063 hectares	₱60,795.96
T-24063	4.5183 hectares	0.6616 hectare	₱52,975.14[9]

The DAR offered to pay the LBP-assessed amounts to petitioner, but the latter rejected the same. After petitioner failed to reply to DAR's Notice of Land Valuation and Acquisition within the prescribed period, the DAR instituted before the Provincial Agrarian Reform Adjudication Board (PARAD) two summary administrative proceedings for the determination of

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[5] Id. at 50-51 and 52-53.

[6] OTHERWISE KNOWN AS THE COMPREHENSIVE AGRARIAN REFORM LAW OF 1988.

[7] *Rollo*, pp. 50-51 and 52-53.

[8] Id. at 135-150.

[9] Id.

just compensation, docketed as LV-0401-041-09 and LV-0401-049-09.[10]

In the Decisions[11] both dated November 17, 2011, penned by respondent Provincial Agrarian Reform Officer (PARO) Victor B. Baguilat found the LBP's basis for its assessment of just compensation for the subject lots proper,[12] since it adopted the formula set forth by the DAR in its Administrative Order No. 5, Series of 1998, and disposed of said proceedings, thus:

In LV-0401-041-09:

WHEREFORE, premises considered, judgment is hereby rendered declaring the computed land value of [₱]60,795.60 as just compensation of the area actually placed under CARP measuring 1.0063 hectares embraced by TCT No. T-24060.

The LBP is hereby directed to pay the landowner Benito V. Marasigan the said amount subject to existing rules and regulations in land acquisition under agrarian reform laws.

SO ORDERED.[12a]

In LV-0401-049-09:

WHEREFORE, premises considered, judgment is hereby rendered declaring the computed land value of [P]52,975.14 as just compensation of the area actually placed under CARP measuring 0.6616 hectares embraced by TCT No. T-24063.

The LBP is hereby directed to pay the landowner Benito V. Marasigan the said amount subject to existing rules and regulations in land acquisition under agrarian reform laws.

SO ORDERED.[13]

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[10] Id. at 40.

[11] Id. at 50-51 and 52-53.

[12] Id. at 51 and 53.

[12a] Id. at 51.

[13] Id. at 53.

Aggrieved, petitioner filed his Notice of Appeal[14] dated December 22, 2011 and his Appeal Memorandum[15] dated December 22, 2011 before the DARAB with respect to the PARO's decision pertaining to the property covered by TCT No. T-24060 (subject property). Petitioner mainly alleged that the PARO erred (1) since the subject property should not have been placed under the CARP coverage,[16] and (2) grave abuse of discretion was committed when the two summary proceedings were heard and decided despite the fact that the subject property was not yet clearly and particularly identified.[17]

For his first ground for appeal, petitioner alleged that there was no proof that the notices required by law for placing the subject property under the CARP coverage were personally delivered to and received by him, nor was there proof to the effect that the Field Investigation Report pertaining to the subject property was signed by him.[18] He submitted that since there was still a controversy as to the validity of the Notice of Coverage and the compulsory acquisition of the subject property, the PARAD should have dismissed the case or referred the same to the proper agency.[19]

For his second ground, petitioner argued that the DAR failed to comply with its own guidelines when the landholding was not particularly identified. He added that the field investigation conducted on the subject property was without his participation, which prevented him from exercising the opportunity to choose which portion of the subject property he would like to retain, contrary to DAR Administrative Order No. 9, Series of 1990, as amended by DAR Administrative Order No. 1, Series of 1993.[20]

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[14] Id. at 54-55.

[15] Id. at 56-69.

[16] Id. at 58.

[17] Id.

[18] Id. at 61.

[19] Id. at 61-62.

[20] Id. at 63-64.

Petitioner also submitted that as early as August 2003, he already made his formal objections to the inclusion of the subject property under the CARP coverage, through two letters[21] addressed to the Municipal Agrarian Reform Officer (MARO) of San Juan, Batangas, citing as reason for the objection the fact that the subject property was a residential area, with more than 177 families with their houses built thereon, and who were also subject of 177 ejectment cases pending before the Municipal Trial Court of San Juan.[22]

In its Decision dated May 3, 2013, the DARAB denied the appeal for lack of jurisdiction. It held that since the action filed by the DAR with the PARO was for the preliminary determination of just compensation, petitioner's remedy from an adverse decision therefrom was to file an original action for judicial determination of just compensation with a Regional Trial Court sitting as a Special Agrarian Court (RTC-SAC).[23]

Petitioner thereafter filed an appeal to the CA *via* Rule 43 of the Rules, and contended that the DARAB erred when (1) it dismissed the cases for lack of jurisdiction; (2) it disregarded the fact that the PARO was guilty of grave abuse of discretion for hearing and deciding the summary proceedings before it; and when (3) the PARO disregarded the fact that the subject property should not have been placed under the CARP coverage in the first place.[24] The CA denied the petition through its Decision dated November 24, 2014,[25] as follows:

> Thus, a party aggrieved by the PARAD's decision is given 15 days to file an original action before the SAC-RTC. Here, petitioner received a copy of the November 17, 2011 PARAD Decision on December 8, 2011. Petitioner did not move for reconsideration, hence,

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[21] Id. at 49 and 71.

[22] Id. at 71.

[23] Id. at 42.

[24] Id.

[25] Id. at 40-45.

the fifteen-day period to file an original action with the RTC commenced to run on that day until December 23, 2011. Petitioner then filed the appeal with the DARAB which was an improper forum according to the DARAB Rules. For failing to file an action with the RTC-SAC, the assailed November 17, 2011 PARAD Decision has become final and executory on December 23, 2011.

FOR THESE REASONS, the petition is **DENIED**.

SO ORDERED.[26]

In finding that the DARAB correctly dismissed the appeal for lack of jurisdiction, the CA held that since what was before the PARO was a summary administrative proceeding, any party who disagrees with the decision of the PARO in such a case for determination of just compensation may file an original action with the RTC-SAC for final determination.[27] Citing Section 6, Rule XIX of the 2009 DARAB Rules of Procedure (DARAB Rules), it further opined that in case of an issue regarding the *propriety* of a property's inclusion in the CARP coverage, a party should file the appropriate action before the DAR, which has jurisdiction over such matters.[28]

Petitioner timely filed a motion for reconsideration, which was similarly denied by the CA in its Resolution[29] dated January 6, 2016.

Hence this petition.

Petitioner here echoes the grounds he raised in his appeal to the DARAB and to the CA, and mainly asserts that the subject property should not have been placed under the CARP coverage and that the same was not particularly identified.

Petitioner insists that it behooved the PARO to at least defer the hearing on the valuation and determination of just

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[26] Id. at 45.

[27] Id. at 43-44.

[28] Id. at 44.

[29] Id. at 8.

compensation since there was still a pending controversy regarding the validity of the Notice of Coverage and the compulsory acquisition of the subject property.[30] Petitioner argues that under Section 1, Rule II of the DARAB Rules, the PARO has jurisdiction over all matters or incidents involving the implementation of the CARP.[31] Citing Section 4, Rule II of the DARAB Rules,[32] petitioner submits that instead of denying his appeal, the PARO should have dismissed the cases without prejudice to refiling, and for purposes of expediency, referred the same to the Office of the Secretary or his authorized representative in the locality.[33]

Petitioner also maintains that the subject property should not have been placed under the coverage of the CARP because of the irregularities in the Notice of Coverage and Notice of Acquisition pertaining to the same.[34] He asserts that due to the failure of the DAR to notify him, he was not able to participate in the field investigation.[35] Petitioner adds that since the

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[30] Id. at 19.

[31] Id. at 22.

[32] 2009 DARAB RULES OF PROCEDURE, Rule II, Sec. 4, provides:

> 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.
>
> Prejudicial issue is defined as one that arises in a case the resolution of which is a logical antecedent of the issue involved therein, and the jurisdiction over which pertains to the Office of the Secretary.
>
> The prejudicial issue must be determinative of the case before the Board or the Adjudicator but the jurisdiction to try and resolve the question is lodged with the Office of the Secretary.

[33] Id. at 20.

[34] Id. at 24.

[35] Id. at 26.

documents provided by the DAR, including the Field Investigation Report, do not bear his signature, he may not be bound by the said documents.[36] He also claims that since he was not able to attend the field investigation, he was not able to exercise his retention right and the more particular option of choosing the particular area to be retained, and that instead, said right was arrogated by the DAR upon itself.[37]

Petitioner further reiterates that the subject property should not have been included in the coverage of the CARP since the same is a residential property with a school, a barangay hall, a chapel, and more than 177 families living therein.[38] He adds that the subject property is also a sandy foreshore area, and is not suitable for agricultural uses.[39] Finally, petitioner submits that absent a specific showing of where the 1.0063 hectares will be taken from the whole 13.5550 hectares, there is as yet no meeting of the minds between the landowner and the DAR, and therefore voids the contract of sale under Article 1349 of the Civil Code.[40]

In its Comment[41] dated September 22, 2016, the LBP counters that petitioner availed of the wrong remedy since the DARAB clearly provides that the decisions of Adjudicators are no longer appealable to the DARAB, under Sections 5 and 6, Rule XIX of the said Rules.[42] It submits that contrary to petitioner's claim,

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[36] Id.

[37] Id. at 29.

[38] Id. at 32.

[39] Id.

[40] Id.; CIVIL CODE, Art. 1349 provides:

Art. 1349. The object of every contract must be determinate as to its kind. The fact that the quantity is not determinate shall not be an obstacle to the existence of the contract, provided it is possible to determine the same, without the need of a new contract between the parties. (1273)

[41] Id. at 118-128.

[42] Id. at 120-121.

the DAR, through the PARAD, RARAD or DARAB, has primary jurisdiction to determine just compensation for lands covered by the CARP, and that such determination is subject to the original and exclusive jurisdiction of the RTC-SACs. It argues that since petitioner did not file a petition for determination of just compensation in an RTC-SAC, the decisions of the PARO in Cases Nos. LV-0401-041-09 and LV-0401-049-09 have already become final and executory.[43]

The LBP also submits that contrary to petitioner's protest, the subject property is not exempt from the CARP coverage[44] and that petitioner should have raised his oppositions against the coverage of the same before the proper office with jurisdiction over the relief he prays for.[45] The LBP further maintains that the subject property was clearly and particularly identified in the detailed Field Investigation Report prepared therefor,[46] which showed that the portion to be acquired is planted with coco trees, which are well-within the purview of agricultural lands as defined by R.A. 6657. Lastly, the LBP asserts that the PARO was correct in not referring the case to the DAR Secretary, since the proceedings before the PARAD are only suspended by a prejudicial issue if the same is pending before the DAR Secretary or the Regional Director, and involves questions

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[43] Id. at 121-122.

[44] Id.

[45] Id. at 124.

[46] Id. at 125; the pertinent portion of the Field Investigation Report for subject property provides:

Crops Planted	**Area**
Cocos	**1.0063**
Residential and Swampy	7.3459
Residential with cocos	4.8259
Road	0.3033
Eroded	0.0726
Total:	**13.5550**

pertaining to Agrarian Law implementation (ALI), *i.e.*, petitions for lifting of coverage.[47]

For their part, the PARO and the DARAB argue in their Comment[48] dated December 12, 2016 that the PARO could not have resolved petitioner's allegations regarding the validity of the Notice of Coverage for his property as well as the DAR's failure to identify the same precisely because the PARO had no jurisdiction to rule on those matters.[49] It likewise affirmed the correctness of DARAB's dismissal of petitioner's appeal since the latter also had no jurisdiction to review the decisions of PARAD.[50] Like the LBP, both the PARO and the DARAB affirm that since petitioner's allegation of impropriety of inclusion of coverage is an example of cases falling under ALI, he should have filed an action with the DAR, which exercises appellate jurisdiction over the same.[51]

Petitioner thereafter merely reiterated his earlier contentions in his Consolidated Reply[52] dated July 24, 2017.

Issues

The issues presented in the instant case are (1) whether the PARO erred in hearing and ruling on the summary administrative proceeding brought before him for determination of just compensation; and (2) whether the DARAB erred in dismissing petitioner's appeal to it for lack of jurisdiction.

The Court's Ruling

The Court finds the petition lacking in merit, and its contentions fall in the face of black letter law that clearly provides for the contrary.

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[47] Id. at 126.

[48] Id. at 171-188.

[49] Id. at 177.

[50] Id. at 180.

[51] Id. at 181.

[52] Id. at 202-209.

The legal take-off point of these issues' resolution must be the discussion of the procedure prescribed in land acquisition for purposes of the CARP coverage, and the specific roles, jurisdictions, and limitations of both the PARO and the DARAB within the context of this land acquisition process.

Section 16, Chapter IV of R.A. 6657 categorically outlines the process wherein a land may be acquired and placed under the CARP coverage:

SECTION 16. Procedure for Acquisition of Private Lands. — For purposes of acquisition of private lands, the following procedures shall be followed:

(a) After having identified the land, the landowners and the beneficiaries, the **DAR shall send its notice to acquire the land** to the owners thereof, by personal delivery or registered mail, and post the same in a conspicuous place in the municipal building and barangay hall of the place where the property is located. **Said notice shall contain the offer of the DAR to pay a corresponding value in accordance with the valuation set forth** in Sections 17, 18, and other pertinent provisions hereof.

(b) Within thirty (30) days from the date of receipt of written notice by personal delivery or registered mail, the landowner, his administrator or representative shall inform the DAR of his acceptance or rejection of the offer.

(c) If the landowner accepts the offer of the DAR, the Land Bank of the Philippines (LBP) shall pay the landowner the purchase price of the land within thirty (30) days after he executes and delivers a deed of transfer in favor of the Government and surrenders the Certificate of Title and other monuments of title.

(d) **In case of rejection or failure to reply, the DAR shall conduct summary administrative proceedings to determine the compensation for the land by requiring the landowner, the LBP and other interested parties to submit evidence as to the just compensation for the land**, within fifteen (15) days from the receipt of the notice. After the expiration of the above period, the matter is deemed submitted for decision. **The DAR shall decide the case within thirty (30) days after it is submitted for decision**.

(e) Upon receipt by the landowner of the corresponding payment or, in case of rejection or no response from the landowner, upon the deposit with an accessible bank designated by the DAR of the compensation in cash or in LBP bonds in accordance with this Act, the DAR shall take immediate possession of the land and shall request the proper Register of Deeds to issue a Transfer Certificate of Title (TCT) in the name of the Republic of the Philippines. The DAR shall thereafter proceed with the redistribution of the land to the qualified beneficiaries.

(f) **Any party who disagrees with the decision may bring the matter to the court of proper jurisdiction for final determination of just compensation**. (Emphasis supplied)

Against this procedural backdrop, R.A. 6657 likewise lays out the role and jurisdiction of the DAR. Particularly, under Section 50, Chapter XII thereof, the DAR is vested with the authority to administratively adjudicate agrarian reform disputes, thus:

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).

x x x x.

Distinct but relatedly, the DAR is likewise authorized, within the ambit of judicial review and by way of special jurisdiction, to resolve petitions for determination of just compensation, among others:

SECTION 57. Special Jurisdiction. — The Special Agrarian Courts shall have original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners, and the prosecution of all criminal offenses under this Act. The Rules of Court shall apply to all proceedings before the Special Agrarian Courts, unless modified by this Act.

The Special Agrarian Courts shall decide all appropriate cases under their special jurisdiction within thirty (30) days from submission of the case for decision.

Given the above delineation of the DAR's power to administratively adjudicate agrarian dispute *vis-à-vis* its special jurisdiction to determine just compensation, the confusion between the limits of both jurisdictions is conceivable, as demonstrated by petitioner's ease of arguing, albeit over-simply, that for as long as a dispute is agrarian in nature, the same may be brought before the PARAD as in this case.

And still, however imaginable, such confusion is nevertheless incorrect, as the careful delineation between these two jurisdictions, and their corresponding remedies, have long been settled both in legal procedure and in jurisprudence.

Acutely pertaining to said distinction, the case of *Philippine Veterans Bank v. Court of Appeals*[53] is instructive:

> There is nothing contradictory between the provision of [Section] 50 granting the DAR primary jurisdiction to determine and adjudicate "agrarian reform matters" and exclusive original jurisdiction over "all matters involving the implementation of agrarian reform," which includes the determination of questions of just compensation, and the provision of [Section] 57 granting Regional Trial Courts "original and exclusive jurisdiction" over (1) all petitions for the determination of just compensation to landowner, and (2) prosecutions of criminal offenses under R.A. No. 6657. **The first refers to administrative proceedings, while the second refers to judicial proceedings**. Under R.A. No. 6657, the Land Bank of the Philippines is charged with the preliminary determination of the value of lands placed under land reform program and the compensation to be paid for their taking. It initiates the acquisition of agricultural lands by notifying the landowner of the government's intention to acquire his land and the valuation of the same as determined by the Land Bank. Within 30 days from receipt of notice, the landowner shall inform the DAR of his acceptance or rejection of the offer. **In the event the landowner rejects the offer, a summary administrative proceeding is held by the**

[53] G.R. No. 132767, January 18, 2000, 322 SCRA 139.

provincial (PARAD), the regional (RARAD) or the central (DARAB) adjudicator, as the case may be, depending on the value of the land, for the purpose of determining the compensation for the land. The landowner, the Land Bank, and other interested parties are then required to submit evidence as to the just compensation for the land. The DAR adjudicator decides the case within 30 days after it is submitted for decision. If the landowner finds the price unsatisfactory, he may bring the matter directly to the appropriate Regional Trial Court.[54]

Petitioner's insistence, therefore, on the PARO's grave abuse of discretion and the DARAB's erroneous restraint is demonstrably misplaced. Instead, what is clearly discernable is that in the DAR's acquisition of subject property, it followed the prescribed process outlined in R.A. 6657 and the relevant rules of procedure, with two key points of procedure that make plain the original error in the present petition.

First, paragraph (d), Section 16, Chapter V of R.A. 6657 belies petitioner's contentions that the PARO should or could have first suspended or otherwise referred the case to the proper agency, instead of denying the same. On the contrary, said provision clearly shows that the PARO was not at liberty to delay or otherwise suspend the decision in the summary administrative proceedings brought before him, since the latter was required to decide said cases within 30 days after they had been submitted for resolution.

More specifically, Section 1, Rule XIX of the DARAB Rules makes salient the singular role of the Board or Adjudicator in such summary administrative proceedings, *viz.*:

SECTION 1. *Principal Role of Board/Adjudicator*. — The principal role of the Board/Adjudicator in the summary administrative proceedings for the preliminary determination of just compensation is to determine whether the Land Bank of the Philippines (LBP) and the Department of Agrarian Reform (DAR) in their land valuation computations have complied with the administrative orders and other issuances of the Secretary of the DAR and the LBP.

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[54] Id. at 145-146. Emphasis supplied.

Second, paragraph (f), Section 16, Chapter V of R.A. 6657 additionally provides that in the event that a party disagrees with the PARO's decision in a summary administrative proceeding, the remedy allowed is for said party to bring the case before the court of proper jurisdiction for final determination of the just compensation due. Instead, and fatally for his cause, petitioner filed an appeal before the DARAB, which under the applicable DARAB Rules is no longer allowed, to wit:

SECTION 5. *When Resolution Deemed Final*. — Failure on the part of the aggrieved party to contest the resolution of the Board/Adjudicator within the afore-cited reglementary period provided shall be deemed a concurrence by such party with the land valuation, hence said valuation shall become final and executory.

SECTION 6. *Filing of Original Action with the Special Agrarian Court for Final Determination*. — **The party who disagrees with the decision of the Board/Adjudicator may contest the same by filing an original action with the Special Agrarian Court (SAC) having jurisdiction over the subject property within fifteen (15) days from his receipt of the Board/Adjudicator's decision**.

Immediately upon filing with the SAC, the party shall file a Notice of Filing of Original Action with the Board/Adjudicator, together with a certified true copy of the petition filed with the SAC.

Failure to file a Notice of Filing of Original Action or to submit a certified true copy of the petition shall render the decision of the Board/Adjudicator final and executory. Upon receipt of the Notice of Filing of Original Action or certified true copy of the petition filed with the SAC, no writ of execution shall be issued by the Board/Adjudicator. (Emphasis supplied)

This is consistent with the clear jurisdiction of the RTC-SACs provided for under Sections 56 and 57 of R.A. 6657, to wit:

SECTION 56. Special Agrarian Court. — The Supreme Court shall designate at least one (1) branch of the Regional Trial Court (RTC) within each province to act as a Special Agrarian Court.

The Supreme Court may designate more branches to constitute such additional Special Agrarian Courts as may be necessary to cope with the number of agrarian cases in each province. In the designation,

the Supreme Court shall give preference to the Regional Trial Courts which have been assigned to handle agrarian cases or whose presiding judges were former judges of the defunct Court of Agrarian Relations.

The Regional Trial Court (RTC) judges assigned to said courts shall exercise said special jurisdiction in addition to the regular jurisdiction of their respective courts.

The Special Agrarian Courts shall have the powers and prerogatives inherent in or belonging to the Regional Trial Courts.

SECTION 57. Special Jurisdiction. — The Special Agrarian Courts shall have original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners, and the prosecution of all criminal offenses under this Act. The Rules of Court shall apply to all proceedings before the Special Agrarian Courts, unless modified by this Act.

The Special Agrarian Courts shall decide all appropriate cases under their special jurisdiction within thirty (30) days from submission of the case for decision.

In accordance with this procedural framework, therefore, the PARO was well within his powers when he proceeded to hear and later decided the summary administrative proceeding over the subject property. In similar token, the DARAB, in turn, was likewise correct when it recognized that petitioner's appeal before it was beyond its jurisdiction and consequently denied the same.

That petitioner availed and insisted on the wrong remedy is further shown by the fact that the pertinent rules likewise provided for the remedy he should have resorted to. As correctly submitted by respondents, petitioner was not without a remedy when he objected to the inclusion of the subject property under the CARP coverage. Sections 7 and 8, Rule II, in relation to Section 2, Rule I of the 2003 Rules of Procedure for Agrarian Reform Implementation (ALI) cases clearly provided so, to wit:

RULE I

Preliminary Provisions

x x x x

SECTION 2. *ALI cases*. — These Rules shall govern all cases arising from or involving:

2.1. **Classification and identification of landholdings for coverage under the agrarian reform program** and the initial issuance of Certificate of Land Ownership Awards (CLOAs) and Emancipation Patents (EPs), **including protests or oppositions thereto and petitions for lifting of such coverage**;

x x x x.

RULE II

Jurisdiction over ALI Cases

SECTION 7. *General Jurisdiction*. — The Regional Director shall exercise primary jurisdiction over all agrarian law implementation cases except when a separate special rule vests primary jurisdiction in a different DAR office.

SECTION 8. *Jurisdiction over protests or petitions to lift coverage*. — The Regional Director shall exercise primary jurisdiction over protests against CARP coverage or petitions to lift notice of coverage. If the ground for the protest or petition to lift CARP coverage is exemption or exclusion of the subject land from CARP coverage, the Regional Director shall either resolve the same if he has jurisdiction, or refer the matter to the Secretary if jurisdiction over the case belongs to the latter.

x x x x

Still, to resolve any doubt, the Court has traced the history of Philippine land reform and the evolution of both relevant laws and jurisprudence on the same, and outlined with clarity the delineation of the jurisdictions of an RTC-SAC and the DAR on the matter of determination of just compensation in the *en banc* case of *Alfonso v. Land Bank of the Philippines*:[55]

For clarity, we restate the body of rules as follows: The factors listed under Section 17 of [R.A.] 6657 and its resulting formulas provide a uniform framework or structure for the computation of just compensation which ensures that the amounts to be paid to affected landowners are not arbitrary, absurd or even contradictory to the

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[55] G.R. Nos. 181912 and 183347, November 29, 2016, 811 SCRA 27.

objectives of agrarian reform. Until and unless declared invalid in a proper case, the DAR formulas partake of the nature of statutes, which under the 2009 amendment became law itself, and thus have in their favor the presumption of legality, such that courts shall consider, and not disregard, these formulas in the determination of just compensation for properties covered by the CARP. When faced with situations which do not warrant the formula's strict application, courts may, in the exercise of their judicial discretion, relax the formula's application to fit the factual situations before them, subject only to the condition that they clearly explain in their Decision their reasons (as borne by the evidence on record) for the deviation undertaken. It is thus entirely allowable for a court to allow a landowner's claim for an amount higher than what would otherwise have been offered (based on an application of the formula) for as long as there is evidence on record sufficient to support the award.[56]

Therefore, as rightly held by the CA, the PARO's decisions both dated November 17, 2011 for Case Nos. LV-0401-041-09 and LV-0401-049-09 have long become final, for petitioner's failure to appeal them before the proper RTC-SAC. As held in *Heirs of Lorenzo and Carmen Vidad v. Land Bank of the Philippines*:[57]

It must be emphasized that the taking of property under [R.A.] 6657 is an exercise of the State's power of eminent domain. The valuation of property or determination of just compensation in eminent domain proceedings is essentially a judicial function which is vested with the courts and not with administrative agencies. When the parties cannot agree on the amount of just compensation, only the exercise of judicial power can settle the dispute with binding effect on the winning and losing parties. On the other hand, the determination of just compensation in the RARAD/DARAB requires the voluntary agreement of the parties. Unless the parties agree, there is no settlement of the dispute before the RARAD/DARAB, except if the aggrieved party fails to file a petition for just compensation on time before the RTC.[58]

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[56] Id. at 78-79.

[57] G.R. No. 166461, April 30, 2010, 619 SCRA 609.

[58] Id. at 630.

Petitioner's hubris in demanding that the PARO direct his objections to the proper channel by virtue of his resort to the wrong remedy also does not escape the Court. Such audacity is thoroughly misplaced, and does not help his claim, whatsoever.

Finally, on the matter of petitioner's consistent assertion that the subject property should not have been included in the CARP coverage to begin with, the Court finds that said factual issue is beyond the province of the instant case, since the same goes into an appreciation of facts, and this Court is not a trier of facts. Time and again, the Court reminds that its function in petitions for review on *certiorari* under Rule 45 of the Rules is limited to reviewing errors of law that may have been committed by the lower courts. As a matter of sound practice and procedure, the Court generally defers and accords finality to the factual findings of the lower courts. Here, since the question of whether the subject property was correctly placed under the CARP is essentially factual in nature, the determination of which is best left to the courts below, especially the specialized adjudication bodies and the CA challenged in the present dispute.

WHEREFORE, the Petition is hereby **DENIED**. Accordingly, the Decision dated November 24, 2014 and Resolution dated January 6, 2016 of the Court of Appeals, Seventh Division, in CA-G.R. SP No. 130431 are hereby **AFFIRMED**.

SO ORDERED.

Peralta, C.J. (Chairperson), Carandang, Zalameda, and *Gaerlan, JJ.*, concur.

FIRST DIVISION

[G.R. No. 223163. December 2, 2020]

GIL SAMBU JARABELO, *Petitioner, v.* **HOUSEHOLD GOODS PATRONS, INC. and SUSAN DULALIA**, *Respondents*.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Dennis P. Amparo for respondents.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court assailing the Decision[2] dated September 8, 2015 and Resolution[3] dated February 16, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 138115. The CA affirmed the National Labor Relations Commission's (NLRC) ruling that petitioner Gil Sambu Jarabelo (Jarabelo) was not illegally dismissed.

Facts

Jarabelo was the booking salesman for respondent Household Goods Patrons, Inc. (Household Goods) since July 2007.[4] He worked from 8:00 A.M. to 6:00 P.M., from Monday to Friday, with a daily salary of ₱456.00.[5] As a booking salesman, his duties and responsibilities were: (a) getting orders from customers

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[1] *Rollo*, pp. 11-31, excluding Annexes.

[2] Id. at 33-46. Penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Ramon A. Cruz and Myra V. Garcia-Fernandez.

[3] Id. at 48-49.

[4] Id. at 33-34.

[5] Id. at 34.

of Household Goods; (b) collecting payments from the customers (in cash or check), which he was required to remit to the office within the day; and (c) checking of oil, gasoline, water, and tools assigned to him.[6]

From May 2012 to August 2013, Jarabelo was subject of several disciplinary proceedings because of unaccounted amounts,[7] low sales output,[8] unremitted collections, "Poor Performance" rating during evaluation for failing to meet sales target,[9] and late remittance of sales proceeds.[10]

The disputed events, which led to Jarabelo's filing of a complaint for illegal dismissal before the Labor Arbiter (LA), are as follows:

On August 29, 2013, Jarabelo claims that respondent Susan Dulalia (Dulalia) directed him to report to her office and to his surprise told him: "*Mr. Jarabelo, magresign [ka na], magsubmit ka na ng resignation letter sapagkat ikaw ang isa sa mga nagpabagsak ng kumpanya! Wala kang ginawa kundi maghi[n]tay ng sahod*."[11] Jarabelo denied the accusation claiming that in the past he was even awarded Salesman of the Year. This made Dulalia angrier and ordered Jarabelo to leave her office.[12]

The following day, Jarabelo claims that he was confronted by HR/Audit Supervisor Susan Soriano (Soriano) for his resignation letter as ordered by Dulalia. Jarabelo was presented with the computation of his final pay. He opposed the decision but it proved futile and he was ordered to surrender all documents and properties the following day.[13]

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[6] Id.

[7] See id.

[8] See id.

[9] Id. at 34-35.

[10] Id. at 35.

[11] Id. at 35-36.

[12] Id. at 36.

[13] Id.

Respondents, on the other hand, claim that Jarabelo was not dismissed.[14] According to respondents, Dulalia talked to Jarabelo on September 1, 2013 about the latter's shortages and poor performance. Dulalia informed Jarabelo that the shortages are considered as theft, which is a valid ground for his immediate termination.[15] But considering his prior good sales performance and the stigma of being terminated from employment, Dulalia offered the option for Jarabelo to just resign and the management would not file a criminal charge against him for the unremitted amounts. After this conversation, respondents claim that Jarabelo never returned to work.[16]

LA Decision

In a Decision[17] dated March 31, 2014, the LA ruled that Jarabelo was illegally dismissed when he was abruptly told not to report for work anymore and file a resignation letter.[18] The LA further ruled that respondents failed to prove that Jarabelo abandoned his work. The LA granted Jarabelo's prayer for separation pay in lieu of reinstatement and backwages, service incentive leave pay, unpaid salary, and 13th month pay.[19]

NLRC Decision

Aggrieved, respondents appealed to the NLRC, which partly granted respondents' appeal. The dispositive portion of the NLRC Decision[20] states:

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[14] Id. at 37.

[15] Id. at 36-37.

[16] Id. at 37.

[17] Id. at 179-185. Penned by Labor Arbiter J. Potenciano F. Napenas, Jr.

[18] Id. at 37, 183.

[19] Id. at 37-38, 183-185.

[20] Id. at 71-84. Decision dated July 31, 2014; penned by Commissioner Gregorio O. Bilog III and concurred in by Presiding Commissioner Alex A. Lopez and Commissioner Pablo C. Espiritu, Jr.

WHEREFORE, premises considered, the instant appeal is **PARTLY GRANTED**. The assailed decision dated March 31, 2014 is hereby **AFFIRMED WITH MODIFICATION** in that complainant was not dismissed. Consequently, the award for separation pay and backwages is DELETED. In addition, the award for unpaid salary for June 23-July 8, 2013 and SILP is, likewise, DELETED. Respondent Household Goods [Patrons,] Inc. is ordered to pay complainant Gil Jarabelo a proportionate 13th month pay amounting to **₱7,007.51**.

SO ORDERED.[21]

The NLRC ruled that Jarabelo failed to establish the fact of his dismissal by substantial evidence and that his allegations were not supported by corroborative evidence.[22] Jarabelo filed a motion for reconsideration but this was denied.[23] Jarabelo then filed a petition for *certiorari* before the CA.

CA Decision

In the assailed Decision, the CA affirmed the NLRC. The dispositive portion of the CA Decision states:

WHEREFORE, premises considered, the instant petition is hereby **DENIED**. The Decision promulgated on July 31, 2014 and the Resolution dated September 17, 2014 of public respondent NLRC in NLRC LAC NO. 07-001631-14(8) NLRC NCR CN. 1013502-13 are **AFFIRMED**.[24]

The CA ruled that it was incumbent on Jarabelo to prove the fact of dismissal.[25] The CA, after reviewing the evidence of the parties given the variance between the factual findings of the LA and the NLRC, found that Jarabelo failed to present any evidence of Household Goods' categorical intention to

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[21] Id. at 83.

[22] Id. at 39, 79-80.

[23] See Resolution dated September 17, 2014, id. at 86-87.

[24] *Rollo*, p. 45.

[25] See id. at 41.

discontinue his employment or that he was prevented to work or otherwise deprived of any work assignment.[26] In fact, the CA found that the records were replete with instances where Jarabelo failed to meet sales quota, and was even short on remitting sales proceeds.[27]

The CA believed respondents' version that Dulalia talked to Jarabelo and gave him the option of resigning instead of being dismissed for cause.[28] The CA also ruled that unlike Jarabelo's bare assertions, respondents submitted the affidavit of Soriano who denied Jarabelo's claim that she talked to him about his submission of the resignation letter.[29] For the CA, it was a valid exercise of management prerogative for Dulalia to give Jarabelo the option of resigning.[30]

The CA also found that the NLRC was correct in ruling that Jarabelo was already paid his unpaid salary for June 23 to July 8, 2013 and his service incentive leave pay as the record was replete with evidence supporting this conclusion.[31] Since the NLRC Decision was supported by evidence and in accordance with law, the CA ruled that the NLRC did not commit grave abuse of discretion amounting to lack or excess of jurisdiction.[32]

Jarabelo moved for reconsideration, but this was denied.

Hence, this Petition.

Issues

Jarabelo reiterates the same issues he raised before the CA, as follows:

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[26] Id. at 42.

[27] Id. at 43.

[28] Id.

[29] Id. at 42.

[30] Id. at 43.

[31] Id. at 43-44.

[32] Id. at 44-45.

"I.

WHETHER THE PUBLIC RESPONDENT COMMISSION (NLRC) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN RULING THAT THE PETITIONER FAILED TO PROVE THE FACT OF HIS DISMISSAL.

II.

WHETHER THE PUBLIC RESPONDENT COMMISSION (NLRC) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DELETING THE SEPARATION PAY, BACKWAGES, AND SERVICE INCENTIVE LEAVE PAY AWARDED BY THE LABOR ARBITER TO THE PETITIONER."[33] x x x

The Court's Ruling

The Petition is denied.

As a general rule, in a Rule 45 petition assailing a decision in a petition for *certiorari* under Rule 65, as is usually the case in labor cases before the Court, the Court cannot address questions of facts.[34] Only questions of law may be raised against the CA decision and such decision will be examined using the prism of whether the CA correctly determined the existence of grave abuse of discretion.[35]

As the Court explained in *San Fernando Coca-Cola Rank-and-File Union (SACORU) v. Coca-Cola Bottlers Philippines, Inc. (CCBPI)*:[36]

"[G]rave abuse of discretion may arise when a lower court or tribunal violates or contravenes the Constitution, the law or existing

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[33] Id. at 16.

[34] *Rodriguez v. Sintron Systems, Inc.*, G.R. No. 240254, July 24, 2019, 910 SCRA 498, 509.

[35] See *San Fernando Coca-Cola Rank-and-File Union (SACORU) v. Coca-Cola Bottlers Philippines, Inc. (CCBPI)*, G.R. No. 200499, October 4, 2017, 842 SCRA 1, 10.

[36] Id.

jurisprudence." The Court further held in *Banal III v. Panganiban* that:

> By grave abuse of discretion is meant, such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.

The reason for this limited review is anchored on the fact that the petition before the CA was a *certiorari* petition under Rule 65; thus, even the CA did not have to assess and weigh the sufficiency of evidence on which the NLRC based its decision. The CA only had to determine the existence of grave abuse of discretion. As the Court held in *Soriano, Jr. v. National Labor Relations Commission*:

> As a general rule, in *certiorari* proceedings under Rule 65 of the Rules of Court, the appellate court does not assess and weigh the sufficiency of evidence upon which the Labor Arbiter and the NLRC based their conclusion. The query in this proceeding is limited to the determination of whether or not the NLRC acted without or in excess of its jurisdiction or with grave abuse of discretion in rendering its decision. However, as an exception, the appellate court may examine and measure the factual findings of the NLRC if the same are not supported by substantial evidence.[37] (Citations omitted)

Here, the Court finds that the CA was correct in ruling that the NLRC did not commit grave abuse of discretion amounting to lack or excess in jurisdiction.

The CA was correct that there was no proof of dismissal

It is settled that "[i]n illegal dismissal cases, before the employer must bear the burden of proving that the dismissal

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[37] Id. at 10-11.

was legal, the employee must first establish by substantial evidence the fact of his dismissal from service."[38]

In *Rodriguez v. Sintron Systems, Inc.*[39] *(Rodriguez)*, the Court ruled that the petitioner failed to prove she was constructively dismissed because she failed to present any evidence that the President of the company shouted invectives at her and that she was mistreated. The Court ruled in *Rodriguez*:

> x x x Obviously, if there is no dismissal, then there can be no question as to its legality or illegality. As an allegation is not evidence, it is elementary that a party alleging a critical fact must support his allegation with substantial evidence. Bare allegations of dismissal, when uncorroborated by the evidence on record, cannot be given credence. Moreover, the evidence to prove the fact of dismissal must be clear, positive and convincing.[40] (Citations omitted)

Rodriguez applies here. Other than his allegation, Jarabelo failed to present any proof that he was dismissed from employment. He failed to present any proof of dismissal or that he was prohibited from returning to work. On the other hand, respondents were able to show that Jarabelo was not dismissed from work. Given his poor performance, he was given the option to resign instead of being dismissed. And the CA correctly ruled that giving such an option may be done at the discretion of the employer. As the Court ruled in *Willi Hahn Enterprises v. Maghuyop*:[41]

> The failure of petitioner to pursue the termination proceedings against respondent and to make her pay for the shortage incurred did not cast doubt on the voluntary nature of her resignation. A decision to give a graceful exit to an employee rather than to file an action for redress is perfectly within the discretion of an employer. It is not uncommon that an employee is permitted to resign to save face after the exposure of her malfeasance. Under the circumstances, the failure

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[38] *Rodriguez v. Sintron Systems, Inc.*, supra note 34, at 510.

[39] Supra note 34.

[40] Id. at 510.

[41] G.R. No. 160348, December 17, 2004, 447 SCRA 349.

of petitioner to file action against the respondent should be considered as an act of compassion for one who used to be a trusted employee and a close member of the household.[42]

The CA was correct in ruling that giving the option to gracefully exit considering his prior good sales performance and out of compassion did not constitute dismissal, legal or illegal. Jarabelo, however, did not resign and take the separation pay offered to him, but neither did Household Goods initiate disciplinary proceedings to terminate his employment.

Separation pay awarded

Given the foregoing, generally, when there is no dismissal, "the Court merely declares that the employee may go back to his work and the employer must then accept him because the employment relationship between them was never actually severed."[43]

There have been instances, however, where the Court directed the payment of separation pay even if there was no dismissal of the employee instead of a directive for the employee to return to work and for the employer to accept him.

In *Nightowl Watchman & Security Agency, Inc. v. Lumahan*[44] *(Nightowl)*, the Court directed the payment of separation pay even if it found that no dismissal took place considering that more than 10 years had already passed since the employee stopped reporting for work. In *Dee Jay's Inn and Café v. Rañeses*[45] *(Dee Jay's Inn)*, the Court likewise found that the employee was not dismissed nor did she abandon her work, but citing *Nightowl*, and also considering the more than 10 years that had passed since the employee reported for work, the Court directed the payment of separation pay. Also, in *Doctor v. NII*

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[42] Id. at 354.

[43] *Rodriguez v. Sintron Systems, Inc.*, supra note 34, at 515.

[44] G.R. No. 212096, October 14, 2015, 772 SCRA 638.

[45] G.R. No. 191823, October 5, 2016, 805 SCRA 143.

Enterprises,[46] the Court found that there was no dismissal and no abandonment but instead of directing the return to work of the employee, the Court, citing *Dee Jay's Inn*, awarded separation pay considering that more than 10 years had also passed since the employee reported for work and the manifestation of the employer that the employee no longer had any place in the business due to reduced workforce. In these cases, separation pay was computed at one month salary for every year of service.

Here, considering that Household Goods had from the outset offered to pay separation pay to Jarabelo, and which even Jarabelo himself does not dispute, and that more than seven years had passed since Jarabelo reported for work on September 1, 2013, the Court deems it just to award separation pay in lieu of the directive for him to return to work and for Household Goods to accept him.

As to the other claims of Jarabelo, the Court finds no reason to disturb the factual findings of the NLRC as affirmed by the CA, the same being supported by substantial evidence.

WHEREFORE, premises considered, the Petition is **DENIED**. The Decision dated September 8, 2015 and Resolution dated February 16, 2016 of the Court of Appeals in CA-G.R. SP No. 138115 are **AFFIRMED** with **MODIFICATION** that respondent Household Goods Patrons, Inc. is **DIRECTED** to pay petitioner Gil Sambu Jarabelo separation pay equivalent to one month salary for every year of service, computed up to the time he stopped working, or until September 1, 2013. This monetary award shall earn interest at six percent (6%) *per annum* from finality of this Decision until full payment.

SO ORDERED.

Peralta, C.J. (Chairperson), Carandang, Zalameda, and *Gaerlan, JJ.*, concur.

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[46] G.R. No. 194001, November 22, 2017, 846 SCRA 53.

FIRST DIVISION

[G.R. No. 224863. December 2, 2020]

SUSAN CO DELA FUENTE, *Petitioner*, *v*. **FORTUNE LIFE INSURANCE CO., INC.**, *Respondent*.

APPEARANCES OF COUNSEL

Mañacop Law Office for petitioner.
Santiago Arevalo Asuncion & Associates 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 (Rules) assailing the Decision[2] dated February 17, 2016 and the Resolution[3] dated May 26, 2016 of the Court of Appeals (CA) in CA-G.R. CV No. 105012 filed by petitioner Susan Co Dela Fuente (Susan).

Antecedents

On February 17, 2011, Susan invested ₱2,000,000.00 in the lending business of Reuben Protacio (Reuben).[4] On March 3, 2011, she invested an additional ₱1,000,000.00.[5] On March 10, 2011, Reuben applied for a life insurance with respondent Fortune

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[1] *Rollo*, pp. 8-20.

[2] Penned by Associate Justice Remedios A. Salazar-Fernando, with the concurrence of Associate Justices Priscilla J. Baltazar-Padilla (Former Member of this Court) and Socorro B. Inting; id. at 105-117.

[3] Penned by Associate Justice Remedios A. Salazar-Fernando, with the concurrence of Associate Justices Priscilla J. Baltazar-Padilla (Former Member of this Court) and Melchor Quirino C. Sadang; id. at 131.

[4] Records, pp. 32-33, 107-108.

[5] Id. at 109-110.

Life Insurance Co., Inc. (Fortune) in the amount of ₱15,000,000.00 with Susan as the revocable beneficiary.[6] On March 14, 2011, she again invested another ₱1,000,000.00.[7] On March 25, 2011, Policy No. 61761 was issued after the premium of ₱82,500.00 was paid.[8] The policy stated *inter alia* that:

> In case of death of the Insured by self-destruction within (2) years from the Policy Date or date of last reinstatement of this Policy, the pertinent provisions of the Insurance code, as amended, shall apply. Where the death of the Insured by self-destruction is not compensable, we shall refund the premiums actually paid less indebtedness.[9]

On March 28, 2011, Susan invested ₱12,000,000.00 in Reuben's lending business.[10]

About a month after the issuance of the policy, Susan submitted a copy of Policy No. 61761 with a face value of ₱15,000,000.00 to claim its proceeds.[11] Based on the Death Certificate[12] submitted, Reuben died on April 15, 2011 due to a gunshot wound on the chest.[13] Medico Legal Report No. M-239-2011 prepared by Dr. Voltaire P. Nulud (Dr. Nulud) confirmed that the cause of death of Reuben is "Gunshot wound, trunk."[14]

Fortune conducted an investigation and uncovered a Clinical Abstract[15] executed by Dr. Allen Pagayatan (Dr. Pagayatan) stating that he conducted an interview with Randolph Protacio (Randolph), brother of Reuben, within minutes after he brought

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[6] Id. at 5.

[7] Id. at 111-112.

[8] Id. at 6-9, 410.

[9] Id. at 9.

[10] Id. at 36-39.

[11] Id. at 534.

[12] Id. at 10.

[13] Id.

[14] Id. at 372.

[15] Id. at 297, 326.

Reuben to the emergency room of Makati Medical Center. Based on Dr. Pagayatan's interview, Randolph stated that prior to the shooting incident, Reuben intimated that he already wanted to die. When he thought that he had already pacified Reuben, Randolph left the room. Subsequently, he heard a gunshot and found Reuben bleeding.[16] Because of this information, Fortune denied the claim of Susan.[17] Fortune refunded Susan ₱80,643.00, which represents the amount of premiums paid on the policy less service charge[18] but Susan refused to accept it.[19] Thereafter, Susan filed a complaint for a sum of money and damages against Fortune.[20]

Incidentally, Rossana Ajon (Rossana), a business partner of Reuben, sent a letter to Fortune informing the latter that she already paid Susan the amount of ₱2,000,000.00. Rossana requested that the amount of ₱1,000,000.00 be segregated in the settlement to be made with Susan.[21]

In their Answer,[22] Fortune argued that Susan has no insurable interest over the life of Reuben since she had not invested yet in the business of Reuben. Fortune pointed out that when the policy was secured on March 25, 2011, Susan's investment was only in the amount of ₱3,000,000.00 and ₱2,000,000.00 was already refunded to her by Rossana. The rest of the investment in the amount of ₱12,000,000.00 was only invested by Susan after the policy took effect.[23] Even assuming that Susan has insurable interest over the life of Reuben to the extent of ₱15,000,000.00 or that she was legally appointed as the

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[16] Id. at 320-322.

[17] Id. at 414.

[18] Id. at 415.

[19] Id. at 418.

[20] Id. at 1-4.

[21] Id. at 31-33.

[22] Id. at 19-27.

[23] Id. at 22-23, 36-39.

beneficiary of Reuben, Fortune insisted that Susan has no cause of action because Reuben's death was due to suicide which is an excepted risk under his policy.[24]

Ruling of the Regional Trial Court

On February 27, 2015, the Regional Trial Court (RTC) rendered its Decision[25] the dispositive portion of which states:

> **WHEREFORE**, premises considered, judgment is hereby rendered in favor of the plaintiff **SUSAN CO DELA FUENTE** and against the defendant **FORTUNE LIFE INSURANCE CO., INC.** ordering the latter to pay the former the following:
>
> 1. **FIFTEEN MILLION PESOS (Php15,000,000.00)** plus interest at the rate of **twelve percent (12%)** per annum from May 18, 2011 until fully paid;
> 2. **FIFTY THOUSAND PESOS (Php50,000.00)** as and by way of attorney's fees; and
> 3. Costs of suit.
>
> **SO ORDERED**.[26] (Emphasis in the original)

The RTC found no merit in the contention of Fortune that the information Randolph gave to Dr. Pagayatan is an exception to the hearsay rule for being part of *res gestae*. For the RTC, the statement cannot be treated as spontaneous because a considerable amount of time had lapsed from the moment the deceased was found bleeding and the time the alleged statement was given to Dr. Pagayatan at the hospital. The RTC declared that such considerable amount of time was more than enough for Randolph to deliberate on the matter which rendered the information given regarding the case of Reuben's death fall beyond the ambit of spontaneity.[27]

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[24] Id. at 24-25.

[25] Penned by Presiding Judge Elpidio R. Calis; *rollo*, pp. 37-45.

[26] Id. at 45.

[27] Id. at 44.

The RTC did not give credence to the testimony of Dr. Raquel Fortun (Dr. Fortun) as her findings were only based on documents provided by Fortune. She did not examine the body of Reuben nor present additional evidence to convince the RTC that Reuben took his own life. The RTC ruled that her testimony regarding the presence of gun powder or residue on the shooter's hand has no weight because her qualifications and expertise restrict her from testifying on the subject matter.[28]

For the RTC, Susan was able to establish that she is entitled to the proceeds of the policy. On the other hand, the RTC found that Fortune failed to establish by preponderance of evidence its defense that Reuben committed suicide.[29]

The RTC awarded interest of 12% *per annum* from May 18, 2011 until fully paid because of Fortune's unreasonable refusal to pay Susan's claim.[30] The RTC held that Fortune's strong reliance on the unsubstantiated statements of Randolph relayed to Dr. Pagayatan to justify its obstinate refusal to pay the claim of Susan was a clear sign of wanton disregard of its obligations arising from the contract of insurance.[31]

In an Order[32] dated May 8, 2015, the RTC denied the Motion for Reconsideration[33] of Fortune for lack of merit.[34]

Ruling of the Court of Appeals

On February 17, 2016, the CA rendered its Decision[35] the dispositive portion of which states:

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[28] Id.

[29] Records, pp. 540-542.

[30] Id. at 542.

[31] Id.

[32] Penned by Presiding Judge Elpidio R. Calis; id. at 608.

[33] Id. at 548-577.

[34] Id. at 608.

[35] Supra note 2.

WHEREFORE, premises considered, the appeal is **GRANTED**. The assailed decision dated February 27, 2015 of the RTC, Branch 133, Makati City is hereby **VACATED** and **SET ASIDE** and a new one is entered ordering the **DISMISSAL** of the complaint.

SO ORDERED.[36] (Emphasis in the original)

The CA held that the evidence on record proved that Reuben committed suicide. The photos taken at the crime scene did not show any cleaning kit which would have proved the claim of Susan that Reuben was cleaning his gun before his death. Not even a piece of cloth was found at the scene of the crime, as confirmed by the statement of PO3 Serquena and SPO1 Rico Caramat.[37]

The CA ruled that the statement Randolph gave to Dr. Pagayatan was spontaneously given and found no reason for him to concoct or fabricate his narration of the events. Between the statement of Randolph given to Dr. Pagayatan at the emergency room and his statement given to the police after a considerable length of time, the CA declared that the former should be given more weight because it was given spontaneously and at a time when Randolph still had no chance to think and make up a story. The CA stated that if the statement of Randolph to Dr. Pagayatan made several minutes after the incident is considered inadmissible, there is more reason to consider as inadmissible the statement Randolph gave to the police after a considerable length of time. By then, he already had the opportunity to fabricate his account to conceal the real story behind Reuben's death.[38]

Although Dr. Fortun did not perform an autopsy on the body of Reuben, the CA gave credence to her testimony as she based her findings on the same medico-legal report and investigation report Susan presented as evidence. For the CA, Dr. Fortun

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[36] *Rollo*, p. 116.

[37] Id. at 110.

[38] Id. at 112-113.

merely interpreted the results of official records. The genuineness and authenticity of these documents were never assailed. The CA believed the explanation of Dr. Fortun that gunshot residues on a shooter's hand is not always visible even with sensitive testing. The CA gave weight to the opinion of Dr. Fortun that the trajectory of the bullet which went "straight front to back" supported the conclusion that the gun shot was deliberate and self-inflicted.[39]

The CA denied the Motion for Reconsideration[40] Susan filed in a Resolution[41] dated May 26, 2016.

In her petition,[42] Susan insists that Reuben's death is compensable because he died when he accidentally fired his gun while cleaning it. Susan argues that the CA erred in holding that the absence of a gun cleaning kit in the room where Reuben was found lifeless disproves that the latter accidentally shot himself while cleaning his gun.[43] Susan also avers that the testimony of Dr. Pagayatan on the information Randolph relayed to him is inadmissible and cannot be considered as part of *res gestae* as this was not spontaneously given. Susan emphasizes that it took more than 15 minutes from the time the shooting happened in the house of Reuben and the moment Randolph allegedly gave the information to Dr. Pagayatan at the emergency room.[44] Susan likewise claims that the testimony of Dr. Fortun is biased and weak since she is an expert witness hired by Fortune.[45] Susan posits that instead of discrediting Dr. Nulud for entertaining the possibility that Reuben killed himself, the

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[39] Id. at 114.

[40] Id. at 118-128.

[41] Penned by Associate Justice Remedios A. Salazar-Fernando, with the concurrence Associate Justices Priscilla J. Baltazar-Padilla (Former Member of this Court) and Melchor Quirino C. Sadang; id. at 131-132.

[42] Id. at 8-20.

[43] Id. at 12-13.

[44] Id. at 13-15.

[45] Id. at 16-18.

CA should have appreciated his open-mindedness and should have looked at it as signs of impartiality and disinterestedness.[46] After all, Dr. Nulud's opinion is based on the absence of muzzle imprint of the gun barrel on the skin of the deceased, the direction and trajectory of the bullet in the victim's body, and the negative result of the paraffin examination on the victim's hands.[47]

In its Comment,[48] Fortune highlights that Susan belatedly filed her motion for reconsideration on the Decision of the CA. Susan moved for reconsideration of the Decision of the CA that she received on March 1, 2016 only on March 17, 2016 (Thursday), or 16 days after the receipt of the assailed Decision.[49] Fortune maintains that the death of Reuben is an excepted risk. Based on the pictures taken and the testimonies of the responding officers and investigator, there appears to be no cleaning kit nor any piece of cleaning material which Reuben could have used in purportedly cleaning his gun.[50] Fortune asserts that the possibility that the insured could have been using his own clothes or his hand when he was cleaning his gun cannot be raised in a motion for reconsideration.[51] Fortune likewise claims that the CA correctly held that the statement Randolph made to Dr. Pagayatan qualified as part of *res gestae*, an exception to the hearsay rule. Fortune argues that Randolph's statement to Dr. Pagayatan was spontaneously given and under circumstances which would bar him from inventing the same.[52] Fortune also submits that the CA correctly gave credence to the testimony of Dr. Fortun, a known forensic pathologist, who opined that Reuben committed suicide.[53]

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[46] Id. at 18.

[47] Id.

[48] Id. at 135-141.

[49] Id. at 135.

[50] Id. at 137-138.

[51] Id. at 138.

[52] Id. at 138-139.

[53] Id. at 139-140.

In her Reply,[54] Susan insists that Fortune is now barred by laches in questioning the timeliness of the filing of the petition because the belated filing of the Motion for Reconsideration was not raised in the Comment/Opposition to Susan's Motion for Reconsideration.[55] Susan also reiterates her argument that the statement of Randolph cannot be admitted as part of *res gestae*.[56]

Issues

The issues to be resolved in this case are:

(1) whether Fortune is now barred by laches from questioning the timeliness of the filing of the petition because the issue on the belated filing of the Motion for Reconsideration was not raised in the Comment/Opposition to Susan's Motion for Reconsideration;

(2) whether the insurer carries the burden of proving that the insured's death was caused by suicide or self-destruction; and

(3) whether Susan, as creditor of Reuben and beneficiary of the policy, is entitled to the entire face value of the policy in the amount of ₱15,000,000.00 despite the fact that her insurable interest at the time the policy took effect was only ₱4,000,000.00 and Rossana had already returned ₱2,000,000.00.

Ruling of the Court

Fortune is now barred from raising the belated filing of the motion for reconsideration in its Comment to Susan's petition filed in this Court.

At the outset, We must address the claim of Susan that Fortune is now barred by laches from questioning the timeliness of the

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[54] Id. at 146-152.

[55] Id. at 146-147.

[56] Id. at 149-150.

filing of her petition since the issue on the belated filing of her Motion for Reconsideration was not raised in the Comment/ Opposition to Susan's Motion for Reconsideration. The CA entertained Susan's Motion for Reconsideration despite having been filed 16 days from the receipt of the assailed Decision of the CA or one day after the last day to file her Motion for Reconsideration in violation of Section 1, Rule 52 of the Rules of Court (Rules) which clearly provides:

> Section 1. *Period for filing.* — A party may file a motion for reconsideration of a judgment or final resolution within fifteen (15) days from notice thereof, with proof of service on the adverse party.

A motion for reconsideration of a judgment or final resolution should be filed within 15 days from notice. The 15-day reglementary period for filing a motion for reconsideration is non-extendible and if no appeal or motion for reconsideration is timely filed, the judgment or final resolution shall be entered by the clerk in the book of entries of judgment as provided under Section 10, Rule 51 of the same Rules.

Nevertheless, under exceptional circumstances, such as when stringent application of the rules will result in manifest injustice, the Court may set aside technicalities[57] and proceed with the petition for review on *certiorari*. The present petition deserves the liberality of the Court considering that the substantial issues Susan raised will ultimately affect the final disposition in this case. Susan stands to lose the money she invested in Reuben's business simply because she was one day late in filing her Motion for Reconsideration. To Our mind, this is too harsh a penalty for a day's delay. Therefore, the rules should be relaxed to afford both parties an opportunity for a just and proper disposition of the case.

Moreover, considering that Fortune did not interpose any objection on the timeliness of the filing of Susan's motion for

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[57] *Philippine Bank of Communications v. Court of Appeals*, 805 Phil. 964, 971 (2017).

reconsideration in its Comment/Opposition, Fortune can no longer raise the belated filing of the motion for reconsideration in its Comment to Susan's petition filed in this Court.

The burden of proving an excepted risk or condition that negates liability lies on the insurer and not on the beneficiary.

Susan essentially assails the appreciation made by the CA of the pieces of evidence presented in concluding that Reuben's death was caused by a self-inflicted gunshot wound. In *United Merchants Corp. v. Country Bankers Insurance Corp.*,[58]

> An insurer who seeks to defeat a claim because of an exception or limitation in the policy has the burden of establishing that the loss comes within the purview of the exception or limitation. If loss is proved apparently within a contract of insurance, the burden is upon the insurer to establish that the loss arose from a cause of loss which is excepted or for which it is not liable, or from a cause which limits its liability.[59]

In the context of life insurance policies, the burden of proving suicide as the cause of death of the insure to avoid liability rests on the insurer. Therefore, Fortune must prove suicide to defeat Susan's claim.

In the present case, We find that Fortune failed to discharge its burden of proving, by preponderance of evidence, that Reuben's death was caused by suicide, an excluded risk in his policy. The CA primarily relied on the testimony of Dr. Pagayatan which the CA considered *res gestae*, and the testimony of Dr. Fortun in concluding that Reuben committed suicide. However, these pieces of evidence cannot be given credence by the Court.

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[58] 690 Phil. 734, 747-748 (2012).

[59] Id.

Dr. Pagayatan's testimony on the statement Randolph allegedly gave moments after Reuben was brought to the hospital is inadmissible.

We do not agree with the ruling of the CA that the statement given by Randolph, which was repeated in court by Dr. Pagayatan, is admissible. It is not the *res gestae* contemplated by the Rules.

Section 36 of Rule 130 of the Rules provides that "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." *Res gestae*, one of the exceptions to the hearsay rule, is found in Section 42 of Rule 130 which states:

> Section 42. Part of 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.

In *People v. Dianos*[60] the Court explained that the exclamations and statements contemplated in this exception are:

> x x x made by either the **participants, victims**, or **spectators** to a crime, *immediately before, during or immediately after the commission of the crime*, when the circumstances are such that the statements constitute nothing but *spontaneous* reaction or utterance inspired by the excitement of the occasion there being no opportunity for the declarant to deliberate and to fabricate a false statement become admissible in evidence against the otherwise hearsay rule of inadmissibility.[61] (Emphasis supplied; italics in the original)

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[60] 357 Phil. 871, 885 (1998).

[61] Id.

Here, Dr. Pagayatan was neither a participant, victim, or spectator to the death of Reuben. He merely repeated in court what was relayed to him by Randolph who was also not a participant, victim or spectator to the act in controversy. He is not the declarant envisioned by the Rules as he had no personal knowledge of the fact that Reuben took his own life. Nobody witnessed Reuben take his own life. The information Randolph relayed to Dr. Pagayatan, which the latter testified on during trial, cannot be admitted as proof of the veracity of said information. This is not the *res gestae* statement contemplated by the Rules. Thus, the CA committed error in admitting and giving credence to Dr. Pagayatan's testimony on the matter.

The testimony of Dr. Fortun failed to prove that Reuben's death was caused by suicide.

The CA also erroneously gave credence to the testimony of Dr. Fortun despite the fact that she did not perform an autopsy on the body of Reuben which had already been cremated.[62] Though Dr. Fortun is a renowned expert in the field of forensic pathology, her analysis and opinion were confined to documentary evidence, including the medico-legal report,[63] investigation report,[64] and photographs that We consider insufficient to conclude with certainty that Reuben took his own life. Her conclusions and suppositions were not reached through a comprehensive examination of Reuben, the weapon involved, nor the scene of the incident.

Between the testimony of Dr. Fortun, who admitted that she did not conduct a post-mortem examination on Reuben, and Dr. Nulud, who actually conducted an autopsy on Reuben and prepared the medico-legal report, the latter should be given more weight. While Fortune tried to discredit the findings of Dr. Nulud during his cross-examination by pointing out that

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[62] Records, pp. 358, 421.

[63] Id. at 372.

[64] Id. at 422-424.

he had no training in forensic or clinical pathology,[65] it cannot be denied that he is competent to conduct an autopsy considering the 9,600 medico-legal cases, 8,246 autopsies he had previously handled and 2,627 gunshot wound cases.[66] Even Dr. Fortun recognized that the conduct of an autopsy could have been a better basis to make a conclusive finding on the matter of death of Reuben.[67] Therefore, Dr. Nulud is in a better position to know the circumstances surrounding the death of Reuben.

According to Dr. Nulud, the trajectory of the wound is "posterior ward, upward and medial ward."[68] In Dr. Nulud's Judicial Affidavit which was adopted as his direct-examination, he explained his findings in Medico-Legal Report No. M-239-2011, as revealed in the following exchange:

> 26. Q. So according to you, the cause of the death of Reuben Protacio is gunshot wound whose point of entry was left anterior mid-line with an area of smudging, measuring c6x5 cm., 115 cm from the heel, directed posterior-ward, upward and medialward, fracturing the sternum of the level of 5th thoracic rib and 8th thoracic vertebra, lacering the pericardial sac, right ventricle of the heart and thoracic aorta, making a point of exit at the vertebra region, measuring 1.8 x 1 cm., along the posterior midline, 118 cm from the heel, and exited at the vertebra region along the posterior mid-line. Based on those findings of your, can you tell whether said wound was self inflicted or not?
>
> A. It is not self inflicted.
>
> 27. Q. What made you say that?
>
> A. Based on my experience, I could categorically say that the wound is not self inflicted, due to the following reason: (1) the distance range of the firearm from the wound's point of entry which resulted in the absence

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[65] TSN dated July 8, 2013, p. 8.

[66] Id. at 8-9; records, p. 135.

[67] TSN dated December 1, 2014, pp. 8-10.

[68] Records, pp. 14, 24.

> of muzzle imprinting of the gun barrel on the skin; (2) the direction/trajectory of the bullet in the victim[']s body; (3) and the negative result of the paraffin exam on the victim's hands.[69]

Fortune failed to refute the findings of Dr. Nulud. Fortune even furnished Dr. Fortun the report prepared by Dr. Nulud so that she can form her own opinion on the cause of Reuben's death.

Relying on Dr. Nulud's sketch,[70] Dr. Fortun illustrated in her own anatomic sketch[71] a similar trajectory of the bullet and expounded on this matter in her Judicial Affidavit as follows:

> 75. Q: Earlier during the testimony of Dr. Nulud he made an illustration of the trajectory, can you confirm the accuracy of the said illustration?
>
> A: Yes. This illustration is consistent with the description of Dr. Nulud.
>
> 76. Earlier marked as Exhibit 35.
>
> 77. Q: Dr. Nulud is his testimony also stated that the trajectory of the bullet in the victim's body indicates that the wound was not self-inflicted, what is your opinion on this?
>
> A: The trajectory of a bullet describes its path inside the body in reference to a person in an anatomic position i.e., standing straight, legs apart and arms away from the trunk with palms forward. **Trajectory alone does not indicate whether a gunshot wound is self-inflicted or not. In Mr. Protacio's case however the bullet went straight front to the back supporting a deliberate self-inflicted shot, not random gunfire such as in an accident**.[72] (Emphasis and underscoring supplied)

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[69] Id. at 136-137.

[70] Id. at 370-371.

[71] Id. at 392-394.

[72] Id. at 62-63.

However, when Dr. Fortun was pressed about the implication of the trajectory of the bullet, she did not disregard the possibility that the shooting was accidental as shown in the following exchange:

Q. In question no. 77 according to you, in the case of Mr. Protacio because the bullet went straight from the front to the back it is indicative of a deliberate self-inflicted shot?

A. Yes, sir.

Q. Are you saying that it is impossible for an accidental shooting for the bullet to go through from the front to back?

A. **Not impossible sir.**[73]

Noticeably, Dr. Fortun contradicted her own statement that trajectory alone does not indicate that a gunshot wound is self-inflicted by hastily concluding that the trajectory of the bullet in Reuben's case showed that it was not an accident.

Moreover, the admission of Dr. Fortun that she also considered the purported information supplied by Randolph to Dr. Pagayatan that Reuben wanted to end his life[74] is another reason for Us not to give credence to her testimony. She does not have personal knowledge about this information as she did not personally talk to Randolph, Dr. Pagayatan, or any of Reuben's house helpers.[75] We have already settled that the purported statement made by Randolph to Dr. Pagayatan which the latter included in his Clinical Abstract is not a *res gestae* statement that may be admitted by the Court as an exception to the hearsay rule.

Likewise, the RTC correctly ruled that Dr. Fortun's testimony regarding the presence of gun powder or residue on Reuben's hand carries no weight because her qualifications and expertise restrict her from testifying on it.[76] In her cross-examination,

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[73] TSN dated December 1, 2014, p. 17.

[74] Id. at 18.

[75] Id. at 19.

[76] Records, p. 541.

Dr. Fortun admitted that forensic chemistry is not her expertise as revealed in the following exchange:

> Q. Do you agree that there are people whose duties include the determination of the presence of gun powder nitrate such as a forensic chemical officer?
>
> A. Yes, sir.
>
> Q. And are you a forensic chemical officer?
>
> A. **No, sir, forensic chemistry is not my line**.[77] (Emphasis supplied)

The Final Investigation Report[78] prepared by PO3 Rico P. Caramat (PO3 Caramat), the investigator on the case, made the following conclusion:

> 1. Based on the foregoing facts and the forensic examination conducted, and the absence of direct witness who actually saw what had transpired inside the bedroom of the deceased, the fact remains that prior to the death of REUBEN PROTACIO, he told his brother that he is cleaning his gun after which a shot rang out and REUBEN was discovered with a gunshot wound on his body, thus his death. With this it could be surmised that REUBEN PROTACIO died of an **accidental gunshot wound**.
>
> 2. As far as this office is concerned[,] this case is considered close[d], without prejudice should new evidence surfaces (sic) to prove otherwise.[79] (Emphasis supplied)

In the Judicial Affidavit of PO3 Caramat which was adopted as his direct-examination, PO3 Caramat identified the Final Investigation Report marked as Exhibit U that he prepared and adopted his findings therein.[80] PO3 Caramat concluded that Reuben died of an accidental gunshot based on the absence of an eye witness and the information Reuben gave to Randolph

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[77] TSN dated December 1, 2014, p. 15.

[78] Records, pp. 187-189.

[79] Id. at 189.

[80] TSN dated February 17, 2014, pp. 10-11.

prior to the incident. When pressed on how he arrived at his conclusion, PO3 Caramat explained that:

> THE WITNESS:
>
> A: Sir, my conclusion arriving to this statement of the brother that he saw his brother cleaning the gun.
>
> ATTY. OCO:
>
> Q: So, your report merely based on the testimonies of the brother, the drivers and the house helper of the deceased. Correct?
>
> A: Yes, sir.[81]

Taking into consideration all the evidence presented, We are convinced that Reuben's death was caused by an accident and not a deliberate self-inflicted gunshot. We are inclined to give more credence to the testimonies and reports prepared by the police investigators and medico-legal officer, Dr. Nulud than the testimony of Dr. Fortun, since they personally examined Reuben, the scene of the incident, and the weapon used.

Susan is entitled to the value of Reuben's outstanding obligation.

The critical question to be resolved now is the extent of Fortune's liability to Susan in light of the fact that the amount of Reuben's obligation at the time of his death exceeded the face value of the policy and Susan had already recovered ₱2,000,000.00 from Rossana.

Fortune argued that even if it is liable to Susan, the extent of its liability should only be limited to ₱1,000,000.00 because when the policy took effect, her investment only amounted to ₱3,000,000.00 and ₱2,000,000.00 had already been returned to her by Rossana.[82] Fortune pointed out that the additional investments amounting to ₱12,000,000.00 were made after the

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[81] Id. at 29.

[82] Id. at 22.

policy took effect.[83] For Fortune, the policy was assigned to Susan only up to the extent of the debt at the time the policy took effect.[84] This argument is erroneous.

It must be clarified that at the time the policy took effect, the investment Susan made was already ₱4,000,000.00.[85] After the policy took effect, Susan invested ₱12,000,000.00 more to Reuben's business. The argument of Fortune is belied by the Endorsement Letter[86] wherein Ma. Teresa B. Catapang (Catapang), Senior Manager—New Business Division of Fortune, stated:

Policy Number	:	61761
Insured	:	REUBEN M. PROTACIO

This certifies that the above policy contract is assigned to SUSAN CO DELA FUENTE-UG7 Megaplaza Bldg. ADB Ave. Ortigas Ctr. Pasig as creditor, **up to the extent of the indebtedness, the balance if any, to the designated beneficiaries.**

Done at Makati City, Philippines, this 25th day of March, 2011.[87] (Emphasis supplied)

Nowhere in the Endorsement Letter[88] is it stated that the insurer shall only be liable to the beneficiary for the amount owing to Susan at the time the policy took effect. Instead, what is clear is that Susan, as the creditor of Reuben and the designated beneficiary of his policy, is entitled to her claim up to the extent of his indebtedness.

The policy of the State against wagering contracts is apparent in Section 3 of the Insurance Code, as amended, requiring the presence of insurable interest for a contract of insurance to be

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[83] Id. at 23.

[84] Id.

[85] Id. at 107-112.

[86] Id. at 429.

[87] Id.

[88] Id.

valid. This is meant to eliminate the temptation of taking out a policy for speculative or evil purposes. Insurance policies should be obtained in good faith, and not for the purpose of speculating upon the hazard of a life in which one has no interest in. Paragraph (c), Section 10 of the same Code enumerates the kinds of insurable interest contemplated in Section 3, to wit:

> Section 10. Every person has an insurable interest in the life and health:
>
> x x x x
>
> (c) **Of any person under a legal obligation to him for the payment of money**, or respecting property or services, **of which death or illness might delay or prevent the performance**; and
>
> x x x x[89] (Emphasis supplied)

Therefore, a debtor may name his creditor as a beneficiary on a life insurance policy taken out in good faith and maintained by the debtor. Likewise, a creditor may take out an insurance policy on the life of his debtor. However, there are marked differences in the implication of these two scenarios.

In the United States (US) Supreme Court case of *Crotty v. Union Mutual Life Ins. Co. of Maine*,[90] a person obtained an insurance policy upon his life with a stipulation that the amount of the policy should be payable to the insured if he survived the stipulated term; or, if he should die within that term, then "to Michael Crotty, his creditor, if living; if not, then to the said executors, administrators or assigns." When his creditor Crotty brought a suit against the insurer, the US Supreme Court declared that:

> x x x [I]f a policy of insurance be taken out by a debtor on his own life, naming a creditor as beneficiary, or with a subsequent assignment to a creditor, the general doctrine is that, on payment of the debt, the creditor loses all interest therein, and the policy becomes one for the

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[89] Republic Act No. 10607, Section 10.

[90] 144 U.S. 621.

benefit of the insured, and collectible by his executors or administrators.[91]

Professor Sulpicio Guevara, an eminent author in insurance law, highlighted the differences between a policy taken by a creditor on the life of his debtor and a policy taken by the debtor on his own life and made payable to his creditor. Reconciling the case of *Crotty* and Philippine insurance law, Professor Guevara explained that:

> x x x [A] distinction should be made between a policy taken by a debtor on his life and made payable to his creditor, and one taken by a creditor on the life of his debtor. Where a debtor in good faith insures his life for the benefit of his creditor, full payment of the debt does not invalidate the policy; in such case, the proceeds should go to the estate of the debtor.[92]

Meanwhile, in a situation where an insurance is taken by a creditor on the life of his debtor, Professor Guevara adopted the ruling in *Godsall v. Boldero*[93] and rationalized that:

> x x x [T]he insuring creditor could only recover such amount as remains unpaid at the time of the death of the debtor, — such that, if the whole debt has already been paid, then recovery on the policy is no longer permissible.[94]

Noticeably, the actual investment of Susan at the time of Reuben's death is ₱16,000,000.00 of ₱1,000,000.00 more than the face value of the policy. The intention of the parties in entering into several memoranda of agreement reflecting the investment contracts, and in taking out an insurance policy on the life of Reuben with Susan as the beneficiary is to secure Reuben's debt. To Our mind, in taking out a policy on his own life and paying its premium, Reuben intended to use it as a

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[91] Id.

[92] Guevara, Sulpicio, The Philippine Insurance Law 4th Edition (1961), p. 35.

[93] 9 East 72 (1807).

[94] Id.

collateral for his debt at least to the amount of the policy's face value. The insurable interest of Susan is not limited to just what Reuben owed her at the time the policy took effect. Instead, she becomes entitled to the value of Reuben's outstanding obligation at the time of his death the maximum recoverable amount of which is the face value of the policy.

Nevertheless, taking into consideration the state's policy against wagering contracts and the principle of equity, the ₱2,000,000.00 which Susan received from Rossana should be deducted from ₱16,000,000.00, the total outstanding obligation of Reuben at the time of his death. The face value of the policy, ₱15,000,000.00 should be the maximum amount that Susan may receive. Therefore, the amount of Fortune's liability to Susan should be computed as follows:

Investment on February 17, 2011[95]	Php2,000,000.00
Investment on March 3, 2011[96]	1,000,000.00
Investment on March 14, 2011[97]	1,000,000.00
Investment prior to effectivity date of policy	Php4,000,000.00
Add: Investment on March 28, 2011[98]	6,000,000.00
Investment on March 28, 2011 [99]	6,000,000.00
Total Investment of Susan	Php16,000,000.00
Less: Amount paid by Rossana Ajon to Susan Dela Fuente	(2,000,000.00)
Total outstanding obligation of Fortune to Susan	**Php14,000,000.00**

Limiting the extent of Fortune's liability to Susan is consistent with the ruling in the case of *Crotty*.[100] Though the case of

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[95] Records, pp. 32-33, 107-108.

[96] Id. at 109-110.

[97] Id. at 111-112.

[98] Id. at 36-37, 113-114.

[99] Id. at 38-39.

[100] 144 U.S. 621.

Crotty may not be on all fours with the one at bar, its principle is instructive in resolving Susan's claim. Having already received ₱2,000,000.00 of the ₱16,000,000.00 Susan invested in Reuben business, she can now only recover up to the balance of his outstanding obligation, ₱14,000,000.00.

Attorney's fees

With respect to the award of attorney's fees, the Civil Code allows attorney's fees to be awarded if, as in this case, exemplary damages are imposed. Considering the protracted litigation of this dispute, an award of ₱50,000.00 as attorney's fees is awarded to Susan.

Legal interest

In accordance with the Court's ruling in the case of *Nacar v. Gallery Frames and/or Felipe Bordey, Jr.*,[101] Susan is entitled to legal interest. In *Nacar*, the Court, modified the imposable interest rates on the basis of Bangko Sentral ng Pilipinas Monetary Board Circular No. 799, which took effect on July 1, 2013, thus:

> II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:
>
> 1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be **6% *per annum*** to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.
>
> 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

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[101] 716 Phil. 267, 278-279 (2013).

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.

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph l or paragraph 2, above, shall be **6% *per annum*** from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

And in addition to the above, judgments that have become final and executory prior to July 1, 2013, shall not be disturbed and shall continue to be implemented applying the rate of interest fixed therein.[102] (Emphasis and italics in the original; citation omitted)

Applying the guidelines in the case of *Nacar* to the present case, 12% interest rate *per annum* shall be imposed on the principal amount due from the time of judicial demand, *i.e.*, from the time of the filing of the complaint, until June 30, 2013. Thereafter, from July 1, 2013, until full satisfaction of the monetary award, the interest rate shall be 6% *per annum*.

WHEREFORE, the Decision dated February 17, 2016 and the Resolution dated May 26, 2016 of the Court of Appeals in CA-G.R. CV No. 105012 are **SET ASIDE**. Respondent Fortune Life Insurance Co., is **ORDERED** to pay petitioner Susan Co Dela Fuente the following:

a. ₱14,000,000.00 representing Reuben's outstanding obligation;

b. ₱50,000.00 as attorney's fees; and

c. costs of suit.

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[102] Id.

Interest at twelve percent (12%) *per annum* of the total monetary awards, computed from the date of the filing of the complaint for damages to June 30, 2013 and six percent (6%) *per annum* from July 1, 2013 until their full satisfaction shall also be imposed on the total judgment award.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 227440. December 2, 2020]

RICARDO O. TRINIDAD, JR., *Petitioner*, *v.* **OFFICE OF THE OMBUDSMAN and FIELD INVESTIGATION OFFICE, OFFICE OF THE OMBUDSMAN**, *Respondents*.

APPEARANCES OF COUNSEL

Manicad Ong & Fallarme for petitioner.

R E S O L U T I O N

LOPEZ, *J.*:

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assails the June 28, 2016 Court of Appeals' (CA) Decision[2] in CA-G.R. SP No. 142793 finding petitioner Ricardo O. Trinidad, Jr. (Ricardo), guilty of gross negligence.

Antecedents

Ricardo served as Engineer II in the Department of Public Works and Highways-Quezon City Second Engineering District (DPWH-QCSED), and was tasked to oversee laborers of the DPWH-QCSED's Oyster Program designed to provide jobs to Filipinos as gardeners or cleaners. Among the laborers of the program are Michael Bilaya (Bilaya), Danilo Martinez (Martinez), Norwena Sanchez (Sanchez), and Danilo dela Torre (dela Torre). Ricardo signed the daily time records (DTRs) of Bilaya, Martinez, Sanchez, and dela Torre for April and May 2005. However, it was found that some of them were either simultaneously employed as traffic aides of the Metropolitan

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[1] *Rollo*, pp. 10-33.

[2] *Id*. at 37-46; penned by Associate Justice Ramon R. Garcia, with the concurrence of Associate Justices Leoncia R. Dimagiba and Jhosep Y. Lopez.

Manila Development Authority (MMDA), or as field coordinators in the Office of Congresswoman Nanette C. Daza; and received double, and even triple compensations from the three government agencies.[3]

Due to this irregularity, an administrative case for dishonesty, gross neglect of duty, grave misconduct, and conduct prejudicial to the best interest of the service, was filed by the Field Investigation Office (FIO) of the Office of the Ombudsman (Ombudsman) against Ricardo and the other approving authorities of the other government agencies involved for signing the workers' DTRs.[4]

On November 5, 2014,[5] the Ombudsman found Ricardo guilty of gross neglect of duty, and meted the penalty of dismissal from the service. The Ombudsman ruled that Ricardo's reliance on the logbook prepared by his subordinate amounts to "*wanton attitude and gross lack of precaution*."[6]

The dispositive portion of the Decision, reads:

WHEREFORE, this Office finds respondents **LEONICIO GALANG OCAMPO, RICARDO OLIVA TRINIDAD, JR. and EVANGELINE BULAONG ABRIGONDA, GUILTY OF GROSS NEGLECT OF DUTY** and as such, are hereby meted the penalty of **DISMISSAL FROM THE SERVICE** with accessory penalties, pursuant to the Revised Rules on Administrative Cases in the Civil Service: CSC Resolution No. 1101502 dated November 21, 2011.

In the event that the penalty can no longer be enforced due to respondents' separation from service, the penalty shall be converted into **FINE EQUIVALENT TO ONE YEAR SALARY** shall be imposed, payable to the Office of the Ombudsman, and may be deductible from respondents' retirement benefits, accrued leave credits or any receivable from her office.

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[3] *Id.* at 38-39.

[4] *Id.* at 39.

[5] *Id.* at 407-416.

[6] *Id.* at 411.

SO ORDERED.[7] (Emphases in the original, underscoring supplied.)

Aggrieved, Ricardo elevated the case to the CA, which affirmed the decision of the Ombudsman.[8] The CA held that the laborers had DTRs in all three government agencies, and the DTRs were approved by Ricardo pursuant to his designation as inspector of the Oyster Program. Ricardo's sole reliance on the logbook as basis for the DTRs amounts to gross negligence. Ricardo sought reconsideration but was denied.[9]

Hence, this Petition.[10] Ricardo asserts that the evidence on record is insufficient to sustain a finding of gross negligence against him. The findings of gross negligence by the Ombudsman and the CA, which were anchored on his own admission that he merely relied on the logbook prepared by his subordinate, is unfounded.

The Court's Ruling

The petition is partly meritorious.

We stress that this Court is not a trier of facts. In a petition for review on *certiorari* under Rule 45, the Court's judicial review is generally confined only to errors of law. While it is widely held that this rule of limited jurisdiction admits of exceptions, none exist in the instant case.[11] Hence, We affirm

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[7] *Id.* at 414-415.

[8] *Supra* note 2, at 46. The dispositive portion of the decision states:

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED**. The Decision dated November 5, 2014 of the Office of the Ombudsman is **AFFIRMED**.

SO ORDERED. (Emphases in the original.)

[9] *Rollo*, pp. 48-49.

[10] *Supra* note 1.

[11] *Navaja v. Hon. de Castro*, 761 Phil. 142 (2015). The recognized exceptions are: (a) When the findings are grounded entirely on speculation, surmises, or conjectures; (b) When the inference made is manifestly mistaken, absurd, or impossible; (c) When there is grave abuse of discretion; (d) When the judgment is based on a misapprehension of facts; (e) When the findings

the findings of the Ombudsman and the CA that Ricardo relied solely on his subordinate's logbook in signing the workers' DTRs.[12] Consequently, the only matter to be resolved is whether Ricardo's reliance on the logbook constitutes gross negligence.

The unjustified reliance on one's subordinate constitutes inexcusable negligence

Ricardo argues that his act of signing the DTRs should not be considered as negligence because he was in good faith when he relied on the work of his subordinate. His reliance on his subordinate is justified considering that his duties with the Oyster Program comprise only five percent (5%) of his total duties. To support this claim, Ricardo cites the case of *Arias v. Sandiganbayan (Arias case)*,[13] wherein this Court declared that "*[a]ll heads of offices have to rely to a reasonable extent on their subordinates*."[14] x x x.

We are not persuaded.

The *Arias case* does not grant officials with a blanket authority to depend on their underlings. There are two important distinctions between the *Arias case* and the case at bar. *First*, Arias was a head of a department tasked to supervise voluminous

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of facts are conflicting; (f) When in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant or the appellee; (g) When the CA's findings are contrary to those by the trial court; (h) When the findings are conclusions without citation of specific evidence on which they are based; (i) When the facts set forth in the petition, as well as in the petitioner's main and reply briefs, are not disputed by the respondent; (j) When the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (k) When the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. *Id.* at 155. (Citation omitted.)

[12] *Rollo*, pp. 45 and 409-410.

[13] 259 Phil. 794 (1989).

[14] *Id.* at 801.

records and documents. *Second, Arias case* involved a criminal case for causing undue injury to the government.

As to the first distinction, the Court's consideration in favor of Arias is, in large part, due to the sheer volume of papers he must sign, which included the irregular purchase orders subject of the charge against him. The Court noted that Arias could not have possibly scrutinized each and every one of the hundreds of documents, letters, memoranda, vouchers, and supporting papers he had to sign. This is not the case here, because Ricardo was tasked with supervising only four workers of the Oyster Program for a brief period of two months. Yet, he failed to exercise due diligence in even verifying that the workers reported for work. Ricardo never alleged in any of his pleadings that he personally saw them report for duty, nor that he exerted any effort to supervise them in any way.

Anent the second distinction, the *Arias case*, involved a criminal case for gross negligence, while Ricardo's case, pertains to administrative negligence. The *Arias case*, dealt exclusively with the guilt of Arias and his co-accused beyond reasonable doubt to defraud the government, without discussing whether they were guilty of negligence.[15] These distinctions between criminal and administrative gross negligence stem from the differences in their purpose, which go beyond a mere difference in the required quantum of evidence. We declared in *Dr. De Jesus v. Guerrero III*,[16] that the purpose of administrative proceedings is mainly to protect the public service, based on the time-honored principle that a public office is a public trust. On the other hand, the purpose of criminal prosecution is the punishment of the criminal.

Clearly, criminal gross negligence is treated differently from administrative gross negligence. While good faith may exculpate a public official from criminal liability, the same does not necessarily relieve him from administrative liability. In *Office*

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[15] *Id*.

[16] 614 Phil. 520 (2009).

of the Court Administrator v. Clerk of Court Marasigan,[17] respondent Marasigan, a Clerk of Court, was found liable for administrative gross negligence for failing to supervise his subordinates in managing court funds. Marasigan claimed that he assigned the task to one of his subordinates in good faith. The Court declared that no amount of good faith could relieve Marasigan from liability for failing to properly administer and safeguard the court's funds. In the more recent case of *Roy III v. The Honorable Ombudsman*,[18] We declared that malice or fraudulent intent cannot be automatically inferred from a mere signature appearing on the purchase order. The Court added that negligence in signing an irregular purchase order would, at worst, only amount to gross negligence.

In this case, Ricardo insists that his reliance on the logbook prepared by his subordinate is justified because his tasks in connection with the Oyster Program comprise only a mere five percent (5%) of his total duties; essentially arguing that a task as miniscule as that, could permissibly be entrusted to one of his subordinates. Such argument cannot be countenanced by this Court. Even assuming that Ricardo's claim is true, he was still duty-bound to perform even a minor task. A public officer's duty, no matter how miniscule, must still be diligently accomplished. No less than the Constitution[19] sanctifies the principle that public office is a public trust, and enjoins all public officers and employees to serve with the highest degree of responsibility, integrity, loyalty, and efficiency.[20] Although supervising the workers of the Oyster Program may have

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[17] 677 Phil. 500 (2011).

[18] G.R. No. 225718, March 4, 2020, citing *Arias v. Sandiganbayan*, *supra* note 13 and *Sistoza v. Desierto*, 437 Phil. 117 (2002).

[19] The 1987 Constitution, Article XI, Section 1, provides: "*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, act with patriotism and justice, and lead modest lives.*"

[20] *Judge Gaviola v. Court Aide Navarette*, 341 Phil. 68, 70-71 (1997).

consisted a very small percentage of Ricardo's tasks, he was still duty-bound to faithfully accomplish it, and to not simply entrust it to his subordinate. Thus, Ricardo cannot be excused for having merely relied on his subordinate, even if it was done in good faith. However, this Court finds that Ricardo's negligence in this case cannot be considered as gross.

Ricardo is guilty only of Simple Negligence

Dereliction of duty may be classified as gross or simple neglect of duty or negligence.[21] Simple negligence is defined as the failure of an employee to give proper attention to a required task expected of him, or to discharge a duty due to carelessness or indifference.[22] On the other hand, gross negligence is characterized by want of even the slightest 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, or by flagrant and palpable breach of duty.[23] It denotes a flagrant and culpable refusal or unwillingness of a person to perform a duty.

Gross negligence, thus, involves an element of intent, more than mere carelessness or indifference to do one's duty. To be held liable for gross negligence, a public official must have intentionally shirked his duty, fully aware that he is duty-bound to perform. Simply, gross negligence involves consciously avoiding to do one's work. In *COC Marigomen*,[24] Manabat — a security guard of the CA — was found guilty of simple negligence for accidentally firing his service firearm. Meanwhile,

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[21] *Re: Complaint of Aero Engr. Reci Against Marquez and DCA Bahia Relative to Crim. Case No. 05-236956*, 805 Phil. 290, 292 (2017).

[22] See *Court of Appeals by: COC Marigomen v. Manabat, Jr.*, 676 Phil. 157, 164 (2011).

[23] Re: Complaint of Aero Engr. Reci Against Marquez and DCA Bahia Relative to Crim. Case No. 05-236956, *supra* note 20; *Court of Appeals by: COC Marigomen v. Manabat, Jr., Id.*

[24] *Supra* note 22.

in *Sarno-Davin v. Quirante*,[25] this Court increased Regional Trial Court Clerk III Quirante's liability from simple to gross negligence for failing to transmit the records of the case to the CA.

Here, We cannot reasonably conclude that Ricardo's failure to check the actual attendance of the workers amounts to gross negligence. *First*, his failure to check the attendance of the workers of the Oyster Program involves mere carelessness considering that Ricardo's tasks relating to the program was not part of his normal duties as engineer, and was merely a transitory duty. He was not made aware that he was to personally supervise the workers of the program. *Second*, there is no showing or even any imputation that Ricardo conspired with the workers to defraud the government, nor did he benefit from the worker's double and triple compensation. *Third*, Ricardo could not be reasonably expected to investigate whether the workers were employed in different government institutions since he was not the one who hired them. *Lastly*, there is no allegation that Ricardo has committed any prior infractions, nor has he been administratively charged in the past. Nonetheless, Ricardo's carelessness in relying on his subordinate's logbook in signing the workers' DTRs, and in his duty of supervising the workers of the Oyster Program — believing that such a minor task does not entail his full attention — is tantamount to simple negligence.

Under Section 46 of the 2011 Revised Rules on Administrative Cases in the Civil Service, simple neglect of duty is classified as a less grave offense, punishable by suspension without pay, for one (1) month and one (1) day, to six (6) months, for the first offense. Considering that the task of supervising the Oyster

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[25] A.M. No. P-19-4021, January 15, 2020. In the cited case, Quirante, in an attempt to justify her failure to transmit the records, claimed that the litigants failed to pay for the duplicate copies to be forwarded to the CA, a requirement not found in the Rules. In imposing a higher penalty, the Court considered that it was Quirante's third infraction, having been reprimanded in the first, and held liable for simple negligence in the second administrative charge against her.

Program's workers is not Ricardo's primary task as an engineer of the DPWH, and this being his first infraction, We deem it proper to impose the penalty of suspension for two (2) months.

FOR THESE REASONS, the petition is **PARTLY GRANTED**. The Court of Appeals' Decision dated June 28, 2016, in CA-G.R. SP No. 142793, is **MODIFIED** in that petitioner Ricardo O. Trinidad, Jr. is **SUSPENDED** for two (2) months, without pay, for simple neglect of duty. He is **WARNED** that a repetition of the same or similar offense shall be dealt with more severely.

SO ORDERED.

Gesmundo, Lazaro-Javier, and *Rosario,*[*] *JJ.*, concur.

Perlas-Bernabe, (S.A.J.) Chairperson, J., on official leave.

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[*] Designated additional Member *per* Special Order No. 2797 dated November 5, 2020.

FIRST DIVISION

[G.R. No. 228704. December 2, 2020]

DIOSA ARRIVAS, *Petitioner*, *v.* **MANUELA BACOTOC**, *Respondent*.

APPEARANCES OF COUNSEL

Manuel D. Justiniani for petitioner.
Ilarde Penetrante & Associates for respondent.

D E C I S I O N

PERALTA, *C.J.*:

Before Us is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] dated May 26, 2016 and the Resolution[2] dated September 30, 2016 of the Court of Appeals *(CA)* in CA-G.R. CR No. 01596, which affirmed, with modifications, the Decision dated September 7, 2010 of the Regional Trial Court, Iloilo City, Branch 31 finding herein petitioner guilty beyond reasonable doubt of the crime of *Estafa* under Article 315, paragraph 1(b) of the Revised Penal Code.

The antecedent facts are as follows:

Diosa Arrivas was charged with *Estafa* in an Information, which read:

That on or about the 23rd day of July, 2003, in the City of Iloilo, Philippines and within the jurisdiction of this Honorable Court, herein accused, took and received in trust from Manuela Bacotoc one (1) men's ring with 2K solo diamond at the center with eight smaller diamonds around, in yellow Gold (14K) valued at P75,000.00 to be

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[1] Penned by Associate Justice Edgardo L. Delos Santos (now a member of this Court), with Associate Justices Edward B. Contreras and Geraldine C. Fiel-Macaraig, concurring; *rollo*, pp. 27-40.

[2] Id. at 50-53.

sold by her at an overprice, the overprice will constitute as her commission, with the express duty and obligation to remit the proceeds of the sale within the same period, however, said accused, far from complying with her express duty and obligation and with grave abuse of confidence, did then and there willfully, unlawfully, and criminally convert and misappropriate to her own personal use and benefit the amount of P75,000.00 or the jewelry received, that despite repeated demands made upon her to remit the proceeds of the sale or return the unsold items, fails and refuses to do so, to the damage and prejudice of Manuela Bacotoc in the sum of P75,000.00.[3]

Arrivas pleaded not guilty, and thus, trial ensued.

Version of the Prosecution and Herein Private Respondent Manuela Bacotoc

Diosa Arrivas and Manuela Bacotoc personally knew each other and had been long-time acquaintances. They are both engaged in buying and selling of jewelries, and had done business together countless times.

On July 23, 2003, Arrivas told Bacotoc that she knew someone who was interested in a male's ring and was willing to buy one at a price ranging from P50,000.00 to P80,000.00. She asked Bacotoc if she had an available item within the given specification. When Bacotoc told Arrivas that she had an available ring, Arrivas asked Bacotoc if she could bring the said ring to her client. Considering the price of the ring, Bacotoc was hesitant at first to entrust the same to Arrivas. The latter, however, was able to convince Bacotoc, and promised that she will return the ring if the buyer would not buy the same, or immediately deliver the amount if the buyer decides to purchase the ring. They then agreed to execute a trust receipt as they usually do whenever they transact business together.

A trust receipt was executed and personally signed by them on that same day, which provides:

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[3] *Id.* at 27.

"Received from MANUELA BACOTOC the following items: 1pc. of men's ring with 2K solo diamond at center and eight smaller diamonds around, in yellow Gold (14K) which cost Php75,000.00. RECEIVED on Consignment from MANUELA the goods stated below. It is hereof understood that all the consigned goods listed hereunder remain the property of BACOTOC on which goods I am also responsible as in their merchantable condition and quantity; and I am also responsible on the loss of any of this goods by theft or otherwise, and that I, upon order on demand will return all consigned goods on hand or otherwise turn order the proceeds of any of the consigned goods to the amount of the prices stated hereunder; and finally, I further agree to assume liability and expense for the safekeeping of these consigned goods. To be sold by me on commission basis and return the same if not sold within two (2) days from today. I am prohibited from giving the above items to sub-agents; signed by Diosa Arrivas on July 23, 2003." *(sic)*

After the lapse of two days from July 23, 2003, however, Arrivas was not able to deliver the payment of the ring or return the same to Bacotoc. The latter tried to look for Arrivas in her usual place of business but she could not be found. It was only after two weeks that Bacotoc was able to finally meet with Arrivas.

During their said meeting, Arrivas told Bacotoc that the payment for the ring will be made in thirty days. However, the said thirty days lapsed and Arrivas still failed to make any payment to Bacotoc.

Thereafter, when Bacotoc again met Arrivas, the latter asked for reconsideration and pleaded that she be allowed to pay the price of the ring in installments as well as pay her old accounts, to which Bacotoc agreed. Nevertheless, no payment was made by Arrivas.

Thus, Bacotoc sent a demand letter dated November 3, 2004 to Arrivas, and demanded for the payment of the ring in the amount of ₱75,000.00. The said demand letter was sent through registered mail and was personally received by Arrivas on November 5, 2004. Arrivas then met with Bacotoc's lawyer and promised to settle the amount in installments. However, Arrivas again failed to comply with her promise.

Version of Herein Petitioner

Arrivas and Bacotoc were long time acquaintances, and they were engaged in the same business of buying and selling jewelries. They had, likewise, entered into countless transactions where Bacotoc would also buy jewelries from Arrivas.

On July 23, 2003, Bacotoc and Arrivas, together with Virgie Valencia, Letty Espinosa, and Daphne Lopez, met at the stall of Arrivas because Valencia and Espinosa were looking for a men's diamond ring. Bacotoc had an available stock of the ring which the two wanted, but she would not release the same unless Bacotoc sign a receipt for them. Thus, as usual, Bacotoc released the men's diamond ring after Arrivas signed a trust receipt in the amount of Php75,000.00.

On August 8, 2003, or fifteen days from July 23, 2003, but prior to the filing of Bacotoc's complaint, Arrivas paid Bacotoc a partial amount of Php20,000.00 from her own pocket because Valencia and Espinosa did not appear after the lapse of the two days agreed in the trust receipt. Arrivas further made several payments even after the filing of the complaint.

Lopez testified for Arrivas that on July 23, 2003, Arrivas, Espinosa, and Valencia met with Bacotoc because Espinosa and Valencia were looking for a men's ring to sell. Lopez further testified that because Espinosa and Valencia had unsettled accounts with Bacotoc, the latter did not want to give it to them and instead asked Arrivas to sign the receipt for the two.

Ruling of the RTC

After trial on the merits, the trial court rendered judgment convicting Arrivas. Its decision read —

WHEREFORE, IN VIEW OF THE FOREGOING, the prosecution having established the guilt of the accused of the offense of Swindling as defined and penalized under Art. 315, par. 1(b), Revised Penal Code, JUDGMENT is hereby rendered finding said accused DIOSA ARRIVAS, GUILTY beyond reasonable doubt of said crime and hereby sentences her to suffer the indeterminate penalty of imprisonment consisting of six (6) months and one (1) day of *Prision*

Correccional[,] as minimum[,] to six (6) years and (1) day of *Prision Mayor*[,] as maximum, to indemnify the offended party the amount of P75,000.00 by way of actual damages and to pay attorney's fees equivalent to 25% of the value of the ring, as well as to suffer all the accessory penalties provided by law.

SO ORDERED.[4]

The trial court held that the elements of *Estafa* under paragraph 1 (b) of Article 315 had been established — a personal property, that is, one men's diamond ring, valued at ₱75,000.00 was delivered to and received by Arrivas on July 23, 2003 with the obligation to sell the same and deliver the proceeds thereof to Bacotoc; otherwise, if not sold, to return the said ring to Bacotoc within two days therefrom. The trial court further noted that Arrivas admitted the identity of the subject ring and that she understood the terms and conditions of the trust receipt when she signed the same.

While Arrivas claimed that payments were made, the trial court found that none of the receipts evidencing the alleged payments referred to the July 23, 2003 transaction involving the subject ring. The trial court added that the receipts showed that these were payments made to Arrivas's previous accounts with Bacotoc. The trial court, however, considered the payments made by Arrivas as a manifestation of her lack of intent to commit so grave a wrong, a mitigating circumstance, and imposed the minimum penalty.

Aggrieved, Arrivas filed an appeal before the Court of Appeals.

Ruling of the CA

In its Decision dated May 26, 2016, the CA denied Arrivas's appeal and affirmed, with modifications, the ruling of the trial court.

It held that all the elements of Estafa under Article 315, paragraph 1(b) of the Revised Penal Code were established by the prosecution.

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[4] *Id.* at 30-31.

A motion for reconsideration was filed by Arrivas, but the same was denied by the CA in its Resolution dated September 30, 2016.

Thus, this petition for review.

Issues

The petitioner raises the following issues:

I. WHETHER OR NOT THE COURT OF APPEALS ERRED IN NOT CONSIDERING THAT THE PHP20,000.00 PAYMENT MADE BEFORE THE LETTER OF DEMAND WAS FOR THE VALUE OF THE DIAMOND RING AND THIS CONVERTED THE TRUST RELATIONSHIP INTO DEBTOR-CREDITOR RELATIONSHIP.

II. WHETHER OR NOT THERE WAS NOVATION OF THE PRINCIPAL OBLIGATION OF TRUST.

Petitioner Arrivas contends that there was no demand made by Bacotoc prior to the partial payment of ₱20,000.00, and that this partial payment was for the principal of ₱75,000.00, or the amount of the subject men's ring. Thus, the trust relationship between them was novated, and it was converted into one between a debtor and a creditor.

Basing on this premise, Arrivas contends that Article 1292 of the Civil Code should have been applied since a contract of sale novated the principal obligation of trust, and this was before the consummation of the crime of *Estafa*.

Our Ruling

The petition lacks merit.

The Rules of Court requires that only questions of law should be raised in petitions filed under Rule 45.[5] This Court is not a trier of facts. It will not entertain questions of fact as the factual findings of the appellate courts are "final, binding[,] or conclusive

[5] Rules of Court, Rule 45, Sec. 1.

on the parties and upon this [c]ourt"[6] when supported by substantial evidence.[7] Factual findings of the appellate courts will not be reviewed nor disturbed on appeal to this court.[8]

However, these rules do admit of exceptions. Over time, the exceptions to these rules have expanded. At present, there are ten (10) recognized exceptions that were first listed in *Medina v. Mayor Asistio, Jr.*:[9]

> (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.

These exceptions similarly apply in petitions for review filed before this court involving civil,[10] labor,[11] tax,[12] or criminal cases.[13]

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[6] *Commissioner of Internal Revenue v. Embroidery and Garments Industries (Phil.), Inc.*, 364 Phil. 541, 546 (1999) [Per J. Pardo, First Division].

[7] *Siasat v. Court of Appeals*, 425 Phil. 139, 145 (2002) [Per J. Pardo, First Division]; *Tabaco v. Court of Appeals*, 239 Phil. 485, 490 (1994) [Per J. Bellosillo, First Division]; and *Padilla v. Court of Appeals*, 241 Phil. 776, 781 (1988) [Per J. Paras, Second Division].

[8] *Bank of the Philippine Islands v. Leobrera*, 461 Phil. 461, 469 (2003) [Per J. Ynares-Santiago, Special First Division].

[9] 269 Phil. 225 (1990) [Per J. Bidin, Third Division].

[10] *Dichoso, Jr., et al. v. Marcos*, 663 Phil. 48 (2011) [Per J. Nachura, Second Division] and *Spouses Caoili v. Court of Appeals*, 373 Phil. 122, 132 (1999) [Per J. Gonzaga-Reyes, Third Division].

[11] *Go v. Court of Appeals*, 474 Phil. 404, 411 (2004) [Per J. Ynares-Santiago, First Division] and *Arriola v. Filipino Star Ngayon, Inc., et al.*, 741 Phil. 171 (2014) [Per J. Leonen, Third Division].

A question of fact requires this Court to review the truthfulness or falsity of the allegations of the parties.[14] This review includes assessment of the "probative value of the evidence presented."[15] There is also a question of fact when the issue presented before this Court is the correctness of the lower courts' appreciation of the evidence presented by the parties.[16]

In this case, the issues raised by the petitioner are essentially encapsulated by the first issue outlined above, which obviously asks this Court to review the evidence presented during the trial. Clearly, this is not the role of this Court, because the issue presented is factual in nature. Thus, the present petition must fail.

Nevertheless, We shall discuss the substantial matters for the guidance of the bar and the bench.

The elements of *Estafa* under Article 315, paragraph 1 (b) are: (1) the offender's receipt of money, goods, or other personal property in trust, or on commission, or for administration, or under any other obligation involving the duty to deliver, or to return, the same; (2) misappropriation or conversion by the offender of the money or property received, or denial of receipt of the money or property; (3) the misappropriation, conversion or denial is to the prejudice of another; and (4) demand by the

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[12] *Commissioner of Internal Revenue v. Embroidery and Garments Industries (Phil.), Inc.*, 364 Phil. 541, 546-547 (1999) [Per J. Pardo, First Division].

[13] *Macayan, Jr. v. People*, 756 Phil. 202 (2015) [Per J. Leonen, Second Division]; *Benito v. People*, 753 Phil. 616 (2015) [Per J. Leonen, Second Division].

[14] *Republic v. Ortigas and Company Limited Partnership*, 728 Phil. 277, 287-288 (2014) [Per J. Leonen, Third Division] and *Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc.*, 665 Phil. 784, 788 (2011) [Per J. Carpio-Morales, Third Division].

[15] *Republic v. Ortigas and Company Limited Partnership, supra*, at 287 [Per J. Leonen, Third Division].

[16] *Pascual v. Burgos, et al.*, 776 Phil. 167, 183 (2016) [Per J. Leonen, Second Division].

offended party that the offender return the money or property received.

As aptly ruled by the Court of Appeals, all of the elements were established by the prosecution.

First. The trust receipt covering the July 23, 2003 transaction unequivocally shows the fiduciary relationship between the parties. Arrivas was entrusted with the diamond ring with the specific authority to sell the same, and the corresponding duty to return it, or the proceeds thereof should it be sold, within two days from the time of the execution of the receipt. These matters were admitted by Arrivas during trial.

Second. Arrivas failed to return the ring, or the proceeds thereof, within the period agreed upon in the trust receipt, and even after a written demand. The failure to account upon demand, for funds or property held in trust, is circumstantial evidence of misappropriation.[17]

Third. Arrivas's failure to return the subject ring or its value, despite demand, resulted to the damage and prejudice of Bacotoc.

Lastly. Oral and written demands were made by Bacotoc to the petitioner.

It is in this last element that petitioner anchors her case — that there was no demand prior to the partial payment of the ₱20,000.00.

Even assuming that the ₱20,000.00 payment is for the value of the diamond ring, which it is not as ruled by the trial court and the CA, failure to account, upon demand for funds or property held in trust, is circumstantial evidence of misappropriation.[18]

Likewise, novation will not apply even if the ₱20,000.00 was made before demand.

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[17] *D'Aigle v. People*, 689 Phil. 480, 481 (2012) [Per J. Del Castillo, First Division].

[18] *Asejo v. People*, 555 Phil. 106, 114 (2007) [Per J. Velasco, Jr., Second Division], citing *Tubb v. People*, 101 Phil. 114, 119 (1957) [Per J. Concepcion, En Banc].

Novation is defined as the extinguishment of an obligation by the substitution or change of the obligation by a subsequent one which terminates the first, either by changing the object or principal conditions, or by substituting the person of the debtor, or subrogating a third person in the rights of the creditor.

Article 1292 of the Civil Code on novation further provides:

> Article 1292. In order that an obligation may be extinguished by another which substitute the same, it is imperative that it be so declared in unequivocal terms, or that the old and the new obligations be on every point incompatible with each other.

It is well settled that novation is never presumed — *novatio non praesumitur*. As the party alleging novation, the onus of showing clearly and unequivocally that novation had indeed taken place rests on the petitioner. This, however, she failed to do.

Penalty

The decisive factor in determining the criminal and civil liabilities for the crime of *Estafa* depends on the value of the thing or the amount defrauded. In this case, records will show that the value of the diamond ring is ₱75,000.00.

By virtue of Republic Act No. 10951,[19] the amounts which a penalty is based under the Revised Penal Code were adjusted. Section 85 thereof provides:

> Section 85. Article 315 of the same Act, as amended by Republic Act No. 4885, Presidential Decree No. 1689, and Presidential Decree No. 818, is hereby further amended to read as follows:
>
> > Art. 315. *Swindling (estafa).* — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

[19] *An Act Adjusting the Amount or the Value of Property and Damage on which a Penalty is Based and the Fines Imposed under the Revised Penal Code Amending for the Purpose Act No. 3815 Otherwise Known as the "Revised Penal Code" as Amended.*

x x x

3rd. The penalty of ***arresto mayor* in its maximum period to *prisión correccional* in its minimum period**, if such amount is over Forty thousand pesos (₱40,000) but does not exceed One million two hundred thousand pesos (₱1,200,000).

x x x. (Emphasis supplied)

Thus, the penalty must be accordingly modified in line with the settled rule on the retroactive effectivity of laws. For as long as it is favorable to the accused, said recent legislation shall find application. The accused shall be entitled to the benefits of the new law warranting him to serve a lesser sentence.[20]

There being no mitigating and aggravating circumstance, the maximum penalty should be one (1) year and one (1) day of *prision correccional*. Applying the Indeterminate Sentence Law, the minimum term of the indeterminate sentence is *arresto mayor* in its minimum and medium periods, the range of which is one (1) month and one (1) day to four (4) months. Thus, the indeterminate penalty should be modified to a prison term of two (2) months and one (1) day of *arresto mayor*, as minimum, to one (1) year and one (1) day of *prision correccional*, as maximum.

In addition, an interest rate of six percent (6%) *per annum* is, likewise, imposed on all the monetary awards for damages from the date of finality of this Decision until full payment.

WHEREFORE, premises considered, the instant petition is **DENIED**. The Decision dated May 26, 2016 and the Resolution dated September 30, 2016 of the Court of Appeals in CA-G.R. CR No. 01596 are hereby **AFFIRMED** with **MODIFICATION**. Petitioner is hereby sentenced to suffer the indeterminate penalty of two (2) months and one (1) day of *arresto mayor*, as minimum, to one (1) year and one (1) day of *prision correccional*, as maximum. In addition, an interest rate of six percent (6%) *per annum* is, likewise, imposed on all the monetary awards for

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[20] *Hernan v. Sandiganbayan*, G.R. No. 217874, December 5, 2017.

damages from the date of finality of this Decision until full payment.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 229937. December 2, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **BBB,**[1] *Accused-Appellant*.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

CAGUIOA, ***J.*:**

This is an Appeal,[2] filed pursuant to Section 2, Rule 125 in relation to Section 3, Rule 56 of the Revised Rules of Court,

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[1] The identity of the victims or any information which could establish or compromise their identities, as well as those of their immediate family or household members, shall be withheld pursuant to Republic Act No. (R.A.) 7610, titled "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES," approved on June 17, 1992; R.A. 9262, titled "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 Administrative Matter (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, titled "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; and *People v. XXX and YYY*, G.R. No. 235652, July 9, 2018, 871 SCRA 424.)

[2] *Rollo*, pp. 24-25. Notice of Appeal dated October 3, 2016.

from the Decision[3] dated September 22, 2016 (assailed Decision) of the Court of Appeals, Twenty-Second Division (CA), in CA-G.R. CR-HC No. 01333-MIN. The assailed Decision affirmed, with modification, the Joint Decision[4] dated August 28, 2014 rendered by the Regional Trial Court of SSS, Zamboanga del Norte, Branch 11 (RTC), in Criminal Case Nos. 624, 625, 626, 627, and 628, which found accused-appellant BBB (BBB) guilty beyond reasonable doubt of four counts[5] of rape with the qualifying aggravating circumstance of relationship and minority of the victim.[6]

The accusatory portions of the Informations against BBB read:

Criminal Case No. 624

"That in the morning, on or about the 2nd day of February, 1995, in the Municipality of [ZZZ], Zamboanga del Norte, within the jurisdiction of this Honorable Court, the said accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously succeed in having sexual intercourse with his own daughter [AAA], a 14-year old minor, against her will and without her consent.

CONTRARY TO LAW, (Viol. of Art. 335 of the Revised Penal Code, in relation to R.A. 7610), with the following aggravating/ qualifying circumstances: that the victim is under eighteen (18) years of age and the defendant is a parent of the victim."

Criminal Case No. 625

"That in the evening, on or about the 4th day of February, 1995, in the Municipality of [ZZZ], Zamboanga del Norte, within the jurisdiction of this honorable Court, the said accused, by forcing the victim to take sleeping pill (sic), did then and there willfully, unlawfully

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[3] *Id.* at 3-23. Penned by Associate Justice Maria Filomena D. Singh and concurred in by Associate Justices Edgardo A. Camello and Perpetua T. Atal-Paño.

[4] CA *rollo*, pp. 38-63. Penned by Presiding Judge Reymar L. Lacaya.

[5] In Criminal Case No. 625, BBB was acquitted; id. at 63.

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

and feloniously succeed in having sexual intercourse with his own daughter AAA, a 14-year old minor, against her will and without her consent.

CONTRARY TO LAW, (Viol. of Art. 335 of the Revised Penal Code, in relation to R.A. 7610), with the following aggravating/ qualifying circumstances: that the victim is under eighteen (18) years of age and the defendant is a parent of the victim."

Criminal Case No. 626

"That in the evening, on or about the 15th day of December, 1995, in the Municipality of [ZZZ], Zamboanga del Norte, within the jurisdiction of this Honorable Court, the said accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously succeed in having sexual intercourse with his own daughter [AAA], a 15-year old minor, against her will and without her consent.

CONTRARY TO LAW, (Viol. of Art. 335 of the Revised Penal Code, in relation to R.A. 7610), with the following aggravating/ qualifying circumstances: that the victim is under eighteen (18) years of age and the defendant is a parent of the victim."

Criminal Case No. 627

"That in the evening, on or about the 15th day of January, 1996, in the Municipality of [ZZZ], Zamboanga del Norte, within the jurisdiction of this Honorable Court, the said accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously succeed in having sexual intercourse with his own daughter [AAA], a 15-year old minor, against her will and without her consent.

CONTRARY TO LAW, (Viol. of Art. 335 of the Revised Penal Code, in relation to R.A. 7610), with the following aggravating/ qualifying circumstances: that the victim is under eighteen (18) years of age and the defendant is a parent of the victim."

Criminal Case No. 628

"That on or about the 30th day of August, 1997, in the Municipality of [ZZZ], Zamboanga del Norte, within the jurisdiction of this Honorable Court, the said accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously succeed in having sexual intercourse with his own daughter [AAA], a 16-year old minor, against her will and without her consent.

CONTRARY TO LAW, (Viol. of Art. 335 of the Revised Penal Code, in relation to R.A. 7610), with the following aggravating/ qualifying circumstances: that the victim is under eighteen (18) years of age and the defendant is a parent of the victim."[7]

Upon arraignment, BBB pleaded "not guilty."[8] Trial on the merits ensued thereafter.

The Facts

The CA summarized the facts as follows:

The prosecution presented the victim AAA and her mother CCC, who testified on the following facts:

On 2 February 1995, AAA, who was then 14 years old, was left by her mother in their house at YYY, ZZZ, Zamboanga del Norte, with her siblings and her father. On that day, poking a knife at her, she was told by her father to sit on a sewing machine located at the second floor of their house. She was thereafter told to remove her short pants and her panty. AAA tried to resist but her father pointed the knife on her side prompting her to accede to her father's command. BBB then proceeded to insert his penis into her vagina while covering her mouth and while holding a knife to prevent her from shouting. She was told by her father after that she should not tell her mother and siblings about what happened, otherwise, he would kill them.

On 15 December 1995, AAA, who was then 15 years old, was left in their house with her father as she was not allowed by him to go to the celebration of the Araw ng Barangay UUU which was taking place two kilometers away from their house. At around 6:00 o'clock in the evening, she was threatened by a scythe by her father and was told to undress, or else she will be hurt. While lying on the floor, she was once again raped by her father until he reached his orgasm. Thereafter, she was told by her father that if her mother learns of what happened, he will kill all of them.

On 15 January 1996, AAA, together with her mother and her siblings, went to Brgy. TTT to watch the activities in connection with the celebration of the Araw ng TTT. However, 30 minutes after

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

[8] Id. at 6.

their arrival, she was fetched by her father and was told to go home with him. At first, she resisted as she wanted to watch the celebrations but her father pulled her towards his motorcycle, and she was thereafter brought home. After their arrival in their house, AAA was told by her father to proceed upstairs. Once inside the room in the second floor of their house, she was once again told by her father to undress. After refusing to follow her father's command, his father got a scythe and poked it at her. Because of this, she once again acceded to her father's command to undress and to lie down on the floor where her father once again sexually molested her.

On the morning of 30 August 1997, AAA and her father were left alone in their house. Her father once again told her to go upstairs. After refusing to obey his command, his father got a scythe and poked it at her, which forced her to follow her father's command. Once inside the room, [her] father asked her to undress. Again, she refused, but her father proceeded to poke the scythe that he was holding at her, and threatened her that he will kill her if she does not obey him. When she was already lying on the floor, she told her father not to rape her because she is his daughter, to which her father replied that it would be better that it is him who will use her and not other people. Thereafter, her father once again raped her.

BBB denied that he raped his daughter AAA. He claimed that all the charges against him are lies, and what motivated his daughter to file the charges was because she got mad at him for not giving her money when she asked for it, and also she got mad at him because he punished her before by hitting her with a pipe. BBB further claimed that it was AAA's mother, CCC, who instigated her to file the charges because she was suspicious that BBB had another woman.

In his defense, BBB testified that on 2 February 1995, when the alleged rape subject of Criminal Case No. 624 took place, he was at Brgy. XXX, ZZZ, Zamboanga del Norte working as a maker of hollow blocks. The site of his workplace is about 20 kilometers away from their house in YYY. He claimed that he left YYY to go to XXX on 10 January 1995 and only returned home on 14 February 1995.

On 15 December 1995, when the rape subject matter of Criminal Case No. 626 allegedly occurred, BBB claimed that he was in his brother's house in WWW helping to assemble his motor. He claimed that he left their house on 10 December 1995, and only returned on 20 December 1995.

On 15 January 1996, when the rape subject of Criminal Case No. 627 was supposed to have been committed, BBB claimed that he stayed for five days in Brgy. VVV to harvest the coconuts in his father's one-hectare land.

On 30 August 1997, when the last rape incident under Criminal Case No. 628 allegedly happened, BBB claimed that he was in Malaysia. According to him, he stayed in Malaysia for five years from the time that he left on 20 May 1997.[9]

The Ruling of the RTC

In its Joint Decision[10] dated August 28, 2014, the RTC found BBB guilty beyond reasonable doubt of four counts of rape but acquitted him in Criminal Case No. 625. The dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. In Criminal Case No. 625, accused [BBB] is ***acquitted*** of the offense charge based on reasonable doubt, with cost *de officio*; and

2. In Criminal Case Nos. 624, 626, 627 and 628, the Court finds accused [BBB] ***guilty beyond reasonable doubt*** and as principal of four (4) counts of rape with the existence of the aggravating circumstances of relationship and minority of the victim and hereby sentences him to suffer the penalty of *reclusion perpetua* in each case without eligibility [for] parole.

Further, the accused is sentenced to pay private complainant **AAA** the amount of [₱]75,000.00 as civil indemnity, and the amount of [₱]50,000.00 as moral damages in each case. Finally[,] accused is sentenced to pay the costs of suit.

The accused being a detention prisoner, he shall be credited the preventive imprisonment he has undergone in the service of his sentence.

SO ORDERED.[11]

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[9] Id. at 6-8.

[10] CA *rollo*, pp. 38-63.

[11] Id. at 63. Emphasis in the original.

BBB appealed to the CA *via* a Notice of Appeal dated September 15, 2014.[12] He filed his Brief on March 25, 2015,[13] while the People, through the Office of the Solicitor General (OSG), filed an Appellee's Brief on August 12, 2015.[14]

The Ruling of the CA

In the assailed Decision,[15] the CA affirmed, with modification, the RTC's Decision as follows:

> **WHEREFORE**, the appeal is hereby **DENIED**. The Decision of Branch 11 of the Regional Trial Court of SSS, Zamboanga del Norte dated 28 August 2014 is hereby **AFFIRMED WITH MODIFICATION**. BBB is found **GUILTY** beyond reasonable doubt of four counts of **RAPE** in Criminal Case Nos. 624, 626, 627, and 628 and is hereby sentenced to *reclusion perpetua*, in lieu of death, without eligibility [for] parole, for each of these four counts of rape. He is also ordered to pay the victim One hundred Thousand Pesos ([₱]100,000.00) as civil indemnity *ex delicto* for each count of rape, One Hundred Thousand Pesos ([₱]100,000.00) as moral damages for each count of rape, and One Hundred Thousand Pesos ([₱]100,000.00) as exemplary damages for each count of rape.
>
> **SO ORDERED.**[16]

The CA found that the prosecution was able to establish by proof beyond reasonable doubt all the elements of rape. It likewise found no cogent reason to depart from the findings of the RTC as to the credibility of AAA and upheld her testimony as against the denial and alibi of BBB. However, following prevailing jurisprudence, the CA modified the award of damages ordered by the RTC.[17]

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[12] Id. at 10-11.

[13] Id. at 19-36.

[14] Id. at 73-98.

[15] *Rollo*, pp. 3-23.

[16] Id. at 22-23.

[17] Id. at 10-22.

Hence, this recourse.

BBB filed a Manifestation in Lieu of Supplemental Brief[18] dated August 14, 2017 while the People filed a Manifestation and Motion[19] dated August 8, 2017, both foregoing their respective rights to file supplemental briefs, their respective briefs filed with the CA having already exhausted all of their arguments in the present case.

Issue

The main issue for resolution of the Court is whether the RTC and the CA erred in convicting BBB of four counts of rape.

The Court's Ruling

The appeal lacks merit.

BBB may only be prosecuted for the crime of Rape under the Revised Penal Code (RPC), not sexual abuse under Section 5 of Republic Act No. (R.A.) 7610.

At the outset, the Court observes that the four Informations subject of the present appeal, all alleging sexual intercourse "by means of force and intimidation," charged BBB of violation "of Art. 335 of the [RPC] in relation to R.A. 7610." A perusal, however, of the said Informations reveal that the crime charged is, and that BBB may only be prosecuted for, rape under the RPC and not likewise violation of R.A. 7610, specifically Section 5[20] thereof.

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[18] Id. at 41-42.

[19] Id. at 36-37.

[20] Sec. 5 of R.A. 7610 provides:

Sec. 5. *Child Prostitution and Other Sexual Abuse*. — Children, whether male or female, who for money, profit, or any other consideration or **due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse**.

Considering the dates when the subject rape incidents occurred, Article 335[21] of the RPC, prior to its amendment by R.A. 8353,[22] applies. Under this provision, the relevant elements of rape are: (a) the offender had carnal knowledge of the victim; and (b) said carnal knowledge was accomplished through the use of force or intimidation.[23]

Upon the other hand, the elements of Section 5(b) of R.A. 7610 are:

1) Offender is a man;

2) who indulges in sexual intercourse with a female child exploited in prostitution or other sexual abuse, who is 12 years old or below 18, or above 18 years old, under special circumstances;[24] and

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The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

(a) Those who engage in or promote, facilitate or induce child prostitution which include, but are not limited to, the following:

x x x x

(4) Threatening or using violence towards a child to engage him as a prostitute; or

x x x x

(b) **Those who commit the act of sexual intercourse of lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse**[.] x x x (Emphasis supplied)

[21] Art. 335 of the RPC states:

ARTICLE 335. *When and how rape is committed*. — Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or **intimidation[.]**

xxx xxx xxx (Emphasis supplied)

[22] Otherwise known as the "ANTI-RAPE LAW OF 1997," approved on September 30, 1997.

[23] *People v. Alejandro*, G.R. No. 225608, March 13, 2017, 820 SCRA 189, 199-200.

[24] Under Article I, Section 3 of R.A. 7610, Children is referred as:

3) Coercion or influence of any adult, syndicate or group is employed against the child to become a prostitute.[25]

As regards the second element of Section 5(b), a "child exploited in prostitution or other sexual abuse" is one who, for money or profit or any other consideration, or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct.

Regarding the coercion or influence in the third element of Section 5 (1), the same is exerted upon the child to indulge in sexual intercourse NOT by the offender (who engaged in sexual intercourse with the child) but by another "adult, syndicate or group" whose liability is found in Section 5(a) of the same law for engaging in, promoting, facilitating or inducing child prostitution.[26]

Hence, where the victim is below 18 years old and the charge is carnal knowledge through force, threat or intimidation, the accused must be prosecuted under the RPC.[27] In the instances that the information wrongfully designates the crime as rape under the RPC in relation to Section 5(b) of R.A. 7610, like in the present case, the accused must still be prosecuted pursuant to the RPC. This is not only because the elements of the crimes are different, as explained, but likewise that the graver penalty provided under the RPC furthers the avowed policy of the

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SEC. 3. *Definition of Terms*. —

(a) **"Children"** refers to person[s] below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition[.]

x x x x

[25] *People v. Tulagan*, G.R. No. 227363, March 12, 2019, 896 SCRA 307, 387.

[26] Id. at 386; *J.* Caguioa, Concurring and Dissenting Opinion, id. 535-536.

[27] Id. at 384.

Congress in enacting R.A. 7610. The Court, in *People v. Tulagan*[28] (*Tulagan*), expounded on this thus:

x x x **"[F]orce, threat, or intimidation" is the element of rape under the RPC, while "due to coercion or influence of any adult, syndicate or group" is the operative phrase for a child to be deemed "exploited in prostitution or other sexual abuse," which is the element of sexual abuse under Section 5(b) of R.A. No. 7610. The "coercion or influence" is not the reason why the child submitted herself to sexual intercourse, but it was utilized in order for the child to become a prostitute**. Considering that the child has become a prostitute, the sexual intercourse becomes voluntary and consensual because that is the logical consequence of prostitution as defined under Article 202 of the RPC, as amended by R.A. No. 10158 where the definition of "prostitute" was retained by the new law[.]

x x x x

Therefore, there could be no instance that an Information may charge the same accused with the crime of rape where "force, threat or intimidation" is the element of the crime under the RPC, and, at the same time[,] violation of Section 5(b) of R.A. No. 7610 where the victim indulged in sexual intercourse because she is exploited in prostitution either "for money, profit or any other consideration or due to coercion or influence of any adult, syndicate or group" — the phrase which qualifies a child to be deemed "exploited in prostitution or other sexual abuse" as an element of violation of Section 5(b) of R.A. No. 7610.

x x x x

Assuming that the elements of both violations of Section 5(b) of R.A. No. 7610 and of Article 266-A, paragraph 1(a) of the RPC are mistakenly alleged in the same Information — *e.g.*, carnal knowledge or sexual intercourse was due to "force or intimidation" with the added phrase of "due to coercion or influence," one of the elements of Section 5(b) of R.A. No. 7610; or in many instances wrongfully designate the crime in the Information as violation of "Article 266-A, paragraph 1(a) in relation to Section 5(b) of R.A. No. 7610," although this may be a ground for quashal of the

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[28] Supra note 25.

Information under Section 3(f) of Rule 117 of the Rules of Court — and proven during the trial in a case where the victim who is 12 years old or under 18 did not consent to the sexual intercourse, **the accused should still be prosecuted pursuant to the RPC, as amended by R.A. No. 8353, which is the more recent and special penal legislation that is not only consistent, but also strengthens the policies of R.A. No. 7610. Indeed, while R.A. No. 7610 is a special law specifically enacted to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination and other conditions prejudicial to their development, We hold that it is contrary to the legislative intent of the same law if the lesser penalty (*reclusion temporal* medium to *reclusion perpetua*) under Section 5(b) thereof would be imposed against the perpetrator of sexual intercourse with a child 12 years of age or below 18.**[29]

It is worthy of note that *Tulagan* discusses the rape law (Article 266-A of the RPC) as already amended by R.A. 8353. As mentioned, the present rape charges were committed prior to such amendment and under the regime of Article 335 of the RPC as amended by R.A. 7659.[30] However, the same reasoning in *Tulagan* applies in the present case — Article 335 of the RPC as amended by R.A. 7659 was a more recent law and provides for a graver penalty,[31] and, hence, better deterrence against child rape than R.A. 7610. It therefore strengthens the legislative intent in the enactment of R.A. 7610 to provide special protection to children against all forms of abuses.

Considering the foregoing, here, while all the elements of rape under the RPC are alleged, the second and third elements

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[29] Id. at 387-390. Emphasis supplied.

[30] Entitled "AN ACT TO IMPOSE THE DEATH PENALTY ON CERTAIN HEINOUS CRIMES, AMENDING FOR THAT PURPOSE THE REVISED PENAL LAWS, AS AMENDED, OTHER SPECIAL PENAL LAWS AND FOR OTHER PURPOSES," approved on December 13, 1993.

[31] Under this law, simple rape is punished by *reclusion perpetua*. If committed under certain enumerated qualifying circumstances, the penalty of rape is death. On the other hand, R.A. 7610, Sec. 5 (b) provides for the penalty of *reclusion temporal* medium to *reclusion perpetua*.

of Section 5(b) of R.A. 7610 are missing. Hence, BBB must be prosecuted under the RPC which likewise provides for a graver penalty — consistent with the policy of the State to provide special protection to children against abuses. Moreover, BBB cannot both be prosecuted under the RPC and R.A. 7610 despite the designation made in the Informations. What controls is not the title of the information or the designation of the offense, but the actual facts recited in the Information.[32] As discussed by the Court in *Pielago v. People*,[33]

> It is well-settled that in all criminal prosecutions, the accused is entitled to be informed of the nature and cause of the accusation against him. In this respect, the designation in the Information of the specific statute violated is imperative to avoid surprise on the accused and to afford him the opportunity to prepare his defense accordingly. In the instant case, the designation of the offense in the Information against Pielago was changed from the crime of acts of lasciviousness in relation to Section 5(b) of R.A. No. 7610 to the crime of rape by sexual assault penalized under Article 266-A(2) of the Revised Penal Code, as amended by R.A. No. 8353. It cannot be said, however, that his right to be properly informed of the nature and cause of the accusation against him was violated. This Court is not unaware that the Information was worded, as follows: "*x x x commit an act of lasciviousness upon the person of [AAA], a minor being four (4) years old, by kissing the vagina and inserting one of his fingers to the vagina of AAA, x x x.*" And, as correctly explained by the CA, **the factual allegations contained in the Information determine the crime charged against the accused and not the designation of the offense as given by the prosecutor which is merely an opinion not binding to the courts**. As held in *Malto v. People*:
>
> > **What controls is not the title of the information or the designation of the offense but the actual facts recited in the information. In other words, it is the recital of facts of the commission of the offense, not the nomenclature of the offense, that determines the crime being charged in the information**. x x x

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[32] *Malto v. People*, G.R. No. 164733, 533 SCRA 643, 657.

[33] G.R. No. 202020, March 13, 2013, 693 SCRA 476.

Also, in the more recent case of *People v. Rayon, Sr.*, this Court reiterated **that the character of the crime is not determined by the caption or preamble of the information nor from the specification of the provision of law alleged to have been violated, but by the recital of the ultimate facts and circumstances in the complaint or information**.[34]

Here, the facts alleged in the Informations — that BBB, "by means of force and intimidation x x x succeed[ed] in having sexual intercourse with his own daughter [AAA], a [14, 15 or 16]-year old[35] minor, against her will and without her consent" — control and not the designation of the offense made therein.

The prosecution's evidence was sufficient to establish the guilt of BBB beyond reasonable doubt for the four counts of rape charged.

Having clarified that BBB may be prosecuted only for rape under the present Informations, the question now becomes: was his guilt therefor proven beyond reasonable doubt? The Court answers in the affirmative.

In assessing the guilt or innocence of an accused in a rape case, the Court takes guidance from three settled principles, *to wit*: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the person accused, though innocent, to disprove the charge; (2) considering that, in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence of the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[36]

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[34] Id. at 486-488. Emphasis supplied; citations omitted.

[35] Age of AAA varies depending on the date of the occurrence narrated in the Information.

[36] *People v. Ramos*, G.R. No. 200077, September 17, 2014, 735 SCRA 466, 478; *People v. Malate*, G.R. No. 185724, June 5, 2009, 588 SCRA 817, 825.

Rape is almost always committed in isolation or in secret. Hence, conviction therein frequently rests on the basis of the testimony of the victim so long as such is credible, natural, convincing, and consistent with human nature and the normal course of things. Thus, in resolving such cases, the credibility of the victim is of utmost consideration.[37]

Anent the credibility of the victim, the trial court's assessment thereof deserves great weight, and is even conclusive and binding, unless the same is tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. This is because the trial court had the full opportunity to observe directly the deportment and the manner of testifying of the witnesses before it, thus, putting it in the better position than the appellate court to properly evaluate testimonial evidence. This rule holds stronger in cases where the CA sustained the findings of the trial court.[38]

Applying the foregoing, the Court affirms the findings of the RTC as to the credibility and truthfulness of AAA's testimonies. As observed by the RTC, she remained steadfast and did not waver in her claim that BBB raped her repeatedly, thus:

First incident:

Q: Now, you still remember where were you in the morning of February 2, 1995?
A: I was in the house.

Q: Who were with you during that time in the house?
A: My father and my siblings.

x x x x

Q: While you were in the house[,] was there [an] unusual incident that happened to you?

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[37] *People v. XXX*, G.R. No. 244288, March 4, 2020.

[38] *People v. Wile*, G.R. No. 208066, April 12, 2016, 789 SCRA 228, 263.

A: Yes, sir.

Q: What happened during that time?
A: He raped me.

Q: Where?
A: In my room.

Q: Before he raped you[,] what did he do?
A: He poked [me] with a knife.

Q: And then after threatening you with a knife, what did he do next?
A: He told me to [sit] on the sewing machine and then he told me also to remove my short pants and panty.

Q: When he asked you to remove your short pants and panty, did you immediately remove them?
A: No, sir.

Q: So, when you resisted, what did your father do to you?
A: He pointed the knife on my side and told me to remove my short[s] and panty.

Q: What did you feel at that time when he pointed the hunting knife [at] you?
A: I was afraid.

Q: And so because of your fear, what did you do to your pants and panty?
A: I just removed my shorts and panty.

Q: And after removing your shorts and panty, what did he do?
A: He opened my legs.

Q: What was your position then?
A: I was leaning on the machine.

Q: How old [were] you at that time?
A: Fourteen.

Q: And when he told you to spread your legs, what did he do next?
A: He used me.

Q: What do you mean by [the] term used?
A: He molested me.

Q: You are already married, could you please be specific in your terms?
A: He inserted his penis into my vagina.

Q: What was your position when he inserted his penis to your vagina?
A: We were standing.

Q: Was that the first time you were sexually molested by your father?
A: Yes, Sir.

Q: And when his penis was already inserted into your vagina[,] what did you feel?
A: I felt pain.

Q: Considering that you felt pain, were you able to shout?
A: I was not able to shout because he was covering my mouth and he was also holding a knife.

Q: Where [were] your brothers and sisters at that time?
A: They were downstairs.

Q: And so, for how long did he insert his penis to your vagina?
A: Until he was ejaculated.

Q: After he was ejaculated[,] what did [you] do?
A: I just cried.

Q: Where?
A: Inside the room because he did not allow me to go out.

Q: What instruction did he give to you?
A: He told me not to tell to my mother and siblings or else he will kill us.

Q: Did you believe him at that time?
A: Yes, Sir.

Q: Now, what other instructions did your father give you aside from threatening you?
A: He just told me not to tell anyone or else he will kill us.

Q: Did you really believe that your father will do what he threatened you to do at that time?
A: Yes, Sir.

Second incident:

Q: Was it the only time that your father raped you?
A: No, Sir.

Q: When was the second time?
A: February 4.

Q: What year?
A: 1995.

Q: Where?
A: Still in our house.

Q: What time was that on February 4, 1995?
A: I cannot remember what time was that because on that night he forced me to drink a tablet which I refused but he insisted. So, in the morning of February 5[,] I noticed that [I am] no longer wearing my shorts and panty, so I presumed that he raped me again.

Q: What time in the evening of February 4, 1995 [did] your father [ask] you to drink the pill or medicine?
A: About 7:00 o'clock.

x x x x

Q: And what did he ask you to do with the tablet?
A: He just told me to drink that medicine so that I will not get pregnant.

Q: And you believed him[,] that is why you took that pill?
A: Yes, because he still bringing (*sic*) the knife.

x x x x

Q: After taking the pill, what did you feel?
A: Sleepy.

Q: And what time did you wake in the morning?
A: Six a.m.

Q: What did you feel at that time?
A: I could hardly stand up.

Q: Why?
A: I felt pain.

Q: What parts of your body was painful at that time?
A: My vagina and my legs.

Q: And what came to your mind knowing that you have pain in your vagina and in your legs?
A: That he raped me again. (*TSN, December 2005, pp. 11-18*)

Third incident:

Q: Mrs. Witness, do you still remember where were you on December 15, 1995?
A: Yes[,] I was in the house.

x x x x

Q: So, who were left in your house during that time?
A: Only the two of us.

Q: Two of us, you and who?
A: My father.

x x x x

Q: You said that it was around 6: o'clock (*sic*) in the evening, what unusual incident that happened at that time?
A: He again raped me.

Q: How did he rape you?
A: He again threatened me with a scythe.

Q: What did he do with that scythe?
A: He poked that scythe [at] me.

Q: While poking [at] you what did he say?
A: He told me to undress.

x x x x

Q: So, when he asked you to undress, did you also undress?
A: Not immediately.

Q: And since you did not immediately undress as demanded by your father, what was his reaction?
A: He got angry and he told me to undress.

Q: How did he say that to you?
A: He told me to remove my clothes or else [I will] be hurt.

Q: And then after saying that to you, what did you do?
A: I just undressed.

Q: What else did he do after undressing yourself?
A: At that time[,] he sexually abused me.

Q: With his clothes on?
A: He also undressed himself.

Q: After undressing yourself[,] he also undressed himself?
A: Yes, sir.

Q: What was his position when he sexually abused you?
A: We were lying down.

Q: On the floor?
A: On the floor.

Q: For how long did it take?
A: Until he reached his orgasm.

Q: In terms of minutes?
A: I cannot estimate.

Q: Why did you not shout considering that your mother was just at your neighborhood?
A: I cannot because he told me if my mother knew he will kill all of us.

Q: What did you feel when his penis was inside your vagina?
A: I felt pain.

Q: How old were you during that time on December 15, 1995?
A: 15.

x x x x

Q: Before your father went outside from the room, what did he tell you if there was any?
A: He told me not to tell my mother because he will kill all of us.

x x x x

Fourth incident:

Q: Was it the last time that your father had sexual intercourse with you?
A: No, sir.

Q: When was the next time?
A: January 15, 1996.

Q: How come you can remember that day?
A: Because that was the celebration of Araw ng [TTT].

Q: So what was your plan in connection with the celebration of Araw ng [TTT]?

A: We planned together with my mother, brother and sister to go to [TTT] and watch the activities.

Q: Were you able to go there?
A: Yes, sir.

Q: What time did you go there?
A: 7:00 in the evening.

x x x x

Q: Were you able to watch and see the coronation and the disco?
A: No, sir.

Q: Why?
A: Because my father followed us.

x x x x

Q: Upon his arrival, what did you do?
A: He called me.

x x x x

Q: And so, what did you say to your father considering that you were enjoying yourself?
A: I told him that I am not going home because I still watched (*sic*) the coronation.

Q: And what was his answer?
A: He told me that were really going home and he pulled me.

x x x x

Q: Toward what direction?
A: Towards [his] motorcycle.

x x x x

Q: And when you arrived [at] the place where the motorcycle was parked[,] what happened?
A: We went home.

x x x x

Q: And when you arrived in the house[,] the two of you[,] what happened?
A: He told me to go upstairs.

x x x x

Q: When you were already inside the room what happened?
A: He told me to undress.

x x x x

Q: And since you did [not] immediately undress yourself[,] what did he do to you?
A: He told me to undress or I will be hurt.

x x x x

Q: And since you did not immediately undress[,] what did he do to you?
A: He got mad and poked his scythe [at] me.

x x x x

Q: So, you eventually undressed yourself as demanded by your father?
A: Yes, sir.

x x x x

Q: And when you were already on that situation, what did he do?
A: He made me to (*sic*) lie down.

x x x x

Q: And you [laid] down where?
A: On the floor.

Q: When you were already lying down[,] what did he do to you?
A: He removed his short pants.

Q: What else did he take off?
A: Brief.

Q: And after taking his short pants and brief, what did he do to you?
A: He again sexually molested me.

Q: What did you feel while he was sexually intercourse (*sic*) with you?
A: I felt pain.

Q: How long did it take while having sexual intercourse with you?
A: Until he reached his orgasm.

x x x x

Q: And after raping you, what did he do?
A: He did not allow me to go out.

x x x x

Q: What did you do?
A: I was crying.

x x x x

Fifth incident:

Q: Now, was it the last time that your father raped you on January 15, 1996?
A: No, sir.

Q: Was there another occasion?
A: Yes, sir.

Q: When was that if you can still remember?
A: August 30.

Q: What year?
A: 1997.

x x x x

Q: What incident was that?
A: My father again raped me.

x x x x

Q: Was that in the morning, afternoon or evening?
A: Morning.

Q: Where?
A: Inside our house.

x x x x

Q: And when you were in your house[,] what happened?
A: He told me to go upstairs.

Q: What came into your mind when he directed you to go upstairs?
A: That he will [rape] me again.

Q: Did you immediately go upstairs?
A: No, sir.

Q: And when you did not immediately go upstairs[,] what did he do?
A: He got angry and got a scythe.

Q: After taking again a scythe[,] what did he do with that scythe?
A: He poked that scythe [at] me.

Q: After that[,] what did he do?
A: I went upstairs.

Q: Where did you proceed?
A: He made me enter my room.

Q: And he followed you inside the room?
A: Yes, sir.

Q: And when the two of you were already inside the room[,] what did he ask you to do?
A: He told me to undress.

Q: You immediately undressed?
A: No, sir.

Q: What was his reaction when you did not immediately undress yourself?
A: He got mad.

Q: Two of us, you and who?
A: My father.

Q: And aside from being angry to you[,] what else did he do to you?
A: He poked the scythe [at] me and he told me that if I will not obey [him], he will kill me.

x x x x

Q: And so you undressed yourself?
A: Yes, sir.

x x x x

Q: And then what did he ask you to do?
A: He made me to (*sic*) lie down.

Q: Where?
A: On the floor.

Q: When you were already lying on the floor, what did you fell (*sic*) at that time?
A: I was afraid and I was crying.

Q: You did not ask your father not to do it again?
A: I told him.

Q: How did you ask him?
A: I told him not to rape me because I am his daughter.

Q: And what was his answer?
A: He said that it would be better that he will be the one who make used (*sic*) of me that (*sic*) others.

Q: While saying that[,] what did he do?
A: He proceeded [with] his desire.

Court:
Place that on record that the witness has been crying.

Fiscal Laquihon:
Q: So, he was able to have sexual intercourse with you?
A: Yes, sir.

Q: After that[,] where did he go?
A: Outside. (*TSN, May 18, 2006, pp. 2-15*)[39]

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[39] CA *rollo*, pp. 48-57. Citations and italics in the original.

An accused in a criminal prosecution is presumed innocent until his guilt is proven beyond reasonable doubt.[40] This requirement, however, does not mean such a degree of proof 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.[41] As found by the RTC and affirmed by the CA, this degree of proof was discharged by the prosecution in the present appealed charges against BBB. The Court quotes with favor the RTC's assessments:

> The records reveal that the prosecution was able to prove accused's carnal knowledge of AAA through threat and intimidation during the first, third, fourth and fifth incidents. AAA candidly pointed out the horrible part of her ordeal when the accused would order her to undress, would open or spread her legs, would insert his penis into her vagina and had sexual intercourse until the accused reached his orgasm. AAA was cowed or forced into submission to the accused's beastly desire because the latter would threatened (*sic*) to hurt her with a knife or a scythe whenever she would refuse or resist his sexual advances. The use of the knife or a scythe at the time of the sexual advances and the threat to kill or hurt posed by the accused constituted sufficient force and intimidation to cow AAA into obedience. Considering that AAA was a minor at the time when her person was criminally violated, the mere sight of [a] deadly weapon in the hands of the accused would intimidate her. Moreover, accused, who is AAA's father, undoubtedly exerted a strong moral influence

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[40] CONSTITUTION, Art. III, Sec. 14(2) provides:

> *Section 14.* x x x
>
> (2) In all criminal prosecutions, **the accused shall be presumed innocent until the contrary is proved**, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable. (Emphasis supplied)

[41] *People v. Manson*, G.R. No. 215341, November 28, 2016, 810 SCRA 551, 560.

over her. His moral ascendancy and influence over AAA may even substitute for physical violence and intimidation. xxx.[42]

Anent the second incident, notably; the RTC's order of acquittal was based on its finding that AAA's testimony does not present clearly that BBB had sexual intercourse with her while she was asleep. The circumstances that she was forced to drink a pill, that after she took it she felt sleepy and that when she awoke the following morning she felt pain in her vagina and legs, do not directly and conclusively indicate that BBB had sexual intercourse with her while she was unconscious.[43] In other words, the RTC did not debunk the credibility or truthfulness of the testimony of AAA; rather, it ruled that assuming such testimony to be true, the same does not conclusively point to the conclusion that BBB raped AAA.

On the whole, the RTC was convinced that AAA was a credible witness and that the prosecution was able to prove BBB's carnal knowledge of AAA through force and intimidation in the present charges.

On the other hand, BBB attempts to cast doubt on the credibility of AAA by pointing out inconsistencies in the latter's statements, specifically as to the dates when the rapes were committed and how AAA's husband reacted to her revelation that she was raped by her father.[44] However, it has been held that inconsistencies in a witness' testimony do not, by themselves, diminish the credibility of such witness. This is especially true when, as in the present case, these alleged inconsistencies refer to collateral matters which are not elements of the crime.[45]

Anent the defense's point that AAA's memory of the act of rape is impeccable but that she can barely recall the matters

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[42] CA *rollo*, p. 58. Emphasis omitted.

[43] Id. at 61.

[44] Id. at 28-33.

[45] *People v. Ragasa*, G.R. No. 202863, February 21, 2018, 856 SCRA 229, 246.

outside the rape incident and that this casts doubt on her credibility,[46] the Court is not persuaded. As the Court held in *People v. Saludo*,[47] such lapse in a rape victim's memory is but a natural consequence of her trauma, thus:

> Rape is a painful experience which is oftentimes not remembered in detail. For such an offense is not analogous to a person's achievement or accomplishment as to be worth recalling or reliving; rather, it is something which causes deep psychological wounds and casts a stigma upon the victim, scarring her psyche for life and which her conscious and subconscious mind would opt to forget. Thus, a rape victim cannot be expected to mechanically keep and then give an accurate account of the traumatic and horrifying experience she had undergone.[48]

Finally, the failure of AAA to immediately report to her mother or the police authorities the incidents of rape does not likewise tarnish her credibility. As observed by the RTC, BBB's constant threats upon the life of AAA and her family in all the instances of rape were enough to cower her into silence and keep her from immediately reporting the incidents. The Court has held that delay in reporting a rape does not negate its occurrence nor affect the credibility of the victim. In the face of constant threats of violence and death, not just on the victim but extending to her kin, a victim may be excused for tarrying in reporting her ravishment.[49]

The defenses of BBB consisting of denial and alibi are inherently weak.

In stark contrast to AAA's compelling testimonies, BBB made a wholesale denial of the four instances of rape and interposed alibi. Denial is an intrinsically weak defense which must be supported by strong evidence of non-culpability to merit

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[46] CA *rollo*, p. 29.

[47] G.R. No. 178406, 647 SCRA 374.

[48] Id. at 388.

[48] Id. at 388.

[49] *People v. Ramos*, supra note 36, at 489.

credibility. Alibi, on the other hand, is the weakest of all defenses, for it is easy to contrive and difficult to disprove; hence, generally rejected. For alibi to be appreciated, it must be proven by the accused that: 1) he was not at the *locus delicti* at the time the offense was committed; and 2) it was physically impossible for him to be at the scene at the time of its commission.[50]

Here, as likewise found by the RTC and affirmed by the CA, BBB failed to prove the requisites for his denial and alibi to be given weight by the Court, especially in the face of the overwhelming evidence of the prosecution.

BBB committed four counts of qualified rape.

The RTC, as affirmed by the CA, convicted BBB of four counts of rape with the qualifying/aggravating circumstances of relationship and minority of the victim, and thus meted him the sentence of *reclusion perpetua* in each case without eligibility for parole.[51]

As found by the RTC and borne by the records, the prosecution was able to prove the aggravating circumstances alleged in the Informations: 1) that AAA was under 18 years old at the time of the incidents and 2) that BBB is her father. As regards AAA's minority, the same was established by her Birth Certificate presented by the prosecution, which shows that she was born on November 19, 1980; hence, during the rape incidents, she was under 18 years of age. Anent her paternal relationship with BBB, the same is not disputed and is, in fact, admitted by BBB.[52]

Article 335 of the RPC, as amended by R.A. 7659, qualifies rape when the same is committed with the concurrence of both the minority of the victim and that the offender is her parent,

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[50] *People v. Ronquillo*, G.R. No. 214762, September 20, 2017, 840 SCRA 405, 417.

[51] *Rollo*, pp. 22-23.

[52] CA *rollo*, p. 59.

among others, and makes mandatory the imposition of the death penalty, thus:

> ARTICLE 335. *When and how rape is committed.* — x x x
>
> x x x x
>
> The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant 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 (Emphasis supplied)

Hence, the RTC and the CA properly imposed the penalty of *reclusion perpetua* without eligibility for parole for each of the four counts of rape, considering R.A. 9346[53] and A.M. No. 15-08-02-SC.[54]

Anent the award for damages made by the CA of One Hundred Thousand Pesos (₱100,000.00) each as civil indemnity, moral and exemplary damages for each of the four counts of rape, the Court likewise affirms the same, in light of prevailing jurisprudence.[55]

WHEREFORE, in view of the foregoing, the appeal is **DISMISSED** for lack of merit. The Decision dated September 22, 2016 of the Court of Appeals, Twenty-Second Division, in CA-G.R. CR-HC No. 01333-MIN is **AFFIRMED**. Accused-appellant BBB is hereby found **GUILTY** beyond reasonable doubt of four (4) counts of Qualified Rape and

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[53] Entitled, "AN ACT PROHIBITING THE IMPOSITION OF THE DEATH PENALTY," approved on June 24, 2006.

[54] GUIDELINES FOR THE PROPER USE OF THE PHRASE "WITHOUT ELIGIBILITY FOR PAROLE" IN INDIVISIBLE PENALTIES dated August 4, 2015.

[55] *People v. Jugueta*, 783 Phil. 806 (2016).

sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole for each count.

Accused-appellant BBB is likewise ordered to pay One Hundred Thousand Pesos (₱100,000.00) as civil indemnity; One Hundred Thousand Pesos (₱100,000.00) as moral damages; and One Hundred Thousand Pesos (₱100,000.00) as exemplary damages for each count of Qualified Rape. All monetary awards shall earn interest at the legal rate of six percent (6%) *per annum* from the date of finality of this Resolution until fully paid.

SO ORDERED.

Peralta, C.J. (Chairperson), Carandang, Zalameda, and *Gaerlan, JJ.*, concur.

FIRST DIVISION

[G.R. No. 230934. December 2, 2020]

HEIRS OF THE LATE APOLINARIO CABURNAY, NAMELY, LYDIA CABURNAY, LETECIA NAVARRO, EVANGELINE CRUZ, JERRY CABURNAY, ZENAIDA C. ANCHETA, LIWAYWAY C. WATAN, GLORIA GUSILAN, APOLINARIO CABURNAY, JR., *Petitioners, v.* **HEIRS OF TEODULO SISON,[*] NAMELY, ROSARIO SISON, OFELIA SISON, TEODULO SISON, JR., BLESILDA[**] SISON, ARMIDA SISON, CYNTHIA SISON, JESUS SISON AND PERLA[***] SISON,** *Respondents*.

APPEARANCES OF COUNSEL

Martinez Velasquez & Associates Law Offices for petitioners.
Nolan R. Evangelista for respondents.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is the Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court filed by petitioners Heirs of the late Apolinario Caburnay (petitioners) assailing the Decision[2] dated November 11, 2016 and Resolution[3] dated

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[*] Also Teodulo Sison, Sr. in some parts of the *rollo*.

[**] Also Blesislda in some parts of the *rollo*.

[***] Also Perlas in some parts of the *rollo*.

[1] *Rollo*, pp. 20-40, excluding Annexes.

[2] Id. at 42-47. Penned by Associate Justice Agnes Reyes-Carpio, with Associate Justices Romeo F. Barza and Danton Q. Bueser concurring.

[3] Id. at 57-59. Penned by Associate Justice Romeo F. Barza, with Associate Justices Danton Q. Bueser and Socorro B. Inting concurring.

April 12, 2017 of the Court of Appeals[4] (CA) in CA-G.R. CV No. 106010. The CA Decision denied the appeal of petitioners and affirmed the Decision[5] dated November 16, 2015 of the Regional Trial Court of Lingayen, Pangasinan, Branch 38 (RTC) in Civil Case No. 19135. The CA Resolution denied petitioners' motion for reconsideration.

The Facts and Antecedent Proceedings

The CA Decision narrates the factual antecedents as follows:

> The instant case stemmed from a complaint filed by [petitioners] against [respondents Heirs of Teodulo Sison (respondents)] for specific performance, declaration of nullity of document and title and damages.
>
> [Petitioners] alleged that on September 23, 1994, [respondents'] predecessor-in-interest Teodulo Sison [(Teodulo)] sold a parcel of land to [petitioners'] predecessor-in-interest Apolinario Caburnay [(Apolinario)]. The [subject] property was covered by Transfer Certificate of Title (TCT) No. 8791 with an approximate area of 7,768 square meters. The parties agreed that Apolinario would pay P40,000.00 as initial payment of the total purchase price of P150,000.00, the rest of which was to be paid in installments. The receipt of the initial payment was acknowledged by Teodulo in a handwritten receipt, also dated September 23, 1994. Consequently, Apolinario's family occupied the property.
>
> [At the time of the sale in 1994, Teodulo's first wife, Perpetua Sison (Perpetua), had died in 1989 and he had married in 1992 his second wife, Perla (Perla) Sison, who did not give her consent to the sale.][6]
>
> The second installment in the amount of P40,000.00 was paid by Apolinario on August 14, 1996 and, another handwritten receipt was executed by Teodulo. The third installment was made on October 20, 1999 in the amount of P40,000.00, as reflected in the handwritten receipt which also stated that Teodulo would start

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[4] Special First Division and Special Former Special First Division.

[5] *Rollo*, pp. 77-86. Penned by Presiding Judge Teodoro C. Fernandez.

[6] Id. at 30, 45.

processing the transfer of the title upon payment of the remaining balance of P30,000.00.

However, Teodulo passed away [on December 22, 2000][7] before the balance of the purchase price could be paid. Consequently, Apolinario informed Teodulo's heirs, herein [respondents], about the sale and payment of his remaining balance. [Respondent] Jesus Sison [(Jesus)] told Apolinario that they could not locate the certificate of title and they agreed to settle the amount once the TCT was found.

Due to Apolinario's advanced age and failing memory, no follow-up was made thus, the purchase price remained unpaid until his death in April 2005.

Upon Apolinario's death, his heirs tried to pay the balance of the purchase price but Jesus x x x rejected the payment. [Petitioners] later discovered that [respondents] had executed an Extrajudicial Settlement of [the] Estate[s] of Teodulo and his wife Perpetua and the same included the subject property which was given to Jesus x x x.

As a result of the extrajudicial settlement, Jesus x x x effected the cancellation of TCT No. 8791 and caused the issuance of TCT No. 22388 in his favor. Thus, [petitioners] prayed that the document captioned Extrajudicial Settlement of Estate be declared null and void and consequently, nullify TCT [N]o. 22388 in the name of Jesus x x x. They also asked that Jesus x x x be compelled to execute a Deed of Absolute Sale in their favor upon payment of the remaining balance of P30,000.

x x x x

[Respondents], on the other hand, denied the execution of the sale between Teodulo and Apolinario, averring that there was no deed of sale recorded at the Registry of Deeds thus, the subject property was free from encumbrances when the same was included in the partition of the estate of Teodulo and Perpetua x x x.

It was further claimed that Apolinario was a mere caretaker of the property thus, Teodulo and his family consented to his occupation thereof. Upon the transfer of the property to Jesus x x x, he demanded that [petitioners] vacate the same but they refused.

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[7] Id. at 83.

[Respondents] also argue that the action was barred by prescription and that the receipts only showed that there was a contract to sell and not one of sale.

x x x x

After weighing the arguments and evidence presented before it, the trial court rendered the [Decision] dated November 16, 2015. While it found the receipts issued by Teodulo x x x to Apolinario to be genuine, the sale in favor of Apolinario was however, declared null and void because the property is presumed to be conjugal and there was no evidence of the consent to the sale by Teodulo's wife, Perpetua. Thus:

WHEREFORE, premises considered, judgment is hereby rendered **dismissing** the instant complaint for lack of merit.

Costs against [petitioners].

SO ORDERED.[8]

Petitioners appealed the RTC Decision to the CA.

Ruling of the CA

The CA, in its Decision[9] dated November 11, 2016, denied petitioners' appeal. The CA agreed with respondents that the property regime governing the marriage between Perla and Teodulo is absolute community, having been contracted during the effectivity of the Family Code.[10] The CA pointed out that under Article 91 of the Family Code, the community property consists of all the property owned by the spouses at the time of the celebration of the marriage or acquired thereafter and, under Article 92, property acquired before the marriage by either spouse who has legitimate descendants by a former marriage, and the fruits as well as income, if any, of such property is excluded from the community property. The purpose of the exclusion is to protect the rights and interests of the legitimate

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[8] Id. at 43-45.

[9] *Supra* note 2.

[10] Id. at 46.

descendants by the first marriage over the property and to ensure that the children born of the prior marriage are not deprived of their share in the properties of their parents.[11]

The CA then pronounced that in the instant case, the exclusion does not apply considering that "Perla x x x recognizes the co-ownership between Teodulo and his children with Perpetua, as seen in the extrajudicial settlement document[, and thus,] there is no risk of depriving them of their rights over the conjugal property of Teodulo and Perpetua."[12]

Citing *Nobleza v. Nuega*,[13] where the sale by the husband of community property without the wife's consent was declared void,[14] the CA ruled that:

> In the instant case, there is no showing that [respondent] Perla gave her consent to the sale of Teodulo's share of the subject property. Accordingly, the sale is void in its entirety, contrary to the claim of [petitioners].[15]

The dispositive portion of the CA Decision states:

> **WHEREFORE**, in view of the foregoing, the Appeal is **DENIED**. The *Decision*, dated November 16, 2015, rendered by the Regional Trial Court of Lingayen, Pangasinan, Branch 38 in Civil Case No. 19135 is **AFFIRMED**.
>
> **SO ORDERED.**[16]

Petitioners filed a Motion for Reconsideration,[17] which the CA denied in its Resolution[18] dated April 12, 2017.

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[11] Id.

[12] Id.

[13] G.R. No. 193038, March 11, 2015, 752 SCRA 602.

[14] *Rollo*, p. 46.

[15] Id. at 47.

[16] Id.

[17] Id. at 48-55.

[18] Supra note 3.

Hence the present Petition. Respondents filed their Comment[19] dated October 16, 2017. Petitioners filed a Reply[20] dated November 30, 2017.

The Issues

The Petition presents two issues:

1. Whether the CA misapplied Article 92 of the Family Code when it ruled that the sale of the property acquired during the first marriage by the surviving husband, who had surviving children in the first marriage, without the consent of the second spouse who recognized the existence of co-ownership between the husband and his children in the first marriage, is void.

2. Whether the CA erred when it ignored the clear provisions of Articles 92 and 103 in relation to Article 145 of the Family Code authorizing the surviving spouse to dispose of his share in the conjugal property in the first marriage even without the consent of his second spouse.[21]

The Court's Ruling

The Petition is partly meritorious.

Usually, precedents are not set when the lower courts correctly apply the law. That a correct ruling by a lower court may no longer be elevated to the Court and, without the Court's imprimatur, it may not be accorded its due jurisprudential significance. In instances, however, where the lower courts misapply or misread the law and the cases get elevated to the Court, precedents are set and jurisprudence is thereby enriched.

Had petitioners accepted the ruling of the RTC and of the CA in this case, jurisprudence would not have benefitted from their appeal to this Court.

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[19] Id. at 92-99.

[20] Id. at 101-105.

[21] Id. at 28.

In a nutshell, the present case involves a husband (Teodulo), who has married twice and has children (respondents) from the first marriage. After the death of his first wife (Perpetua) and while married to his second wife (Perla), the husband entered into a contract wherein he sold property acquired in his first marriage without the consent of his second wife. Needless to say, the children from the first marriage did not also consent.[22] Is the sale valid or void the Court is asked.

The lower courts ruled that the sale is void. Petitioners want the Court to overturn such ruling. They argue that while the CA ruled that the property regime governing Teodulo and Perla is absolute community, their marriage having been contracted after the effectivity of the Family Code, the subject property should be excluded from their community property having been acquired before their marriage by Teodulo, who has legitimate children by his former marriage with Perpetua by virtue of Article 92(3) of the Family Code.[23] This excluded property remains the separate property of the spouse, who has remarried, and it is subject to his full right of disposition, with the price from such alienation continuing to be his separate property.[24] Petitioners point out that at the time of the celebration of Teodulo's marriage with Perla, he had legitimate descendants, namely, respondents Teodulo, Jr., Rosario, Ofelia, Blesilda, Armida, Jesus and Cynthia, all surnamed Sison.[25]

Petitioners invoke Article 103 of the Family Code, which provides that should the surviving spouse contract a subsequent

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[22] In denying the execution of the sale between Apolinario and Teodulo and in asserting there was no deed of sale registered with the Register of Deeds, respondents, which include the children of Teodulo from the first marriage, could not be deemed to have given their consent to the sale. *Rollo*, p. 44.

[23] *Rollo*, pp. 28-30.

[24] Id. at 31.

[25] Id. at 30. Note that petitioners did not include respondent Jesus Sison in their enumeration of the legitimate children of the late spouses Teodulo and Perpetua.

marriage without liquidation of the prior marriage, then the mandatory regime of complete separation of property will govern the property relations of the subsequent marriage.[26] As such, petitioners assert that Teodulo could validly dispose of his share in the property acquired during his first marriage without needing to obtain the consent of his second spouse. They rely on Article 145 of the Family Code which authorizes each spouse under the regime of separation of property to dispose of his or her own separate estate, without need of the consent of the other.[27]

Since the consent of Perla is not required, petitioners conclude that the sale of the subject property between Teodulo and Apolinario should be recognized as valid insofar as the share of Teodulo in the subject property is concerned, consisting of his ½ share of the entire property representing his conjugal share and another 1/5 of the other half, representing his share in the conjugal share of his first wife Perpetua.[28] Upon recognition of the validity of the sale, respondent Jesus should be ordered to convey to petitioners "the one[-]half (½) portion of the said property plus the one[-]fifth (1/5) share of the late Teodulo x x x on the other half of the property in question [now covered by TCT No. 22388 in the name of Jesus]."[29]

On the other hand, respondents argue that the regime of complete separation of property does not apply in the case because: (1) there was no pre-nuptial agreement between Teodulo and Perla that they adopted such regime to govern their property relations; and (2) it applies only where the disposition is made after the death of a spouse, which is not the case here as both Teodulo and Perla were alive when the alleged sale to Apolinario took place.[30] Respondents also argue that Article 103 of the Family Code applies when the property regime of a previous

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[26] Id. at 31-32.

[27] Id. at 32.

[28] Id. at 35-36.

[29] Id. at 36.

[30] Id. at 93.

marriage was governed by absolute community property, but the property regime of Teodulo and Perpetua was conjugal partnership of gains since they were married under the Civil Code, without any pre-nuptial agreement.[31] Besides, respondents posit that inasmuch as in this case, there was an extrajudicial settlement of the estate of the first wife and the property regime of the surviving spouse with the first wife was conjugal partnership of gains, then Article 103, which presupposes the absence of a settlement of the deceased first spouse's estate and the existence of absolute community property regime, is inappropriate.[32] Lastly, respondents argue that Article 145 of the Family Code does not apply for it refers to separate property of the spouses in case their property regime is governed by conjugal partnership of gains, but the property regime of Teodulo and Perla is absolute community property because they were married during the effectivity of the Family Code.[33]

Both parties agree that, having been married during the effectivity of the Civil Code and without any marriage settlements executed before their marriage, the property regime of Teodulo and his first wife, Perpetua, was conjugal partnership of gains pursuant to Article 105 of the Family Code, which provides:

> Art. 105. x x x
>
> The provisions of this Chapter [Conjugal Partnership of Gains] shall also apply to conjugal partnership of gains already established between spouses before the effectivity of this Code, without prejudice to vested rights already acquired in accordance with the Civil Code or other laws, as provided in Article 256. (n)

Also, it is undisputed that the subject property was acquired during the marriage of Teodulo and Perpetua. As such, the subject property was their conjugal property.

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[31] Id.

[32] Id. at 94.

[33] Id.

Both the RTC and the CA held that conjugal partnership of gains did govern the property relations of Teodulo and Perpetua and the subject property is thus their conjugal property, having been acquired during their marriage which was celebrated during the effectivity of the Civil Code.

The death of a married person triggers legal consequences, among which are: termination or dissolution of the marriage; termination of the absolute community or conjugal partnership; and succession with respect to the estate of the deceased spouse.

When Perpetua died on July 19, 1989,[34] the conjugal partnership between her and Teodulo was terminated pursuant to Article 126(1) of the Family Code.[35] The rule was the same under Article 175(1) of the Civil Code: "The conjugal partnership of gains terminates x x x upon the death of either spouse x x x."

With Perpetua's death, the liquidation of the conjugal partnership between her and Teodulo should have ensued. Pursuant to Article 129 of the Family Code, after inventory, mutual restitution and payment of debts, the net remainder of the conjugal properties, constituting the profits of the conjugal partnership, shall be divided equally between the spouses and/or their respective heirs, unless a different proportion has been agreed upon in their marriage settlements, or unless the surviving spouse or the heirs of the deceased renounce their shares, and the presumptive legitimes of the common children shall be then delivered, to be taken from the total properties (the share in

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[34] See records, pp. 66 and 236.

[35] FAMILY CODE, Article 126 provides:

> ART. 126. The conjugal partnership terminates:
>
> (1) Upon the death of either spouse;
>
> (2) When there is a decree of legal separation;
>
> (3) When the marriage is annulled or declared void; or,
>
> (4) In case of judicial separation of property during the marriage under Articles 134 to 138. (175a)

the conjugal properties and the balance of separate properties) pertaining to each spouse in proper cases in accordance with Article 51 of the Family Code.[36] In the case, however, of the dissolution of the marriage due to the death of a spouse, the common children are entitled to their respective shares as legal heirs in the estate of the deceased spouse.

In many instances, however, the surviving spouse and the heirs of the deceased spouse do not liquidate the conjugal properties and they keep them undivided. In such case, a co-ownership is deemed established for the management, control and enjoyment of the common property. Since the conjugal partnership no longer subsists, the fruits of the common property are divided according to the law on co-ownership; that is, in proportion to the share or interest of each party.[37] That share or part of the co-heir in the co-ownership prior to partition is *pro indiviso*, undivided or abstract, not specific, delineated or demarcated by metes and bounds.

As far as the conjugal partnership property of Teodulo and Perpetua, subject matter of the conflict herein, ½ undivided interest therein pertained to Teodulo as his conjugal share and the other half, which was Perpetua's conjugal share, pertained to her legal heirs. Based on the facts, there is no mention of conjugal debts at the time of Perpetua's death. There is likewise no mention of any conjugal property other than the subject property. Thus, the subject property became co-owned property of Teodulo and the heirs of Perpetua upon Perpetua's death.

Pending liquidation of the conjugal partnership, the alienations and encumbrances of the parties or co-owners must be considered limited to their respective undivided interests, and cannot involve any particular or specific property or physical part of it. This means that the alienation or encumbrance may be valid as to

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[36] See Arturo M. Tolentino, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES (Volume One with The Family Code of the Philippines, 1990 ed.), pp. 472-474.

[37] See id. at 394.

the undivided interest of the vendor but not as to the *corpus* or body or physical portion of the property; and the vendee will get the property that may be adjudicated in the partition to the vendor, but not any portion of what may be allotted to the other co-owners.[38]

The foregoing is consistent with the ownership rights of each co-owner, which are spelled out in Article 493 of the Civil Code, to wit:

> ART. 493. Each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved. But the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership. (399)

Aside from the dissolution of the marriage between Perpetua and Teodulo and their conjugal partnership, Perpetua's death triggered the transfer of her inheritance or hereditary estate to her legal heirs pursuant to Article 777 of the Civil Code, which provides: "The rights to the succession are transmitted from the moment of the death of the decedent." Since there is no mention of any will that she left, Perpetua died intestate.

Perpetua was survived by her husband, Teodulo, and their seven legitimate children, namely, respondents Teodulo, Jr., Rosario, Ofelia, Blesilda, Armida, Jesus and Cynthia, all surnamed Sison. Article 996 of the Civil Code states: "If a widow or widower and legitimate children or descendants are left, the surviving spouse has in the succession the same share as that of each of the children." Since there are two or more heirs, the whole estate of the decedent is, before its partition, owned in common by such heirs, subject to the payment of debts of the deceased, as provided in Article 1078 of the Civil Code.

Upon Perpetua's death, her one-half *pro indiviso* conjugal share in the subject property was inherited by her widower,

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[38] Id. at 394-395.

Teodulo, and their seven legitimate children equally, with each legal heir entitled to 1/8 *pro indiviso* share therein, or 1/16 undivided interest in the subject property. In totality, Teodulo became co-owner of the subject property to the extent of 9/16, consisting of his ½ conjugal share and 1/16 of the conjugal share of Perpetua. Thus, at the time of Perpetua's death, the subject property became co-owned by Teodulo (to the extent of 9/16) and each of the seven children (to the extent of 1/16 each).

Petitioners therefore erred in claiming that Teodulo was entitled to "the one[-]half (½) portion of the said property plus the one fifth (1/5) share of the late Teodulo x x x on the other half of the property in question [now covered by TCT No. 22388 in the name of Jesus]."[39] Petitioners did not even explain how they arrived at his purported 1/5 share in the estate of Perpetua, which is the other half of the subject property. If the 1/5 fraction is used as basis to divide Perpetua's estate, Teodulo and Perpetua should have only four children. But they had seven children.

When the marriage is terminated by death, Article 130 of the Family Code specifically provides for the liquidation of the conjugal partnership within one year from the death of the deceased spouse:

> ART. 130. Upon the termination of the marriage by death, the conjugal partnership property shall be liquidated in the same proceeding for the settlement of the estate of the deceased.
>
> If no judicial settlement proceeding is instituted, the surviving spouse shall liquidate the conjugal partnership property either judicially or extrajudicially within one year from the death of the deceased spouse. If upon the lapse of said period no liquidation is made, any disposition or encumbrance involving the conjugal partnership property of the terminated marriage shall be void.
>
> Should the surviving spouse contract a subsequent marriage without compliance with the foregoing requirements, a mandatory regime of

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[39] *Rollo*, p. 36.

complete separation of property shall govern the property relations of the subsequent marriage. (n)

Parenthetically, a similar provision (Article 103) governs with respect to the absolute community property regime. Three methods of liquidation of the conjugal property are mentioned in the above-quoted provision: (1) judicial settlement in a testate or intestate proceeding; (2) judicial action, or ordinary action for partition; and (3) extrajudicial settlement. Any of the three should be resorted to within one year from the death of the deceased spouse.[40]

Likewise, Article 130 provides two consequences if no liquidation is effected within the one-year period: (1) "any disposition or encumbrance involving the conjugal partnership property of the terminated marriage shall be void"; and (2) "[s]hould the surviving spouse contract a subsequent marriage x x x, a mandatory regime of complete separation of property shall govern the property relations of the subsequent marriage."

A noted civil law expert has expressed certain reservations with respect to these effects, to wit:

> If no liquidation is made within the one-year period, the law says, "any disposition or encumbrance involving the [conjugal partnership] property of the terminated marriage shall be void." The validity of the alienation or encumbrance can be challenged by the heirs of the deceased spouse. Such alienation or encumbrance, however, shall be valid to the extent of what is allot[t]ed in the property involved, in the final partition, to the vendor or mortgagor. So if the property sold or mortgaged is finally allot[t]ed to the vendor or mortgagor as his share, the alienation or encumbrance shall be valid. It shall also be valid if the surviving spouse is the only heir of the deceased spouse.
>
> x x x If no liquidation of the first marriage property has taken place and the surviving spouse re-marries, this article imposes a mandatory regime of separation of properties for the subsequent marriage. We see no logical reason for this. If after the celebration of the subsequent marriage, the heirs of the deceased spouse succeed

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[40] Arturo M. Tolentino, supra note 36, at 403.

to get a partition of the properties of the first marriage, why should the regime of separation of property continue for the second marriage? The spouses in the new marriage may want to establish a system of community [property]; but it would be too late to have a marriage settlement.[41]

After Perpetua's death, there was no liquidation of the conjugal property of Teodulo and Perpetua within the one-year period provided in Article 130. It must be recalled that respondents executed an extrajudicial settlement of the estates of Teodulo and Perpetua only after Teodulo's demise wherein the subject property was given to Jesus. As it stands, the subject property is now registered in the name of Jesus.

At this juncture, the Court notes that, on three prior occasions, it has interpreted the proviso in Article 130 of the Family Code regarding the disposition or encumbrance involving the conjugal partnership property of the terminated marriage where no liquidation of the terminated marriage property is made within one year from the death of the deceased spouse. These cases, however, do not involve a subsequent marriage of the surviving spouse and the disposition of the terminated marriage property being made during the subsistence of the subsequent marriage, without the consent of the surviving spouse's second spouse.

Firstly, in *Heirs of Protacio Go, Sr. and Marta Barola v. Servacio*[42] *(Heirs of Go)*, the validity of the sale made by the surviving husband and his son of a portion of the conjugal property the surviving husband had with the deceased wife, without prior liquidation as mandated by Article 130, was challenged.

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[41] Id. at 403-404.

[42] G.R. No, 157537, September 7, 2011, 657 SCRA 10. Rendered by the First Division; penned by Associate Justice Lucas P. Bersamin and concurred in by Chief Justice Renato C. Corona and Associate Justices Teresita J. Leonardo-De Castro, Mariano C. Del Castillo and Martin S. Villarama, Jr.

Briefly, the pertinent factual setting of *Heirs of Go* was: after the death in November 1987 of Marta Barola Go, wife of Protacio, Sr., the latter, together with their son Rito Go, sold in December 1999 a portion of two parcels of land with a total area of 17,140 square meters to Ester Servacio for ₱5,686,768.00. The conjugal partnership property was not liquidated prior to the sale and the said parcels were conjugal property of Marta and Protacio, Sr., there being no dispute that they were married prior to the effectivity of the Family Code on August 3, 1988.

The Court in *Heirs of Go* stated:

> x x x Upon Marta's death in 1987, the conjugal partnership was dissolved, pursuant to Article 175 (1) of the *Civil Code*, and an implied ordinary co-ownership ensued among Protacio, Sr. and the other heirs of Marta with respect to her share in the assets of the conjugal partnership pending x x x its liquidation. The ensuing implied ordinary co-ownership was governed by Article 493 of the *Civil Code* x x x.
>
> x x x x
>
> Protacio, Sr., although becoming a co-owner with his children in respect of Marta's share in the conjugal partnership, could not yet assert or claim title to any specific portion of Marta's share without an actual partition of the property being first done either by agreement or by judicial decree. Until then, all that he had was an ideal or abstract quota in Marta's share. Nonetheless, a co-owner could sell his undivided share; hence, Protacio, Sr. had the right to freely sell and dispose of his undivided interest, but not the interest of his co-owners. Consequently, the sale by Protacio, Sr. and Rito as co-owners without the consent of the other co-owners was **not necessarily void**, for the rights of the selling co-owners were thereby effectively transferred, making the buyer (Servacio) a co-owner of Marta's share. This result conforms to the well-established principle that the binding force of a contract must be recognized as far as it is legally possible to do so *(quando res non valet ut ago, valeat quantum valere potest)*.
>
> Article 105 of the *Family Code* x x x expressly provides that the applicability of the rules on dissolution of the conjugal partnership is "without prejudice to vested rights already acquired in accordance with the *Civil Code* or other laws." This provision gives another reason not to declare **the sale as entirely void**. Indeed, such a declaration prejudices the rights of Servacio who had already acquired

the shares of Protacio, Sr. and Rito in the property subject of the sale.

x x x x

> "From the foregoing, it may be deduced that since a co-owner is entitled to sell his undivided share, a sale of the entire property by one co-owner without the consent of the other co-owners is **not null and void**. However, only the rights of the co-owner-seller are transferred, thereby making the buyer a co-owner of the property.
>
> x x x x
>
> Thus, it is now settled that the appropriate recourse of co-owners in cases where their consent [was] not secured in a sale of the entire property as well as in a sale merely of the undivided shares of some of the co-owners is an action for PARTITION under Rule 69 of the Revised Rules of Court. x x x"

In the meanwhile, Servacio would be a trustee for the benefit of the co-heirs of her vendors in respect of any portion that might not be validly sold to her. The following observations of Justice Paras are explanatory of this result, *viz.*:

> "x x x [I]f it turns out that the property alienated or mortgaged really would pertain to the share of the surviving spouse, then said transaction is valid. If it turns out that there really would be, after liquidation, no more conjugal assets then the whole transaction is null and void. But if it turns out that half of the property thus alienated or mortgaged belongs to the husband as his share in the conjugal partnership, and half should go to the estate of the wife, then that corresponding to the husband is valid, and that corresponding to the other is not. Since all these can be determined only at the time the liquidation is over, it follows logically that a disposal made by the surviving spouse is **not void ab initio**. Thus, it has been held that the sale of conjugal properties cannot be made by the surviving spouse without the legal requirements. **The sale is void as to the share of the deceased spouse** (except of course as to that portion of the husband's share inherited by her as the surviving spouse). The buyers of the property that could not be validly sold become trustees of said portion for the benefit of the husband's other heirs, the *cestui que [trustent]*. x x x (See *Cuison, et al. v.*

> *Fernandez, et al.*, L-11764, Jan. 31, 1959.)"[43] (Emphasis and underscoring supplied; emphasis in the original omitted)

The second case, *Domingo v. Molina*[44] *(Domingo)*, merely adopted the formulation in *Heirs of Go*.

In summary, *Domingo* involved the sale by Anastacio Domingo (Anastacio) on September 10, 1978, or ten years after the death of his wife Flora, of his interest in the land subject of the case. The sale was annotated on the Original Certificate of Title covering the land with the following statement: "**[o]nly the rights, interests and participation of Anastacio Domingo**, married to Flora Dela Cruz, [are] hereby sold, transferred, and conveyed unto the said vendees for x x x P1,000.00 x x x which **pertains to an undivided one-half (½) portion** and subject to all other conditions specified in the document x x x."[45]

The Court, following the discussion in *Heirs of Go*, stated that being married prior to the effectivity of the Family Code, the property relation of spouses Anastacio and Flora Domingo was conjugal partnership, which was dissolved when Flora died in 1968 pursuant to Article 175(1) of the Civil Code (now Article 126(1) of the Family Code). Then the Court cited Article 130 of the Family Code, which requires the liquidation of the conjugal partnership upon the death of a spouse and prohibits any disposition or encumbrance of the conjugal property prior to the liquidation. But the Court did not apply Article 130, citing Article 105 thereof which states that the provisions of the Family Code shall be "without prejudice to vested rights already acquired in accordance with the Civil Code or other laws." Thereafter, the Court indicated that an implied ordinary co-ownership among Flora's heirs governed the conjugal properties pending liquidation and partition, with Anastacio

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[43] *Id.* at 15-19. Citations omitted.

[44] G.R. No. 200274, April 20, 2016, 791 SCRA 47. Rendered by the Second Division; penned by Associate Justice Arturo D. Brion and concurred in by Associate Justices Antonio T. Carpio, Mariano C. Del Castillo, Jose C. Mendoza and Marvic M.V.F. Leonen.

[45] *Id.* at 59. Emphasis in the original.

owning one-half of the original conjugal partnership as his share plus his share as Flora's heir in the conjugal properties, but the same was an undivided interest. Invoking Article 493 of the Civil Code, the Court mentioned that Anastacio, as a co-owner, had the right to freely sell and dispose of his undivided interest, but not the interest of his co-owners.[46]

In fine, the Court held in *Domingo*:

> x x x Consequently, Anastacio's sale to the spouses Molina without the consent of the other co-owners was **not totally void**, for Anastacio's rights or a portion thereof were thereby effectively transferred, making the spouses Molina a co-owner of the subject property to the extent of Anastacio's interest. This result conforms with the well-established principle that the binding force of a contract must be recognized as far as it is legally possible to do so *(quando res non valet ut ago, valeat quantum valere potest)*.[47] (Emphasis and underscoring supplied)

Finally, in *Uy v. Estate of Vipa Fernandez*[48] *(Uy)* which also involved the sale of the undivided interest of the surviving spouse in a conjugal property, the Court merely adopted the ruling in *Domingo,* thus:

> Levi and Vipa were married in March 24, 1961 and in the absence of a marriage settlement, the system of conjugal partnership of gains governs their property relations. It is presumed that the subject property is part of the conjugal properties of Vipa and Levi considering that the same was acquired during the subsistence of their marriage and there being no proof to the contrary.
>
> When Vipa died on March 5, 1994, the conjugal partnership was automatically terminated. Under Article 130 of the Family Code, the conjugal partnership property, upon its dissolution due to the death of either spouse, should be liquidated either in the same

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[46] Id. at 56-59

[47] Id. at 59.

[48] G.R. No. 200612, April 5, 2017, 822 SCRA 382. Rendered by the Third Division; penned by Associate Justice Bienvenido L. Reyes and concurred in by Associate Justices Presbitero J. Velasco, Jr., Lucas P. Bersamin, Francis H. Jardeleza, and Noel G. Tijam.

proceeding for the settlement of the estate of the deceased or, in the absence thereof, by the surviving spouse within one year from the death of the deceased spouse. That absent any liquidation, any disposition or encumbrance of the conjugal partnership property is void. x x x

x x x x

Article 130 of the Family Code is applicable to conjugal partnership of gains already established between the spouses prior to the effectivity of the Family Code pursuant to Article 105 thereof x x x.

x x x x

Rafael bought Levi's one-half share in the subject property in consideration of P500,000.00 as evidenced by the Deed of Sale dated December 29, 2005. At that time, the conjugal partnership properties of Levi and Vipa were not yet liquidated. **However, such disposition, notwithstanding the absence of liquidation of the conjugal partnership properties, is <u>not necessarily void</u>**.

It bears stressing that under the regime of conjugal partnership of gains, the husband and wife are co-owners of all the property of the conjugal partnership. Thus, upon the termination of the conjugal partnership of gains due to the death of either spouse, the surviving spouse has an actual and vested one-half undivided share of the properties, which does not consist of determinate and segregated properties until liquidation and partition of the conjugal partnership. With respect, however, to the deceased spouse's share in the conjugal partnership properties, an implied ordinary co-ownership ensues among the surviving spouse and the other heirs of the deceased.

Thus, upon Vipa's death, one-half of the subject property was automatically reserved in favor of the surviving spouse, Levi, as his share in the conjugal partnership. The other half, which is Vipa's share, was transmitted to Vipa's heirs — Grace Joy, Jill Frances, and her husband Levi, who is entitled to the same share as that of a legitimate child. The ensuing implied co-ownership is governed by Article 493 of the Civil Code x x x.

x x x x

Although Levi became a co-owner of the conjugal partnership properties with Grace Joy and Jill Frances, he could not yet assert or claim title to any specific portion thereof without an actual partition

of the property being first done either by agreement or by judicial decree. Before the partition of a land or thing held in common, no individual or co-owner can claim title to any definite portion thereof. All that the co-owner has is an ideal or abstract quota or proportionate share in the entire land or thing.

Nevertheless, a co-owner could sell his undivided share; hence, Levi had the right to freely sell and dispose of his undivided interest. Thus, the sale by Levi of his one-half undivided share in the subject property was **not necessarily void**, for his right as a co-owner thereof was effectively transferred, making the buyer, Rafael, a co-owner of the subject property. It must be stressed that the binding force of a contract must be recognized as far as it is legally possible to do so *(quando res non valet ut ago, valeat quantum valere potest)*.[49] (Emphasis and underscoring supplied)

The Court's ruling in *Heirs of Go, Domingo*, and *Uy* to the effect that the undivided share of the disposing co-owner is effectively transferred to the buyer based on the maxim *quando res non valet ut ago, valeat quantum valere potest* can be traced to the 1944 *en banc* case of *Lopez v. Vda. De Cuaycong, et al.*[50] *(Lopez)*, to wit:

On the first question, we believe the consent of the three daughters above named was not necessary to the validity of the sale in question. Each co[-]owner may alienate his undivided or ideal share in the community.

Articles 392[51] and 399[52] of the [old] Civil Code provide:

"Article 392. There is co-ownership whenever the ownership of a thing or of a right belong undivided to different persons.

x x x x

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[49] Id. at 395-398. Citations omitted.

[50] 74 Phil. 601 (1944).

[51] CIVIL CODE, Art. 484.

[52] Id., Art. 493.

"Article 399. Each one of the co-owners shall have the absolute ownership of his part and that of the fruits and profits pertaining thereto, and he may therefore sell, assign or mortgage it, and even substitute another person in its enjoyment, unless personal rights are involved. But the effect of the alienation or mortgage with respect to the co-owners shall be limited to the share which may be allotted to him in the division upon the termination of the co-ownership."

Manresa has the following to say on this subject:

x x x x

"Each co-owner owns the whole, and over it he exercises rights of dominion, but at the same time he is the owner of a share which is really abstract, because until the division is effected, such share is not concretely determined. The rights of the co-owners are, therefore, as absolute as dominion requires, because they may enjoy and dispose of the common property, without any limitation other than that they should not, in the exercise of their right, prejudice the general interest of the community, and *possess, in addition, the full ownership of their share, which they may alienate, convey or mortgage; which share, we repeat, will not be certain until the community ceases.* The right of ownership, therefore, as defined in Art. 348 of the present Civil Code, with its absolute features and its individualized character, in exercised in co-ownership, with no other differences between sole and common ownership than that which is rightly established by the Portuguese Code (Arts. 2175 and 2176), when it says 'that the sole owner exercises his rights exclusively, and the co-owner exercises them jointly with the other co-owners'; but we shall add, *to each co-owner pertains individually, over his undivided share, all the rights of the owner,* aside from the use and enjoyment of the thing, which is common to all the co-owners." x x x

Manresa further says that in the alienation of his undivided or ideal share, a co-owner does not need the consent of the others. (Vol. 3, pp. 486-487, 3rd Ed.)

Sanchez Roman also says ("*Estudios de Derecho* Civil," Vol. 3, pp. 174-175):

x x x x

"Article 399 shows the essential integrity of the right of each co-owner in the *mental* portion which belongs to him in the co-ownership or community.

x x x x

"To be a co-owner of a property does not mean that one is deprived of every recognition of the disposal of the thing, of the free use of his right within the circumstantial conditions of such juridical status, nor is it necessary, for the use and enjoyment, or the right of free disposal, that the previous consent of all the interested parties be obtained. x x x"

According to Scaevola (Codigo Civil, Vol. 7, pp. 154-155):

x x x x

"2nd. *Absolute right of each co-owner with respect to his part or share*. — With respect to the latter, each co-owner is the same as an individual owner. He is a singular owner, with all the rights inherent in such condition. The share of the co-owner, that is, the part which ideally belongs to him in the common thing or right and is represented by a certain quantity, is his and he may dispose of the same as he pleases, because it does not affect the right of the others. Such quantity is equivalent to a credit against the common thing or right, and is the private property of each creditor (co-owner). The various shares ideally signify as many units of thing or right, pertaining individually to the different owners; in other words, a unit for each owner."

It follows that the consent of the three daughters Maria Cristina, Josefina and Anita Cuaycong to the sale in question was not necessary.

x x x x

The second question is: What rights did the intervenor acquire in this sale? The answer is: the same rights as the grantors had as co-owners in an ideal share equivalent in value to 10,832 square meters of the hacienda. No specific portion, physically identified, of the hacienda has been sold, but only an abstract and undivided share equivalent in value to 10,832 square meters of the common property. What portion of the hacienda has been sold will not be physically and concretely ascertained until after the division. This sale is therefore subject to the result of such partition, but this condition does not

render the contract void, for an alienation by the co-owner of his ideal share is permitted by law, as already indicated. If in the partition this lot 178-B should be adjudicated to the intervenor, the problem would be simplified; otherwise, the sellers would have to deliver to the intervenor another lot equivalent in value to Lot No. 178-B. Incidentally, it should be stated that according to Rule 71, sec. 4, of the new Rules of Court, regarding partition of real estate, the commissioners on partition shall set apart the real property "to the several parties in such lots or parcels as will be *most advantageous and equitable, having due regard to the improvements*, situation and quality of the different parts thereof." x x x Consequently, without deciding that the commissioners on partition must assign Lot 178-B to intervenor, we deem it proper to state that if in the partition proceedings, the commissioners should set apart said lot to intervenor, they would be acting within the letter and spirit of the provision, just quoted, of Rule 71, sec. 4; and that they will probably make such adjudication.

In the Sentence of December 29, 1905, the Supreme Tribunal of Spain declared that the alienation, by a co-owner, of either an abstract or a concrete part of the property owned in common does not mean the cessation of the ownership. Said sentence held:

x x x x

> "The first assignment of error cannot be sustained, because such legal status does not disappear, nor is it impaired, with respect to the co-owners between themselves simply because both or either of them executed acts which may be considered as beyond the powers inherent in administration, the only powers which by mutual agreement had been conferred as to certain properties, inasmuch as although every co-owner may alienate, grant, or mortgage the ownership of his share, the effect of such alienation is limited, with reference to the co-owners, to the portion which may be adjudicated to him later, according to Art[.] 399 of the Civil Code, and does not imply the cessation of the community, whether the sale refers to an abstract part of the property, or *to a concrete and definite part thereof*, because though in the latter case the form and conditions of the subsequent partition may be effected, nevertheless, the juridical situation of the collective owners is not in any way altered so long as the partition of the common property is not carried out, which is declared not to have taken place." x x x

Applying the above doctrine to the instant case, it cannot be said that the sale of Lot 178-B to the intervenor had the effect of partitioning the hacienda and adjudicating that lot to the intervenor. It merely transferred to the intervenor an abstract share equivalent in value to 10,832 square meters of said hacienda, subject to the result of a subsequent partition. The fact that the agreement in question purported to sell a concrete portion of the hacienda does not render the sale void, for it is a well-established principle that the binding force of a contract must be recognized as far as it is legally possible to do so. "Quando res non valet ut ago, valeat quantum valere potest." ("When a thing is of no force as I do it, it shall have as much force as it can have.") It is plain that Margarita G. Vda. de Cuaycong and her children of age intended to sell to intervenor no more than what they could legally and rightfully dispose of, and as they could convey only their ideal share, equivalent in value to 10,832 square meters of the hacienda, that ideal share alone must be deemed to have been the subject-matter of the sale in question. They are presumed to know the law that before partition, conventional or judicial, no co[-]owner may dispose of any physically identified portion of the common property; and that any conveyance by a co[-]owner is subject to the result of a subsequent partition. This interpretation of the contract does no harm to the minor daughters, as the sale in question is subject to the result of the partition which intervenor may demand.

As a successor in interest to an abstract or undivided share of the sellers, equivalent in value to 10,832 square meters of the property owned in common, the intervenor has the same right as its predecessors in interest to demand partition at any time, according to Article 400[53] of the [old] Civil Code x x x[.][54] (Italics in the original)

With respect to *Uy*, the Court notes that it applied Article 130 of the Family Code since the concerned spouse died during the

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[53] CIVIL CODE, Art. 494.

[54] *Lopez v. Vda. de Cuaycong, et al.*, supra note 50, at 603-609. The Court notes that in the 1968 *en banc* case of *Estoque v. Pajimula*, No. L-24419, July 15, 1968, 24 SCRA 59, where a co-owner sold a specific one-third portion of the co-owned property without the consent of the other two co-owners and afterwards the selling co-owner became the sole owner thereof, the Court pronounced that while on the date of the sale, "said contract may have been ineffective, for lack of power in the vendor to sell the specific portion described in the deed, the transaction was validated and became

effectivity of the Family Code while *Heirs of Go* and *Domingo* did not apply the said Article because the death of the spouse occurred during the effectivity of the Civil Code, or prior to August 3, 1988, and Article 130's retroactive application would purportedly impair vested rights under the Civil Code. According to *Heirs of Go*: "such a declaration [of nullity] prejudices the rights of Servacio [(the buyer)] who had already acquired the shares of Protacio, Sr. and Rito [(the surviving spouse and a legitimate son of the deceased spouse)] in the property subject of the sale."[55] But, in *Heirs of Go*, the disputed sale happened in 1999 such that Servacio's right as co-owner was acquired

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fully effective when the next day x x x the vendor x x x acquired the entire interest of her remaining co-owners x x x and thereby became the sole owner [thereof]." The Court cited Article 1434 of the Civil Code, which provides that "[w]hen a person who is not the owner of a thing sells or alienates and delivers it, and later the seller or grantor acquires title thereto, such title passes by operation of law to the buyer or grantee," as justification. As to the effect of the sale of specific one-third portion prior to the seller's acquisition of the shares of the other co-owners, the Court observed that granting the seller could not have sold that particular portion of the lot owned by her and her two brothers, by no means did it follow that the seller intended to sell her 1/3 undivided interest in the property as there was nothing in the deed of sale to justify the inference and pursuant to the maxim, *ab posse ad actu non valet illatio*. The ruling of the Court in *Estoque v. Pajimula* is not necessarily inconsistent with the Court's statement in *Lopez* that the sale of a concrete portion of the co-owned property does not render the sale void based on the principle that the binding force of a contract must be recognized as far as it is legally possible to do so, following the maxim: *Quando res non valet ut ago, valeat quantum valere potest*. The peculiar circumstance in *Estoque v. Pajimula* that the selling co-owner subsequently acquired the sole ownership of the property apparently impelled the Court to treat the previous sale of the specific portion ineffective so that it could be validated upon the acquisition by the seller of the interests of the other co-owners. Whereas, if the co-ownership subsists after the sale by a co-owner of a specific portion of the co-owned property without the consent of the others, the sale will be recognized as valid only up to the extent of the undivided share of the disposing co-owner, and in addition to the maxim: *Quando res non valet ut ago, valeat quantum valere potest*, estoppel will bar the seller from disavowing the sale to the prejudice of the buyer who relied upon the former's action.

[55] *Heirs of Protacio Go, Sr. and Marta Barola v. Servacio*, supra note 42, at 17.

during the effectivity of the Family Code. In *Domingo*, the disputed transaction happened in 1978. That being the situation, the buyer of the surviving spouse's undivided interest became co-owner of the subject property and the buyer's vested right would be prejudiced if Article 130 would be applied retroactively.

However, it must likewise be noted that what was vested in the buyer regarding a disposition prior to the effectivity of the Family Code is merely the ownership of the undivided interest of the surviving spouse in the conjugal property, consisting of (1) the surviving spouse's half interest in the conjugal property as his or her conjugal share (because death terminated the marriage) and (2) the surviving spouse's share as legal heir in the deceased spouse's conjugal share (the other half interest therein), that was vested in his favor by succession. It is that undivided interest that the surviving spouse can freely dispose of without need of the other co-owners' consent. As to the undivided shares of the other co-owners, the disposition by the surviving spouse thereof is not valid. And the same holds true with respect to a similar disposition made by the surviving spouse after the effectivity of the Family Code.

If the right being prejudiced in the retroactive application of Article 130 is the right of the surviving spouse as a co-owner of the conjugal property, which vested when the marriage was dissolved by the death of the other spouse, the prejudice could result only when the right is exercised. Thus, the date of the spouse's death is not the reckoning point. Rather, the relevant date in the retroactive application of Article 130 is when the questioned disposition involving the unliquidated conjugal property is made.

As demonstrated in *Uy*, the result is the same whether Article 130 is retroactively applied or not. The disposition by the surviving spouse despite non-observance of the requirement on the liquidation of the terminated marriage property within one year from the death of his or her spouse is recognized as one that is not totally or necessarily void. As stated earlier, the disposition is recognized as valid to the extent of the undivided

share of the disposing surviving spouse in *Domingo* and *Uy*, or the undivided shares of the disposing surviving spouse and legitimate child in *Heirs of Go*. The proviso on nullity under Article 130 is therefore more appropriately applied only insofar as the disposition affects the portion of the conjugal property pertaining to the non-disposing co-heirs.

The Court further notes that in *Domingo* and *Uy*, the subject disposition or alienation concerned the very share or interest of the surviving spouse over which, according to Article 493 of the Civil Code, he or she has **full ownership**. Thus, as Article 493 puts it, the disposition should be perfectly valid "[b]ut the effect of the alienation x x x, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership."

The Court now discusses how Article 130 should be interpreted given the factual milieu of this case.

Was the consent of Perla, Teodulo's second wife, necessary for the validity of the sale of the subject property by Teodulo to Apolinario?

The third paragraph of Article 130 of the Family Code provides that a mandatory regime of complete separation of property shall govern the property relations of the subsequent marriage should the surviving spouse contract a subsequent marriage without liquidating the conjugal partnership property, thus:

> x x x x
>
> Should the surviving spouse contract a subsequent marriage without compliance with the foregoing requirements, a mandatory regime of complete separation of property shall govern the property relations of the subsequent marriage. (n)

When a complete or total separation of property governs the property relations, no portion of the properties of the marriage will be common, and the fruits of the properties of either spouse, as well as his or her earnings from any profession, work or

industry, will belong to him or her as exclusive property.[56] Each spouse owns the property which he or she brings to the marriage or which he or she may acquire during the marriage by onerous or gratuitous title.[57]

The ownership rights of each spouse in a regime of separation of property are provided in Article 145 of the Family Code, which states:

> ART. 145. Each spouse shall own, dispose of, possess, administer and enjoy his or her own separate estate, without need of the consent of the other. To each spouse shall belong all earnings from his or her profession, business or industry and all fruits, natural, industrial or civil, due or received during the marriage from his or her separate property. (214a)

Given that complete separation of property governed the subsequent marriage of Teodulo and Perla, the 9/16 undivided share or interest in the subject property of Teodulo belonged to him and remained with him as his separate property when he married Perla. Thus, he could have disposed of this without need of consent from Perla.

Is this right of disposition by the surviving spouse under Article 145 of the Family Code, which is consistent with Article 493 of the Civil Code insofar as the right of alienation by a co-owner of his or her interest or share in the co-ownership is concerned, abrogated by the provision of Article 130 of the Family Code which provides that "any disposition or encumbrance involving the conjugal partnership property of the terminated marriage shall be void" if no liquidation of the terminated marriage property is made upon the lapse of one year from the death of the deceased spouse?

While there appears to be a seeming conflict in the cited provisions of the Family Code and the Civil Code, the provisions are not irreconcilable. As discussed above, the disposition or

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[56] Arturo M. Tolentino, supra note 36, at 489.

[57] Id. at 490.

encumbrance is valid only to the extent of the share or interest of the surviving spouse in the terminated marriage property, and cannot in no way bind the shares or interests therein of the other heirs of the deceased spouse.

The above formulation, which recognizes as valid the disposition by the surviving spouse of his separate property — equivalent to his undivided share in the conjugal property with his deceased wife and his share as legal heir in the latter's estate — pursuant to Article 145 of the Family Code despite the proviso in Article 130 to the effect that such disposition is considered void, is consistent with *Lopez* and supported by *Heirs of Go*, *Domingo* and *Uy*.

While the phrases used in *Heirs of Go*, *Domingo* and *Uy* to describe the effect of the disposition which is non-compliant with the requirements of Article 130, namely, "not necessarily void," "[not] entirely void," "not null and void," "not totally void," the Court still recognized therein that the surviving spouse's rights in the subject property are effectively transferred to the buyer, making the latter a co-owner of the property to the extent of the surviving spouse's undivided interest therein, and a trustee of the remaining portion of the property for the benefit of the deceased spouse's other heirs, the *cestui que trustent* or *cestui que trust*. In this light, if the disposition is made after the remarriage of the surviving spouse during the effectivity of the Family Code, then with more reason that the disposition is not void because the surviving spouse's undivided interest in the terminated marriage property is already recognized as his separate property, which he can freely dispose of under Article 145 of the Family Code.

The disposition or encumbrance of the entire property is valid only if the other heirs or co-owners give their consent thereto pursuant to Article 491 of the Civil Code, which provides that none of the co-owners shall, without the consent of the others, make alterations in the thing owned in common, even though benefits for all would result therefrom. Alteration includes any act of ownership or strict dominion such as alienation of the

thing by sale or donation.[58] However, if the widow or widower alone survives the deceased spouse, he or she becomes the sole owner of the latter's estate pursuant to Article 995 of the Civil Code, which states:

> ART. 995. In the absence of legitimate descendants and ascendants, and illegitimate children and their descendants, whether legitimate or illegitimate, the surviving spouse shall inherit the entire estate, without prejudice to the rights of brothers and sisters, nephews and nieces, should there be any, under Article 1001. (946a)

In this scenario, the surviving spouse becomes the sole owner of the conjugal property and the proviso of Article 130 of the Family Code necessarily yields to Article 145.

Also, there is no doubt that the disposition by the surviving spouse of his undivided interest in the co-ownership created by the death of the other spouse is valid pursuant to Article 493 of the Civil Code, subject to the outcome of the partition, and because that undivided interest is separate property of the surviving spouse in case of remarriage, its disposition without the consent of the subsequent spouse is valid pursuant to Article 145 of the Family Code.

Consequently, the determination of the effect of a questioned disposition by the surviving spouse despite non-compliance with the requirements under Article 130 of the Family Code depends not so much on whether this provision can be retroactively applied, but on the correct application of Article 493 of the Civil Code (prior to remarriage of the surviving spouse), and Article 145 of the Family Code by itself or in conjunction with Article 493 of the Civil Code (after the latter's remarriage during the effectivity of the Family Code).

Taking into consideration the foregoing discussion, the CA erred when it ruled that the property regime governing the marriage between Perla and Teodulo is absolute community.[59]

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[58] See Hector S. De Leon and Hector M. De Leon, Jr., COMMENTS AND CASES ON PROPERTY (Fourth Edition 2003), p. 234.

[59] *Rollo*, p. 46.

Accordingly, it also erred when it applied the exclusion provided in Article 92[60] of the Family Code with respect to property acquired before the marriage by either spouse who has legitimate descendants by a former marriage, and the fruits as well as income thereof.

While the CA was correct in stating that the purpose of the exclusion is to protect the rights and interests of the legitimate descendants by the first marriage over the property and to ensure that the children born of the prior marriage are not deprived of their share in the properties of their parents,[61] its pronouncement that in the instant case the exclusion does not apply considering that "Perla x x x recognizes the co-ownership between Teodulo and his children with Perpetua, as seen in the extrajudicial settlement document[, and thus,] there is no risk of depriving them of their rights over the conjugal property of Teodulo and Perpetua"[62] is misguided.

Perla's recognition of the co-ownership between Teodulo and his children with Perpetua does not confer any additional right in their favor nor is it necessary to confer upon them their right to succeed from Perpetua because as far as they are concerned their right to inherit from the estate of Perpetua was vested upon the latter's death. As to Teodulo's conjugal share in the subject property, that is guaranteed as his separate property under Article 145 in relation to Article 130 of the Family Code.

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[60] ART. 92. The following shall be excluded from the community property:

(1) Property acquired during the marriage by gratuitous title by either spouse, and the fruits as well as the income thereof, if any, unless it is expressly provided by the donor, testator or grantor that they shall form part of the community property;

(2) Property for personal and exclusive use of either spouse. However, jewelry shall form part of the community property;

(3) Property acquired before the marriage by either spouse who has legitimate descendants by a former marriage, and the fruits as well as the income, if any, of such property. (201a)

[61] *Rollo*, p. 46.

[62] Id.

In the same vein, petitioners' invocation of Article 92 to justify that the subject property is excluded from the community property of Teodulo and Perla, and is partly Teodulo's separate property, which he could alienate without need of Perla's consent, is incorrect. As to their invocation of Article 103, which applies to community property, it is likewise incorrect because the property regime of Teodulo and Perpetua was the conjugal partnership of gains. Thus, the applicable provision is Article 130 of the Family Code.

The Court need not waste its time to discuss the arguments of respondents as they are clearly egregiously wrong.

The Court will now proceed to determine whether the sale of the subject property by Teodulo to Apolinario, without the consent of Perla and his other seven co-owners, is valid.

Before the question can be properly addressed, the nature of the transaction over the subject property between Teodulo and Apolinario must be examined.

It will be recalled that on September 23, 1994, Teodulo (respondents' predecessor-in-interest) sold to Apolinario (petitioners' predecessor-in-interest) a parcel of land with an approximate area of 7,768 square meters for the total purchase price of ₱150,000.00. The parties agreed that Apolinario would pay ₱40,000.00 as initial payment and the rest was to be paid in installments. The receipt of the initial payment was acknowledged by Teodulo in a handwritten receipt also dated September 23, 1994. Thereafter, Apolinario's family occupied the property. The second installment in the amount of ₱40,000.00 was paid by Apolinario on August 14, 1996, and another installment was made on October 20, 1999 in the amount of ₱40,000.00, as reflected in the handwritten receipt which also stated that "[u]pon payment of the balance in the amount of Thirty Thousand Pesos ([₱]30,000.00), I [(referring to Teodulo)] will cause the transfer of the title of my land in his [(referring to Apolinario)] name."[63] Of the ₱150,000.00 purchase price,

[63] *Id.* at 78, 81.

Apolinario was able to pay ₱120,000.00 or 80% thereof. However, on December 22, 2000, Teodulo died before the balance of the purchase price could be paid.

Based on these facts, the transaction between Teodulo and Apolinario is a contract of sale.

Article 1458 of the Civil Code defines a contract of sale as a contract where one of the parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other party to pay therefor a price certain in money or its equivalent. From the perspective of the definition of obligation under Article 1156 as "a juridical necessity to give, to do or not to do," the prestations of the seller are: (1) to transfer the ownership of a determinate thing and (2) to deliver that determinate thing while the corresponding prestation of the buyer is to pay therefor a price certain in money or its equivalent. Given that the seller is obligated to transfer not only the ownership of the determinate thing sold but also to deliver the thing, the seller may withhold ownership of the thing sold despite its delivery to the buyer. This is expressly allowed under Article 1478 of the Civil Code, which states: "The parties may stipulate that ownership in the thing shall not pass to the purchaser until he has fully paid the price." Without such stipulation, ownership of the thing sold is transferred to the buyer upon its delivery in consonance with Article 1477, which provides: "The ownership of the thing sold shall be transferred to the vendee upon the actual or constructive delivery thereof."

In *San Lorenzo Development Corporation v. Court of Appeals*,[64] the Court discussed the nature, elements, perfection and consummation of a contract of sale, *viz.*:

> Sale, being a consensual contract, is perfected by mere consent and from that moment, the parties may reciprocally demand performance. The essential elements of a contract of sale [are]: (1) consent or meeting of the minds, that is, to transfer ownership in

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[64] G.R. No. 124242, January 21, 2005, 449 SCRA 99.

exchange for the price; (2) object certain which is the subject matter of the contract; (3) cause of the obligation which is established.

The perfection of a contract of sale should not, however, be confused with its consummation. In relation to the acquisition and transfer of ownership, it should be noted that sale is not a mode, but merely a title. A mode is the legal means by which dominion or ownership is created, transferred or destroyed, but title is only the legal basis by which to affect dominion or ownership. Under Article 712 of the Civil Code, "ownership and other real rights over property are acquired and transmitted by law, by donation, by testate and intestate succession, and in consequence of certain contracts, by tradition." Contracts only constitute titles or rights to the transfer or acquisition of ownership, while delivery or tradition is the mode of accomplishing the same. Therefore, sale by itself does not transfer or affect ownership; the most that sale does is to create the obligation to transfer ownership. It is tradition or delivery, as a consequence of sale, that actually transfers ownership.

Explicitly, the law provides that the ownership of the thing sold is acquired by the vendee the moment it is delivered to him in any of the ways specified in Article 1497 to 1501. The word "delivered" should not be taken restrictively to mean transfer of actual physical possession of the property. The law recognizes two principal modes of delivery, to wit: (1) actual delivery; and (2) legal or constructive delivery.

Actual delivery consists in placing the thing sold in the control and possession of the vendee. Legal or constructive delivery, on the other hand, may be had through any of the following ways: the execution of a public instrument evidencing the sale; symbolical tradition such as the delivery of the keys of the place where the movable sold is being kept; *traditio longa manu* or by mere consent or agreement if the movable cannot yet be transferred to the possession of the buyer at the time of the sale; *traditio brevi manu* if the buyer already had possession of the object even before the sale; and *traditio constitutum possessorium*, where the seller remains in possession of the property in a different capacity.[65]

Based on the elements of sale, the transaction between Teodulo and Apolinario is indeed a contract of sale. There was a meeting

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[65] Id. at 113-114. Citations omitted.

of the minds: Teodulo agreed to transfer ownership of and to deliver the subject property and Apolinario agreed to pay the purchase price of ₱150,000.00. The object is the subject property, which is determinate and licit. For Teodulo, the cause or consideration was the receipt of the payment of the purchase price while for Apolinario, it was the transfer of ownership and delivery of the subject property to him.

Not only was the sale between Teodulo and Apolinario perfected, it was partially consummated. Teodulo had substantially complied with his prestations as the seller when he placed the subject property in the control and possession of Apolinario without reserving its ownership. What was left was the transfer of the certificate of title covering the subject property from Teodulo to Apolinario. Apolinario had paid a total of ₱120,000.00 or 80% of the purchase price of ₱150,000.00 agreed upon. As to the remaining ₱30,000.00, the handwritten receipt dated October 20, 1999 stated that "[u]pon payment of the balance in the amount of Thirty Thousand Pesos ([₱]30,000.00), I [(referring to Teodulo)] will cause the transfer of the title of my land in his [(referring to Apolinario)] name."[66]

As control and possession of the subject property had earlier been ceded by Teodulo to Apolinario after the payment of the initial ₱40,000.00 on September 23, 1994, without any stipulation that ownership in the subject property would not pass to Apolinario until he had fully paid the price, the quoted proviso in the October 20, 1999 receipt had no effect on the ownership of the subject property having already been transferred to Apolinario by actual delivery.

The proviso is simply a reservation of a portion of the purchase price to ensure the transfer of the certificate of title from Teodulo to Apolinario. Sale being a reciprocal obligation, both Teodulo and Apolinario stood to benefit from the proviso. Teodulo would not need to spend his own funds to effect the transfer of title and Apolinario could be assured of the transfer of title by making

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[66] See note 63.

sure that the remaining ₱30,000.00 would be spent for that purpose.

Despite the existence of a valid contract of sale over the subject property between Teodulo and Apolinario, the sale is effective only to the extent of the share or interest of Teodulo therein pursuant to Article 493 of the Civil Code which, as discussed above, is 9/16 of the subject property.

The Court, in applying Article 493 of the Civil Code to a situation wherein the entire co-owned property has been disposed by a co-owner without the consent of the other co-owners, has this to say in *Bailon-Casilao v. Court of Appeals*:[67]

> The rights of a co-owner of a certain property are clearly specified in Article 493 of the Civil Code.Thus:
>
> > Art. 493. Each co-owner shall have the *full ownership of his part* and of the fruits and benefits pertaining thereto, and he may therefore *alienate, assign or mortgage* it and even substitute another person in its enjoyment, except when personal rights are involved. *But the effect of the alienation or mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership*. [Italics supplied.]
>
> As early as 1923, this Court has ruled that even if a co-owner sells the whole property as his, the sale will affect only his own share but not those of the other co-owners who did not consent to the sale [Punsalan v. Boon Liat, 44 Phil. 320 (1923)]. This is because under the aforementioned codal provision, the sale or other disposition affects only his undivided share and the transferee gets only what would correspond to his grantor in the partition of the thing owned in common. [Ramirez v. Bautista, 14 Phil. 528 (1909)] x x x[68]

This pronouncement of the Court was reiterated in *Spouses Del Campo v. Court of Appeals*,[69] to wit:

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[67] No. L-78178, April 15, 1988, 160 SCRA 738.

[68] Id. at 744-745.

[69] G.R. No. 108228, February 1, 2001, 351 SCRA 1.

x x x Since the co-owner/vendor's undivided interest could properly be the object of the contract of sale between the parties, what the vendee obtains by virtue of such a sale are the same rights as the vendor had as co-owner, in an ideal share equivalent to the consideration given under their transaction. In other words, the vendee steps into the shoes of the vendor as co-owner and acquires a proportionate abstract share in the property held in common.

x x x We have ruled many times that even if a co-owner sells the whole property as his, the sale will affect only his own share but not those of the other co-owners who did not consent to the sale. Since a co-owner is entitled to sell his undivided share, a sale of the entire property by one co-owner will only transfer the rights of said co-owner to the buyer, thereby making the buyer a co-owner of the property.[70]

Furthermore, *Lopez* supports the validity of the disposition to the extent of the undivided share of the disposing co-owner despite the lack of consent from the other co-owners.

Therefore, while Teodulo sold the entire subject property which he owned in common with his seven children, the sale only affected his undivided share and Apolinario acquired only Teodulo's 9/16 abstract share in the property held in common. While Teodulo could dispose of his 9/16 undivided interest therein by virtue of Article 145 of the Family Code because that pertained to him as his separate property in his subsequent marriage to Perla under Article 130 of the Family Code, his disposition of the entire subject property cannot be entirely valid as his right to dispose as a co-owner is limited by Article 493 of the Civil Code to the share or part pertaining to him.

In view of the fact that 80% of the purchase price had been paid, Jesus, to whom the subject property was adjudicated by virtue of the extrajudicial settlement of the estates of Teodulo and Perpetua, is no longer entitled to collect the remaining balance of ₱30,000.00. The ₱120,000.00 is deemed to be sufficient

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[70] *Id.* at 7-8, citing *Tomas Claudia Memorial College, Inc. v. Court of Appeals*, G.R. No. 124262, October 12, 1999, 316 SCRA 502, 509.

consideration of 9/16 of the subject property because 9/16 thereof, given its total area of 7,768 square meters, is equivalent to approximately 4,369.5 square meters or a little more than half of the subject property's area.

Given that: Apolinario had already paid a total of ₱120,000.00 or 80% of the purchase price of ₱150,000.00 agreed upon; such 80% payment would be equivalent to about 6,214 square meters, given that the total area of the subject property is 7,768 square meters; the sale can only be recognized to the extent of 9/16 or 56.25% of its area or 4,369.5 square meters; petitioners' prayer that the sale be recognized valid to the extent of the conjugal share of Teodulo plus his "share[71] x x x [i]n the other half of the property in question";[72] and the length of time that has transpired from the sale in 1994 to the present, the Court deems it just and equitable to recognize the sale between Teodulo and Apolinario valid to the extent of 9/16 of the subject property and the purchase price thereof has been fully discharged.

Upon the death of Apolinario, pursuant to Article 777 of the Civil Code, ownership to the extent of 9/16 of the subject property devolved *pro-indiviso* upon his heirs, petitioners herein, by virtue of succession. Consequently, Jesus and the heirs of Apolinario are pronounced co-owners of the subject property now covered by TCT No. 22388 in the following proportion: Jesus to the extent of 7/16 and petitioners to the extent of 9/16.

In the words of the Court in *Heirs of Go, Domingo*, and *Uy*, the sale by Teodulo of the subject property to Apolinario was **not necessarily or totally or entirely void**, for his right as a co-owner to the extent of 9/16 thereof was effectively transferred, making the buyer, Apolinario, a co-owner of the subject property

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[71] Petitioners claim that 1/5 of the other half of the subject property is Teodulo's share in the estate of Perpetua, which is her conjugal half. However, they have not explained how they arrived at the said fraction. 1/5 presupposes that Teodulo and Perpetua had 4 children. They had 7 children. There are 8 respondents and one of them is Perla, Teodulo's second wife. Thus, the correct fraction, as computed, is 9/16 [½ or 8/16 plus 1/8 (½) or 1/16].

[72] *Rollo*, p. 36.

to that extent and a trustee for the benefit of the co-heirs of Teodulo, his seven children, in respect of their combined 7/16 interest therein that was not validly sold to Apolinario. Upon Apolinario's death, petitioners stepped into his shoes and became co-owners together with Jesus of the subject property.

WHEREFORE, the Petition is hereby **PARTIALLY GRANTED**. Accordingly, the Decision dated November 11, 2016 and the Resolution dated April 12, 2017 of the Court of Appeals in CA-G.R. CV No. 106010 are **REVERSED** and **SET ASIDE**. Judgment is hereby rendered in favor of petitioners as follows:

(1) The Heirs of Apolinario Caburnay, namely, Lydia Caburnay, Letecia Navarro, Evangeline Cruz, Jerry Caburnay, Zenaida C. Ancheta, Liwayway C. Watan, Gloria Gusilan, Apolinario Caburnay, Jr. and Maelin Caburnay are declared and recognized co-owners, share and share alike, of the property covered by Transfer Certificate of Title No. 22388 to the extent of 9/16 thereof;

(2) Jesus Sison is declared and recognized co-owner of the said property to the extent of 7/16 thereof; and

(3) Upon finality of this Decision, the proper Register of Deeds is directed to enter and register this Decision in the primary entry book, annotate the same in Transfer Certificate of Title No. 22388, and issue a new Transfer Certificate of Title in lieu of Transfer Certificate of Title No. 22388 in the names of the parties mentioned in (1) and (2) above as co-owners in the proportions indicated therein.

SO ORDERED.

Peralta, C.J. (Chairperson), Carandang, Zalameda, and *Gaerlan, JJ.*, concur.

FIRST DIVISION

[G.R. No. 232455. December 2, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **TEODORO ANSANO *y* CALLEJA,** *Accused-Appellant.*

APPEARANCES OF COUNSEL

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

D E C I S I O N

CAGUIOA, *J.*:

Before this Court is an ordinary appeal[1] filed by the accused-appellant Teodoro Ansano y Calleja (Ansano) assailing the Decision[2] dated February 20, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08223, which affirmed the Decision[3] dated November 16, 2015 of the Regional Trial Court of YYY, ZZZ,[4] Branch 26 (RTC) in Criminal Case No. SC-12326, finding Ansano guilty beyond reasonable doubt of rape.

The Facts

An Information was filed against Ansano for the rape of minor AAA,[5] which read:

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[1] *See* Notice of Appeal dated March 10, 2017; *rollo*, pp. 111-112.

[2] *Rollo*, pp. 2-16. Penned by Associate Justice Marlene Gonzales-Sison, with Associate Justices Ramon A. Cruz and Henri Jean Paul B. Inting (now a Member of this Court) concurring.

[3] CA *rollo*, pp. 12-15. Penned by Pairing Judge Cynthia R. Mariño-Ricablanca.

[4] The names of the City and the·Province are replaced with fictitious initials pursuant to SC Adm. Cir. No. 83-15 dated July 27, 2015.

[5] The name of the victim is replaced with fictitious initials pursuant to SC Adm. Cir. No. 83-15 dated July 27, 2015.

That on or about April 6, 2005, in the Municipality of [XXX], Province of [ZZZ] and within the jurisdiction of this Honorable Court, the above-named accused, while conveniently armed and provided with a bolo, with lewd design and with force and intimidation, did then and there [willfully], unlawfully and feloniously have carnal knowledge of one [AAA], a minor who at the time was only fifteen (15) years of age, against her will and consent, the act of the accused being prejudicial to the psychological development of the said minor.

CONTRARY TO LAW.[6]

Upon arraignment, Ansano entered a plea of not guilty. Pre-trial and trial on the merits then ensued.

The version of the prosecution, as summarized by the trial court and affirmed by the CA, is as follows:

The complaining witness is AAA, 15 years old, student and a resident of XXX. She testified that she filed this case of rape against accused Teodoro Ansano, whom she pointed to and identified in open court. She stated that she did not know him at first, but when she went to the Municipal Building, she came to know him because of his niece who is her friend. On April 6, 2005, at about 5:00 o'clock in the afternoon, she was going to fetch her father at Narra, where he was then selling goods at the river. This was at [GGG][7] near the river. Accused Ansano was then carrying a bolo, wearing a long-sleeved shirt and long pants used in the farm; while she was wearing red t-shirt and school uniform skirt. Ansano poked his bolo at her and told her to go with him to the falls near the Narra tree. Because she was afraid and he threatened to kill her if she does not go with him, she went along. When they were nearing the falls, he turned the other way. He held her tightly by the shoulder, dragged her to a secluded area with bamboo trees and coconuts and told her to sit down and not to shout, still poking the bolo at her. He then removed

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[6] CA *rollo*, p. 11.

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

his clothes, undressed her, laid her down, kissed her neck and placed his penis into her mouth. She cried very hard and vomited at that time. Thereafter, accused inserted his penis into her vagina. It was painful. Accused rested for a while, and then did it again. Thereafter, accused put on his clothes and directed her to remain lying down until he left the place. He also told her not to tell anyone about the incident because he knew her and her parents, he knew what time she went to church, what time she went to bed and that she was always with her cousin. He then left and proceeded to the direction going to Narra. After he left, she put on her clothes and went home. She proceeded to bed and cried. Her mother asked her why she was crying and she told her that she was raped. She could hardly speak because she was still crying. Her father went to the place of the incident but the person who abused her was no longer there, so her father reported the incident to the police station.

She came to know the name and identity of the accused on March 19, 2006 at 8:00 o'clock in the evening, when she saw him in their house having a drinking spree with her father. She was able to recognize him ("namumukhaan");·he has a scar and "butil-butil" on his face; he has a moustache and "medyo singkit." She came to know his name for the first time when she went to the XXX Municipal Hall, where accused was detained because of the case filed by BBB. She was shown a picture of the accused, which she examined clearly, and she was sure that he was the one who raped her.

Because she was raped, she went to [ZZZ] Provincial Hospital for a medical examination. At the time of the incident on April 6, 2005, she was [just] thirteen (13) years old. She presented her Certificate of Baptism issued by Santo Cristo of Bulacan, Valenzuela, Metro Manila, showing that she was born on September 14, 1991 and baptized on September 25, 1991. She does not have a Certificate of Live Birth, as her birth was not registered because the midwife who attended to the delivery of her mother went abroad.

Upon cross-examination, she stated that she had been residing in XXX, since the year 2005, and that she had not known the accused, even by face, before April 6, 2005. She came to know him through BBB who was then living in their house, when accused had a drinking spree with her father on March 19, 2006.

x x x x

The next prosecution witness was Dr. Maria Cheryl Obcemea x x x [and] [h]er qualification as an expert witness was admitted by the defense. She testified that according to their records, she examined the patient AAA on April 7, 2005 at [ZZZ] Provincial Hospital. She was the one who physically examined AAA and her findings was reduced into writing in a Medico-Legal Report. Said findings indicate "Perineum: hymen-multiple fresh laceration 7 and 5 o'clock position; minimal bleeding."[8]

On the other hand, the accused relied on denial and alibi to establish his innocence. The version of the defense was summarized by the RTC, again as affirmed by the CA, as follows:

The defense presented accused himself, Teodoro Calleja Ansano, 45 years old, single, slipper maker and residing at XXX. He stated that he does not personally know AAA. On April 6, 2005, at around 5:00 o'clock in the afternoon, he was at Villa Pokan with his friends Rudy Monfero, Albert Concordia and Nick Esmejarda. They arrived at 4:00 o'clock in the afternoon at Villa Pokan to go swimming there and left at around 5:00 o'clock. They went home going their separate ways: Rudy and Albert to Ilayang Taykin, Nick to Poblacion and he (Ansano) to XXX. Upon reaching his house, he immediately went to sleep and woke up the next morning, April 7 at around 6:00 o'clock. On his way home to XXX, he did not meet AAA, nor did he poke a bolo on her neck and rape her.

The Court noted the manifestation of defense counsel that Ansano has no scar on his face at the time he testified in court.

When cross-examined, he stated that he does not know AAA and her father CCC; that he came to know in court that their house is more or less one kilometer away from his house; that on April 6, 2005, he and his friends Rudy, Albert and Nick left at around 5:00 o'clock in the afternoon; that [Villa Pokan] is more or less one kilometer away from his house; that upon reaching his house, he immediately went to sleep and woke up the following day.[9]

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[8] Id. at 3-5.

[9] Id. at 5-6.

Ruling of the RTC

After trial on the merits, in its Decision[10] dated November 16, 2015, the RTC convicted Ansano of the crime charged. The dispositive portion of the said Decision reads:

> WHEREFORE, this court finds accused Teodoro Ansano y Calleja GUILTY beyond reasonable doubt of the crime of Rape, defined and penalized under Article 266-A of the Revised Penal Code, as amended by Republic Act No. 8353 or the Rape Law of 1997. Thus, he is sentenced to suffer the penalty of RECLUSION PERPETUA. In addition thereto, he is ordered to pay AAA the sum of Fifty Thousand Pesos (P50,000.00) as civil indemnity, Fifty Thousand Pesos (P50,000.00) by way of moral damages, and Thirty Thousand Pesos (P30,000.00) as exemplary damages.
>
> SO ORDERED.[11]

The RTC was convinced by the testimony of AAA identifying Ansano as the one who sexually abused her. It found such testimony to be clear, consistent, spontaneous, and unrelenting, thus establishing that it was Ansano who sexually abused her on April 6, 2005. The RTC likewise found her testimony to be corroborated through the testimony of the medico-legal who conducted a medical examination on AAA. Thus, as between her credible testimony and Ansano's bare denial, the RTC ruled that the evidence at hand established Ansano's guilt beyond reasonable doubt.

Aggrieved, Ansano appealed to the CA.[12]

Ruling of the CA

In the questioned Decision[13] dated February 20, 2017, the CA affirmed Ansano's conviction, and held that the prosecution was able to sufficiently prove the elements of the crime charged. The dispositive portion of the Decision reads:

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[10] Supra note 3.

[11] CA *rollo*, pp. 14-15.

[12] Supra note 1.

[13] Supra note 2.

WHEREFORE, the appeal is **DENIED**. The Judgment dated November 16, 2015 of the Regional Trial Court, 4th Judicial Region, Branch 26, [XXX], [ZZZ], in Criminal Case No. SC-12326 finding accused-appellant **TEODORO ANSANO y CALLEJA GUILTY** beyond reasonable doubt of rape, is hereby **AFFIRMED**, with **MODIFICATION**. The Court sentences accused-appellant to suffer the penalty of *reclusion perpetua* without eligibility for parole and to pay AAA the amount of Php75,000.00 as civil indemnity, Php75,000.00 as moral damages, and another Php75,000.00 as exemplary damages, all with interest at the rate of six percent (6%) *per annum* from the finality of this Decision until fully paid.

SO ORDERED.[14]

The CA noted that AAA's testimony was clear, consistent, and spontaneous, and that she positively identified Ansano as the perpetrator.[15] Moreover, her claim that she was assaulted was supported by the medico-legal examination, which found multiple fresh lacerations on her hymen. The CA held that there was therefore no doubt that AAA was indeed assaulted.

As to the identification of Ansano as the perpetrator of the crime, the CA explained:

> The alleged inconsistency of AAA's testimony with regard to the time she first saw the accused-appellant face to face only on March 19, 2006 was properly explained during her re-direct examination. Again, there is no inconsistency as to having known accused-appellant's name only on May 15, 2006. That is different from having to see the accused-appellant again for the first time on March 19, 2006 after the rape incident that occurred on April 6, 2005.
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> Accused-appellant's claim of the absence of scar on his face may be true. However, AAA also identified accused-appellant through his other physical features such as, "*butil-butil sa mukha*," "*medyo singkit*," and his moustache. In this case, AAA consistently testified that she was able to see and recognize accused-appellant as her rapist.[16]

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[14] *Rollo*, p. 15.

[15] Id. at 11.

[16] Id. at 14.

Finally, the CA also ruled that Ansano's alibi cannot be given probative value, as AAA's positive identification, which was clear and credible, has destroyed Ansano's alibi which, in turn, was unsupported by evidence. The CA thus affirmed Ansano's conviction.

Hence, the instant appeal.

Issue

Proceeding from the foregoing, for resolution of this Court is the issue of whether the RTC and the CA erred in convicting the accused-appellant.

The Court's Ruling

The appeal is meritorious. The Court acquits Ansano on the ground of reasonable doubt.

At the outset, it bears emphasis that "the Court, in the course of its review of criminal cases elevated to it, still commences its analysis from the fundamental principle that the accused before it is presumed innocent."[17] This presumption continues although the accused had been convicted in the trial court, as long as such conviction is still pending appeal. As the Court explained in *Polangcos v. People*:[18]

> Article III, Section 14 (2) of the 1987 Constitution provides that every accused is presumed innocent unless his guilt is proven beyond reasonable doubt. It is "a basic constitutional principle, fleshed out by procedural rules which place on the prosecution the burden of proving that an accused is guilty of the offense charged by proof beyond reasonable doubt. Corollary thereto, conviction must rest on the strength of the prosecution's evidence and not on the weakness of the defense."
>
> This presumption in favor of the accused remains until the judgment of conviction becomes final and executory. Borrowing the words of

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[17] *Polangcos v. People*, G.R. No. 239866, September 11, 2019, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65740>.

[18] Id.

the Court in *Mangubat, et al. v. Sandiganbayan, et al.*, "[u]ntil a promulgation of final conviction is made, this constitutional mandate prevails." **Hence, even if a judgment of conviction exists, as long as the same remains pending appeal, the accused is still presumed to be innocent until his guilt is proved beyond reasonable doubt**. Thus, in *People v. Mingming*, the Court outlined what the prosecution must do to hurdle the presumption and secure a conviction:

> *First*, the accused enjoys the constitutional presumption of innocence until final conviction; conviction requires no less than evidence sufficient to arrive at a moral certainty of guilt, not only with respect to the existence of a crime, but, more importantly, of the identity of the accused as the author of the crime.
>
> *Second*, the prosecution's case must rise and fall on its own merits and cannot draw its strength from the weakness of the defense.[19] (Emphasis supplied)

Corollary to such principle, the Court has also laid down the following guidelines in its review of rape cases:

(a) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the person accused, though innocent, to disprove the charge;[20]

(b) considering that, in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution;[21] and

(c) the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[22]

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[19] Id.

[20] *People v. Sta. Ana*, 353 Phil. 388, 402 (1998).

[21] *Id.*

[22] Id.

From these principles, and based on its own careful review of the records of the case, the Court rules that a reasonable doubt exists as to Ansano's culpability. While the Court does not doubt AAA's claim that she had been raped, the Court does not, however, have moral certainty that it was Ansano who committed the dastardly act.

Verily, a successful prosecution of a criminal action largely depends on proof of two things: the identification of the author of the crime and his actual commission of the same. **An ample proof that a crime has been committed has no use if the prosecution is unable to convincingly prove the offender's identity**. The constitutional presumption of innocence that an accused enjoys is not demolished by an identification that is full of uncertainties.[23]

The Court has always been mindful that "[t]he greatest care should be taken in considering the identification of the accused, especially when this identification is made by a sole witness and the judgment in the case totally depends on the reliability of the identification."[24] This stems from the recognition that testimonial evidence, unlike other forensic evidence such as fingerprint and DNA testing which are real or object evidence, are subject to human errors which may be intentional or unintentional. In *People v. Nuñez*[25] *(Nuñez)*, the Court elucidated:

> The frailty of human memory is a scientific fact. The danger of inordinate reliance on human memory in criminal proceedings, where conviction results in the possible deprivation of liberty, property, and even life, is equally established.
>
> Human memory does not record events like a video recorder. In the first place, human memory is more selective than a video camera. The sensory environment contains a vast amount of information, but the memory process perceives and accurately

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[23] *People v. Tumambing*, 659 Phil. 544, 547 (2011).

[24] *People v. Rodrigo*, 586 Phil. 515, 528 (2008).

[25] 819 Phil. 406 (2017).

> records only a very small percentage of that information. Second, because the act of remembering is reconstructive, akin to putting puzzle pieces together, human memory can change in dramatic and unexpected ways because of the passage of time or subsequent events, such as exposure to "postevent" information like conversations with other witnesses or media reports. Third, memory can also be altered through the reconstruction process. Questioning a witness about what he or she perceived and requiring the witness to reconstruct the experience can cause the witness' memory to change by unconsciously blending the actual fragments of memory of the event with information provided during the memory retrieval process.

Eyewitness identification, or what our jurisprudence commendably refers to as "positive identification," is the bedrock of many pronouncements of guilt. — However, eyewitness identification is but a product of flawed human memory. In an expansive examination of 250 cases of wrongful convictions where convicts were subsequently exonerated by DNA testing, Professor Brandon Garett (Professor Garett) noted that as much as 190 or 76% of these wrongful convictions were occasioned by flawed eyewitness identifications. Another observer has more starkly characterized eyewitness identifications as "the leading cause of wrongful convictions."

x x x x

The bifurcated difficulty of misplaced reliance on eyewitness identification is borne not only by the intrinsic limitations of human memory as the basic apparatus on which the entire exercise of identification operates. It is as much the result of and is exacerbated by extrinsic factors such as environmental factors, flawed procedures, or the mere passage of time.[26]

In another case, the Court acknowledged that:

Identification testimony has at least three components. First, witnessing a crime, whether as a victim or a bystander, involves perception of an event actually occurring. Second, the witness must memorize details of the event. Third, the witness must be able to recall and communicate accurately. **Dangers of unreliability in eyewitness testimony arise at each of these three stages, for**

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[26] Id. at 415-417.

whenever people attempt to acquire, retain, and retrieve information accurately, they are limited by normal human fallibilities and suggestive influences.[27]

Thus, American jurisprudence has followed — and local jurisprudence later on adopted — a "*totality of circumstances test*" in determining the reliability, or at times even the admissibility, of a witness' out-of-court identification of the accused.

The jurisprudential test of "totality of circumstances"

The *totality of circumstances test* was first applied by the Court in *People v. Teehankee*[28] *(Teehankee)*, wherein it applied the test as laid down by the Supreme Court of the United States (SCOTUS) in *Neil v. Biggers*[29] *(Biggers)* and *Manson v. Brathwaite*[30] *(Brathwaite)*:

> 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

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[27] *People v. Teehankee, Jr.*, 319 Phil. 128, 179 (1995), citing LAFAVE AND ISRAEL, CRIMINAL PROCEDURE, HORNBOOK SERIES 353 (1992 Ed.).

[28] Id.

[29] 409 U.S. 188 (1972).

[30] 432 U.S. 98 (1977).

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.[31] (Emphasis supplied)

Essentially, the problem with eyewitness testimony is that the human mind is not just limited in terms of perception, but that human memory is also highly susceptible to suggestion. Hence, the jurisprudence on the matter, like *Biggers and Brathwaite*, dealt with the propriety of police procedures employed to arrive at the identification of the accused. The rule that was thereafter adopted was that "convictions based on eyewitness identification at trial following a pretrial identification by photograph will be set aside on that ground only if the **photographic identification procedure was so impermissibly suggestive** as to give rise to **a very substantial likelihood of irreparable misidentification**."[32] It was explained that "[s]uggestive confrontations are disapproved because they increase the likelihood of misidentification, and unnecessarily suggestive ones are condemned for the further reason that the increased chance of misidentification is gratuitous."[33]

In the case of *Foster v. California*,[34] the accused was initially put in a line-up of three men, with the accused being almost six feet in height while the other two men in the line-up were just 5'5" and 5'6." The eyewitness was unable to identify the accused as the perpetrator, but asked for a one-on-one confrontation with the accused. Even with this, the eyewitness was still uncertain that it was indeed the accused who committed the crime. A week or more later, the same eyewitness was shown another line-up of five men. Only the accused was present in both the first and second line-ups. After having been shown

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[31] *People v. Teehankee, Jr.*, supra note 27 at 180.

[32] *Simmons v. United States*, 390 U.S. 377, 384 (1968).

[33] *Neil v. Biggers*, supra note 29 at 198.

[34] 394 U.S. 440 (1969).

the second line-up, the eyewitness became "sure" that the accused was the perpetrator. Applying the *totality of circumstances test* and the standard of "likelihood of irreparable misidentification," the SCOTUS set aside the out-of-court identification of the accused for having violated the latter's right to due process. The SCOTUS explained:

> Judged by that standard, this case presents a compelling example of unfair lineup procedures. In the first lineup arranged by the police, petitioner stood out from the other two men by the contrast of his height and by the fact that he was wearing a leather jacket similar to that worn by the robber. See *United States v. Wade*, *supra*, at 388 U.S. 233. When this did not lead to positive identification, the police permitted a one-to-one confrontation between petitioner and the witness. This Court pointed out in *Stovall* that
>
> > "[t]he practice of showing suspects singly to persons for the purpose of identification, and not as part of a lineup, has been widely condemned."
>
> Even after this, the witness' identification of petitioner was tentative. So, some days later, another lineup was arranged. Petitioner was the only person in this lineup who had also participated in the first lineup. See Wall, *supra*, at 64. This finally produced a definite identification.
>
> The suggestive elements in this identification procedure made it all but inevitable that David would identify petitioner whether or not he was, in fact, "the man." In effect, the police repeatedly said to the witness, "This is the man." See *Biggers v. Tennessee*, 390 U.S. 404, 407 (dissenting opinion). **This procedure so undermined the reliability of the eyewitness identification as to violate due process**.[35] (Emphasis supplied)

The SCOTUS clarified, however, that the presence of suggestive elements in the identification process adopted by the police officers, on its own, would not automatically result in the inadmissibility of the out-of-court identification. In *Brathwaite*, the SCOTUS emphasized that "reliability is the

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[35] Id. at 442-443.

linchpin in determining the admissibility of identification testimony"[36] and that the "factors to be considered x x x include the opportunity of the witness to view the criminal at the time of the crime, the witness' degree of attention, the accuracy of his prior description of the criminal, the level of certainty demonstrated at the confrontation, and the time between the crime and the confrontation. **Against these factors is to be weighed the corrupting effect of the suggestive identification itself**."[37]

This was the context of the *totality of circumstances test* adopted by the Court in *Teehankee*. Years after *Teehankee*, the Court would adopt additional guidelines for police officers, and safeguards for the accused, in the conduct of out-of-court identification. In *People v. Villena*,[38] the Court said that "to avoid charges of impermissible suggestion, there should be nothing in the photograph that would focus attention on a single person."[39] Subsequently, in *People v. Pineda*,[40] the Court added that:

> [t]he first rule in proper photographic identification procedure is that **a series of photographs must be shown**, and not merely that of the suspect. The second rule directs that 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**.[41]

The Court in *Pineda* applied the *totality of circumstances test*, but also added that the following factors may be considered in determining the reliability of the out-of-court identification:

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[36] *Manson v. Braithwaite*, supra note 30 at 114.

[37] Id.

[38] 439 Phil. 509 (2002).

[39] Id. at 524-525.

[40] 473 Phil. 517 (2004).

[41] Id. at 540.

A well-known authority in eyewitness identification made a list of 12 danger signals that exist independently of the identification procedures investigators use. These signals give warning that the identification may be erroneous even though the method used is proper. The list is not exhaustive. The facts of a particular case may contain a warning not in the list. The list is as follows:

(1) the witness originally stated that he could not identify anyone;

(2) the identifying witness knew the accused before the crime, but made no accusation against him when questioned by the police;

(3) a serious discrepancy exists between the identifying witness' original description and the actual description of the accused;

(4) before identifying the accused at the trial, the witness erroneously identified some other person;

(5) other witnesses to the crime fail to identify the accused;

(6) before trial, the witness sees the accused but fails to identify him;

(7) before the commission of the crime, the witness had limited opportunity to see the accused;

(8) the witness and the person identified are of different racial groups;

(9) during his original observation of the perpetrator of the crime, the witness was unaware that a crime was involved;

(10) a considerable time elapsed between the witness' view of the criminal and his identification of the accused;

(11) several persons committed the crime; and

(12) the witness fails to make a positive trial identification.[42]

From the foregoing jurisprudential tests and guidelines, the Court finds in this case that the out-of-court identification by AAA failed to pass the test of reliability to establish the identity of the accused as the perpetrator beyond reasonable doubt.

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[42] Id. at 547-548.

Application of the totality of circumstances test in the present case

To reiterate, the *totality of circumstances test* requires the Court to look at the following factors in weighing the reliability of the out-of-court identification: (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 length of time between the crime and the identification; (5) the level of certainty demonstrated by the witness at the identification; and (6) the suggestiveness of the identification procedure.

(a) The first two factors: opportunity to view, and degree of attention.

Discussions relating to these factors include, for example, the duration of the commission of the crime, the lighting conditions, and whether the eyewitness was put on alert that he or she must remember the identity of the particular person, among others.

In the present case, the Court recognizes that the witness had a good **opportunity to view** the criminal at the time of the crime, given that they spent considerable time together during the commission of the crime. The witness also said that the crime happened around 5:00 in the afternoon, thus the lighting conditions were well enough for her to see the face of her assailant. As well, it could be said that AAA had a **high degree of attention**, especially on the identity of her assailant, during this time as they were the only people in the crime scene.

Despite these, however, AAA's identification of Ansano as the assailant fails the rest of the other factors to be considered.

(b) Accuracy of any prior description.

AAA's description of her attacker was general and related mostly to, not her assailant's physical features, but what he was wearing at the time of the crime. In her direct testimony, the only descriptions that she gave were that: "*[h]e is taller*

than I am, he was carrying a bolo; he was wearing a long-sleeved shirt; he was wearing long pants he used in the farm, sir."[43] These were her only descriptions of her assailant as she was narrating the rape incident. The description that her assailant had a scar on his face and that it had "*butil-butil*" came after, when she saw Ansano on March 19, 2006.

More importantly, however, the records show that the additional description **did not match Ansano**. She testified as follows:

Q Can you please tell to the Honorable Court, how were you able to come to know the name and identity of the accused?
A I was able to recognized *(sic)* his face at the time of the incident on March 19, 2006 at 8 o'clock in the evening. I saw him in our house having a drinking spree with my father, sir.

Q And while the accused was having a drinking spree with your father at that night, where were you at that time?
A I was in our house, playing with my cousins, sir.

Q How far were you to the place of your father and the accused were there *(sic)* having a drinking spree?
A Our house is near the road and my father and the accused having a drinking spree beside the road, sir.

Q What happened next after their having a drinking spree?
A I felt nervous, Sir.

Q Why?
A Because I was able to recognized *(sic)* his face, sir.

ATTY. ANONUEVO I would like to quote in vernacular "*namumukhaan*.''

COURT Put it on the record.

WITNESS Because "*namumukhaan ko po siya*."

Q And when you say "*namumukhaan*," what do you mean by that?

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[43] TSN dated April 23, 2007, p. 5.

A Because in my mind, I was able to recall his face that he is the one who abuse[d] me, sir.

Q Now, you said that you were able to recall that the accused was the one who abuse[d] you because of his face, what are those identifying [marks] to his face?
A He has a scar in [his] face, sir.

INTERPRETER Witness pointing on her left cheek with her finger.

FISCAL What else, if any?

WITNESS And he has "*butil-butil sa mukha*," sir.

Q Aside from those, what else, if any?
A He has a moustache, he has an eye which is "*medyo singkit*," sir.[44]

However, on another hearing date, before the prosecution cross-examined Ansano, the defense made the following manifestation which was duly noted by the trial court:

ATTY. ANONUEVO Before the public prosecutor conduct[s] his cross-examination, I am requesting the witness, the accused, to please face the Honorable Presiding Judge. I just want to make it of record that the face of the witness has no scar whatsoever which will be verified by the Honorable Court.

COURT Verified.

ATTY. ANONUEVO I would like to make it of record that the Honorable Presiding Judge has confirmed that the accused has no scar whatsoever on his face.[45]

The prosecution made a counter-manifestation that the scar may have been gone since it had been four years between AAA's identification and the time the accused took the witness stand.[46] However,

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[44] TSN dated June 25, 2008, pp. 13-15.

[45] TSN dated February 10, 2010, p. 3.

[46] Id.

> [t]he Court has, time and again, declared that if the inculpatory facts and circumstances are capable of two or more interpretations, one of which being consistent with the innocence of the accused and the other or others consistent with his guilt, then the evidence in view of the constitutional presumption of innocence has not fulfilled the test of moral certainty and is thus insufficient to support a conviction.[47]

In other words, doubts — no matter how slight, as long as they are reasonable — created in the identity of the perpetrator of the crime, should be resolved in favor of the accused.[48]

(c) The length of time between the crime and the identification.

The Court also held in *Nuñez* that:

> The totality of circumstances test also requires a consideration of the length of time between the crime and the identification made by the witness. 'It is by now a well-established fact that people are less accurate and complete in their eyewitness accounts after a long retention interval than after a short one.' Ideally then, a prosecution witness must identify the suspect immediately after the incident.[49]

In the present case, AAA was raped in April 2005. She supposedly saw her assailant again in March 2006, and was finally able to definitively point to Ansano as her assailant in May 2006. There was thus, more or less, one year between the time the crime was committed to the time of the identification.

In *People v. Rodrigo*[50] *(Rodrigo)* a time lapse of 5½ months between the commission of the crime and the out-of-court identification was one of the factors that led the Court to hold that the identification of the accused was unreliable. The present

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[47] *Franco v. People*, 780 Phil. 36, 50 (2016).

[48] *People v. Vargas*, 784 Phil. 144, 156 (2016).

[49] *People v. Nuñez*, supra note 25 at 428.

[50] Supra note 24.

case, in comparison, even involves a longer passage of time. While a longer passage of time *per se* will not automatically make an eyewitness recollection unreliable, it certainly impacts its overall reliability when considered along with the other factors in the *totality of circumstances test*.

(d) The last two factors: the level of certainty demonstrated by the witness at the identification, and the suggestiveness of the identification procedure.

The Court notes that AAA did not show a high level of certainty in her initial identification of Ansano. For instance, in her testimony quoted above, she used the word *"namumukhaan"* instead of *"nakilala"* when she saw Ansano on March 19, 2006. More glaring, however, was that she needed a second look for her to be able to ascertain that Ansano was her assailant — this time, through a photograph while Ansano was detained for another charge. AAA testified as follows:

Q Now, Madam Witness, you stated that, that was the time on March 19, 2006 were able to identify the face of the accused, the one who raped you that afternoon of April 6, 2005, when for the first time did you come to know his name?
A When I went to the Municipal Hall, sir.

Q Where specifically in Municipal Hall?
A In Municipal Hall of [ZZZ], sir.

Q What office?
A In the office of the police, sir.

Q Were you able to know his name at the Police Station?
A I was then asking if the accused was still at the Municipal Jail because he was then detained because of the case filed by [BBB],[51] sir.

Q And the policemen told you the name of the accused?
A Yes and he shown *(sic)* the picture of the accused, sir.

Q And after that what did you do?

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[51] Supra note 7.

A I examine the picture clearly and I am sure that he is the one who raped me, sir.[52] (Emphasis supplied)

The foregoing testimony, apart from being an indication of AAA's level of uncertainty as to her identification of Ansano, is more importantly an indication that the identification was marred by improper suggestion.

To recall, the Court has already said in *Pineda* that:

> [t]he first rule in proper photographic identification procedure is that **a series of photographs must be shown**, and not merely that of the suspect. The second rule directs that 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.[53]

This is so because:

> [w]here a photograph has been identified as that of the guilty party, any subsequent corporeal identification of that person may be based not upon the witness's recollection of the features of the guilty party, but upon his recollection of the photograph. *Thus, although a witness who is asked to attempt a corporeal identification of a person whose photograph he previously identified may say, "That's the man that did it," what he may actually mean is, "That's the man whose photograph I identified."*
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> x x x x
>
> A recognition of this psychological phenomenon leads logically to the conclusion that where a witness has made a photographic identification of a person, his subsequent corporeal identification of that same person is somewhat impaired in value, and its accuracy must be evaluated in light of the fact that he first saw a photograph.[54]

Pineda itself involved an acquittal of the accused on the ground that, among others, the eyewitness was shown only two

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[52] TSN dated June 25, 2008, p. 16.

[53] *People v. Pineda*, supra note 40.

[54] Id. at 540, citing PATRICK M. WALL, EYE-WITNESS IDENTIFICATION IN CRIMINAL CASES 68-69 (1965).

photographs of suspected highway robbers while there were a total of six perpetrators to be identified, thereby effectively suggesting to the eyewitness that the men in both photos belonged to the group of the perpetrators. Similarly, in *Rodrigo*, the eyewitness was shown only one photo before making the identification. In finding this out-of-court identification unreliable, the Court explained:

> The initial photographic identification in this case carries serious constitutional law implications in terms of *the possible violation of the due process rights of the accused* as it may deny him his *rights to a fair trial* to the extent that his *in-court* identification proceeded from and was influenced by impermissible suggestions in the earlier photographic identification. **In the context of this case, the investigators might not have been fair to Rodrigo if they themselves, purposely or unwittingly, fixed in the mind of Rosita, or at least actively prepared her mind to, the thought that Rodrigo was one of the robbers**. Effectively, this act is no different from coercing a witness in identifying an accused, varying only with respect to the means used. **Either way, the police investigators are the real actors in the identification of the accused; evidence of identification is effectively created when none really exists**.[55] (Emphasis supplied)

The same thing can be said about AAA's identification of Ansano in this case. That she was shown only one photograph, when considered with the other factual circumstances of this case, only leads to the logical conclusion that the identification might have been marred by improper suggestions.

Again, the circumstances of AAA's identification of Ansano were that almost a year after the rape incident, she supposedly recognized him as her assailant as he was having a drinking spree with her father. She, however, only knew of his name two months after, or on March 19, 2006, when she went to the municipal hall to inquire if Ansano was still detained for the case filed by her best friend, BBB, who was also Ansano's niece. Incidentally, BBB was also present when AAA first

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[55] *People v. Rodrigo*, supra note 24 at 529-530.

"recognized" Ansano in the drinking spree with her father. She narrated:

Q How did you come to know that he is indeed a resident of [GGG, XXX, ZZZ]?
A Because of my best friend [BBB] and she is his niece, sir.

Q You mean to say that, through [BBB], you came to know that the accused is from [GGG, XXX, ZZZ]?

A Yes, sir.

x x x x

Q And you were able to see him face to face through [BBB]?
A No, sir, he had a drinking spree with my father.

Q You were with [BBB] when that incident happened?
A Yes, sir.

Q That was March 19, 2006?
A Yes, sir.

Q What time more or less was that, when you were able to meet face to face the accused?
A More or less 8 o'clock in the evening, sir.

Q March 19, 2006?
A Yes, sir.

Q And you were with [BBB]?
A Yes, sir.

Q In what particular place, you were *(sic)* then with [BBB] on that date?
A In our house, sir.

Q Your house is near the house of [BBB]?
A No, sir. [BBB] once live[d] in our house.

Q You want you *(sic)* tell the court that, on that day, March 19, 2006 that was the very first time that you came face to face [with] the accused?
A Yes, sir.[56]

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[56] TSN dated December 10, 2008, pp. 5-7.

It is important to note that the records reflect that the present charge was once consolidated with a case filed by BBB against Ansano, but BBB eventually decided to not pursue the case and this case thus proceeded on its own. While the records do not reflect the exact nature of the case filed by BBB, it could reasonably be inferred that it was likewise a rape or sexual assault charge for it to have been initially consolidated with this case.

To the mind of the Court, there is a reasonable possibility that the confluence of these circumstances may have, albeit inadvertently, improperly suggested to the mind of AAA that Ansano was her assailant. It is true that the latter finding — on the possible effect of BBB on the identification — did not arise from State action; thus, this finding would not amount to a violation of Ansano's right to due process that would render the identification inadmissible. This does not, however, preclude the courts from taking the said finding into consideration as evidentiary inquiries do not end on questions of admissibility. "Admissibility of evidence should not be equated with weight of evidence."[57] Hearsay evidence, for instance, cannot be given credence whether objected to or not for it has no probative value.[58] Eyewitness testimony, like all other evidence, must not only be admissible — it must be able to convince.

Ultimately, the Court's independent assessment of the reliability of the out-of-court identification when the *totality of circumstances test* is applied resulted in reasonable doubt on the said identification. All told, the foregoing findings ultimately impressed upon the mind of the Court a reasonable doubt — to reiterate, not on the fact that the crime happened, but rather — on the identity of the accused. Acquittal must perforce follow.

The Court's reminders

The Court laments that neither the RTC nor the CA was able to discuss the doubt on Ansano's identity as the perpetrator of

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[57] *People v. Parungao*, 332 Phil. 917, 924 (1996).

[58] Id.

the crime even though the issue was glaring in the records of the case. Both the RTC and the CA focused on *whether the crime indeed happened* and examined AAA's testimony only through that lens. The RTC simply said that "[t]he clear, consistent and spontaneous testimony of [AAA] unrelentingly established how Ansano sexually [assaulted] her on April 6, 2005 with the use of force, threat and intimidation."[59] The CA was unfortunately as terse, as it held that: "AAA positively identified accused-appellant as the perpetrator. The clear, consistent and spontaneous testimony of AAA established that accused-appellant committed rape against the victim,"[60] adding that Ansano's defense of alibi and denial simply failed to stand in light of AAA's positive identification.[61]

The Court thus takes this opportunity to remind courts that "[a] conviction for a crime rests on two bases: (1) credible and convincing testimony establishing the **identity** of the accused as the perpetrator of the crime; and (2) the prosecution proving beyond reasonable doubt that all elements of the crime **are attributable to the accused**."[62] "Proving the identity of the accused as the malefactor is the prosecution's primary responsibility. Thus, in every criminal prosecution, the identity of the offender, like the crime itself, must be established by proof beyond reasonable doubt. Indeed, the first duty of the prosecution is not to prove the crime but to prove the identity of the criminal, for **even if the commission of the crime can be established, there can be no conviction without proof of identity of the criminal beyond reasonable doubt**."[63]

Also, while the defenses of denial and alibi are inherently weak, they are only so in the face of an effective identification[64] which, as discussed, was not present in this case.

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

[60] *Rollo*, p. 11.

[61] Id. at 13.

[62] *People v. Pineda*, supra note 40 at 537.

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

[64] See *People v. Pineda*, supra note 40 at 548.

Lastly, while it was true, as the CA noted, that "no young woman, especially one of tender age, would concoct a story of defloration, allow an examination of her private parts, and thereafter testify about her ordeal in a public trial if she had not been impelled to seek justice for the wrong done to her,"[65] this does not mean that the said testimony should be accepted wholesale. It bears stressing that:

> the testimonies from aggrieved parties should not simplistically be equated to or treated as testimonies from detached parties. Their testimonies should be handled with the realistic thought that they come from parties with material and emotional ties to the subject of the litigation so that they cannot be accepted and held as credible simply because the defense has not adduced evidence of ill-motivation.[66]

Like all other evidence, they must be independently assessed.

As a final note, the Court ends with the following discussion in *People v. Fernandez*:[67]

> Given the foregoing findings, we are not concluding that complainant has not been a victim of rape, or that appellant's defense of alibi and denial can be given full faith and credence. We only stress that her testimony was unable to pass the exacting test of moral certainty that the law demands and the rules require to satisfy the prosecution's burden of overcoming appellant's presumption of innocence.
>
> A conviction in a criminal case must be supported by proof beyond reasonable doubt — moral certainty that the accused is guilty. The defense may be weak, but the prosecution is even weaker. As a result of this finding, it will be unnecessary to discuss the other issues raised.
>
> The Court has aptly said: "It is better to liberate a guilty man than to unjustly keep in prison one whose guilt has not been proved by

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[65] *Rollo*, p. 11.

[66] *People v. Rodrigo*, supra note 24 at 539.

[67] 434 Phil. 435 (2002).

the required quantum of evidence. Hence, despite the Court's support of ardent crusaders waging all-out war against felons on the loose, when the People's evidence fails to prove indubitably the accused's authorship of the crime of which they stand accused, it is the Court's duty — and the accused's right — to proclaim their innocence. Acquittal, therefore, is in order.[68]

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated February 20, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08223 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Teodoro Ansano y Calleja is **ACQUITTED** of the crime charged on the ground of reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Decision be furnished the Superintendent of New Bilibid Prisons for immediate implementation. The said Superintendent is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Decision the action he has taken.

SO ORDERED.

Peralta, C.J. (Chairperson), Carandang, Zalameda, and *Gaerlan, JJ.*, concur.

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[68] Id. at 455.

FIRST DIVISION

[G.R. No. 237178. December 2, 2020]

DOMINGA PALACAT, *Petitioner*, *v.* **HEIRS OF FLORENTINO HONTANOSAS, represented by MALCO HONTANOSAS, ELIZA HONTANOSAS, CHOCHE H. CANDUTAN, NERY HONTANOSAS, and HERMIE HONTANOSAS**, *Respondents*.

APPEARANCES OF COUNSEL

Tinampay Legal Clinic for petitioner.
Bryan O. Gaviola for respondents.

D E C I S I O N

ZALAMEDA, *J.*:

The present case is a salutary reminder of the hornbook principle in jurisprudence that the nature of an action, as well as which court or body has jurisdiction over it, is determined based on the allegations contained in the complaint of the plaintiff, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein.

The Case

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, seeking to reverse and set aside the Decision[2] dated 31 July 2017 (assailed Decision) and Resolution[3]

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[1] *Rollo*, pp. 3-21.

[2] *Id*. at 23-35; penned by Associate Justice Germano Francisco D. Legaspi and concurred in by Associate Justice Pamela Ann Abella Maxino and Associate Justice Gabriel T. Robeniol of the Court of Appeals, Cebu City.

[3] *Id*. at 37-39; penned by Associate Justice Germano Francisco D. Legaspi, and concurred in by Associate Justice Pamela Ann Abella Maxino and Associate Justice Gabriel T. Robeniol.

dated 11 December 2017 of the Court of Appeals (CA) in CA-G.R. CEB-SP No. 09963 entitled, "Heirs of Florentino Hontanosas, represented by Malco Hontanosas, Eliza Hontanosas, Choche H. Candutan, Nery Hontanosas, and Hermie Hontanosas, Petitioners, v. Dominga Palacat, Respondent." The CA set aside the Orders dated 21 December 2015[4] and 17 February 2016[5] issued by Branch 49, Regional Trial Court (RTC), Tagbilaran City, in the exercise of its appellate jurisdiction over a case for Quieting of Title, Recovery of Possession, Specific Performance and Damages, docketed as RTC Civil Case No. 8555.

Antecedents

In February 2012, the Heirs of Florentino Hontanosas (respondents), filed a Complaint[6] for Quieting of Title, Recovery of Possession, Specific Performance, and Damages against petitioner Dominga Palacat (petitioner) before the Municipal Circuit Trial Court (MCTC) of Dauis-Panglao, Bohol. In June 2013, respondents amended their complaint.[7]

Respondents claim to be the owners of Lot No. 6662-B, an unregistered land containing an area of 2016 square meters, which they obtained through a Compromise Agreement[8] in a civil case for partition and damages. It shared the same boundary line with Lot No. 6450, registered under Original Certificate of Title No. 63752[9] in the name of the late Placido Palacat (Placido), and currently occupied by his widow, herein petitioner.

Prior to filing the complaint and amended complaint, respondents applied for a free patent over Lot No. 6662-B with

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[4] *Id.* at 77-78, Annex "G."

[5] *Id.* at 79-81, Annex "H"; penned by Acting Presiding Judge Suceso A. Arcamo.

[6] *Id.* at 42-51, Annex "D."

[7] *Id.* at 119-126; *see* Amended Complaint.

[8] *Id.* at 191-193.

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

the Department of Environment and Natural Resources (DENR), but Placido opposed the application on the ground that respondents' lot had encroached on his lot, Lot No. 6450.[10] The DENR surveyed the adjoining lots and found that it was the fence of Lot No. 6450 that was encroaching on one of Lot No. 6662-B's corner boundaries by about 6.7 meters.

Respondents informed petitioner about the encroachment, and requested for a joint survey of the adjoining lots. Dominga refused.[11] The dispute went to the *barangay* for conciliation, but the parties failed to reach a compromise agreement. Hence, respondents filed the Complaint.[12]

In response, petitioner filed a Motion to Dismiss[13] on the following grounds: 1) the court's lack of jurisdiction over the subject matter of the amended complaint for failure to allege the assessed value of the disputed property; 2) failure to exhaust administrative remedies; and 3) quieting of title was an improper remedy.[14]

Ruling of the MCTC

On 28 August 2014, the MCTC issued an Order,[15] dismissing the amended complaint for failure of respondents to exhaust administrative remedies. The dispositive portion thereof reads:

> WHEREFORE, this case is hereby DISMISSED for failure of the plaintiffs to exhaust administrative remedies thereby divesting this court of jurisdiction in this case.
>
> SO ORDERED.[16]

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[10] *Id*. at 24.

[11] *Id.* at 24.

[12] *Id*. at 25.

[13] *Id*. at 206-210.

[14] *Id*. at 25.

[15] *Id*. at 63-70, Annex "E"; penned by Presiding Judge Raul P. Barbarona.

[16] *Id*. at 70.

Citing the ruling of the Court in *Bagunu v. Aggabao, et al. (Bagunu)*,[17] the MCTC declared that the DENR was the proper forum to ventilate the issues in this case considering that the property involved was public land. Moreover, the DENR had already acquired jurisdiction over the dispute in view of the Placido's opposition to the application for issuance of patent by the respondents.[18]

Respondents filed a Motion for Reconsideration[19] but the MCTC's Order[20] dated 13 May 2015 denied the same. Hence, they appealed to the RTC.

Ruling of the RTC

Initially, the RTC affirmed the dismissal of respondents' amended complaint for the MCTC's lack of jurisdiction. Notwithstanding, the RTC proceeded to take cognizance of the amended complaint considering the dismissal was not on the merits. Unsatisfied with the ruling, respondents moved for partial reconsideration, arguing the RTC's assumption of jurisdiction as erroneous.

On 17 February 2016, the RTC issued an Order[21] reinstating the MCTC judgment. The decretal portion of said Order reads:

> WHEREFORE, in the light of the foregoing, the order of this court dated December 21, 2015 is hereby RECONSIDERED and the order of the court *a quo* dismissing the instant complaint is hereby AFFIRMED.
>
> SO ORDERED.[22]

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[17] G.R. No. 186487, 15 August 2011, 671 Phil. 183.

[18] *Rollo*, pp. 216-217.

[19] *Id*. at 219-229.

[20] *Id*. at 71-76, Annex "F".

[21] *Id*. at 79-81, Annex "H".

[22] *Id*. at 81.

The RTC admitted that as correctly insisted by respondents, it would be an error to assume jurisdiction over the amended complaint inasmuch as the assessed value of the disputed property, as stated in Tax Declaration of Real Property No. 2008-19-0012-00277,[23] was only Php8,720.00. Furthermore, the RTC held the doctrine of primary jurisdiction was applicable since the issue hinged on the determination of the correct metes and bounds of the adjoining lots.[24]

Respondents thus filed a Petition for Review under Rule 42[25] with the CA.

Ruling of the CA

On 31 July 2017, the CA promulgated the assailed decision granting respondents' petition, thus:

> **WHEREFORE**, the petition is **GRANTED**. The Orders dated December 21, 2015 and February 17, 2016 of Branch 49 of the Regional Trial Court of Tagbilaran, Bohol in Civil Case No. 8555 are SET ASIDE.
>
> The case is **REMANDED** to the 14th Municipal Circuit Trial Court of Dauis, Panglao, Bohol for further proceedings. The MCTC is **DIRECTED** to decide the case with reasonable dispatch.
>
> SO ORDERED.[26]

The CA held that based on the allegations in the amended complaint, the action was not one for quieting of title, but only for recovery of possession. Corollarily, jurisprudence is clear that quieting of title is not the proper remedy for settling boundary disputes.[27]

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[23] *Id*. at 52 and 188.

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

[25] *Id*. at 82-109, Annex "I".

[26] *Id*. at 34.

[27] *Id*. at 30.

Specifically, the CA held the complaint was one for *accion publiciana*. While respondents failed to allege in the amended complaint the assessed value of the disputed property, the first level court had jurisdiction over the case. This, considering that the attached tax declaration in the amended complaint showed that respondents' lot had an assessed value of Php8,720.00.[28] Consequently, the RTC should not have affirmed the dismissal of the complaint, but instead should have remanded the case to the MCTC for further proceedings.[29]

Petitioner moved for reconsideration, but the same was denied. Hence, she filed the present petition, submitting the following assignment of errors for the Court's consideration:

A

THE HONORABLE APPELLATE COURT ERRED IN HOLDING THAT THE DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES IS NOT APPLICABLE IN THE PRESENT CASE.

B

WHETHER OR NOT THE HONORABLE APPELLATE COURT ERRED IN FINDING RESPONDENTS' PETITION FOR REVIEW MERITORIOUS.

C

WHETHER OR NOT THE HONORABLE APPELLATE COURT COMMITTED A REVERSIBLE ERROR IN NOT FINDING THAT THE PRESENT CASE INVOLVES A QUESTION OF OWNERSHIP AND IN REVERSING THE DECISION OF THE REGIONAL TRIAL COURT AND REMANDING THE CASE TO THE MCTC.[30]

In addition, the Court must decide whether or not the MCTC has jurisdiction over the subject matter of respondents' amended complaint.

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

[29] *Id.* at 33-34.

[30] *Id.* at 7.

Ruling of the Court

The petition has no merit.

Well-settled is the rule that jurisdiction over the subject matter of a case is conferred by law. The nature of an action, as well as which court or body has jurisdiction over it, is determined by the allegations contained in the complaint, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein. The averments in the complaint and the character of the relief sought are the determining factors. Once vested, jurisdiction remains even if it is established at trial that the plaintiff is not entitled to recover from all or some of the claims raised in the complaint.[31]

As correctly found by the CA, while denominated as one for Quieting of Title, Recovery of Possession, Specific Performance, and Damages, a perusal of the amended complaint shows that it is essentially a suit for recovery of possession. Specifically, it is in the nature of an *accion publiciana*, which is a plenary action for recovery of possession in an ordinary civil proceeding, in order to determine who has the better and legal right to possess, independently of title.[32] Paragraph 16 of the amended complaint states:

> 16. Plaintiff do not intend to assail the Original Certificate of Title No. 63752 but instead alleges that Placido Palacat have occupied and fenced off a land area which is more that *[sic]* what is validly covered and protected by Original Certificate of Title No. 63752 thereby encroaching a portion of Lot No. 6662-B;[33] (Underscore and italics removed)

Apart from this particular allegation, respondents prayed only for the joint survey of the adjoining lots, and the peaceful

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[31] *See De Vera, et al. v. Spouses Santiago, et al.*, G.R. No. 179457, 22 June 2015, 761 Phil. 90 (2015) [Per J. Peralta].

[32] *See Catindig v. Vda. de Meneses*, G.R. Nos. 165851 and 168875, 02 February 2011, 656 Phil. 361 (2011) [Per J. Peralta].

[33] *Id.* at 122.

turn over of the possession of the encroached portion of Lot No. 6222-B. They did not ask for a determination of ownership of the subject properties. Hence, the MCTC has jurisdiction over respondents' amended complaint.

Petitioner insists that the MCTC was correct in dismissing respondents' amended complaint for failure to exhaust administrative remedies. Allegedly, the disputed property is a public land, and as such, the DENR had jurisdiction over the issues, not the regular courts. However, the doctrine of exhaustion of administrative remedies is inapplicable since ownership was never raised as an issue.[34] As such, jurisdiction remains with the regular courts.

In *Modesto v. Urbina*,[35] which involved the recovery of possession of a property covered by a Miscellaneous Sales Application with the Land Management Bureau, the Court had the occasion to stress once again that the authority of the courts to resolve and settle questions relating to the possession of property continues, even when the land in question is public land, thus:

> As we explained in Solis v. Intermediate Appellate Court:[36]
>
> We hold that the power and authority given to the Director of Lands to alienate and dispose of public lands does not divest the regular courts of their jurisdiction over possessory actions instituted by occupants or applicants against others to protect their respective possessions and occupations. While the jurisdiction of the Bureau of Lands [now the Land Management Bureau] is confined to the determination of the respective rights of rival claimants to public lands or to cases which involve disposition of public lands, the power to determine who has the actual, physical possession or occupation or the better right of possession over public lands remains with the courts.

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[34] *Id.* at 32-33.

[35] G.R. No. 189859, 18 October 2010, 647 Phil. 706 (2010) [Per J. Brion].

[36] G.R. No. 72486, 19 June 1991, 275 Phil. 295 (1991) [Per C.J. Fernan].

The rationale is evident. The Bureau of Lands does not have the wherewithal to police public lands. Neither does it have the means to prevent disorders or breaches of peace among the occupants. Its power is clearly limited to disposition and alienation and while it may decide disputes over possession, this is but in aid of making the proper awards. The ultimate power to resolve conflicts of possession is recognized to be within the legal competence of the civil courts and its purpose is to extend protection to the actual possessors and occupants with a view to quell social unrest.

Consequently, while we leave it to the LMB to determine the issue of who among the parties should be awarded the title to the subject property, there is no question that we have sufficient authority to resolve which of the parties is entitled to rightful possession.

Accordingly, the case at bar should be distinguished from the case of *Bagunu*, which was relied upon by the MCTC. While both cases involve a protest against an application for patent over public land, the subsequent complaint-in-intervention filed by the respondents therein alleged possession based on ownership, and specifically prayed for the Court to declare them as owners of the encroached property, which made a case for *accion reivindicatoria*. In deciding *Bagunu*, the Court held that although a reivindicatory action ordinarily falls within the exclusive jurisdiction of the RTC, the court's jurisdiction to resolve controversies involving ownership of real property extends only to private lands. It likewise applied the doctrine of primary jurisdiction in this wise:

The resolution of conflicting claims of ownership over real property is within the regular courts' area of competence and, concededly, this issue is judicial in character. However, regular courts would have no power to conclusively resolve this issue of ownership given the *public character* of the land, since under C.A. No. 141, in relation to Executive Order No. 192, the disposition and management of public lands fall within the exclusive jurisdiction of the Director of Lands, subject to review by the DENR Secretary.

While the powers given to the DENR, through the Bureau of Lands, to alienate and dispose of public land do not divest regular courts of jurisdiction over *possessory* actions instituted by occupants or applicants (to protect their respective possessions and occupations)

the respondents' complaint-in-intervention does not simply raise the issue of possession — whether *de jure* or *de facto* — but likewise raised the issue of ownership as basis to recover possession. Particularly, the respondents prayed for declaration of ownership of Lot 322. Ineluctably, the RTC would have to defer its ruling on the respondents' *reivindicatory* action pending final determination by the DENR, through the Lands Management Bureau, of the respondents' entitlement to a free patent, following the doctrine of primary jurisdiction.[37]

Considering there was no allegation of ownership in the present case, and as such, jurisdiction resides with the regular courts, the CA correctly remanded the case to the MCTC for trial on the merits. Pursuant to Republic Act (RA) No. 7691, first level courts have exclusive original jurisdiction over *accion publiciana* and *accion reivindicatoria* where the assessed value of the real property does not exceed Php20,000.00 if outside Metro Manila, or Php50,000.00 if within Metro Manila.[38]

Finally, petitioner's belated argument in her Reply to Respondents' Comment/Opposition[39] that the case is dismissible for being barred by prescription deserves scant consideration.

Although it is established that Placido obtained his certificate of title in 1990, the time when Placido fenced Lot No. 6450, and when respondents learned of the encroachment, along with other factual matters, like supervening events, would necessitate a full-blown trial on the merits to ascertain whether prescription had indeed set in. It is settled that an allegation of prescription can effectively be used to seek the dismissal of an action only when the complaint on its face shows that the action has indeed prescribed. The issue of prescription is one involving evidentiary

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[37] *Supra* note at 17.

[38] *See Vda. de Barrera v. Heirs of Legaspi*, G.R. No. 174346, 12 September 2008, 586 Phil. 750 (2008) [Per J. Carpio-Morales].

[39] *Rollo*, pp. 141-144.

matters requiring a full blown trial on the merits and cannot be determined in a mere motion to dismiss.[40]

WHEREFORE, premises considered, the instant Petition for Review on *Certiorari* is **DENIED**. The Decision promulgated on 31 July 2017 and Resolution promulgated on 11 December 2017 of the Court of Appeals in CA-G.R. CEB-SP No. 09963 are **AFFIRMED**.

SO ORDERED.

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

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[40] *See Bañez, Jr. v. Hon. Concepcion*, G.R. No. 159508, 29 August 2012, 693 Phil. 399 (2012) [Per J. Bersamin]; citing *Pineda v. Heirs of Guevara*, G.R. No. 143188, 14 February 2007, 544 Phil. 554 (2007) [Per J. Tinga].

SECOND DIVISION

[G.R. No. 237449. December 2, 2020]

IN THE MATTER OF THE TESTATE ESTATE OF AIDA A. BAMBAO, LINDA A. KUCSKAR, *Petitioner*, *v.* **COSME B. SEKITO, JR.**, *Respondent*.

APPEARANCES OF COUNSEL

Efren C. Carag for petitioner.
Rolando P. Quimbo for respondent.

D E C I S I O N

LOPEZ, *J.*:

The allowance of a foreigner's will executed abroad is the main issue in this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the Court of Appeals' (CA) Decision[2] dated August 31, 2017 in CA-G.R. CV No. 104100.

Antecedents

On October 28, 1999, Aida A. Bambao (Aida), a naturalized American citizen, executed a Last Will and Testament (will)[3] in California where she nominated her cousin, Cosme B. Sekito, Jr. (Cosme), as a special independent executor over her assets located in the Philippines, thus:

I, AIDA A. BAMBAO, a resident of California, declare this to be my Will and hereby revoke all former Wills and Codicils.

x x x x

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[1] *Rollo*, pp. 9-39.

[2] *Id.* at 75-92; penned by Associate Justice Romeo F. Barza, with the concurrence of Associate Justices Myra V. Garcia-Fernandez and Renato C. Francisco.

[3] *Id.* at 49-54.

Fifth

x x x I nominate COSME B. SEKITO, JR. to serve as special independent Executor over all assets which are located in the Philippines, x x x. The special independent Executor over the Philippines shall have the individual signature authority capable of transacting all Trust business with regard to any assets located in the Philippines.

x x x x

By: [Sgd.] AIDA A. BAMBAO

ATTESTATION

The testator, AIDA A. BAMBAO, on the date last above written, declared to us that the above instrument is her Will and requested us to act as witnesses to it. At this point in time the testator appeared to be of sound and disposing mind. Her publication and subscription of the Will appeared to be a free and voluntary act. Wherefore, each of us at her request now signs as a witness in the presence of the testatrix and in the presence of each other. Each of us knows that each signature appearing hereon is a true signature of the person who signed. We[,] the undersigned, are of the age of majority.

We declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 28, 1999 at Newport Beach. California.

[Signed:] Witness 1
Witness 2[4]

On February 5, 2000, Aida died a widow in her residence at Long Beach, California.[5] On March 27, 2000, Cosme filed a Petition for the Allowance of Will/Appointment of Guardian *Ad Litem* (allowance of the will), before the Regional Trial Court (RTC) of Pasig City, Branch 264, docketed as Sp. Proc. No. 11042.[6] Cosme prayed that he be appointed as the Special

[4] *Id.*

[5] *Id.* at 76.

[6] *Id.* at 75-76.

Administrator of Aida's estate pending the issuance of letters testamentary, and as guardian *ad litem* of Aida's adopted minor child, Elsa Bambao (Elsa).[7] Meanwhile, Linda A. Kucskar (Linda), the decedent's sister, and one of the heirs named in the will, opposed the petition and claimed that she is the one defraying all of Elsa's expenses. Linda added that Aida left a real estate property in Calbayog City which was excluded in the petition.[8]

At the trial, Cosme presented authenticated copies of Aida's will as well as her Revocable Living Trust (living trust).[9] The parties stipulated that these documents are faithful reproductions of the original. In due course, the RTC appointed Cosme as special administrator of Aida's estate, but designated Cosme and Linda as Elsa's co-guardians.[10] Thereafter, the petition for allowance of the will was submitted for resolution. On August 4, 2011, the RTC granted the petition and ordered the issuance of a certificate of allowance of the will, *viz.*:

> WHEREFORE, **finding conclusive proof of the due execution of the will of the *[sic]* Aida Bambao, and there being none of the grounds for its disallowance as enumerated in Section 9 of Rule 76 of the Rules of Court, the same is hereby allowed**. Let the corresponding Certificate of Allowance be issued, pursuant to Section 13 of Rule 76, and be furnished to the Register of Deeds of Pasig City along with the attested copy of the Will. Said Register of Deeds is ordered to duly record the Will and the Certificate in their respective registers. Let letters of testamentary issue in favor of the petitioner Cosme Sekito, Jr. He is hereby required to take possession and management of all the properties of the deceased and shall return to this Court a true inventory and appraisal of the said properties of the deceased which shall come into his possession and knowledge within three (3) months alter his appointment.

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

[8] *Id.* at 78.

[9] *Id.* at 45.

[10] *Id.* at 78.

SO ORDERED.[11] (Emphasis supplied.)

Dissatisfied, Linda sought for a reconsideration. On the other hand, Cosme moved to disinherit Linda.[12] On November 10, 2014, the RTC denied both motions. The RTC held that Linda is estopped from contesting the due execution and allowance of the will because she repeatedly mentioned in her pleadings that she had no opposition with its approval. The RTC likewise explained that there is no reason to disinherit Linda, but warned that her share may be revoked should she insist on contesting the will.[13]

Aggrieved, Linda elevated the case to the CA docketed as CA-G.R. CV No. 104100. On August 31, 2017, the CA affirmed the RTC's findings pursuant to the rule on substantial compliance, to wit:

> Appellant proceeds to point out the defects in the attestation clause in that it did not mention the number of pages used and it fails to state that the testator signed the will and every page thereof and in the presence of three witnesses. Also, there were only two attesting witnesses which is less than the required number.
>
> **While there are defects in the attestation clause of the will, this Court applies the rule on substantial compliance, noting the provision of Art 809 of the Civil Code**, which states:
>
> > ART. 809. In the absence of bad faith, forgery, or fraud, or undue and improper pressure and influence, defects and imperfections in the form of attestation or in the language used therein shall not render the will invalid if it is proved that the will was in fact executed and attested in substantial compliance with all the requirements of Article 805.
>
> x x x x
>
> Considering that there was sufficient compliance on the formalities required by law on the execution of will, and there was no circumstance

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[11] *Id.* at 48.

[12] *Id.* at 83.

[13] *Id.* at 73-74.

that would lead to the disallowance of the will under Sec. 9, Rule 76 of the Rules of Court and considering further the evidence proffered by appellee, the allowance of the will of Aida is warranted.

WHEREFORE, the appeal is DENIED. The decision appealed from is hereby AFFIRMED.

SO ORDERED.[14] (Emphasis supplied.)

Hence, this recourse. Linda argues that Aida's will should not have been considered for probate. The foreign law governing the formalities of the will was not alleged and proven. The will also failed to conform with Philippine laws. Specifically, the will was not acknowledged before a notary public, the witnesses did not sign on each and every page, there were only two witnesses, and the attestation clause omitted the total number of pages.[15]

The Court's Ruling

The petition is meritorious.

Philippine laws require that no will shall pass either real or personal property unless it has been proved and allowed.[16] Our laws do not prohibit the probate of wills executed by foreigners abroad. A foreign will can be given legal effects in our jurisdiction.[17] Article (Art.) 816 of the Civil Code is instructive, *viz.*:

ART. 816. The will of an alien who is abroad produces effect in the Philippines if made with the formalities prescribed by the law of the place in which he resides, or according to the formalities observed in his country, or in conformity with those which this Code prescribes.

Here, it is undisputed that Aida is a naturalized American citizen and that she executed the will in California, United States of America where she was residing at the time of her death. As

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[14] *Id.* at 86-91.

[15] *Id.* at 9-39. *Supra* note 1.

[16] Civil Code, Art. 838 and Rules of Court, Rule 76, Sec. 1.

[17] See *Palaganas v. Palaganas*, 655 Phil. 535, 539 (2011).

such, the Philippine courts must examine the formalities of Aida's will in accordance with California law. Yet, it is settled that foreign laws do not prove themselves in this jurisdiction,[18] and our courts are not authorized to take judicial notice of them.[19] Like any other fact, they must be properly pleaded and proved. Under the Rules of Court, the record of public documents of a sovereign authority or tribunal may be proved by (1) an official publication thereof, or (2) a copy attested by the officer having the legal custody thereof. Such official publication or copy must be accompanied, if the record is not kept in the Philippines, with a certificate that the attesting officer has the legal custody thereof. The certificate may be issued by any of the authorized Philippine embassy or consular officials stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.[20] The attestation must state in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be, and must be under the official seal of the attesting officer.[21]

We have scoured the records and found no copy of the pertinent California law presented as evidence pursuant to the requirements of the rules. In this circumstance, the doctrine of *"processual presumption"* comes into play,[22] thus:

It is hornbook principle, however, that **the party invoking the application of a foreign law has the burden of proving the law, under the doctrine of *processual presumption*** which, in this cast, petitioners failed to discharge. The Court's ruling in *EDI-Staffbuilders Int'l. v. NLRC* illuminates:

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[18] *Wildvalley Shipping Co., Ltd. v. CA*, 396 Phil. 383, 392 (2000).

[19] *Nullada v. The Hon. Civil Registrar of Manila*, G.R. No. 224548, January 23, 2019.

[20] Rules of Court, Rule 132, Sec. 24. See also *ATCI Overseas Corp. v. Echin*, 647 Phil. 43, 50 (2010).

[21] Rules of Court, Rule 132, Sec. 25.

[22] *Noveras v. Noveras*, 741 Phil. 670, 680 (2014).

> In the present case, the employment contract signed by Gran specifically states that Saudi Labor Laws will govern matters not provided for in the contract (*e.g.*, specific causes for termination, termination procedures, etc.). Being the law intended by the parties *(lex loci intentiones)* to apply to the contract, Saudi Labor Laws should govern all matters relating to the termination of the employment of Gran.
>
> **In international law, the party who wants to have a foreign law applied to a dispute or case has the burden of proving the foreign law. The foreign law is treated as a question of fact to be properly pleaded and proved as the judge or labor arbiter cannot take judicial notice of a foreign law. He is presumed to know only domestic or forum law.**
>
> **Unfortunately for petitioner, it did not prove the pertinent Saudi laws on the matter; thus, the International Law doctrine of presumed-*identity approach or processual presumption* comes into play. Where a foreign law is not pleaded or, even if pleaded, is not proved, the presumption is that foreign law is the same as ours**. Thus, we apply Philippine labor laws in determining the issues presented before us. (Emphasis in the original.)

The Philippines does not take judicial notice of foreign laws, hence, they must not only be alleged; they must be proven. To prove a foreign law, the party invoking it must present a copy thereof and comply with Sections 24 and 25 of Rule 132 of the Revised Rules of Court[.][23] **x x x;** (Emphases Supplied.)

Hence, this Court applies Philippine laws in determining whether the will should have been considered for probate. Our laws define a will as an act whereby a person is permitted, with the formalities prescribed by law, to control to a certain degree the disposition of his estate, to take effect after his death.[24] The object of solemnities surrounding the execution of wills is to close the door on bad faith and fraud, to avoid substitution of wills and testaments and to guarantee their truth and authenticity.[25]

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[23] *ATCI Overseas Corporation v. Echin*, 647 Phil. 43, 49-50 (2010).

[24] Civil Code, Art. 783.

[25] *Lee v. Atty. Tambago*, 568 Phil. 363, 371 (2008).

A will may either be holographic or notarial. A person may execute a holographic will which must be entirely written, dated, and signed by the hand of the testator himself. It is subject to no other form, and may be made in, or out of the Philippines, and need not be witnessed.[26] In contrast, a notarial will must comply with solemnities including attestation, subscription and acknowledgment. The attestation refers to the act of three or more witnesses themselves who certify to the execution of the will before them, and to the manner of its execution.[27] The acknowledgment is the act of the one who executed the will in going to a competent officer and declaring that the will is [his/her] act or deed.[28] The subscribing or attesting witnesses are likewise required to acknowledge the will before the notary public. These requirements are indispensable for the validity of the will.[29] Apropos are Art. 805 and Art. 806 of the Civil Code, to wit:

> ART. 805. Every will, other than a holographic will, must be subscribed at the end thereof by the testator himself or by the testator's name written by some other person in his presence, and by his express direction, and attested and subscribed by three or more credible witnesses in the presence of the testator and of one another.
>
> The testator or the person requested by him to write his name and the instrumental witnesses of the will, shall also sign, as aforesaid, each and every page thereof, except the last, on the left margin, and all the pages shall be numbered correlatively in letters placed on the upper part of each page.
>
> The attestation shall state the number of pages used upon which the will is written, and the fact that the testator signed the will and every page thereof, or caused some other person to write his name, under his express direction, in the presence of the instrumental witnesses, and that the latter witnessed and signed the will and all the pages thereof in the presence of the testator and of one another.

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[26] Civil Code, Art. 810.

[27] *Echavez v. Dozen Construction and Dev't Corp.*, 647 Phil. 108, 112 (2010).

[28] See *Azuela vs. CA*, 521 Phil. 263, 283 (2006).

[29] *Garcia v. Gatchalian*, 129 Phil. 246, 247 (1967).

If the attestation clause is in a language not known to the witnesses, it shall be interpreted to them.

ART. 806. Every will must be acknowledged before a notary public by the testator and the witnesses. The notary public shall not be required to retain a copy of the will, or file another with the office of the Clerk of Court.

Obviously, Aida's will cannot pass as holographic because it is not entirely in her handwriting. At most, the will may be classified as a notarial will. However, an examination of the will reveals that only two witnesses attested its execution. The witnesses did not sign on each and every page of the will. The attestation clause failed to state the total number of pages. Worse, Aida and the witnesses did not acknowledge the will before a notary public. It bears emphasis that the CA adopted the substantial compliance rule in allowing the will despite the defects in its attestation clause. In *Taboada v. Hon. Rosal*[30] and *Azuela v. Court of Appeals*,[31] the Court permitted the probate although the number of pages was not stated in the attestation clause but elsewhere in the will. In *Lopez v. Lopez*, however, We held that the attestation must state the number of pages used upon which the will is written. The purpose is to safeguard against possible interpolation, or omission of one, or some of its pages and prevent any increase or decrease in the pages. Further, the substantial compliance rule applies only to imperfections which can be explained through examination of the will itself, thus:

x x x The rule must be limited to disregarding those defects that can be supplied by an examination of the will itself: whether all the pages are consecutively numbered; whether the signatures appear in each and every page; whether the subscribing witnesses are three or the will was notarized. All these are facts that the will itself can reveal, and defects or even omissions concerning them in the attestation clause can be safely disregarded. **But the total number of pages, and whether all persons required to sign did so in the presence**

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[30] 203 Phil. 572 (1982).

[31] 521 Phil. 263 (2006), *supra* note 28.

of each other must substantially appear in the attestation clause, being the only check against perjury in the probate proceedings.[32] (Emphases supplied.)

Assuming the CA correctly appreciated substantial compliance with the formalities of the attestation clause under Art. 805, the same cannot be applied to the requirement of acknowledgment under Art. 806. To reiterate, Aida and the witnesses did not acknowledge the will before a notary public. The CA did not even bother to discuss this requirement. Viewed from this light, we cannot, by any stretch of imagination, accept the supposed validity of the will absent total compliance with the requisite acknowledgement. The CA likewise, cannot conveniently rely on Aida's Revocable Living Trust in allowing the will. The living trust simply provides the proportion of the United States and Philippine shares to be given to the beneficiaries.[33] Also, the living trust was presented to the District Court, Clark Country, Nevada,[34] which is a distinct proceeding from the probate of the will here in the Philippines. Hence, the living trust is evidence *aliunde* that is not allowed to fill a void or to supply missing details that should appear in the will itself.[35]

Lastly, Linda's failure to object at the onset of the probate proceedings does not relieve the proponent of the will from establishing that it complied with the legal formalities. Estoppel is not applicable in probate proceedings because they involve public interest. Otherwise, the truth as to the circumstances surrounding the execution of a testament may not be ascertained which is inimical to public policy.[36]

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[32] 698 Phil. 423 (2013).

[33] *Rollo*, pp. 87-89.

[34] *Id.* at 89.

[35] See *Caponong-Noble v. Abaja*, 490 Phil. 671, 685 (2005).

[36] *Alsua-Betts v. CA*, 180 Phil. 737, 750 (1979), citing *Testate Estate of the Late Procopio Apostol, Benedicta Obispo, et al. v. Remedios Obispo*, CA 50 O.G. 614.

In sum, Aida's will should have been disallowed because it failed to comply with the legal formalities.[37] It is regrettable that this case has dragged on and up to this Court unnecessarily only for Us to come to the conclusion that the foreign law was not alleged and proven, and that the Will does not comply with Philippine laws. On this score, We stress that the requirements for proving foreign laws and judgments are not mere technicalities,[38] and Our courts are not at liberty to exercise judicial notice without contravening Our own rules on evidence.[39]

FOR THESE REASONS, the petition is **PARTLY GRANTED**. The case is **REMANDED** to the Regional Trial Court of Pasig City, Branch 167, for purposes of compliance with Sections 24 and 25 of Rule 132 of the Revised Rules of Court.

SO ORDERED.

Gesmundo,[*] *Lazaro-Javier,* and *Rosario,*[**] *JJ.*, concur.

Perlas-Bernabe, S.A.J. (Chairperson) on official leave.

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[37] Civil Code. Art. 839.

[38] See *Wildvalley Shipping Co., Ltd. v. CA*, *supra* note 18, at 396.

[39] *Gov't of Hongkong Special Administrative Region v. Muñoz*, 820 Phil. 479, 482 (2017).

[*] Acting Chairperson.

[**] Designated additional Member *per* Special Order No. 2797 dated November 5, 2020.

FIRST DIVISION

[G.R. No. 241981. December 2, 2020]

DEVELOPMENT BANK OF THE PHILIPPINES, *Petitioner, v.* **WEST NEGROS COLLEGE, INC., substituted by V-2 SAC MANAGEMENT AND DEVELOPMENT CORPORATION**, *Respondent.*

APPEARANCES OF COUNSEL

DBP Legal Services Group for petitioner.
Perfecto R. Yasay, Jr. for respondent.

D E C I S I O N

ZALAMEDA, *J.*:

This is the third time that this case has been brought before this Court. All three (3) cases, the present one included, are entitled *Development Bank of the Philippines v. West Negros College* and raise the issue of the determination of the redemption price due to the Development Bank of the Philippines (DBP). The Decision in the first case, docketed as G.R. No. 152359, was promulgated on 28 October 2002,[1] while the Resolution was promulgated on 21 May 2004.[2] The Decision in the second case, docketed as G.R. No. 174103, was promulgated on 16 September 2008,[3] while the Resolution was promulgated on 23 December 2008.[4] The present action finds basis in our 23 December 2008

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[1] Penned by Associate Justice Josue N. Bellosillo and concurred in by Associate Justices Vicente V. Mendoza, Leonardo A. Quisumbing, and Romeo J. Callejo, Sr.

[2] Penned by Associate Justice Dante O. Tinga and concurred in by Associate Justices Leonardo A. Quisumbing, Alicia Austria-Martinez, and Romeo J. Callejo, Sr.

[3] Penned by Associate Justice Dante O. Tinga and concurred in by Chief Justice Reynato S. Puno (ret.), Associate Justices Leonardo A. Quisumbing, Minita V. Chico-Nazario, and Presbitero J. Velasco, Jr.

[4] *Id.*

Resolution. We reiterate Our previous ruling that the redemption price for properties mortgaged with the DBP consists of the total indebtedness, plus contractual interest.

The Case

This is a petition for review on *certiorari*[5] filed by the Development Bank of the Philippines (DBP) against West Negros College (WNC), which is now substituted by V-2 SAC Management and Development Corporation (V2). DBP seeks to annul and set aside the Resolutions of the Court of Appeals (CA) dated 14 March 2018[6] and 04 September 2018[7] in CA-G.R. CEB CV No. 38277.

In said Resolutions, the CA declared Php23,099,850.82, as the specific amount for the balance of the redemption price. It also declared that the 60-day grace period commences upon agreement of the parties, and an interest of 12% *per annum* imposed on the redemption price of Php23,099,850.82 during this grace period.

Antecedents

The facts below are based on the facts established in G.R. Nos. 152359 and 174103.

Bacolod Medical Center (BMC) obtained a loan of Php2.4 million from DBP on 12 December 1967. BMC's loan was secured by a mortgage on two parcels of land, Lot Nos. 1397-A and 1397-B-1 covered by Transfer Certificates of Title (TCT) Nos. T-25053 and T-29169, respectively, subject to the provisions of Republic Act No. (RA) 85 creating the Rehabilitation Finance Corporation (RFC). RFC is DBP's predecessor agency. WNC is BMC's successor-in-interest, while V-2 SAC Management and Development Corporation (V2) is WNC's successor-in-interest.

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[5] Under Rule 45 of the 1997 Rules of Civil Procedure.

[6] *Rollo*, pp. 35-44; penned by Associate Justice Gabriel T. Ingles and concurred in by Associate Justices Marilyn B. Lagura-Yap and Edward B. Contreras of the Special Eighteenth Division, Court of Appeals, Cebu City.

[7] *Id.* at 47-49.

On 30 January 1989, DBP extrajudicially foreclosed BMC's mortgage due to its unpaid loan of Php32,526,133.62. At the public auction held on 24 August 1989, DBP bid Php4,090,117.36 and was the highest and only bidder. The certificate of sale was executed the next day, while the sale was registered in the Registry of Deeds on 11 July 1990.

Before the expiration of the redemption period on 11 July 1991, BMC and DBP-Bacolod entered into a provisional agreement, which was subject to the approval of DBP's head office. BMC and DBP-Bacolod set the redemption price at Php21,500,000.00 as compromise settlement of the outstanding account. BMC promised to make a 20% partial payment of Php4,000,000.00 on or before 31 August 1991, payable in three (3) separate payments. On 10 July 1991, while the 20% partial payment was in process, and without DBP's approval, BMC assigned to WNC its interests in the properties foreclosed by DBP as well as its right of redemption.

On 27 October 1991, DBP head office disapproved the provisional agreement between BMC and DBP-Bacolod. The compromise amount of Php21,500,000.00 was way below the Php28,895,500.00 re-appraised value of the foreclosed parcels of land as of 31 May 1991. Still on 27 October 1991, WNC demanded reduction of the redemption price from Php21,500,000.00 to Php12,768,432.90 because of alleged excessive interest charges.

WNC, on 08 November 1991, requested the *Ex-Officio* Provincial Sheriff (Sheriff) to issue a Certificate of Redemption in its favor because it had already paid Php4,300,000.00. The Sheriff computed the redemption price according to Sec. 30, Rule 39 of the Rules of Court and Act No. 3135, and determined that WNC's payment of Php4,300,000.00 was short by Php358,128.58. WNC paid the deficit on 12 November 1991. The Sheriff notified DBP about WNC's request for redemption also on 8 November 1991 and requested surrender of the TCTs of the foreclosed properties.

On 14 November 1991, DBP filed its objection to the issuance of the certificate of redemption. DBP argued that, according to

its charter, the redemption price must be based on payment of the amount owed as of the date of foreclosure sale with interest on the total indebtedness at the rate agreed upon in the obligation. Expectedly, DBP refused to surrender the TCTs. However, on 03 December 1991, possession of the foreclosed properties was vested on WNC. DBP caused the registration of its adverse claim on the foreclosed properties on 05 December 1991.

Then, WNC filed a complaint before Branch 50, Regional Trial Court (RTC) of Bacolod City asking for the surrender of the TCTs of the foreclosed properties pursuant to Section 30, Rule 39 of the Rules of Court and on Act 3135 on 10 December 1991. In the alternative, WNC prayed for the cancellation of the existing TCTs and the issuance of new ones in its favor. DBP opposed the cancellation and relied on the DBP charter. DBP also asked for the annotation of a notice of *lis pendens* on the TCTs.

The Bacolod City RTC ruled in favor of WNC. It cancelled DBP's titles and ordered the issuance of new titles in WNC's name. It also cancelled DBP's notice of *lis pendens* and denied DBP's motion for reconsideration.

On appeal, DBP asked the CA to determine whether redemption can take place even if WNC did not settle the total outstanding obligation of BMC with DBP. WNC countered that it only had to pay the purchase price at the foreclosure sale, plus interests and other charges, to effect redemption of the foreclosed properties. The CA upheld WNC's argument and, subsequently, denied DBP's motion for reconsideration.

This Court ruled in favor of DBP in our Decision dated 28 October 2002 in G.R. 152359. We declared that when real property is mortgaged to and foreclosed by DBP, the right of redemption may be exercised only by paying to DBP "all the amount owed at the date of sale, with interest on the total indebtedness at the rate agreed upon in the obligation from the said date, unless the bidder has taken material possession of the property or unless this has been delivered to him, in which

case the proceeds of the property shall compensate the interest."[8] The dispositive portion of this decision reads:

WHEREFORE, the instant Petition for Review is GRANTED. The 7 August 2001 Decision and the 21 February 2002 Resolution of the Court of Appeals in CA-G.R. CV No. 38277 are REVERSED and SET ASIDE. The appealed Orders of RTC-Br. 50 in Cad. Case No. 2, GLRO CAD. REC. No. 55, dated 7 February 1992, 14 February 1992 and 28 April 1992, ordering petitioner Development Bank of the Philippines through the Ex-Officio Provincial Sheriff to surrender the transfer certificates of title covering the foreclosed parcels of land and, in case of the failure to turn them over, instructing the Register of Deeds to issue new transfer certificates of title for the foreclosed properties, as it did issue new transfer certificates of title designated as TCT Nos. T-165261 and T-165262 in the name of West Negros College; canceling the adverse claim and notice of *lis pendens* in favor of petitioner Development Bank of the Philippines; and denying the separate motions for reconsideration of petitioner Development Bank of the Philippines, are also REVERSED and SET ASIDE.

The Certificate of Redemption dated 13 November 1991 in favor of respondent West Negros College is DECLARED VOID AND OF NO EFFECT. **Respondent is given however a grace period of sixty (60) calendar days from notice of the finality of this Decision within which to redeem the mortgaged properties** (Lots Nos. 1397-A and 1397-B-1 originally covered by Transfer Certificates of Title Nos. T-25053 and T-29169, respectively, improvements thereon and other properties subject of the mortgage and the extrajudicial foreclosure) **if respondent so desires by paying petitioner**

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[8] G.R. No. 152359, 28 October 2002, 439 Phil. 943 (2002) [Per Justice Bellosillo], citing Sec. 31, CA 459 as amended by RA 85; *see also Development Bank of the Philippines v. Court of Appeals*, G.R. No. 139034, 06 June 2001, 411 Phil. 121 (2001) [Per Justice Gonzaga-Reyes]; *Philippine National Bank v. Remigio*, G.R. No. 78508, 21 March 1994, 301 Phil. 366 (1994) [Per Justice Vitug]; *Dulay v. Carriaga*, G.R. No. L-52831, 29 July 1983, 208 Phil. 702 (1993) [Per Justice Concepcion, Jr.]; *Development Bank of the Philippines v. Mirang*, G.R. No. L-29130, 08 August 1975, 160 Phil. 833 (1975) [Per Justice Makalintal]; *Development Bank of the Philippines v. Jimenez*, G.R. No. L-28165, 19 December 1970, 146 Phil. 919 (1970) [Per Justice J.B.L. Reyes].

Development Bank of the Philippines the balance of the credit of Bacolod Medical Center (as assumed by respondent West Negros College under a deed of assignment) **secured by the properties plus the expenses and the agreed rate of interest, to be computed as of the date of the public auction on 24 August 1989, unless petitioner Development Bank of the Philippines has taken material possession of the properties in which case the proceeds of the properties shall compensate the interest but only during the period of their possession.**

In the event that respondent West Negros College is not interested in redeeming mortgaged properties at the statutory redemption price, or that the redemption period of sixty (60) days expires without any redemption having been undertaken or without a compromise agreement for such purpose having been reached and perfected, respondent West Negros College shall yield possession of the properties in question to petitioner Development Bank of the Philippines as TCT No. T-165261 for Lot No. 1397-A and TCT No. T-165262 for Lot No. 1397-B-1 issued in the name of West Negros College are DECLARED VOID and OF NO EFFECT and the Register of Deeds of Bacolod City is ORDERED TO ISSUE new transfer certificates of title over the mortgaged properties in the name of the Development Bank of the Philippines. No costs.

SO ORDERED.[9] (Emphasis supplied)

WNC filed its Motion for Reconsideration. In this Court's Resolution dated 21 May 2004, We held that, as assignee, WNC is bound by BMC's agreement to pay the redemption price at Php21,500,000.00. As such, WNC is estopped from claiming that the redemption price may be reduced to an amount lower than that. This Court remanded the case to the CA "for reception of evidence solely for the purpose of determining the basis for or the propriety of the imposition of compounded interest, penalties and other charges, and the computation of the total outstanding obligation/redemption price to be paid by [WNC], which, however, shall in no case be lower than ₱21,500,000.00."

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[9] G.R. No. 152359, 28 October 2002, 439 Phil. 943 (2002) [Per Justice Bellosillo].

Eventually, the case made its way back to this Court when DBP questioned the CA's Resolution in CA-G.R. CV No. 38277, entitled *West Negros College, Inc. v. Development Bank of the Philippines*. The CA had ruled that the computation of the redemption price for the subject property should be reckoned from the date of the public auction on 24 August 1989 and that DBP could no longer collect interest from WNC after this date.

On 16 September 2008, the Court promulgated its Resolution[10] in G.R. Nos. 152359 and 174103. We ruled that the CA erred in revisiting the already settled reckoning date in the computation of the redemption price. Thus, WNC should pay DBP with interest thereon at the rate agreed upon as of the date of the public auction on 24 August 1989. We further said: "[t]here was no mention at all in the Decision that contractual interest from the date of the public auction until redemption is actually effected shall continue to accrue and be considered as part of the total redemption price. This is the unmistakable mandate of the Court when it ordered the appellate court to compute the total redemption price."

The dispositive portion of the Resolution dated 16 September 2008 in G.R. Nos. 152359 and 174103 reads:

> WHEREFORE, the Resolutions of the Court of Appeals in CA-G.R. CV No. 38277 dated 5 July 2006 and 8 August 2006 are AFFIRMED. The Court of Appeals is DIRECTED to resume and terminate the proceedings as well as submit its report thereon to this Court in accordance with our Resolution dated 21 May 2004 with deliberate dispatch. No pronouncement as to costs.
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> SO ORDERED.

DBP then assailed the portion of our ruling where we stated that it can no longer collect interest from WNC after 24 August

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[10] *Development Bank of the Phils. v. West Negros College*, G.R. Nos. 152359 & 174103, 16 September 2008, 587 Phil. 1 (2016); penned by Associate Justice Dante O. Tinga and concurred in by Chief Justice Reynato S. Puno (ret.) and Associate Justices Leonardo A. Quisumbing, Minita V. Chico-Nazario and Presbitero J. Velasco.

1989. In our Resolution dated 23 December 2008 in G.R. 174103,[11] We ruled:

> WHEREFORE, the Resolutions of the Court of Appeals in CA-G.R. CV No. 38277 dated July 5, 2006 and August 8, 2006 are REVERSED and SET ASIDE. Its Resolution dated February 14, 2006 is AFFIRMED. The Court of Appeals is DIRECTED to resume proceedings in the case with deliberate dispatch. No pronouncement as to costs.
>
> SO ORDERED.

Reversing our ruling on 16 September 2008, the Court declared that **DBP is entitled to collect accrued interest even after the foreclosure sale**. "[T]he property subject hereof was foreclosed on January 30, 1989 and that DBP did not take possession of the property during the redemption period, as it has a right to do under its charter. Up to the present, in fact, WNC is in possession of the property." We again remanded the case to the CA.

The CA constituted commissioners to determine the total redemption price to be paid by V2. The commission ordered DBP and V2 to submit memoranda appending authenticated evidence on the following issues: (1) whether there is basis to impose compounded interest, penalties, and other charges; (2) should compounded interest be imposed, (a) what is the base amount and the period during which the interest is compounded; and (b) how should the compounding of interest be made; and (3) the computation of the redemption amount shall be as determined by the bank.[12]

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[11] *Development Bank of the Phils. v. West Negros College, Inc.*, G.R. No. 174103, 23 December 2008, 595 Phil. 882 (2008); penned by Associate Justice Dante O. Tinga and concurred in by Chief Justice Reynato S. Puno (ret.) and Associate Justices Leonardo A. Quisumbing, Minita V. Chico-Nazario, and Presbitero J. Velasco.

[12] *Rollo*, pp. 88-89.

Report of the Commissioners

In its Report[13] dated 16 December 2016, the commissioners computed for the redemption price by following the provisions of the promissory note dated 06 January 1975 and the guidelines from the declaration of this Court allowing the imposition of contractual interest during the redemption period. This promissory note stipulated the imposition of compounded interest, penalties, and other charges. The commissioners assumed that neither BMC nor WNC paid the quarterly payments that are inclusive of the principal amortizations and interests. The commissioners explained their computation as follows:

> [The promissory note] provides for a simple interest of twelve percent (12%) per annum on the outstanding principal. For the first year, the total amount of interest due based on the principal loan of P4,100,000.00, computed at the rate of 12% per annum, P492,000.00, which is divided into four quarterly payments of P123,000.00. The promissory note prescribes these interest payments on or before July 30, 1974 and every three months thereafter.
>
> Further, the promissory note requires quarterly payments of P137,548.81 on or before July 30, 1975 and every quarter thereafter. Each quarterly payment includes the amortization on the principal and interest at 12% per annum.
>
> It also provides for the payment of interest at 12% per annum on any and all unpaid interests and/or amortization. The interest is in the nature of a compounded interest as it is imposed on the unpaid accrued interests.
>
> We assume, given the absence of documentary evidence, that BMC/[WNC] has not paid the quarterly payments that are inclusive of the principal amortizations and interests. Hence, the imposition of compounded interest is applied in light of the clear provision of the promissory note.

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[13] *Id*. at 87-109. The Commission that prepared the Report was composed of Atty. Jerry F. Bantilan for WNC, Atty. Allan F. Siu for DBP, and Atty. Lucila M. Cad-Enjambre as Chairman and Representative of the Court of Appeals.

In addition to the compounded interest of 12% per annum, the promissory note provides for the imposition of attorney's fees as stipulated in the mortgage contract securing the loan, if and when the entire obligation has already become due and demandable and DBP has already entrusted the case to its lawyers for enforcement.

The borrower is subject to a penalty charge of 10% interest per annum if it fails to comply with the terms of the restructuring agreement, which shall be levied on the total past due amortization, effective 30 days after the violation was committed. This only applies for as long as the violation of the restructuring agreement remains uncorrected and the mortgage is not foreclosed.

The 10% attorneys' fees plus 10% liquidated damages on the total obligation shall be imposed if the account is already endorsed for legal action and foreclosure is already actually accomplished.

Loan amortizations or portions therefor which had been past due for [more] than 90 days shall be subject to a penalty equivalent to 1/3% per month counted from the date they become liable to such charge.

This penalty charge is distinct from the compounded 12% interest mentioned earlier. Moreover, it bears emphasizing that the imposed penalties and attorneys' fees, even if these have already accrued, should not bear the interest of 12% as this is only imposed on unpaid amortizations and unpaid interests.

x x x x

Consistent with the Supreme Court's recognition of DBP's entitlement to interest during the redemption period, the commissioners have included in the computation the interest due after the foreclosure sale on 24 August 1989 up to the day immediately prior to the issuance of the certificate of redemption on 13 November 1991, which should have accomplished the redemption, had it not been subsequently nullified by the SC. This, again, as both parties differ on what constitutes the period of redemption, that is *should it be the period from foreclosure sale on 24 August 1989 until the issuance of the certificate of redemption (and the grace period of sixty (60) calendar days from notice of finality of the court's final determination of the redemption price) as claimed by [V2], or until actual redemption by paying the total outstanding obligation/redemption prices as maintained by DBP inasmuch as [V2] continues to be in possession*

of the mortgaged properties? The commissioners themselves do not see an unequivocal pronouncement by the courts as regards the matter. To answer that question now is absolutely beyond their authority. However, doing the computation up to 12 November 1991 is simply to illustrate how the calculation runs during the redemption period. It is just a matter of extending the computation up to the time of actual redemption should it be expressly allowed by the court to be so.

Finally, the Promissory Note states that it is governed by the provisions of Board Resolution No. 1776, s. 1971. It further reserves the right to increase the rate of interest without prior notice to the borrower, in pursuance of such policy as it may adopt. These are variables that may be taken into account in order to arrive at the loan balance and the total redemption price. In arriving at their own computation, the commissioners rely on the assumption that the interest remained at 12.0% p.a. for the entire duration of the loan period and during the redemption period.[14]

Upon its re-computation of BMC's unpaid loan, the commissioners declared that the balance of the redemption price as of 12 November 1991 is Php23,099,850.82. This amount includes 10% attorney's fees and 10% liquidated damages at Php1,946,391.23 each, and 12% interest from 24 August 1989 to 12 November 1991 amounting to Php4,043,156.02.

Ruling of the CA

In its Resolution dated 14 March 2018, the CA adopted the commissioners' computation of the redemption price at Php23,099,850.82. The CA took note of V2's admission of the imposition of compound interest. V2 had, in a Memorandum dated 15 October 2015, admitted that the restructured promissory note dated 06 January 1975 obligates the payment of compounded interest at the rate of 12% *per annum* including penalties and other expenses. The CA ruled:

WHEREFORE, the balance of redemption price of West Negros College, substituted by V-2 SAC Management and Development

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[14] *Id.* at 98-101.

Corporation, is **P23,099,850.82**. Upon agreement by the parties, the 60-day grace period granted by the Supreme Court shall commence to run, during which period interest of 12% per annum shall be imposed on the redemption price of P23,099,850.82.

SO ORDERED.[15]

DBP filed a motion for reconsideration, which the CA denied for lack of merit in its Resolution dated 4 September 2018. The CA relied on our 06 September 2008 Resolution in G.R. Nos. 152359 and 174103, as well as on Section 6 of Act No. 3135. The CA did not compute for financial obligations other than the redemption price, because it was mindful that its assigned task is only to compute the redemption price from the date of the auction sale up to 11 November 1991, the end of the extended redemption period.

Issue

DBP raised one ground for the allowance of the petition: that the CA acted in a way not in accord with the final and executory decision dated 23 December 2008 of this Honorable Supreme Court when it held that the final judgment does not say that interest shall accrue until actual redemption of the foreclosed property and in applying the 16 September 2008 resolution of this Supreme Court which has been modified and set aside.[16]

V2, on the other hand, insists on the application of the 16 September 2008 Decision in G.R. No. 174103, notwithstanding the Court's reversal of the same in its 23 December 2008 Resolution.

Ruling of the Court

The petition is **meritorious**. Indeed, the CA's 14 March 2018 and 04 September 2018 Resolutions are not in accord with this Court's 23 December 2008 Resolution in G.R. No. 174103. The

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[15] *Id*. at 44.

[16] *Id*. at 24.

present action finds support in the law of the case. The rule made by an appellate court cannot be departed from in subsequent proceedings of the same case.[17]

In Our Decision dated 28 October 2002 in G.R. No. 152359, We already declared that the redemption price for properties mortgaged with the DBP consists of the **total indebtedness, plus contractual interest**. This pronouncement finds legal basis on Sec. 16 of EO 81, the DBP Charter as amended by RA 8523. We traced the provenance of the DBP Charter in this manner:

> The foregoing rule is embodied consistently in the charters of petitioner DBP and its predecessor agencies. Section 31 of CA 459 creating the Agricultural and Industrial Bank explicitly set the redemption price at the total indebtedness plus contractual interest as of the date of the auction sale. Under RA 85 the powers vested in and the duties conferred upon the Agricultural and Industrial Bank by CA 459 as well as its capital, assets, accounts, contracts, and choses in action were transferred to the Rehabilitation Finance Corporation. It has been held that among the salutary provisions of CA 459 ceded to the Rehabilitation Finance Corporation by RA 85 was Sec. 31 defining the manner of redeeming properties mortgaged with the corporation. Subsequently, by virtue of RA 2081 (1958), the powers, assets, liabilities and personnel of the Rehabilitation Finance Corporation under RA 85 and CA 459, particularly Sec. 31 thereof, were transferred to petitioner DBP. Significantly, Sec. 31 of CA 459 has been reenacted substantially in Sec. 16 of the present charter of the DBP, *i.e.*, EO 81 (1986) as amended by RA 8523 (1998).

For clarity, Section 16 of EO 81 provides:

> SEC. 16. *Right of Redemption*. — Any mortgagor of the Bank whose real property has been extrajudicially sold at public auction shall, within one (1) year counted from the date of registration of the certificate of sale, have the right to redeem the real property by paying to the Bank all of the latter's claims against him, as determined by the Bank.

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[17] *Sps. Sy v. Young*, G.R. No. 169214, 19 June 2013, 711 Phil. 444 (2013) [Per Justice Brion].

The Bank may take possession of the foreclosed property during the redemption period. When the Bank takes possession during such period, it shall be entitled to the fruits of the property with no obligation to account for them, the same being considered compensation for the interest that would otherwise accrue on the account. Neither shall the Bank be obliged to post a bond for the purpose of such possession.

In determining the total amount of the redemption price due to DBP, we refer to the previous rulings of this Court and to the provision on the redemption price in the DBP Charter. The Decision dated 28 October 2002 in G.R. No. 152359 focused on the first paragraph of Section 16 to determine the base amount of the redemption price, while the Resolution dated 23 December 2008 in G.R. No. 174103 focused on the last paragraph of the same section to determine whether interest may be imposed on the base amount of the redemption price.

First. The base amount of the redemption price is Php32,526,133.62, BMC's unpaid loan as of 24 August 1989, the date of foreclosure.

The right of redemption may be exercised only by paying to DBP "all the amount owed at the date of sale, with interest on the total indebtedness at the rate agreed upon in the obligation from the said date, unless the bidder has taken material possession of the property or unless this has been delivered to him, in which case the proceeds of the property shall compensate the interest."[18] This was the import of our Decision dated 28 October 2002 in G.R. No. 152359.

Because of our prior pronouncements, there is no further need for the Commissioners to compute what they deem to be BMC's unpaid loan as of 24 August 1989, the date of foreclosure. Thus, the proper amount of the redemption price is not Php23,099,850.82, or the amount declared by the CA in its Resolutions dated 14 March 2018 and 04 September 2018 in

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[18] *Supra* at note 8.

CA-G.R. CEB CV No. 38277. The CA should have heeded Our rulings in both G.R. Nos. 152359 and 174103.

Second. DBP is allowed to collect accrued interest even after the foreclosure sale on 24 August 1989.

This was the import of our 23 December 2008 Resolution in G.R. No. 174103, where We referred to Section 18 of EO 81 and stated:

> However, we note the fact that the property subject hereof was foreclosed on January 30, 1989 and that DBP did not take possession of the property during the redemption period, as it has a right to do under its charter. Up to the present, in fact, WNC is in possession of the property.
>
> Under its charter, had DBP taken possession of the property, it would not be required to account for the fruits thereof, "the same being considered compensation for the interest that would otherwise accrue on the account." **This phrase explicitly confers upon DBP the right to claim contractual interest on the account during the redemption period in line with the intent of the law to protect the government's investment in the lending institution.** (Emphasis added)

That DBP had never taken possession of the subject property is an established fact. DBP, therefore, has not enjoyed the fruits of the subject property. The "interest that would accrue otherwise on the account" is equivalent to the fruits of the property. By their actions, BMC, WNC, and V2, successively, have effectively deprived DBP of the fruits of its property.

There is, therefore, no basis for V2's assertion of unjust enrichment on the part of DBP. This assertion's logic actually runs counter to V2's admission that the 06 January 1975 promissory note obligates the payment of compounded interest at the rate of 12% *per annum* including penalties and other expenses.

In light of DBP being deprived of the fruits of its property, We find no basis for the CA's declaration that the computation

of the redemption price is limited to until 12 November 1991 only. The interest should continue to run from 24 August 1989, the date of the foreclosure sale, until the date of actual redemption by V2 or its successor-in-interest, whenever it may be. If V2 wanted to stop the continued accrual of interest, it should have given DBP possession of the property. BMC, WNC, and V2 have held the property hostage and prevented DBP from enjoying its fruits since 1989, all the while evading its duty to pay proper compensation.

The computation of accrued interest due to DBP should thus be computed until actual redemption, that is, until full payment of redemption amount. We likewise recognize the 60-day grace period given in our Decision dated 28 October 2002 in G.R. No. 152359: V2 is extended the same grace period, subject to the same conditions.

Third. It is no longer necessary for the CA or for the commissioners to further determine whether DBP is allowed to compound interest.

The issue of the determination of the validity of the imposition of compounded interest, penalties, and other charges was the reason for the remand of the case to the CA in the Resolution dated 21 May 2004 in G.R. No. 152359. The CA, following this mandate, made a finding of fact that V2 itself admitted that the restructured promissory note dated 6 January 1975 obligates the payment of compounded interest at the rate of 12% *per annum* including penalties and other expenses.

Fourth. The only thing left to be determined is the actual redemption price due to DBP. The promissory note dated 06 January 1975 provides for straight interest at the rate of 12% *per annum*: "All unpaid interests and/or amortizations shall bear interest at the rate of twelve (12) *per centum, per annum*."

In a Memorandum dated 01 February 2016 submitted to the CA, the DBP provided the following formula, but did not substantiate the basis of its expenses:

Statement of Total Claim
As of January 31, 2016

Bacolod Medical Center

Outstanding balance as of the date of public auction (8/24/89)	Php32,526,133.62
Interest from 08/25/89 to expiry date of redemption (07/11/91) (686 days) (12%)	2,151,504.02
Expenses	910,746.93
Interest on Expenses	159,470.88
A.Total Claim as of Expiry Date of Redemption 07/11/91	Php35,747,855.45
Interest from 07/12/91 to 01/31/16 (8970 days) (12%)	96,701,706.58
Expenses	1,592,904.11
Interest on Expenses	3,382,198.36
B. Total Claim as of 01/31/16	Php137,474,664.50[19]

With this computation, the DBP is estopped by its exclusion of 10% liquidated damages and 10% attorney's fees in its formula. DBP only included 12% interest from 12 July 1991 until 31 January 2016.

The redemption price due to DBP, then, should exclude the unsubstantiated amount for expenses and interest on expenses. The total claim as of the date of actual redemption has two components: (1) the total claim as of the expiry date of redemption, and (2) the interest from the expiry date of redemption until the actual redemption date.

Accordingly, the total claim as of 11 July 1991, or the expiry date of redemption, is Php34,677,637.64. This amount includes the straight interest of 12% *per annum* from 25 August 1989, or the day after the public auction, until 11 July 1991.

On the other hand, there is a need to determine the number of days from 12 July 1991, or the date after the expiry date of redemption, until the actual redemption date. The number of days should be divided by 365, or the number of days in

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[19] *Rollo*, p. 85.

a year, then subsequently multiplied by 12%, or the interest rate *per annum*. The result should be multiplied by Php32,526,133.62, or the base amount of the redemption price, to determine the amount of interest due from 12 July 1991 until the actual redemption date. We continue to uphold the 60-day redemption period granted in our Decision dated 28 October 2002 in G.R. 152359.

WHEREFORE, DBP's Petition for Review is hereby **GRANTED**. The Resolutions dated 14 March 2018 and 04 September 2018 of the Court of Appeals in CA-G.R. CEB CV No. 38277 are **REVERSED** and **SET ASIDE**.

The redemption price as of 24 August 1989, the date of foreclosure, is Php32,526,133.62. In case of redemption, the total claim due to petitioner Development Bank of the Philippines should be computed as follows:

Outstanding balance as of the date of public auction (8/24/89)	Php32,526,133.62
Interest from 08/25/89 to expiry date of redemption (07/11/91) (686 days) (12%)	2,151,504.02
(1) Total Claim as of Expiry Date of Redemption 07/11/91	Php34,677,637.64
(2) Interest from 07/12/91 to actual redemption date (actual number of days from 7/12/91 to actual redemption date divided by 365 days) (multiplied by 12%)	X
Total Claim as of actual redemption date	Php34,677,637.64 plus X

In the event that respondent V-2 SAC Management and Development Corporation is not interested in redeeming the mortgaged properties at the computed amount in the total claim as of actual redemption date above, or that the 60-day grace period for redemption has expired without any redemption having been undertaken or without a compromise agreement for such purpose having been perfected, respondent V-2 SAC Management and Development Corporation shall yield possession of the two (2) parcels of land, Lot Nos. 1397-A and 1397-B-1 covered by Transfer Certificates of Title Nos. T-25053 and T-29169.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 243625. December 2, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **JEFFREY DERECO y HAYAG**, *Accused-Appellant.*

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 this Court is an appeal under Rule 45 of the Rules of Court seeking the reversal of the Decision[1] dated April 11, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08172, which affirmed with modification the Decision[2] dated November 16, 2015 of the Regional Trial Court *(RTC)* of Quezon City, Branch 76, finding accused-appellant Jeffrey Dereco y Hayag guilty beyond reasonable doubt of rape under Article 266-A of the Revised Penal Code, as amended.

The antecedent facts are as follows:

In an Information[3] dated September 1, 2009, accused-appellant was charged with the special complex crime of Robbery with Rape, to wit:

That on or about the 26th of August 2009, in Quezon City, Philippines, the said accused JEFFREY DERECO Y HAYAG,

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[1] Penned by Associate Justice Franchito N. Diamante, with Associate Justices Japar B. Dimaampao and Zenaida T. Galapate-Laguilles, concurring; *rollo,* pp. 2-15.

[2] Records, pp. 334-342.

[3] *Id.* at 1.

conspiring and confederating with another person who is at-large, and mutually helping each other, with intent to gain and by means of force, violence and intimidation against person, did then and there willfully, unlawfully and feloniously rob one [AAA][4] in (sic) following manner, to wit: on the date and place aforementioned, while complainant was walking along [redacted], this City, accused, pursuant to their conspiracy, appeared from behind and thereafter took and carried away from her one (1) Nokia cellphone worth Php5,000.00, one (1) gold ring 18k worth Php3,000.00, and cash money worth Php1,000.00, all valued in the total amount of Php9,000.00, Philippine Currency, belonging to said [AAA], and on the occasion of the Robbery, by means of force and intimidation, with lewd designs, accused one after another and mutually helping each other, had carnal knowledge with the said complainant, all against her will and without consent, to her damage and prejudice.

CONTRARY TO LAW.[5]

During arraignment, accused-appellant pleaded not guilty to the crime charged. On pre-trial, the parties stipulated on the identity of the accused-appellant as the same person named in the Information. Thereafter, trial on the merits ensued.

The prosecution established that on August 26, 2009, at around 4 o'clock in the morning, while victim AAA was texting on her cellphone and walking along Quirino Highway on her way to work, she was suddenly approached by two (2) men. One of them, later identified as accused-appellant, grabbed her and immediately poked a knife on her left side, while the other, identified as alias "Biboy," grabbed her bag and rummaged through her belongings. They dragged her towards a vacant lot where the accused-appellant, still poking a knife at her, lifted her blouse and mashed her breasts, with Biboy serving as lookout.

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[4] The victim's name and personal circumstances, as well as the names of the victim's immediate family or household members, are withheld and replaced with fictitious initials pursuant to Section 44 of Republic Act No. 9262 and Section 40 of A.M. No. 04-10-11-SC or the Rule on Violence Against Women and their Children. See *People v. Cabalquinto*, 533 Phil. 703 (2006).

[5] Records, p. 1.

AAA struggled, but to no avail. Accused-appellant pulled her pants and underwear down to her knees and inserted his finger in her genitalia. Despite AAA's resistance, accused-appellant did not stop and instead spread her legs, while Biboy shouted "*Bilisan mo*!" When AAA lifted her pants to cover herself, Biboy warned her, "*Auntie, huwag kang sisigaw kung ayaw mong patayin ka namin dahil may dala kaming baril.*"[6]

AAA further testified that Biboy, at some point, made her turn around and face the wall. He went behind her, forcibly pushed her head down to her knees to make her bend and after removing her pants and underwear, he inserted his penis into her genitalia. As Biboy was ravishing her, the accused-appellant, who was in front of her and poking a knife at her side, was mashing her breasts and forcibly kissing her mouth. When Biboy was done, the accused-appellant went behind her forcibly pushed her head down to her knees and inserted his penis into her genitalia for about a minute. After accused-appellant was done, AAA sat down and cried while dressing herself up. Out of fear, she did not leave immediately as accused-appellant and Biboy told her not to leave.[7]

After accused-appellant and Biboy left, AAA walked towards the highway and decided to go to work. Upon arriving at her workplace, she told her boss about what happened to her.[8] She was then brought to the police station where she reported the incident, and subsequently underwent medico-legal examination, as evidenced by Medico-Legal Report No. SC-35-2009. On August 29, 2009, the police operatives arrested the accused-appellant at his residence. AAA then positively identified accused-appellant as one of the perpetrators of the crime.[9]

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[6] TSN, June 2, 2010, pp. 3-8.

[7] *Id.* at 9-12.

[8] *Id.* at 12-13.

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

In the Medico-Legal Report No. SC-35-2009[10] dated August 29, 2009, Dr. Shane Lore Dettabali *(Dr. Dettabali)*, who personally examined AAA, reported that upon examination, AAA's hymen had a deep healed laceration at 5 o'clock position, absence of hymenal tissue on the 6-7 o'clock positions and acute sign of trauma or erythematous. Dr. Dettabali concluded that the laceration signified previous blunt force or penetrating genital trauma, specifically a male erect organ. It was also reported that there was a positive presence of spermatozoa which shows definite evidence of sexual contact.

For the defense, it solely relied on the testimony of the accused-appellant to refute the prosecution's allegations. Accused-appellant denied the charges against him. He narrated that on the date of the incident, August 26, 2009, he was plying his pedicab within the area of Villaflor Street, Barangay Gulod from 6 o'clock in the morning until 8 o'clock in the evening.[11] At around 5 o'clock in the afternoon of August 29, 2009, while he was resting at his house in Araceli Street, Bgry. Gulod, Novaliches, police officers came and arrested him.[12] He was brought to the police station and was presented later on before a woman for identification, who was later identified as AAA. He claimed that AAA repeatedly hit him with a glass she was then holding but he did not know why. Later, accused-appellant claimed that the police officers pinned him as the one who raped the woman, and instructed the victim to identify him.

In its Decision[13] dated November 16, 2015, the RTC of Quezon City, Branch 76, ruled that accused-appellant cannot be convicted of the special crime of robbery with rape as the prosecution failed to establish the presence of all the elements of robbery with rape. Nonetheless, it found accused-appellant guilty beyond reasonable doubt of the crime of rape as all the elements of

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[10] Records, p. 92.

[11] TSN, October 22, 2015, pp. 8-9.

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

[13] CA *rollo*, pp. 51-59.

rape were duly proven and established. The dispositive portion of the Decision reads:

> WHEREFORE, accused Jeffrey Dereco y Hayag is hereby found GUILTY beyond reasonable doubt of violation of paragraph (1) of Art. 266-A of the Revised Penal Code, otherwise known as Rape.
>
> He is hereby sentenced to suffer the penalty of RECLUSION PERPETUA, with no eligibility for parole, and TO PAY the private complainant victim AAA that amount of Php50,000 as civil indemnity, P50,000 as moral damages, and P30,000 as exemplary damages, with all such amounts to earn interest of 6% per annum from the finality of this decision until full payment.
>
> SO ORDERED.[14]

Unperturbed, accused-appellant appealed the court *a quo*'s decision before the Court of Appeals. However, on April 11, 2017, in its disputed Decision,[15] the Court of Appeals affirmed with modification the decision of the trial court. The dispositive portion of which reads:

> WHEREFORE, in view of the foregoing, the appeal is DENIED. The Decision dated November 16, 2015 of the Quezon City Regional Trial Court, Branch 76, in Criminal Case No. Q-09-160418 is hereby AFFIRMED with MODIFICATIONS, in that the phrase "without eligibility for parole" is DELETED and the accused-appellant is ordered to indemnify the private complainant the following amounts: (1) Php75,000.00 as civil indemnity; (2) Php75,000.00 as moral damages; and (3) Php75,000.00 as exemplary damages, with interest on all damages awarded at the rate of 6% per annum from the date of finality of this judgment until fully paid.
>
> All other aspects of the assailed Decision STAND.
>
> SO ORDERED.[16]

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[14] *Id.*

[15] *Supra* note 1.

[16] *Id.*

Thus, before this Court, accused-appellant reiterated the following arguments previously raised before the appellate court to argue his conviction, to wit:

I

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF RAPE DESPITE THE INCONSISTENCIES AND INCREDIBILITY IN THE TESTIMONY OF THE PRIVATE COMPLAINANT.

II

THE COURT A QUO GRAVELY ERRED IN GIVING PROBATIVE WEIGHT TO PRIVATE COMPLAINANT'S TESTIMONY DESPITE BEING CONTROVERTED BY THE PHYSICAL EVIDENCE ON RECORD.

III

THE COURT A QUO GRAVELY ERRED IN GIVING CREDENCE AND UNDUE CONSIDERATION TO THE PRIVATE COMPLAINANT'S INCREDIBLE AND INCONSISTENT TESTIMONY WHILE COMPLETELY DISREGARDING THE ACCUSED-APPELLANT'S DEFENSE OF ALIBI AND DENIAL.

In seeking the reversal of the assailed CA decision, accused-appellant asserts that the prosecution failed to prove his guilt beyond reasonable doubt. He claims that AAA's testimony was riddled with inconsistencies and improbabilities. Thus, accused-appellant asserts that the courts *a quo* erred in giving credence to AAA's testimony as her credibility was questionable.[17]

The Court finds no reason to reverse conviction.

The Court upholds the findings of the RTC which were affirmed by the CA, that AAA's testimony was credible. It is settled that the RTC's findings on the credibility of witnesses and their testimonies are entitled great weight and respect and the same should not be overturned on appeal in the absence of any clear showing that the trial court overlooked, misunderstood,

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[17] CA *rollo*, pp. 43-46.

or misapplied some facts or circumstances which would have affected the case. Questions on the credibility of witnesses are best addressed to the trial court due to its unique position to observe the witnesses' deportment on the stand while testifying.[18] In this case, both the RTC and the CA held that AAA was credible, and her testimony categorically identified accused-appellant and his companion as the malefactors who, with the use of a knife, intimidated her and raped her. The Court finds no reason to doubt the findings of both the RTC and the CA, especially since no evidence was adduced showing that AAA had ill motive to falsely charge appellant with the crime of rape.

Article 266-A of the Revised Penal Code defines when and how the felony of rape is committed, to wit:

> Rape is committed —
>
> 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
>
> a) Through force, threat, or intimidation;
>
> b) When the offended party is deprived of reason or otherwise unconscious;
>
> c) By means of fraudulent machination or grave abuse of authority; and
>
> d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.
>
> 2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

In the instant case, both the RTC and the CA correctly found that all the elements of rape were established by the prosecution. The prosecution sufficiently established beyond reasonable doubt that on August 26, 2009, accused-appellant had carnal knowledge

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[18] *People v. Avelino, Jr. y Gracillian*, G.R. No. 231358, July 8, 2019.

with AAA, and inserted his finger inside AAA's genitalia, while Biboy acted as look-out. It was also proven that accused-appellant employed force, threat, and intimidation upon AAA when he continuously poked a knife at AAA's left side.

The trial court found AAA's testimony to be clear and equivocal. She positively identified accused-appellant as one of the two (2) men who raped her, *albeit* Biboy was not tried as he remained at-large. Her recollection of the material details of her harrowing experience at the hands of accused-appellant and Biboy was consistent, to wit:

> Prosecutor Usita:
>
> The witness is crying.
>
> Q What happened after one of them grabbed you?
> A The accused Jeffrey Dereco immediately poked a knife at my left side while Biboy was at my right side and suddenly grabbed my bag.
>
> Q After that, what happened, Madam Witness?
> A They dragged me to a vacant lot.
>
> Q While they were dragging you towards the vacant lot, what did you do, if any?
> A I was trying to free myself and told them to just get everything they want but not to harm me.
>
> Q What was the reply of the accused and his companion?
> A While I was trying to free myself, Jeffrey kept poking his knife at me.
>
> Q Thereafter, what happened next?
> A When we were already on the far end of the vacant lot, Jeffrey raised my clothes.
>
> Q While Jeffrey was raising your clothes, what did you do?
> A I tried to fight back but he kept on mashing my breasts.
>
> Q Who was mashing your breasts?
> A Jeffrey Dereco.

Q After Dereco kept on mashing your breasts, what happened next?
A Dereco unzipped my pants and lowered my underwear down to my knees.
Q After Dereco unzipped your pants and lowered your underwear, what did you do?
A I tried fighting back but he kept spreading my legs.

Q Was accused Dereco able to spread your legs?

Atty. Cabarrubias:
Leading, your honor.

Prosecutor Usita:

Anyway, it is a follow-up question but we already established the basis that the accused was trying to spread the thighs of the witness.

Q Was he able to spread your legs?
A Yes, sir.

Q What happened after the accused was able to spread your legs?
A He inserted his fingers in my vagina.

Q Was he able to insert his finger into your vagina?

Atty. Cabarrubias:
Leading, your honor.

Prosecutor Usita:
Follow-up question, your honor.

Witness:
A Yes, sir.

Prosecutor Usita:
Q What did you feel?
A It hurts.

Q How about the companion of accused Dereco, what was he doing at the time?
A He was just looking around and said, "*Bilisan mo*."

Q What else did he utter after saying, "*Bilisan mo?*"
A Biboy approached me and said, "*Auntie, huwag kang sisigaw kung ayaw mong patayin ka namin dahil may dala kaming baril*."

Q After uttering those words, what happened next?
A Biboy then pushed me and told me to turn around and face the wall and then he went on my back.

Q What happened next?
A Then he kept on trying to remove my pants and underwear. I kept fighting back.

Q What happened next?
A They were stronger than me. When Biboy was at my back, he kept pushing my head downwards.

Q What did you do after Biboy pushed your head downwards?
A I fought back but they were stronger than me.

Q What was Dereco doing while Biboy was pushing your head down?
A Dereco was in front of me and he was helping Biboy in spreading my legs.

Q What happened next?
A After they were able to remove my pants and underwear, Biboy, who was at my back, inserted his penis in my vagina.

Q What happened next, Madam Witness?
A At that moment, Dereco, who was in front of me, knelt and he was pressing my mouth open and kissed me.

Q What did you do?
A I kept fighting back and begging them not to do what they were doing.

Q What was the response of Dereco to your pleading?
A They did not mind what I was saying and instead, pressed hard on the knife pointed at me.

Q Who in particular was pointing that knife at you?
A Jeffrey Dereco, at first.

Q Then who came next?
A It was still Dereco pointing the knife at me because he was in front of me at the time.

Q After Biboy inserted his penis inside you, what happened next?
A They changed places and it was [the] turn of Dereco to go to my back.

Q What happened after Dereco went to your back?
A He removed his shorts and pulled out his penis and was pushing me and at the same time, I felt I was going to be killed.

Q What happened after that?
A Dereco did the same thing that Biboy did to me.

Q What did he exactly do to you?
A He inserted his penis into my vagina.

Q What did you feel at the time, Madam Witness?
A It was painful.

Q How long did Dereco insert his penis into your vagina?
A More or less, a minute.

Q Before Dereco inserted his penis into your vagina, what did you do?
A I was fighting back.

Q What happened when you tried to fight back?
A The more I fought back, the more they exerted efforts to pin my head down.

Q What happened after Dereco inserted his penis into your vagina for about a minute?
A Then he left my back and I just sat down at the place of incident.

Q Could you describe the lighting condition at the time at the place of the incident?
A The light came from the post at the corner of the street.

Q You said you sat down on the spot of the incident, how long did you sit down on that place?
A I do not recall but I remember that I just put on my pants and underwear.

Q How about the accused Dereco and his companion, what did they do after that?
A They told me not to leave and out of fear, I just "*sumiksik sa dulo.*"

Q After that, what happened?
A When I felt that they were no longer around, I stood up and walked towards the highway.

x x x.[19]

Dr. Shanne Lore A. Dettabali, M.D., who conducted the medico-legal examination on AAA on the same day of the alleged commission of rape, also testified that upon examination, AAA's hymen not only appeared to be "erythematous"[20] but also, there was "positive presence of spermatozoa" found in her vagina which shows a "definite evidence of sexual contact."[21]

It is settled in this jurisdiction that as long as the testimony of the witness is coherent and intrinsically believable as a whole, discrepancies of minor details and collateral matters do not affect the veracity, or detract from the essential credibility of the witnesses' declarations.[22] In fact, the accused may be convicted solely on the basis of the testimony of the victim that is credible, convincing, and consistent with human nature and the normal course of things.[23] Further, no ill motive on the part of AAA to falsely accuse accused-appellant was ever brought up by the defense during trial. This only serves to further strengthen AAA's case since we have consistently held that a rape victim's testimony as to who abused her is credible where she has absolutely no motive to incriminate and testify against the accused.[24]

Anent the alleged inconsistent statements made by AAA in her testimony, we have constantly declared that a few discrepancies and inconsistencies in the testimonies of witnesses referring to minor details and not in actuality touching upon the central fact of the crime do not impair the credibility of the

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[19] TSN (Direct examination of AAA, June 2, 2010); records, pp. 5-12.

[20] Records, pp. 6-7.

[21] *Id.*

[22] *People v. Empuesto*, 851 Phil. 611, 628 (2018).

[23] *People v. Ganaba*, G.R. No. 219240, April 4, 2018, 860 SCRA 513, 525.

[24] *People v. Gahi*, 727 Phil. 642, 659 (2014).

witnesses because they discount the possibility of their being rehearsed testimony.[25] Furthermore, the alleged inconsistencies and discrepancies which accused-appellant raised anew before us, *i.e.*, AAA's failure to immediately report the incident to the police, absence of fresh lacerations in AAA's hymen, the non-presentation of the weapon used to threaten and force AAA, the incredibility of AAA's story considering that she had sighting of men at the site of crime yet she continued to walk alone along Quirino Highway, were all satisfactorily discussed and debunked before the courts *a quo* that there is no need for this Court to belabor on them. Moreso, as these issues are factual in nature. The trial court's evaluation shall be binding on this Court unless it is shown that certain facts of substance and value have been plainly overlooked, misunderstood, or misapplied.[26] None of the exceptions is present in this case.

Moreover, accused-appellant's defense of denial and alibi cannot stand against the prosecution's evidence. Alibi is an inherently weak defense because it is easy to fabricate and highly unreliable. To merit approbation, he must adduce clear and convincing evidence that he was in a place other than the *situs criminis* at the time when the crime was committed, such that it was physically impossible for him to have been at the scene of the crime when it was committed.[27] This accused-appellant failed to prove.

As a final note, as pointed out by the trial court, the prosecution should have indicted accused-appellant for rape through sexual assault. Accused-appellant should have been convicted of two (2) counts of rape, *i.e.*: (1) rape through sexual intercourse by means of force, threat and intimidation, as described and punishable under paragraph 1 of Art. 266-A of the RPC, and (2) rape through sexual assault, as described and punishable under paragraph 2 of Art. 266-A of the same Code. However,

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[25] *People v. Gerola*, 813 Phil. 1055, 1066 (2017).

[26] *People v. Amoc*, 810 Phil. 253, 259 (2017).

[27] *People v. Gani*, 710 Phil. 466, 473 (2013).

due to the failure of the prosecution to allege in the information the rape through sexual assault, as described and punishable under paragraph 2 of Art. 266-A of the RPC, accused-appellant can only be found guilty of rape through force, threat, and intimidation, even though rape through sexual assault was also proven during trial. This is due to the material differences and substantial distinctions between the two modes of rape; thus, the first mode is not necessarily included in the second, and vice-versa. Consequently, to convict accused-appellant of rape by sexual assault when what he was charged with was rape through carnal knowledge, would be to violate his constitutional right to be informed of the nature and cause of the accusation against him.[28]

It is fundamental that, in criminal prosecutions, every element constituting the offense must be alleged in the Information before an accused can be convicted of the crime charged. No matter how conclusive and convincing the evidence of guilt may be, an accused cannot be convicted of any offense unless it is charged in the information on which he is tried or is necessarily included therein. To convict him of a ground not alleged while he is concentrating his defense against the ground alleged would plainly be unfair and underhanded. Thus, the prosecuting arm of the Government is reminded that prudence should be exercised as to what should be alleged in the Information, as the latter is the battleground of all criminal cases.[29]

WHEREFORE, the April 11, 2017 Decision of the Court of Appeals in CA-G.R. CR-HC No. 08172, finding accused-appellant Jeffrey Dereco y Hayag **GUILTY** beyond reasonable doubt of rape, as defined in and penalized under Article 266-A of the Revised Penal Code, is **AFFIRMED**. He is hereby sentenced to suffer the penalty of *reclusion perpetua* and **ORDERED** to **PAY** AAA the amounts of ₱75,000.00 as civil

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[28] *People v. Pareja*, 724 Phil. 759, 783 (2014).

[29] *People v. Romobio*, G.R. No. 227705, October 11, 2017, 842 SCRA 512, 538.

indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages. All monetary awards for damages shall earn an interest rate of six percent (6%) *per annum* to be computed from the finality of this Decision until fully paid.

SO ORDERED.

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

FIRST DIVISION

[G.R. Nos. 244667-69. December 2, 2020]
(Formerly UDK 16373-75)

HEIRS OF CORAZON VILLEZA, Namely: IMELDA V. DELA CRUZ, I,[*] STELLA IMELDA II VILLEZA, IMELDA VILLEZA III, ROBYL[**] O. VILLEZA AND ABIGAIL WEHR, *Petitioners*, *v.* **ELIZABETH S. ALIANGAN AND ROSALINA S. ALIANGAN, rep. by ROGER A. BANANG**, *Respondents*.

APPEARANCES OF COUNSEL

Ferdinand P. Olalia for petitioners.
Piedad Santos & Associates Law Offices for respondents.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is the Petition for Review[1] (Petition) under Rule 45 of the Rules of Court filed by petitioners assailing the Decision[2] dated December 17, 2018 (Decision) of the Court of Appeals[3] in CA-G.R. CV Nos. 108495-97. The CA Decision denied the three appeals of petitioners and affirmed with modification the three Decisions all dated August 30, 2016 of the Regional Trial Court of Cauayan City, Isabela, Branch 20

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[*] Imelda I. Dela Cruz in some parts of the *rollo*.

[**] Robby Villeza in other parts of the *rollo*.

[1] *Rollo*, pp. 13-35, excluding Annexes.

[2] *Id.* at 74-95. Penned by Associate Justice Pablito A. Perez, with Associate Justices Celia C. Librea-Leagogo and Samuel H. Gaerlan (now a Member of the Court) concurring.

[3] Fifth Division.

(RTC), in Civil Case Nos. (CV) Br. 20-3009,[4] Br. 20-3010,[5] and Br. 20-3011.[6]

The Facts and Antecedent Proceedings

The CA Decision narrates the antecedents as follows:

> In controversy are three (3) parcels of land with improvements located at Angadanan, Isabela all registered under the name of Corazon Villeza (Corazon).
>
> It is alleged that Corazon, during her lifetime, sold the subject properties to sisters Elizabeth Aliangan (Elizabeth) (a long-time neighbor and friend) and Rosalina Aliangan (Rosalina), [respondents herein]. On August 3, 2009[,] however, Corazon died without executing any deed of conveyance in [respondents'] favor. [Respondents] thus filed three (3) separate Amended Complaints for "*Specific Performance and Damages*," docketed as Civil Case[s] Nos. Br. 20-3009, Br. 20-3010 and Br. 20-3011, to compel [petitioners Heirs of Corazon Villeza, namely Imelda V. dela Cruz, I, Stella Imelda II Villeza, Imelda Villeza III, Robyl O. Villeza and Abigail Wehr, (petitioners)], legal heirs and collateral relatives of Corazon, to execute the subject deeds. [It appears that aside from petitioners, the other defendants are Lilibeth Villeza Baliwag,[7] Maria Victoria Villeza Barcena, Elmer V. Agpaoa, Dennis V. Agpaoa and Kenneth V. Agpaoa, who are heirs of Rosario Agpaoa (other defendants)].[8]
>
> The RTC, in its Order dated May 19, 2011 consolidated [CV] Br. 20-3010 and Br. 20-3011 with [CV] Br. 20-3009, but opted to render three (3) separate Decisions to obviate confusion.

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[4] Id. at 36-43. Penned by Judge Reymundo L. Aumentado.

[5] Id. at 44-50. Penned by Judge Reymundo L. Aumentado.

[6] Id. at 51-55. Penned by Judge Reymundo L. Aumentado.

[7] Lilibeth Villeza Balawag in some parts of the *rollo*.

[8] *Rollo*, pp. 38, 45, 52 and 81.

[Centro I Property; CV Br. 20-3009]

In an *Amended Complaint* dated March 1, 2011, [respondents] averred the following:

On January 10, 2006, Elizabeth and Rosalina, as buyers, and Corazon and Rosario Agpaoa (Rosario), as sellers, entered into a *Deed of Conditional Sale* for the sale of a residential house and an undivided parcel of land, with a total area of 540.5 square meters, located at Centro I, Angadanan, Isabela (Centro I property) for a purchase price of [₱]450,000.00.

At the time of the execution of the aforementioned deed, the Centro I property formed part of Transfer Certificate of Title (TCT) No. T-299995, a 2,162 sq.m. parcel of land registered under the name of Inocencio Agpaoa (Inocencio).

On November 14, 2006, TCT No. T-299995 was cancelled and TCT No. T-356999 (now only covering the 540.5 sq.m. Centro I property) was issued in Corazon's name.

Thereafter, Elizabeth and Rosalina went back to Toronto, Canada where they sent monthly remittances of [₱]10,000.00 from February 2006 to December 2007 to Rosario as partial payments for the Centro I property. Rosario also acknowledged receiving a total amount of [₱]184,233.00, duly witnessed and signed by Corazon, for the Centro I property. [Respondents] averred that they continued sending monthly remittances to Rosario from January to April 2008.

On August 3, 2009 and September 1, 2009, respectively, Corazon and Rosario died without transferring ownership of TCT No. T-356999 in [respondents'] favor. Alleging full payment of the Centro I property, [respondents] entreated [petitioners], as heirs of Corazon, to honor the *Deed of Conditional Sale* dated January 10, 2006. [Petitioners] did not accede to such request.

Worse, [respondents] discovered two (2) contracts conveying the Centro I property to different persons, *viz.*: (a) a *Deed of Absolute Sale* dated February 9, 2007, executed by one Kenneth Agpaoa selling a parcel of land covered by TCT No. T-356999 to Rosario; and (b) a *Deed of Absolute Sale* dated February 9, 2007 executed by Rosario selling the same parcel of land covered by TCT No. T-356999 to Corazon. It is averred that the signatures of Corazon and Rosario in these documents are forgeries.

Repudiating the January 10, 2006 *Deed of Conditional Sale* for allegedly being void *ab initio*, [petitioners], in their *Answer*, argued, to *wit*: (a) when the subject deed was executed on January 10, 2006, Inocencio x x x was still the registered owner of the Centro I property considering that TCT No. T-356999 was only issued in Corazon's name on November 14, 2006, Corazon cannot thus appropriate something she does not own; (b) Corazon was the sole registered owner of TCT No. T-356999, whatever amount received and acknowledged by Rosario, if any, could never bind Corazon's property; and (c) [respondents], being Canadian citizens, are disqualified under the Constitution from owning real property in the Philippines.

[Petitioners] add that [respondents] have no cause of action against them as they were neither privies to the purported contract nor were they appointed as executors or administrators of Corazon's estate. [Respondents'] actions with the [RTC] are asserted to be premature considering that Corazon's estate is yet to undergo probate proceedings.

[Bunay[9] **property; CV Br. 20-3010]**

In an *Amended Complaint* dated March 1, 2011, [respondent] Elizabeth x x x averred the following:

Corazon is the registered owner of an agricultural land with improvements located at Brgy. Bunay, Angadanan, Isabela, with an area of 36,834 sq.m., more or less, covered by TCT No. T-297393 (Bunay property).

In 2005, Corazon orally offered for sale the Bunay property to Elizabeth for [₱]250,000.00. On June 22, 2007, Elizabeth, while in Toronto, Canada, sent two (2) remittances each worth [₱]125,000.00 (or a total of [₱]250,000.00) addressed to Corazon as payment for the Bunay property. These remittances were received by Corazon herself.

Due to Corazon's untimely demise on August 3, 2009 without transferring ownership of the Bunay property, Elizabeth went back to the Philippines to attend her wake and show [petitioners, heirs of Corazon,] proof of purchase of the Bunay property. [Petitioners] however refused to honor the same.

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[9] Bunnay in some parts of the *rollo*.

In their *Answer* dated June 1, 2010, [petitioners] reiterated their arguments in [CV] Br. 20-3009 while denying the existence of any oral contract of sale of the Bunay property between Corazon and Elizabeth. [Petitioners] maintained that the two (2) remittance receipts are not evidence to prove the sale, are self-serving and hearsay.

[Poblacion property; CV Br. 20-3011]

In an *Amended Complaint* dated March 1, 2011, [respondent] Rosalina x x x averred the following:

Corazon is the registered owner of a parcel of land located at Poblacion, Angadanan, Isabela, with an area of 225 sq.m., more or less, covered by TCT No. T-106311 (Poblacion property).

In 2000, Corazon orally offered for sale the Poblacion property including the house erected thereon to Rosalina. From June 2000 to April 2003, Rosalina, while in Toronto, Canada, sent several remittances (allegedly as payment of the Poblacion property) to Corazon amounting to [₱]307,020.52. On February 11, 2005, Corazon acknowledged receipt of [₱]85,000.00 representing payment in full of the Poblacion property.

Due however to Corazon's untimely demise on August 3, 2009, ownership of the Poblacion property was not transferred to Rosalina. When shown evidence of Rosalina's purchase of the Poblacion property, [petitioners] repudiated the same.

In their *Answer*, [petitioners] reiterated their arguments in [CV] Br. 20-3009 and [CV] Br. 20-3010 while denying the authenticity of the oral contract of sale of the Poblacion property between Corazon and Rosalina.

In an *Order* dated November 8, 2011, the RTC declared defendants heirs Lilibeth Villeza Baliwag, Maria Victoria Villeza Barcena, Elmer Villeza Agpaoa, Dennis Villeza Agpaoa and Kenneth Villeza Agpaoa in default for failure to file their responsive pleading within the prescribed period.

During [the] pre-trial conference, the parties stipulated on the jurisdiction of the RTC and the identity of the parties and the subject parcels of land.

On August 30, 2016, the RTC rendered the x x x Decisions in favor of [respondents]. The RTC ratiocinated that the totality of evidence adduced proved that Corazon, during her lifetime, sold the

subject properties to [respondents]. The RTC found that under the January 10, 2006 *Deed of Conditional Sale*, [respondents] have already paid the entire purchase price. The remittance receipts also show that Corazon intended to sell: the Bunay property to Elizabeth; and the Poblacion property to Rosalina. Anent the issue of [respondents'] citizenship, the RTC found that [respondents], being former Filipino citizen[s] are not disqualified by law to acquire real properties subject to certain limitations. The RTC added that Elizabeth has in fact re-acquired Philippine citizenship when she took her oath of allegiance to the Republic of the Philippines on November 4, 2009 in accordance with Republic Act No. 9225.

[The dispositive portions of the Decisions state:

CV Br. 20-3009

WHEREFORE, in light of the foregoing, judgment is hereby rendered in favor of the plaint[i]ffs [(respondents)] and against the defendants. Defendants are hereby ordered to:

(1) To execute the corresponding document to effectuate the transfer of property containing an area of 540 square meters, more or less, located at Centro I, Angadanan, Isabela covered and embraced by Transfer Certificate of Title No. T-356999 in favor of the plaintiffs;

(2) To surrender to the plaintiffs the owner's duplicate copy of TCT No. T-356999 so that the plaintiffs could register in their names, as the lawful purchaser for value of the property described therein;

(3) To pay [₱]100,000.00 as moral damages;

(4) To pay [₱]50,000.00 as exemplary damages;

(5) To pay [₱]150,000.00 as attorney's fees and cost of the suit.

SO ORDERED.

CV Br. 20-3010

WHEREFORE, in light of the foregoing, judgment is hereby rendered in favor of the plaintiffs and against the defendants. Defendants are hereby ordered to:

(1) To execute the corresponding document to effectuate the transfer of property covered by Transfer Certificate of Title No. T-29739[3] in favor of the plaintiff Elizabeth Aliangan;

(2) To surrender the [o]wner's duplicate copy of TCT N[o]. T-297393 to plaintiff Elizabeth Aliangan so that she could register into her name the property described therein;

(3) To pay [₱]100,000.00 as moral damages;

(4) To pay [₱]50,000.00 as exemplary damages;

(5) To pay [₱]150,000.00 as attorney's fees and cost of the suit.

SO ORDERED.

CV Br. 20-3011

WHEREFORE, in light of the foregoing, judgment is hereby rendered in favor of the plaintiffs and against the defendants. Defendants are hereby ordered to:

(1) To execute the corresponding document to effectuate the transfer of property covered by Transfer Certificate of Title No. T-106311 in favor of the plaintiff Elizabeth [*sic*] Aliangan and to surrender the [o]wner's duplicate copy of TCT N[o]. T-106311 for the plaintiff to [register] into her name the prop[e]rty described therein;

(2) To pay [₱]100,000.00 as moral damages;

(3) To pay [₱]50,000.00 as exemplary damages;

(4) To pay [₱]150,000.00 as attorney's fees and cost of the suit.

SO ORDERED.][10]

Aggrieved, [petitioners appealed to the CA.][11]

Ruling of the CA

The CA, in its Decision dated December 17, 2018, found the appeals without merit.

The CA stated that the actions for specific performance were not filed prematurely because probate courts or courts of administration proceedings cannot determine questions arising

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[10] *Rollo*, pp. 43, 50 and 54-55.

[11] Id. at 76-81.

as to the ownership of property alleged to be part of the estate of the decedent but claimed by some other person to be his property, not by virtue of any right of inheritance from the decedent, but by title adverse to that of the decedent and the latter's estate.[12]

As to petitioners' argument that respondents' cause of action, if any, is against the estate of Corazon and not against them, the CA pronounced that Corazon died without issue, leaving her collateral relatives, respondents herein, as heirs to her estate, and pursuant to Article 1311 of the Civil Code, contracts take effect between the parties, their assigns and heirs.[13] As heirs, they take the estate by right of succession subject to all obligations resting thereon in the hands of her from whom they derive their rights.[14]

Regarding the *Deed of Conditional Sale* (DCS) executed on January 10, 2006 over the Centro I property, the CA regarded it as a "contract to sell" because of its provision that: "the corresponding Deed of Absolute Sale shall be executed by the VENDORS upon full payment of the balance."[15] The obligation of Corazon to transfer ownership by delivery arises upon full payment of the purchase price.[16]

On petitioners' argument that at the time the DCS was executed the land was still registered in the name of Inocencio, as owner, and it was only on November 14, 2006 that Corazon became the registered owner of the Centro I property, the CA noted that based on the RTC's finding, the final payment for the Centro I property was made in April 2008 at which time, Corazon had every right to transfer ownership thereof.[17]

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[12] Id. at 82-83.

[13] Id. at 84.

[14] Id.

[15] Id. at 85.

[16] Id. at 87.

[17] Id. at 87-88.

As to the payment of the purchase price, the CA reviewed the records of the case and found no cogent reason to deviate from the finding of the RTC that there is preponderance of evidence showing full payment by respondents of the ₱450,000.00 purchase price of the Centro I property.[18]

The CA jointly resolved the issues pertaining to the oral contracts of sale of the Bunay property in favor of Elizabeth and the Poblacion property in favor of Rosalina in order not to be repetitious.[19]

The CA noted that while the sales were agreed upon orally by the parties, they are not covered by the Statute of Frauds and are, thus, enforceable because there can be no serious argument about the total execution of the two sales.[20] The CA pointed out that the oral contract of sale between Corazon and Elizabeth for the Bunay property was evidenced by two remittances totaling ₱250,000.00 and their corresponding receipts signed by Corazon.[21] Regarding the oral contract of sale between Corazon and Rosalina for the Poblacion property, it was evidenced by several remittances starting June 2000 to April 2003 amounting to ₱207,020.52, with an Acknowledgment Receipt dated February 11, 2005 signed by Corazon wherein she acknowledged receipt of ₱85,000.00 representing full payment.[22]

The CA concluded that respondents having fully paid the respective purchase prices for the Centro I, Bunay and Poblacion properties, petitioners and the other defendants may be compelled to execute the necessary documents transferring ownership of the Centro I property covered by TCT No. T-356999 to Elizabeth and Rosalina, the Bunay property covered by TCT No. T-297393

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[18] Id. at 88.

[19] Id. at 89.

[20] See id. at 90-92.

[21] Id. at 91.

[22] Id. at 91-92.

to Elizabeth and the Poblacion property covered by TCT No. 106311 to Rosalina.[23]

As to damages, the CA found that the awards of moral and exemplary damages were not properly substantiated while the award of attorney's fees is justified by paragraphs 2 and 11 of Article 2208 of the Civil Code which allow recovery of counsel's fees where a defendant's act or omission has compelled the plaintiff to litigate with a third person or to incur expenses to protect his interest and where the court deems it just and equitable that attorney's fees and expenses of litigation should be awarded.[24]

The dispositive portion of the CA Decision states:

> **WHEREFORE**, premises considered, the three (3) separate Appeals are **DENIED**. The three (3) Decisions all dated August 30, 2016 of Branch 20, Regional Trial Court of Cauayan City, Isabela in Civil Case Nos. Br. 20-3009, Br. 20-3010 and Br. No. 20-3011 are hereby **AFFIRMED WITH MODIFICATION** in that the awards of moral and exemplary damages are **DELETED**.
>
> **SO ORDERED**. [25]

Hence the present Petition. Respondents filed their Comment[26] dated August 15, 2019, wherein they merely questioned the timeliness of the payment by petitioners of the required fees. Petitioners filed their Reply[27] dated December 2, 2019.

The Issues

The Petition states the following issues to be resolved:

1. Whether the CA erred in ruling that there is a perfected agreement of sale between respondents and Corazon.

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[23] Id. at 93.

[24] Id. at 93-94.

[25] Id. at 94.

[26] Id. at 109-112.

[27] Id. at 119-123.

2. Whether the CA erred in not dismissing the cases for specific performance for lack of cause of action because respondents should have filed their claims against the estate of Corazon under Rules 86 and 87 of the Rules of Court.

3. Whether the CA erred in affirming the Decision of the RTC ordering petitioners to execute deeds of conveyance in favor respondents.[28]

The Court's Ruling

The Petition lacks merit.

The issues raised and arguments propounded by petitioners are recycled. In fact, they have been resoundingly rejected by both the RTC and the CA.

Petitioners' arguments in support of the errors of the CA that they identified have been discussed jointly in their Petition.

Firstly, they reiterate that the sale of the Centro 1 property between Corazon and respondents is void because at the time the DCS was executed Corazon could not have sold the property belonging to Inocencio without his consent.[29] The consideration of the sale was not established with certainty and petitioners claimed that the remittances made by respondents to Corazon were intended to purchase materials which were used in the construction of respondents' house.[30] Petitioners also argue that they knew nothing about the purported sale. Thus, respondents could only recover from Corazon during her lifetime and upon her death, respondents should have brought a claim against her estate.[31]

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[28] Id. at 22.

[29] See id. at 24.

[30] Id. at 26.

[31] Id. at 24-25.

Secondly, no written deeds of conveyance over the Bunay and Poblacion properties were presented by respondents to show that contracts of sale were executed by Corazon in respondents' favor.[32] The receipts presented do not prove that contracts of sale had been executed.[33]

Lastly, petitioners claim that Corazon died intestate as a spinster and she did not have any children, and petitioners are children of Corazon's siblings.[34] Citing Article 1311 of the Civil Code, petitioners argue that, not being parties to the contracts of sale between respondents and Corazon, they cannot be sued for the enforcement of the supposed obligations arising from said contracts.[35] Petitioners also argue that the DCS does not contain a stipulation *pour autrui* in their favor to make it binding upon them. They further argue that respondents should have filed the cases of specific performance against Corazon's estate pursuant to Section 8, Rule 89 of the Rules of Court and that prior notice should first be served on the heirs and other interested persons of the application for approval of any conveyance of any property held in trust by the administrator before approval by the probate court of the disposition pursuant to Section 9, Rule 89[36] of the Rules of Court.[37]

As mentioned earlier, the foregoing arguments have been totally rejected by the lower courts and the Court does not find their rejection erroneous.

Before delving into the substantive issues, the Court will clarify certain preliminary procedural matters.

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[32] Id. at 26-27.

[33] Id. at 27.

[34] Id. at 29.

[35] Id.

[36] Mistakenly referred to in the Petition as Rule 90; *rollo*, p. 30.

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

On the argument of petitioners that the consideration of the sale contemplated in the DCS was not established with certainty and that the remittances made by respondents to Corazon were intended to purchase materials, which were used in the construction of respondents' house, this matter calls for reassessment of the factual findings of the lower courts. Petitioners having availed of a review of the CA Decision via a Rule 45 *certiorari* petition are precluded from raising factual issues. Section 2 of Rule 45 of the Rules of Court is clear. Only questions of law may be raised in the *certiorari* petition and must be distinctly set forth.

As to the payment of the purchase prices of the three properties, the CA's finding that, upon its review of the records of the case, there is no cogent reason to deviate from the finding of the RTC that there is preponderance of evidence showing full payment by respondents of the ₱450,000.00 purchase price of the Centro I property stands.[38] The CA stated: "The sum of these payments [(consisting of receipts and remittances)] amounted to [₱]454,233.00, an amount exceeding the contract price of [₱]450,000.00[; thus, this court] agrees with the RTC's findings in [CV] Br. No. 20-2009, that [respondents] have fully paid the Centro I property."[39]

For the Bunay property, the CA stated that: "the records show that Elizabeth had given [₱]250,000.00 as full payment [as evidenced by two remittances and acknowledgment receipts]."[40]

For the Poblacion property, the CA stated that: "Rosalina had, on several occasions, sent Corazon remittances totaling [₱]307,020.52 as partial payments of the purchase price x x x [and] presented a document wherein Corazon acknowledged

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[38] Id. at 88.

[39] Id. at 89.

[40] Id. at 91-92.

receipt of [₱]85,000.00 as payment in full of Corazon's 225 sq.m. parcel of land x x x."[41]

Thus, the Court, faced with a Rule 45 review of the CA Decision, is bound by the CA's factual conclusion that "[respondents] have fully paid the respective purchase price[s] for the Centro I, Bunay and Poblacion properties,"[42] which merely affirms the RTC's findings.

Petitioners cited Rules 86 and 87 of the Rules of Court in the grounds of their Petition in support of their claim that respondents should have filed their claim against Corazon's estate.[43] In the discussion portion, they mentioned Rule 73 in passing, but they zeroed in on Sections 8 and 9 of Rule 89. Rules 86 and 87 were not even mentioned. Rule 86 is on "Claims Against the Estate," Rule 87 is on "Actions by and against Executors and Administrators," while Rule 73 is on "Venue and Process" of the "Settlement of Estates of Deceased Persons." There being no discussion in the Petition of the specific application of Rules 73, 86 and 87 in the present cases, the Court will not argue for them and only consider petitioners' argument in relation to Sections 8 and 9 of Rule 89.

Petitioners argue that the actions for specific performance should be filed against the estate of Corazon because they were not privies to the contracts entered into by Corazon and that whatever actions for the execution of deeds of conveyance over real property which the decedent contracted prior to his or her death, or held in trust should be pursued in accordance with Sections 8 and 9, Rule 89 of the Rules of Court.

Section 8, Rule 89 provides:

SEC. 8. *When court may authorize conveyance of realty which deceased contracted to convey. Notice. Effect of deed.* — Where the deceased was in his lifetime under contract, binding in law, to deed

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[41] Id. at 92-93.

[42] Id. at 93.

[43] Id. at 22.

real property, or an interest therein, the court having jurisdiction of the estate may, on application for that purpose, authorize the executor or administrator to convey such property according to such contract, or with such modifications as are agreed upon by the parties and approved by the court; and if the contract is to convey real property to the executor or administrator, the clerk of court shall execute the deed. The deed executed by such executor, administrator, or clerk of court shall be as effectual to convey the property as if executed by the deceased in his lifetime; but no such conveyance shall be authorized until notice of the application for that purpose has been given personally or by mail to all persons interested, and such further notice has been given, by publication or otherwise, as the court deems proper; nor if the assets in the hands of the executor or administrator will thereby be reduced so as to prevent a creditor from receiving his full debt or diminish his dividend.

On the other hand, Section 9, Rule 89 provides:

SEC. 9. *When court may authorize conveyance of lands which deceased held in trust.* — Where the deceased in his lifetime held real property in trust for another person, the court may, after notice is given as required in the last preceding section, authorize the executor or administrator to deed such real property to the person, or his executor or administrator, for whose use and benefit it was so held; and the court may order the execution of such trust, whether created by deed or by law.

Clearly, Section 9 of Rule 89 finds no application in these cases inasmuch as the subject properties located in Centro I, Bunay and Poblacion were not held in trust by Corazon for respondents or any other person. Respondents have not even alleged any trust arrangement in any of the three Amended Complaints.

Section 8, Rule 89 presupposes a pending probate or administration proceeding for the testate or intestate estate of a decedent. The heirs of Corazon have not initiated a special proceeding for the settlement of her estate where an administrator has been appointed. Without such special proceeding, respondents are not required to make an application to authorize the administrator to convey the subject properties according to the

contracts that Corazon entered into but was unable to execute due to her death.

The Court agrees with the CA that petitioners' invocation of Section 8, Rule 89 is misplaced because that section presupposes that there is no controversy as to the contract contemplated therein, and if objections obtain, the remedy of the person seeking the execution of the contract is an ordinary and separate action to compel the same.[44] This is so given that, as correctly observed by the CA, subject to settled exceptions not present in the instant three cases, the law does not extend the jurisdiction of a probate court to the determination of questions of ownership, and similarly, a court of administration proceedings cannot determine questions which arise as to the ownership of property alleged to be part of the decedent's estate, but claimed by some other person to be his or her property, not by virtue of any right of inheritance from the decedent, but by title adverse to that of the decedent and the latter's estate.[45] The institution by respondents of the actions for specific performance was thus the proper recourse because petitioners dispute the validity of the conveyances over the contested properties.[46]

Proceeding now to the substantive issues.

Regarding the Centro I property, is the DCS a valid contract between Corazon and Rosario, as sellers, and respondents, as buyers?

The salient provisions of the DCS are as follows:

["x x x x]

That Corazon C. Villeza and Rosario V. Agpaoa are the present owners of an unregistered residential lot with an area of x x x (540.5)

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[44] *Rollo*, p. 83, citing Florenz D. Regalado, REMEDIAL LAW COMPENDIUM, VOLUME II (11th Edition, 2008), p. 110.

[45] Id. at 82-83. Citations omitted.

[46] Id. at 83.

Square Meters, more or less, together with a residential house located at Centro I, Angadanan, Isabela;

That FOR AND IN CONSIDERATION of the sum of x x x (₱450,000.00), Philippine [c]urrency, to be paid in installments basis, the VENDORS [(Corazon and Rosario)] does hereby SELL, TRANSFER and CONVEY, by way of CONDITIONAL SALE, unto the said VENDEES [(respondents)], the aforesaid residential house and unregistered residential lot, free from any lien or encumbrance;

That the down payment in the amount of x x x (₱50,000.00), Philippine Currency, [shall] be paid upon the execution of this Conditional Sale;

That the remaining balance of [x x x] ([₱]400,000.00), Philippine [c]urrency, shall be paid in equal monthly installment of [x x x] (₱10,000.00)[, Philippine currency,] until the herein remaining balance shall have been fully paid; and

That the corresponding Deed of Absolute Sale [(DAS)] shall be executed by the VENDORS upon full payment of the balance.

[x x x x.]" (*Emphasis ours*)[47]

Given the stipulation: "[t]hat the corresponding Deed of Absolute Sale [(DAS)] shall be executed by the VENDORS upon full payment of the balance," the CA characterized the DCS as a contract to sell.

As defined in Article 1458 of the Civil Code, a contract of sale is a contract whereby one of the contracting parties obligates himself to transfer the ownership and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent. It may be absolute or conditional.

Professor Araceli Baviera (Prof. Baviera), a noted civil law professor, made this comment on the definition of "Sale":

The Spanish Civil Code defined a contract of purchase and sale as one where a contracting party obligates himself to deliver a determinate thing and the other to pay a certain price therefor in

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[47] Id. at 85.

money or in something representing it.[48] The New Civil Code defines a contract of sale as a contract where one of the parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other party to pay therefor a price certain in money or its equivalent.[49] The Uniform Sales Act defines a sale of goods as an agreement whereby the seller transfers the property in goods to the buyer for a consideration called the price, while a contract to sell goods is a contract whereby the seller agrees to transfer the property in goods to the buyer for a consideration called the price.[50] Under the Uniform Commercial Code, a "contract for sale" includes both a present sale of goods and a contract to sell goods at a future time, and a "sale" consists in the passing of title from seller to the buyer for a price.[51]

The Spanish Civil Code followed the Roman law definition imposing a duty on the seller to deliver, but the seller was not bound to make the buyer owner immediately and directly.[52] According to the Code Commission, the definition in the Spanish Civil Code is unsatisfactory because even if the seller is not the owner of the thing sold, he may validly sell, subject to the warranty against eviction.[53] The present definition is similar to the definition in the German Civil Code imposing two obligations on the seller.[54] The implication of these separate obligations is that the seller may reserve ownership over the thing sold, notwithstanding delivery to the buyer.[55]

As to "Contract to Sell" or "Executory Contract of Sale," Prof. Baviera noted:

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[48] Citing CIVIL CODE (1889), Art. 1445.

[49] Citing CIVIL CODE, Art. 1458.

[50] Citing Sec. 1.

[51] Citing Sec. 2-106 (1).

[52] Citing Dig. 18.1 25, 1: *qui vendidit necesse non habet fundum emptoris facere, ut cogitur qui fundum stipulanti spopondit.*

[53] Citing Report of the Code Commission, p. 141.

[54] Citing Art. 433.

[55] Araceli Baviera, SALES (published by U.P. Law Center), pp. 3-4.

A sale is an executory contract, "if the seller merely promises to transfer the property at some future date, or when the agreement contemplates the performance of some act or condition necessary to complete the transfer. Under such a contract, until the act is performed or the condition fulfilled, which is necessary to convert the executory into an executed contract, no title passes to the buyer, as against the seller or persons claiming under him."[56]

Thus, it can be gathered from the above discussion that the definition of sale in Article 1458 envisions both a contract of sale and a contract to sell as understood in the Uniform Sales Act.

In a contract of sale, the seller transfers the property sold to the buyer for a consideration called the price, which means ownership is transferred to the buyer upon its execution through any of the modes of delivery or tradition.

On the other hand, in a contract to sell, the seller merely "agrees to transfer" the property object of the sale to the buyer for a consideration called the price, which implies that ownership is not right away transferred to the buyer.

Pursuant to Article 1478 of the Civil Code, even if the object of the sale is delivered to the buyer upon the execution of the contract, the parties may still stipulate that the ownership in the thing shall not pass to the purchaser until he has fully paid the price. The withholding of ownership despite delivery of the object to the buyer must be expressly stipulated. Otherwise, with the delivery or tradition of the object to the buyer, ownership is acquired by the buyer. Under Article 712, ownership and other real rights over property are acquired and transmitted by tradition, in consequence of certain contracts, like sale. Specifically, in sales, Article 1496 states that: "The ownership of the thing sold is acquired by the vendee from the moment it is delivered to him in any of the ways specified in Articles 1497 to 1501,[57] or in any other manner signifying an

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[56] Id. at 5. Citations omitted.

[57] ART. 1497. The thing sold shall be understood as delivered, when it is placed in the control and possession of the vendee. (1462a)

agreement that the possession is transferred from the vendor to the vendee."

The instance wherein the transfer of ownership is withheld by the seller despite delivery of the object sold highlights the two obligations of the seller in a contract of sale under Article 1495, which provides: "The vendor is bound to transfer the ownership of and deliver, as well as warrant the thing which is the object of the sale." To fully comply with his obligations, the seller has still to transfer the ownership of the object of the sale despite its delivery to the buyer at an earlier time if transfer of ownership has been withheld until full payment of the consideration.

Going back to the DCS, the provision: "[t]hat the corresponding Deed of Absolute Sale shall be executed by the VENDORS upon full payment of the balance"[58] is sanctioned by Article 1478 of the Civil Code, which allows the parties to stipulate that the ownership in the thing shall not pass to the purchaser until he has fully paid the price. The provision where the seller agrees to execute a deed of absolute sale when the

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ART. 1498. When the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot clearly be inferred.

With regard to movable property, its delivery may also be made by the delivery of the keys of the place or depository where it is stored or kept. (1463a)

ART. 1499. The delivery of movable property may likewise be made by the mere consent or agreement of the contracting parties, if the thing sold cannot be transferred to the possession of the vendee at the time of the sale, or if the latter already had it in his possession for any other reason. (1463a)

ART. 1500. There may also be tradition *constitutum possessorium*. (n)

ART. 1501. With respect to incorporeal property, the provisions of the first paragraph of Article 1498 shall govern. In any other case wherein said provisions are not applicable, the placing of the titles of ownership in the possession of the vendee or the use by the vendee of his rights, with the vendor's consent, shall be understood as a delivery. (1464)

[58] *Rollo*, p. 85.

buyer has paid in full the purchase price has been construed by the Court to signify that the seller has withheld the transfer of ownership until the purchase price has been paid in full, making the agreement between the seller and the buyer a contract to sell and not a contract of sale.

The categorization of an agreement or contract pertaining to the sale of an immovable containing a stipulation that a deed of absolute sale will be executed upon full payment of the consideration or purchase price as a contract to sell is settled jurisprudence as enunciated by the Court in *Diego v. Diego*,[59] *viz.*:

> It is settled jurisprudence, to the point of being elementary, that an agreement which stipulates that the seller shall execute a deed of sale only upon or after full payment of the purchase price is a ***contract to sell***, not a contract of sale. In *Reyes v. Tuparan*, this Court declared in categorical terms that **"[w]here the vendor promises to execute a deed of absolute sale upon the completion by the vendee of the payment of the price, the contract is only a contract to sell. The aforecited stipulation shows that the vendors reserved title to the subject property until full payment of the purchase price."**
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> In this case, it is not disputed as in fact both parties agreed that the deed of sale shall only be executed upon payment of the remaining balance of the purchase price. Thus, pursuant to the above stated jurisprudence, we similarly declare that the transaction entered into by the parties is a contract to sell.[60] (Emphasis in the original; citations omitted)

It must be remembered that the execution of a public instrument, such as a deed of absolute sale, is equivalent to the delivery of the object of the sale pursuant to Article 1498 of the Civil Code, which states: "[w]hen the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot clearly

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[59] G.R. No. 179965, February 20, 2013, 691 SCRA 361.

[60] Id. at 364.

be inferred." With respect to the Centro I property, there was no physical delivery thereof upon the execution of the DCS and Corazon remained in possession thereof until she died, with her heirs continuing such possession after her death. Thus, the execution of the DAS upon full payment of the purchase price was contemplated as the mode of delivery to transfer ownership of the Centro I property to respondents with the possessors vacating the premises.

The DCS is, therefore, a contract to sell as correctly ruled by the CA. That the DCS is a contract to sell does not in any way compromise its validity and enforceability, given the fact that the essential requisites of a perfected contract are evident from the DCS. Article 1475 of the Civil Code provides:

> ART. 1475. The contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price.
>
> From that moment, the parties may reciprocally demand performance, subject to the provisions of the law governing the form of contracts. (1450a)

Not only is the DCS a binding perfected contract, the buyers, herein respondents, have in fact fully paid the agreed purchase price of ₱450,000.00 and have complied with their prestation under the DCS. With the payment in full of the purchase price by the buyers, the DCS has been performed or consummated. At that point, had the sellers, Corazon and Rosario, been still alive, they could be compelled by court action to execute the DAS over the Centro I property, which they contractually promised to execute upon full payment of the purchase price. To reiterate, as the sellers, it was incumbent upon them to comply with their obligations under Article 1458 of the Civil Code, which are "to transfer the ownership of and to deliver a determinate thing," and Article 1495, which provides that "[t]he vendor is bound to transfer the ownership of and deliver, as well as warrant the thing which is the object of the sale."

Whether petitioners and the other defendants, being heirs of the sellers, Corazon and Rosario having died in the meantime,

may be compelled to execute the DAS and deliver possession of the Centro I property to respondents, this matter will be discussed subsequently.

Regarding petitioners' contention that the DCS is not valid because at the time it was executed on January 10, 2006 the Centro I property was then registered in the name of Inocencio and it was only on November 14, 2006 that Corazon became the registered owner thereof by virtue of TCT T-356999, the same is not tenable. In this regard, the CA correctly ruled that:

> Like a contract of sale, a *contract to sell* is consensual. It is **perfected** at the moment there is a meeting of the minds upon the thing which is the object of the contract and upon the price. At this stage, the seller's ownership of the thing sold is **not** an element in the perfection of the contract of sale. It is, therefore, not required that, at the perfection stage, the seller be the owner of the thing sold or even that such subject matter of the sale exists at that point in time. Thus, under Art[icle] 1434 of the Civil Code, when a person sells or alienates a thing which, at that time, was not his, but later acquires title thereto, such title passes by operation of law to the buyer or grantee. This is the same principle behind the sale of "future goods" under Art[icle] 1462 of the Civil Code.However, under Art[icle] 1459, at the time of **delivery** or **consummation** stage of the sale, **it is required that the seller be the owner of the thing sold**. Otherwise, he will not be able to comply with his obligation to transfer ownership to the buyer. It is at the consummation stage where the principle of *nemo dat quod non habet* [(one cannot give what one does not have)] applies.[61] (Citations omitted)

Indeed, as earlier mentioned, under Article 1475 of the Civil Code, the contract of sale is perfected at the moment there is a meeting of the minds upon the thing which is the object of the contract and upon the price, and from that moment, the parties may reciprocally demand performance, subject to the provisions of the law governing the forms of contracts. According to Article 1462, the goods which form the subject of a contract of sale may be either existing goods, owned or possessed by

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[61] *Rollo*, p. 87.

the seller, or goods to be manufactured, raised, or acquired by the seller after the perfection of the contract of sale, called "future goods." There may even be a contract of sale of goods, whose acquisition by the seller depends upon a contingency which may or may not happen.

At such time when the contract of sale or contract to sell is perfected, the seller does not need to have the right to transfer ownership of the object of the sale. All that is required is that provided by Article 1459 of the Civil Code which states that "the vendor must have a right to transfer the ownership thereof at the time it is delivered." Thus, while the seller may not own the object of the sale at the time the contract is perfected, for the sale to be validly consummated, the seller must be the owner thereof at the time of its delivery or tradition to the buyer.

With respect to the Centro I property, while on January 10, 2006 when the DCS was executed it was still registered in Inocencio's name, the certificate of title over the property was already transferred to Corazon on November 14, 2006 when TCT T-356999 was issued in her name. From that time, Corazon had the right to transfer the ownership of the Centro I property such that in April 2008, when the purchase price was paid in full by respondents, the sellers could have transferred the ownership thereof to the buyers, as indeed they had the obligation to do so.

Also, the fact that the seller is not the owner of the object of the sale at the time it is sold and delivered does not prevent title or ownership from passing to the buyer by operation of law if subsequently the seller acquires title thereto or becomes the owner thereof pursuant to Article 1434 of the Civil Code.The said Article provides:

> ART. 1434. When a person who is not the owner of a thing sells or alienates and delivers it, and later the seller or grantor acquires title thereto, such title passes by operation of law to the buyer or grantee.

In view of the foregoing, the CA was correct when it concluded that the DCS is valid and enforceable.[62]

Regarding the Bunay and Poblacion properties, are the oral contracts of sale covering them valid and enforceable?

According to Article 1483 of the Civil Code, "[s]ubject to the provisions of the Statute of Frauds and of any other applicable statute, a contract of sale may be made in writing, or by word of mouth, or partly in writing and partly by word of mouth, or may be inferred from the conduct of the parties." This provision echoes Article 1356, which provides that contracts shall be obligatory in whatever form they may be entered into provided all the essential requisites for their validity are present; however, when the law requires that a contract be in some form in order that it may be valid or enforceable, or that a contract be proved in a certain way, that requirement is absolute and indispensable.

With respect to the Statute of Frauds, which is provided in Article 1403 (2) of the Civil Code, an agreement for the sale of real property or of an interest therein[63] is unenforceable by action, unless the same, or some note or memorandum thereof, be in writing, and subscribed by the party charged, or by his agent; and evidence of the agreement cannot be received without the writing, or a secondary evidence of its contents.

The Court in *Swedish Match, AB v. Court of Appeals*[64] noted:

> The Statute of Frauds embodied in Article 1403, paragraph (2), of the Civil Code requires certain contracts enumerated therein to be evidenced by some note or memorandum in order to be enforceable. The term "Statute of Frauds" is descriptive of statutes which require certain classes of contracts to be in writing. The Statute does not deprive the parties of the right to contract with respect to the matters therein involved, but merely regulates the formalities of the contract

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[62] *Id.* at 88.

[63] CIVIL CODE, Art. 1403(2)(e).

[64] G.R. No. 128120, October 20, 2004, 441 SCRA 1.

necessary to render it enforceable. Evidence of the agreement cannot be received without the writing or a secondary evidence of its contents.

The Statute, however, simply provides the method by which the contracts enumerated therein may be proved but does not declare them invalid because they are not reduced to writing. By law, contracts are obligatory in whatever form they may have been entered into, provided all the essential requisites for their validity are present. However, when the law requires that a contract be in some form in order that it may be valid or enforceable, or that a contract be proved in a certain way, that requirement is absolute and indispensable. Consequently, the effect of non-compliance with the requirement of the Statute is simply that no action can be enforced unless the requirement is complied with. Clearly, the form required is for evidentiary purposes only. Hence, if the parties permit a contract to be proved, without any objection, it is then just as binding as if the Statute has been complied with.

The purpose of the Statute is to prevent fraud and perjury in the enforcement of obligations depending for their evidence on the unassisted memory of witnesses, by requiring certain enumerated contracts and transactions to be evidenced by a writing signed by the party to be charged.[65] (Citations omitted)

In the early case of *Berg v. Magdalena Estate, Inc.*[66] *(Berg)*, the Court stated certain principles governing the meaning, extent and scope of the rule underlying the Statute of Frauds relative to the note or memorandum that may serve as proof to determine the existence of an oral contract or agreement contemplated thereby, *viz.*:

Before we proceed, it is important to state at this juncture some principles governing the meaning, extent and scope of the rule underlying the statute of frauds relative to the note or memorandum that may serve as proof to determine the existence of an oral contract or agreement contemplated by it, and for our purpose, it suffices for us to quote the following authorities:

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[65] Id. at 15-16.

[66] 92 Phil. 110 (1952).

"No particular form of language or instrument is necessary to constitute a memorandum or note in writing under the statute of frauds; any document or writing, formal or informal, written either for the purpose of furnishing evidence of the contract or for another purpose, which satisfies all the requirements of the statute as to contents and signature, as discussed respectively *infra* secs. 178-200, and *infra* secs. 201-215, is a sufficient memorandum or note. A memorandum may be written as well with lead pencil as with pen and ink. It may also be filled in on a printed form." (37 C. J. S., 653-654.)

"The note or memorandum required by the statute of fraud need not be contained in a single document, nor, when contained in two or more papers, need each paper be sufficient as to contents and signature to satisfy the statute. Two or more writings properly connected may be considered together, matters missing or uncertain in one may be supplied or rendered certain by another, and their sufficiency will depend on whether, taken together, they meet the requirements of the statute as to contents and the requirements of the statute as to signature, as considered respectively *infra* secs. 179-200 and secs. 201-215.

"*Papers connected*. — The rule is frequently applied to two or more, or a series of, letters or telegrams, or letters and telegrams sufficiently connected to allow their consideration together; but the rule is not confined in its application to letters and telegrams; any other documents can be read together when one refers to the other. Thus, the rule has been applied so as to allow the consideration together, when properly connected, of a letter and an order of court, a letter and order for goods, a letter and a deposition, letters or telegrams and undelivered deeds, wills, correspondence and related papers, a check and a letter, a receipt and a check, deeds and a map, a memorandum of agreement and a deed, a memorandum of sale and an abstract of title, a memorandum of sale and a will, a memorandum of sale and a receipt, and a contract, deed, and instructions to a depository in escrow. The number of papers connected to make out a memorandum is immaterial." (37 C. J. S. 656-659).

Bearing in mind the foregoing rules, we are of the opinion that the applications marked exhibits "3" and "4",[67] whether considered

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[67] In the application exhibit "3", Ernest Berg stated that he desires a license in order to sell his interest in the Crystal Arcade, Escolta, Manila, for ₱200,000 in cash to Magdalena Estate, Inc., asking at the same time for

separately or jointly, satisfy all the requirements of the statute as to contents and signature and, as such, they constitute sufficient proof to evidence the agreement in question. And we say so because in both applications all the requirements of a contract are present, namely, the parties, the price or consideration, and the subject-matter. In the application exhibit "3", Ernest Berg appears as the seller and the Magdalena Estate, Inc., as the purchaser, the former's interest in the Crystal Arcade as the subject-matter, and the sum of ₱200,000 as the consideration. And the application appears signed by Ernest Berg, the party sought to be charged by the obligation. In other words, it can clearly be implied that between Ernest Berg and the Magdalena Estate, Inc. there has been a clear agreement to sell said property for ₱200,000. From the language of the application no other logical conclusion can be drawn for if there has not been any previous agreement between the parties it is foolhardy to suppose that Ernest Berg would take the trouble of filing an application with the Treasury Department of the United States to secure a license to sell the property. The claim of Ernest Berg that the negotiations he had with Hemady ended with an offer on his part to buy his interest for ₱350,000 cannot be sustained, for if such is the case it is indeed hard to comprehend why he should state in his application that he was selling the property for ₱200,000. The fact that in the same application Berg also asked for license to place the money in an account in his name, or in the name of the company he represents, and to apply the same to the payment of the obligations of said company is of no consequence, nor does it argue against the purpose of the application, for that request only means that, should the sale be carried out, he would deposit the money in the name of the company and later would apply it to the payment of its obligations.[68]

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permission to place the amount in an account in his name or in the name of the company he represents and to apply the same from time to time to the payment of the obligations of Red Star Store, Inc. In the application exhibit "4", defendant in turn stated, through its president K. H. Hemady, that it desires a license in order "to use a portion of the ₱400,000 requested as a loan from the National City Bank of New York, Manila, or from any other local bank in Manila, together with funds to be collected from old and new sales of his real estate properties, for the purchase of the one-third (1/3) of the Crystal Arcade property in the Escolta, Manila, belonging to Mr. Ernest Berg." Id. at 113.

[68] Id. at 114-116.

In *Litonjua v. Fernandez*[69] (*Litonjua*), the Court elucidated on what the note or memorandum should contain, *viz.*:

> x x x The statute is satisfied or, as it is often stated, a contract or bargain is taken within the statute by making and executing a note or memorandum of the contract which is sufficient to state the requirements of the statute. The application of such statute presupposes the existence of a perfected contract. However, for a note or memorandum to satisfy the statute, it must be complete in itself and cannot rest partly in writing and partly in parol. The note or memorandum must contain the names of the parties, the terms and conditions of the contract and a description of the property sufficient to render it capable of identification. Such note or memorandum must contain the essential elements of the contract expressed with certainty that may be ascertained from the note or memorandum itself, or some other writing to which it refers or within which it is connected, without resorting to parol evidence. To be binding on the persons to be charged, such note or memorandum *must be signed by the said party or by his agent duly authorized in writing*.
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> In *City of Cebu v. Heirs of Rubi*, we held that the exchange of written correspondence between the parties may constitute sufficient writing to evidence the agreement for purposes of complying with the statute of frauds.[70] (Italics in the original; citations omitted)

Even if the requirement of a note, memorandum or writing in Article 1403 (2) is not met, contracts infringing the Statute of Frauds become enforceable when they are ratified by the failure to object to the presentation of oral evidence to prove the same, or by acceptance of benefits under them according to Article 1405 of the Civil Code.

It is the well-established rule that the Statute of Frauds is applicable only to executory contracts and not to partially or totally consummated ones, and the basis of this rule is the fact that in consummated contracts, there is already a ratification

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[69] G.R. No. 148116, April 14, 2004, 427 SCRA 478.

[70] Id. at 492-493.

of the contract by acceptance of benefits within the meaning of Article 1405.[71]

On this score, the disquisition of the Court *en banc* in *Carbonnel v. Poncio, et al.*,[72] bears reiterating:

> x x x It is well settled in this jurisdiction that the Statute of Frauds is applicable only to executory contracts (Facturan vs. Sabanal, 81 Phil. 512), not to contracts that are totally or *partially* performed (Almirol, et al. vs. Monserrat, 48 Phil. 67, 70; Robles vs. Lizarraga Hermanos, 50 Phil. 387; Diana vs. Macalibo, 74 Phil. 70).
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> > "Subject to a rule to the contrary followed in a few jurisdictions, it is the accepted view that part performance of a parol contract for the sale of real estate has the effect, subject to certain conditions concerning the nature and extent of the acts constituting performance and the right to equitable relief generally, of taking such contract from the operation of the statute of frauds, so that chancery may decree its specific performance or grant other equitable relief. It is well settled in Great Britain and in this country, with the exception of a few states, that a sufficient part performance by the purchaser under a parol contract for the sale of real estate removes the contract from the operation of the statute of frauds." (49 Am. Jur. 722-723.)
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> In the words of former Chief Justice Moran: "The reason is simple. In executory contracts there is a wide field for fraud because unless they be in writing there is no palpable evidence of the intention of the contracting parties. The statute has precisely been enacted to prevent fraud." (Comments on the Rules of Court, by Moran, Vol. III [1957 ed.], p. 178.) However, if a contract has been totally or partially performed, *the exclusion of parol evidence would promote fraud or bad faith*, for it would enable the defendant to keep the benefits already derived by him from the transaction in litigation, and, at the same time, evade the obligations, responsibilities or liabilities assumed or contracted by him thereby.

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[71] Desiderio P. Jurado, COMMENTS AND JURISPRUDENCE ON OBLIGATIONS AND CONTRACTS (1987 Ninth Revised Edition), p. 556. Citations omitted.

[72] 103 Phil. 655 (1958).

For obvious reasons, it is not enough for a party to *allege* partial performance in order to *hold* that there has been such performance and *to render a decision* declaring that the Statute of Frauds is inapplicable. But neither is such party required to establish such partial performance by *documentary* proof *before* he could have the *opportunity* to introduce *oral* testimony on the transaction. Indeed, such oral testimony would usually be unnecessary if there were documents proving partial performance. Thus, the rejection of any and all testimonial evidence on partial performance, would nullify the rule that the Statute of Frauds is inapplicable to contracts which have been partly executed, and *lead to the very evils that the statute seeks to prevent*.

> "The true basis of the doctrine of part performance according to the overwhelming weight of authority, is that it would be a fraud upon the plaintiff if the defendant were permitted to escape performance of his part of the oral agreement after he has permitted the plaintiff to perform in reliance upon the agreement. The oral contract is enforced in harmony with the principle that courts of equity will not allow the statute of frauds to be used as an instrument of fraud. In other words, *the doctrine of part performance was established for the same purpose for which, the statute of frauds itself was enacted, namely, for the prevention of fraud*, and arose from the necessity of preventing the statute from becoming an agent of fraud for it could not have been the intention of the statute to enable any party to commit a fraud with impunity." (49 Am. Jur., 725-726; italics supplied.)

When the party concerned has pleaded partial performance, such party is entitled to a reasonable chance to establish by parol evidence the truth of this allegation, as well as the contract itself. "The recognition of the exceptional effect of part performance in taking an oral contract out of the statute of frauds involves the principle that oral evidence is admissible in such cases to prove both the contract and the part performance of the contract" (49 Am. Jur., 927).

Upon submission of the case for decision on the merits, the Court should determine whether said allegation is true, bearing in mind that parol evidence is easier to concoct and more likely to be colored or inaccurate than documentary evidence. If the evidence of record fails to prove clearly that there has been partial performance, then the Court should apply the Statute of Frauds, if the cause of action

involved falls within the purview thereof. If the Court is, however, convinced that the obligation in question has been partly executed and that the allegation of partial performance was not resorted to as a devise to circumvent the Statute, then the same should not be applied.[73]

While the contracts of sale of the Bunay and Poblacion properties were orally made between Corazon and Elizabeth, and between Corazon and Rosalina, respectively, there were, in fact, remittances and receipts signed by Corazon[74] evidencing the payments made by Elizabeth and Rosalina.

As to the Bunay property, the CA observed:

> Here, the oral contract of sale between Corazon and Elizabeth for the 36,834 sq.m. Bunay property was evidenced by two (2) remittances (totaling [₱]250,000.00) and their corresponding receipts signed by Corazon herself. The remittances also included a message to Corazon which uniformly read:
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> "I'll call you. Worth ₱250,000. For the full payment of Azon's rice and corn field at Nakar, San Guillermo."
>
> x x x x
>
> For the Bunay property, the records show that Elizabeth had given [₱]250,000.00 as full payment for: *"Azon's rice and corn field at Nakar, San Guillermo."* It should be noted that the only agricultural land registered under the name of Corazon at the time of the oral sale was the Bunay property at Angadanan, Isabela. No explanation was presented as to the discrepancy of the two (2) properties; neither did defendants-appellants [(petitioners)] question such disparity. Verily, Gemma Villanueva (Gemma), Corazon's long-time caretaker of the Bunay property, testified that in 2008, Corazon told her that the property they were tilling [was] already sold to Elizabeth Aliangan and that her share [in] the cropping for April 2009 should be given to Elizabeth. Considering that Nakar, San Guillermo is just adjacent to Bunay, Angadanan, the parties may have mistakenly thought that the Bunay property is within the boundary of Nakar. This confusion

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[73] Id. at 658-660.

[74] See *rollo*, pp. 91-93.

does not however negate the fact that Corazon received [₱]250,000.00 as full payment of her rice and corn field. Without doubt, there is total execution of the oral contract of sale of the Bunay property.[75]

With respect to the Poblacion property, the CA noted:

> While the oral contract of sale between Corazon and Rosalina for the 225 sq.m. Poblacion property was evidenced by several remittances starting June 2000 to April 2003 amounting to [₱]207,020.52, Rosalina alleged that a remittance worth [₱]100,000.00 got lost beyond recovery. Corazon however signed an *Acknowledgement Receipt* dated February 11, 2005, which reads in part:
>
> "ACKNOWLEDGEMENT RECEIPT
>
> KNOW ALL MEN BY THESE PRESENTS:
>
> That, I, CORAZON C. VILLEZA, x x x hereby acknowledged to have received the amount of EIGHTY FIVE THOUSAND PESOS (₱85,000.00), Philippine Currency, from ROSALINA S. ALIANGAN, x x x representing payment (FULL) of the certain parcel of land with an area of 225 Square Meters, more or less, including a residential house therein located at Centro I, [Angadanan], Isabela[."]
>
> x x x x
>
> x x x Again, there seems to be a confusion as to the proper address of the property subject of the sale. This Court however observes that only the 225 sq.m. parcel of land registered in Corazon's name when the *Acknowledgement Receipt* dated February 11, 2005 was executed was the Poblacion property under TCT No. T-106311. There can be no other conclusion than the object of the oral contract of sale was the Poblacion property.[76]

The Court finds that the remittances and receipts which were executed in relation to the Bunay property may not qualify as "some note or memorandum thereof, x x x in writing, and subscribed by the party charged" in compliance with Article 1403(2)

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[75] Id. at 91-92.

[76] Id. at 92-93.

because they are lacking in the required details as prescribed in *Litonjua* and *Berg*. The Court notes that it was Elizabeth who wrote the details of the oral sale in the remittances and Corazon, the party charged, did not subscribe therein. While the receipts might have been signed by Corazon, they do not apparently reflect the application of the amounts which Elizabeth remitted to Corazon. If the receipts reflected that the amounts indicated therein were for the payment of the purchase price of the Bunay property, then petitioners would not be insisting that said amounts were intended to purchase materials which were used in the construction of respondents' house.

However, with respect to the Poblacion property, the Court finds that the remittances together with the Acknowledgement Receipt sufficiently satisfy the note or memorandum requirement under Article 1403 (2) of the Civil Code.Specifically, the Acknowledgement Receipt contains the names of the parties, the terms and conditions of the contract (*i.e.*, the ₱85,000.00 being the remaining balance of the purchase price, which amounted to the ₱85,000.00 plus the previous remittances), a description of the property sufficient to render it capable of identification and signature of Corazon, the party charged.

Nonetheless, the remittances and receipts are sufficient proof that the oral sales had been ratified by Corazon.

When Corazon received the full consideration of the sales from Elizabeth and Rosalina, which is supported by the undisturbed finding of both the RTC and CA that the respective purchase prices for the Bunay and Poblacion properties had been fully paid by Elizabeth and Rosalina to Corazon, there was ratification of the oral contracts of sale by acceptance of benefits, making them enforceable. With the complete payment of the consideration by respondents, the oral contracts of sale covering the Bunay and Poblacion properties have been "partially executed," rendering the Statute of Frauds inapplicable.

The Court agrees with the CA that while there may be disparities in the locations of the properties subject of the oral sales, the disparities have been adequately explained and

petitioners did not even question them. Petitioners did not also raise this factual issue in their Petition, which the Court may not now rule upon given that petitioners availed of a Rule 45 *certiorari* review.

Thus, the CA did not err in recognizing the total execution of the said two sales and their enforceability.[77]

These oral contracts of sale being enforceable, they should be reduced into public documents so that they can be registered in the Registry of Deeds. In this regard, Article 1406 of the Civil Code allows the parties to avail themselves of the right under Article 1357, which states:

> ART. 1357. If the law requires a document or other special form, as in the acts and contracts enumerated in the following article, the contracting parties may compel each other to observe that form, once the contract has been perfected. This right may be exercised simultaneously with the action upon the contract. (1279a)

Now that the DCS, with respect to the Centro I property, and the oral contracts of sale, regarding the Bunay and Poblacion properties, are declared valid and enforceable, may the heirs of the sellers be compelled to comply with the obligations of the deceased sellers and to execute the necessary public documents for their registration with the proper Registry of Deeds?

Petitioners' claim that they are not bound by contracts entered into by Corazon because they are not privies thereto and there is no stipulation *pour autrui* in the DCS in their favor, citing Article 1311 of the Civil Code.[78]

Article 1311 states:

> ART. 1311. Contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by

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[77] See id. at 92-93.

[78] Id. at 29.

stipulation or by provision of law. The heir is not liable beyond the value of the property he received from the decedent.

If a contract should contain some stipulation in favor of a third person, he may demand its fulfillment provided he communicated his acceptance to the obligor before its revocation. A mere incidental benefit or interest of a person is not sufficient. The contracting parties must have clearly and deliberately conferred a favor upon a third person. (1257a)

Petitioners' invocation of stipulation *pour autrui* is preposterous.

It is apparent from the relevant portions of the DCS quoted above that petitioners are not privies or parties thereto and there is no stipulation *pour autrui* in their favor, which the contracting parties clearly and deliberately conferred upon them.

Also, such stipulation creates a right in favor of the third person upon whom the stipulation is conferred, which he can enforce against the contracting parties even if he is not a party to the contract. With respect to the DCS, no such stipulation exists in favor of petitioners. Rather, petitioners are being made liable to comply with the obligations of Corazon, and respondents who are parties to the DCS are the ones enforcing the contract.

Clearly petitioners and the other defendants are not parties to the DCS and the two oral contracts of sale. There is also no evidence that they were aware of, or consented to, the contracts when they were entered into by their predecessors in interest, Corazon and Rosario. Can they, nevertheless, be bound by those contracts as heirs of Corazon and Rosario? To resolve this question, the relevant issue is whether the obligations of Corazon and Rosario arising from the DCS with respect to the Centro I property and the obligations of Corazon arising from the oral contracts of sale with respect to the Bunay and Poblacion properties are transmitted to petitioners as well as the other defendants, as heirs, and not extinguished by the death of Corazon and Rosario.

The first paragraph of Article 1311 — "Contracts take effect only between the parties, their assigns and heirs, except in case

where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law. The heir is not liable beyond the value of the property he received from the decedent." — expresses the doctrine of the relative and personal character of contracts.[79] Under relativity of contracts, it is a general principle of law that a contract can only bind the parties who had entered into it or their successors or heirs who have assumed their personality or juridical possession, and that, as a consequence, such contract cannot favor or prejudice a third person (in conformity with the axiom *res inter alios acta aliis neque nocet podest*).[80]

In the early case of *Mojica v. Fernandez*,[81] the Court ruled that the heirs of a deceased person cannot be regarded as "third persons" with respect to a contract of sale or lease of real estate executed by their decedent in his lifetime,[82] *viz.*:

> But with respect to the contract[, the *venta con pacto de retro* (sale with right of repurchase),] entered into by the deceased and evidenced by the document of September 1, 1901, the heirs cannot be regarded as "third persons." Article 27 of the Mortgage Law defines a "third person" to be "one who has taken part in the act or contract recorded." Under the Civil Code, the heirs, by virtue of the right of succession are subrogated to all the rights and obligations of the deceased (Art. 661)[83] and can not be regarded as third parties with

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[79] Desiderio P. Jurado, supra note 71, at 371. Citation omitted.

[80] Id.

[81] 9 Phil. 403 (1907).

[82] See id. at 406.

[83] In *Suiliong & Co. v. Chio-Taysan*, 12 Phil. 13 (1908), the Court, in ruling that the judicial proceeding for the declaration of heirship (*delcaracion de herederos*) under Spanish procedural law which was effective prior to the 1901 Code of Civil Procedure, at least so far as that proceeding served as a remedy whereby the right of specific persons to succeed to the rights and obligations of the deceased as his heirs might be judicially determined and enforced, had been superseded by Code of Civil Procedure for the administration and distribution of the estates of deceased persons, pronounced that:

respect to a contract to which the deceased was a party, touching the estate of the deceased. (Barrios *vs.* Dolor, 2 Phil. Rep., 44.) This doctrine was enunciated by the supreme court of Spain in its decision of January 27, 1881, wherein it held that "both judicial and extrajudicial acts, formally accepted by one who was a lawful party thereto, are effective as to the heirs and successors of such persons, who are not to be regarded as third persons for this purpose;" also in its decision of January 28, 1892, wherein it held that "the heirs are no more than the continuation of the juridical personality of their predecessor in interest,[84] and can in no way be considered as third persons within the meaning of article 27 of the Mortgage Law."

> x x x The new Code of Procedure furnishing no remedy whereby the provisions of article 661 of the Civil Code may be enforced, in so far as they impose upon the *heredero* (heir) the duty of assuming as a personal obligation all the debts of the deceased, at least to the extent of the value of the property received from the estate; or in so far as they give to the *heredero* the reciprocal right to receive the property of the deceased, without such property being specifically subjected to the payment of the debts of the deceased by the very fact of his decease, these provisions of article 661 may properly be held to have been abrogated; and the new code having provided a remedy whereby the property of the deceased may always be subjected to the payment of his debts in whatever hands it may be found, the right of a creditor to a lien upon the property of the deceased, for the payment of the debts of the deceased, created by the mere fact of his death, may be said to be recognized and created by the provisions of the new code. (Pavia *vs.* De la Rosa, 8 Phil. Rep., 70.) Id. at 23-24. (Underscoring supplied)

[84] In *Limjoco v. Intestate Estate of Fragante*, 80 Phil. 776 (1948), the Court observed:

> Under the regime of the Civil Code and before the enactment of the Code of Civil Procedure, the heirs of a deceased person were considered in contemplation of law as the continuation of his personality by virtue of the provision of article 661 of the first Code that the heirs succeed to all the rights and obligations of the decedent by the mere fact of his death. It was so held by this Court in Barrios *vs.* Dolor, 2 Phil. 44, 46. However, after the enactment of the Code of Civil Procedure, article 661 of the Civil Code was abrogated, as held in Suiliong & Co. *vs.* Chio-Taysan, 12 Phil. 13[,] 22. In that case, as well as in many others decided by this Court after the innovations introduced by the Code of Civil Procedure in the matter of estates of deceased persons, it has been the constant doctrine that it is the

The principle on which these decisions rest is not affected by the provisions of the new Code of Civil Procedure, and, in accordance with that principle, the heirs of a deceased person can not be held to be "third persons" in relation to any contracts touching the real estate of their decedent which comes into their hands by right of inheritance; they take such property subject to all the obligations resting thereon in the hands of him from whom they derive their rights.

x x x x

But we have said that with respect to the contract entered into by the deceased, and evidenced by the private document of September 1, 1901, the heirs cannot be regarded as "third persons," and, therefore, under the provisions of article 1279 of the Civil Code, the heirs of Pedro Sanchez may be compelled in a proper action to execute the public instrument evidencing the said contract, as required by the provisions of article 1280 of that code.[85]

In *Alvarez v. Intermediate Appellate Court*,[86] where the Court rejected the contention of the heirs of the deceased seller, who fraudulently sold two lots owned by another, that the liability arising therefrom should be the sole liability of the deceased or his estate, the Court pronounced:

Petitioners further contend that the liability arising from the sale of Lots No[s]. 773-A and 773-B made by Rosendo Alvarez to Dr.

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estate or the mass of property, rights and assets left by the decedent, instead of the heirs directly, that becomes vested and charged with his rights and obligations which survive after his demise.

The heirs were formerly considered as the continuation of the decedent's personality simply by legal fiction, for they might not be even of his flesh and blood — the reason was one in the nature of a legal exigency derived from the principle that the heirs succeeded to the rights and obligations of the decedent. Under the present legal system, such rights and obligations as survive after death have to be exercised and fulfilled only by the estate of the deceased. And if the same legal fiction were not indulged, there would be no juridical basis for the estate, represented by the executor or administrator, to exercise those rights and to fulfill those obligations of the deceased. x x x Id. at 784-785.

[85] *Mojica v. Fernandez*, supra note 81, at 406-407.

[86] G.R. No. 68053, May 7, 1990, 185 SCRA 8.

Rodolfo Siason should be the sole liability of the late Rosendo Alvarez or of his estate, after his death.

Such contention is untenable for it overlooks the doctrine obtaining in this jurisdiction on the general transmissibility of the rights and obligations of the deceased to his legitimate children and heirs. Thus, the pertinent provisions of the Civil Code state:

> "Art. 774. Succession is a mode of acquisition by virtue of which the property, rights and obligations to the extent of the value of the inheritance, of a person are transmitted through his death to another or others either by his will or by operation of law.
>
> "Art. 776. The inheritance includes all the property, rights and obligations of a person which are not extinguished by his death.
>
> "Art. 1311. Contract stake effect only between the parties, their assigns and heirs except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law. The heir is not liable beyond the value of the property received from the decedent."

As explained by this Court through Associate Justice J.B.L. Reyes in the case of *Estate of Hemady vs. Luzon Surety Co., Inc.*

"The binding effect of contracts upon the heirs of the deceased party is not altered by the provision of our Rules of Court that money debts of a deceased must be liquidated and paid from his estate before the residue is distributed among said heirs (Rule 89). The reason is that whatever payment is thus made from the [e]state is ultimately a payment by the heirs or distributees, since the amount of the paid claim in fact diminishes or reduces the shares that the heirs would have been entitled to receive.

"Under our law, therefore, the general rule is that a party's contractual rights and obligations are transmissible to the successors. The rule is a consequence of the progressive 'depersonalization' of patrimonial rights and duties that, as observed by Victorio Polacco, has characterized the history of these institutions. From the Roman concept of a relation from person to person, the obligation has evolved into a relation from patrimony to patrimony, with the persons occupying only a representative position, barring those rare cases where the

obligation is strictly personal, i.e., is contracted *intuitu personae*, in consideration of its performance by a specific person and by no other. x x x"

Petitioners being the heirs of the late Rosendo Alvarez, they cannot escape the legal consequences of their father's transaction, which gave rise to the present claim for damages. That petitioners did not inherit the property involved herein is of no moment because by legal fiction, the monetary equivalent thereof devolved into the mass of their father's hereditary estate, and we have ruled that the hereditary assets are always liable in their totality for the payment of the debts of the estate.[87]

The discussion on Article 1311 of the Court in *DKC Holdings Corporation v. Court of Appeals*[88] is likewise enlightening:

The general rule, therefore, is that heirs are bound by contracts entered into by their predecessors-in-interest except when the rights and obligations arising therefrom are not transmissible by (1) their nature, (2) stipulation or (3) provision of law.

In the case at bar, there is neither contractual stipulation nor legal provision making the rights and obligations under the contract intransmissible. More importantly, the nature of the rights and obligations therein are, by their nature, transmissible.

The nature of intransmissible rights as explained by Arturo Tolentino, an eminent civilist, is as follows:

> "Among contracts which are intransmissible are those which are purely personal, either by provision of law, such as in cases of partnerships and agency, or by the very nature of the obligations arising therefrom, such as those requiring special personal qualifications of the obligor. It may also be stated that contracts for the payment of money debts are not transmitted to the heirs of a party, but constitute a charge against his estate. Thus, where the client in a contract for professional services of a lawyer died, leaving minor heirs, and the lawyer, instead of presenting his claim, for professional services under the

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[87] Id. at 19-20.

[88] G.R. No. 118248, April 5, 2000, 329 SCRA 666.

> contract to the probate court, substituted the minors as parties for his client, it was held that the contract could not be enforced against the minors; the lawyer was limited to a recovery on the basis of *quantum meruit*."

In American jurisprudence, "(W)here acts stipulated in a contract require the exercise of special knowledge, genius, skill, taste, ability, experience, judgment, discretion, integrity, or other personal qualification of one or both parties, the agreement is of a personal nature, and terminates on the death of the party who is required to render such service."

It has also been held that a good measure for determining whether a contract terminates upon the death of one of the parties is whether it is of such a character that it may be performed by the promissor's personal representative. Contracts to perform personal acts which cannot be as well performed by others are discharged by the death of the promissor. Conversely, where the service or act is of such a character that it may as well be performed by another, or where the contract, by its terms, shows that performance by others was contemplated, death does not terminate the contract or excuse nonperformance.

In the case at bar, there is no personal act required from the late Encarnacion Bartolome. Rather, the obligation of Encarnacion in the contract to deliver possession of the subject property to petitioner upon the exercise by the latter of its option to lease the same may very well be performed by her heir Victor.

As early as 1903, it was held that "(H)e who contracts does so for himself and his heirs." In 1952, it was ruled that if the predecessor was duty-bound to reconvey land to another, and at his death the reconveyance had not been made, the heirs can be compelled to execute the proper deed for reconveyance. This was grounded upon the principle that heirs cannot escape the legal consequence of a transaction entered into by their predecessor-in-interest because they have inherited the property subject to the liability affecting their common ancestor.

It is futile for Victor to insist that he is not a party to the contract because of the clear provision of Article 1311 of the Civil Code.Indeed, being an heir of Encarnacion, there is privity of interest between him and his deceased mother. He only succeeds to what rights his mother had and what is valid and binding against her is also valid and binding as against him. This is clear from *Parañaque Kings*

Enterprises vs. Court of Appeals, where this Court rejected a similar defense —

> With respect to the contention of respondent Raymundo that he is not privy to the lease contract, not being the lessor nor the lessee referred to therein, he could thus not have violated its provisions, but he is nevertheless a proper party. Clearly, he stepped into the shoes of the owner-lessor of the land as, by virtue of his purchase, he assumed all the obligations of the lessor under the lease contract. Moreover, he received benefits in the form of rental payments. Furthermore, the complaint, as well as the petition, prayed for the annulment of the sale of the properties to him. Both pleadings also alleged collusion between him and respondent Santos which defeated the exercise by petitioner of its right of first refusal.
>
> In order then to accord complete relief to petitioner, respondent Raymundo was a necessary, if not indispensable, party to the case. A favorable judgment for the petitioner will necessarily affect the rights of respondent Raymundo as the buyer of the property over which petitioner would like to assert its right of first option to buy.

In the case at bar, the subject matter of the contract is likewise a lease, which is a property right. The death of a party does not excuse nonperformance of a contract which involves a property right, and the rights and obligations thereunder pass to the personal representatives of the deceased. Similarly, nonperformance is not excused by the death of the party when the other party has a property interest in the subject matter of the contract.

Under both Article 1311 of the Civil Code and jurisprudence, therefore, Victor is bound by the subject Contract of Lease with Option to Buy.[89]

To better understand Article 1311 insofar as heirs are concerned, it must be construed in relation to Article 776, which provides: "The inheritance includes all the property, rights and obligations of a person which are not extinguished by his death." In determining which rights are intransmissible (extinguished

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[89] Id. at 672-675.

by a person's death) or transmissible (not extinguished by his death), the following general rules have been laid down:

First: That rights which are *purely personal*, not in the inaccurate equivalent of this term in contractual obligations, but in its proper sense, are, by their nature and purpose, *intransmissible*, for they are extinguished by death; examples, those relating to civil personality, to family rights, and to the discharge of public office.

Second: That rights which are *patrimonial* or relating to property are, as a general rule, not extinguished by death and properly constitute part of the inheritance, except those expressly provided by law or by the will of the testator, such as usufruct and those known as personal servitudes.

Third: That *rights of obligation* are by nature *transmissible* and may constitute part of the inheritance, both with respect to the rights of the creditor and as regards the obligations of the debtor.

The third rule stated above has three exceptions, especially with respect to the obligations of the debtor. They are: (1) those which are personal, in the sense that the personal qualifications and circumstances of the debtor have been taken into account in the creation of the obligation, (2) those that are intransmissible by express agreement or by will of the testator, and (3) those that are intransmissible by express provision of law, such as life pensions given under contract.

x x x x

x x x In connection with "obligations" as forming part of the inheritance, the provisions of the Rules of Court on the settlement of the estates of deceased persons should not be overlooked. The heirs of the deceased are no longer liable for the debts he may leave at the time of his death. Such debts are chargeable against the property or assets left by the deceased. The property of the deceased may always be subjected to the payment of his debts in whatever hands it may be found, inasmuch as the right of a creditor to a lien upon such property, created by the mere fact of the debtor's death, may be said to be recognized by the provisions of the Rules of Court. Only what remains after all such debts have been paid will be subject to distribution among the heirs. In other words, the heirs are no longer personally liable for the debts of the deceased; such debts must be collected only from the property left upon his death, and if this should

not be sufficient to cover all of them, the heirs cannot be made to pay the uncollectible balance.

x x x x

This should not be understood to mean, however, that "obligations" are no longer a part of the inheritance. Only *money debts* are chargeable against the estate left by the deceased; these are the obligations which do not pass to the heirs, but constitute a charge against the hereditary property. There are other obligations, however, which do not constitute money debts; these are not extinguished by death, and must still be considered as forming part of the inheritance. Thus, if the deceased is a lessee for a definite period, paying a periodical rental, then his heirs will inherit the obligation to pay the rentals as they fall due together with the rights arising from the lease contract.[90] (Citations omitted)

In *Bonilla v. Barcena*,[91] the Court stated:

x x x The question as to whether an action survives or not depends on the nature of the action and the damage sued for. In the causes of action which survive the wrong complained affects primarily and principally property and property rights, the injuries to the person being merely incidental, while in the causes of action which do not survive the injury complained of is to the person, the property and rights of property affected being incidental. Following the foregoing criterion the claim of the deceased plaintiff which is an action to quiet title over the parcels of land in litigation affects primarily and principally property and property rights and therefore is one that survives even after her death. x x x[92] (Citations omitted)

In *National Housing Authority v. Almeida*,[93] the Court ruled that the obligations of the seller and the buyer in a contract to sell are transmissible, *viz.*:

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[90] Arturo M. Tolentino, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES, Vol. 3 (1979 ed.), pp.11-15.

[91] No. L-41715, June 18, 1976, 71 SCRA 491.

[92] Id. at 495-496.

[93] G.R. No. 162784, June 22, 2007, 525 SCRA 383.

The death of Margarita Herrera does not extinguish her interest over the property. Margarita Herrera had an existing Contract to Sell with NHA as the seller. Upon Margarita Herrera's demise, this Contract to Sell was neither nullified nor revoked. This Contract to Sell was an obligation on both parties — Margarita Herrera and NHA. Obligations are transmissible. Margarita Herrera's obligation to pay became transmissible at the time of her death either by will or by operation of law.

If we sustain the position of the NHA that this document is not a will, then the interests of the decedent should transfer by virtue of an operation of law and not by virtue of a resolution by the NHA. For as it stands, NHA cannot make another contract to sell to other parties of a property already initially paid for by the decedent. Such would be an act contrary to the law on succession and the law on sales and obligations.[94]

From the foregoing, it is quite clear that with respect to "obligations," similar to "rights," patrimonial obligations or those pertaining to property are by nature generally transmissible and not extinguished by death. Thus, patrimonial obligations form part of the inheritance of the decedent, which are transmitted to or acquired by the heirs upon the decedent's death. This is pursuant to Article 774 of the Civil Code which recognizes succession as a mode of acquisition whereby the property, rights **and obligations** to the extent of the value of the inheritance of a person are transmitted through his death to another or others either by his will or by operation of law, and Article 777 which provides the transmission of the rights to the inheritance at the precise moment of the death of the decedent. A contract of sale or a contract to sell with land or immovable property as its object certainly involves patrimonial rights and obligations, which by their nature are essentially transmissible or transferable. Thus, the heirs of the seller and the buyer are bound thereby and the former cannot be deemed as "third persons" or non-privies to the contract of sale or contract to sell.

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[94] Id. at 398.

Consequently, Article 1311 of the Civil Code upon which petitioners rely to negate their liability is itself the very basis of the obligation that respondents are exacting from them. Since the obligations of the sellers in the DCS and the two oral contracts of sale were transmitted upon the death of Corazon and Rosario to petitioners and the other defendants, the latter are bound to comply with the obligations to deliver and transfer ownership of the Centro I property to respondents, the Bunay property to Elizabeth, and the Poblacion property to Rosario. Likewise, since a public document is required to be registered with the Registry of Deeds to effect the transfer of the certificates of title covering the said properties to the buyers, petitioners and the other defendants can be compelled and are obligated to execute the necessary public documents for that purpose pursuant to Article 1357 of the Civil Code.

WHEREFORE, the Petition is hereby **DENIED**. Accordingly, the Decision dated December 17, 2018 of the Court of Appeals in CA-G.R. CV Nos. 108495-97 is **AFFIRMED WITH MODIFICATION**. To avoid any confusion, the dispositive portions of the three Decisions all dated August 30, 2016 of the Regional Trial Court of Cauayan City, Isabela, Branch 20, in Civil Case Nos. Br. 20-3009, Br. 20-3010, and Br. 20-3011 are restated with modification:

Civil Case No. Br. 20-3009

WHEREFORE, in the light of the foregoing, judgment is hereby rendered in favor of the plaintiffs and against the defendants. Defendants are hereby ordered:

(1) To execute the corresponding document to effectuate the transfer of property containing an area of 540 square meters, more or less, located at Centro I, Angadanan, Isabela covered and embraced by Transfer Certificate of Title No. T-356999 in favor of the plaintiffs;

(2) To surrender to the plaintiffs the owner's duplicate copy of TCT No. T-356999 so that the plaintiffs could register in their names, as the lawful purchasers for value of the property described therein;

(3) To deliver to the plaintiffs physical possession of the property described therein;

(4) To pay ₱150,000.00 as attorney's fees and cost of the suit.

SO ORDERED.

Civil Case No. Br. 20-3010

WHEREFORE, in the light of the foregoing, judgment is hereby rendered in favor of the plaintiff Elizabeth Aliangan and against the defendants heirs of Corazon Villeza. The said defendants are hereby ordered:

(1) To execute the corresponding document to effectuate the transfer of property covered by Transfer Certificate of Title No. T-297393 in favor of the plaintiff Elizabeth Aliangan;

(2) To surrender the owner's duplicate copy of TCT No. T-297393 to plaintiff Elizabeth Aliangan so that she could register into her name the property described therein;

(3) To deliver to the plaintiff Elizabeth Aliangan physical possession of the property described therein;

(4) To pay ₱150,000.00 as attorney's fees and cost of the suit.

SO ORDERED.

Civil Case No. Br. 20-3011

WHEREFORE, in the light of the foregoing, judgment is hereby rendered in favor of the plaintiff Rosario Aliangan and against the defendants heirs of Corazon Villeza. The said defendants are hereby ordered:

(1) To execute the corresponding document to effectuate the transfer of property covered by Transfer Certificate of Title No. T-106311 in favor of the plaintiff Rosario Aliangan and to surrender the owner's duplicate copy of TCT No. T-106311 to enable the said plaintiff to register in her name the property described therein;

(2) To deliver to the plaintiff Rosario Aliangan physical possession of the property described therein;

(3) To pay P150,000.00 as attorney's fees and cost of the suit.

SO ORDERED.

SO ORDERED.

Peralta, C.J. (Chairperson), Hernando, Carandang, and *Zalameda, JJ.*, concur.

FIRST DIVISION

[G.R. No. 245306. December 2, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **EDGAR GUARIN *y* VELOSO** a.k.a. **"Banong",** *Accused-Appellant.*

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *C.J.*:

This is an appeal from the August 30, 2018 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CR-HC No. 09494 which affirmed with modification the May 31, 2017 Decision[2] of the Regional Trial Court *(RTC)*, Branch 69, Lingayen, Pangasinan.

The Facts

Accused-appellant Edgar Guarin *y* Veloso was indicted for Murder as defined and penalized under Article 248 of the Revised Penal Code *(RPC)*. The accusatory portion of the Information, dated May 30, 2016, alleged:

That sometime in the morning of May 27, 2016 in Gayaman, Binmaley, Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused with intent to kill and with treachery, did, then and there, willfully, unlawfully and feloniously assault and attack MANNY MANAOIS y FERNANDEZ, victim, by deliberately and suddenly stabbing him several times with a sharp bladed instrument

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[1] *Rollo*, pp. 3-17. Penned by Presiding Justice Romeo F. Barza, with the concurrence of Associate Justices Elihu A. Ybañez and Maria Elisa Sempio Diy.

[2] CA *rollo*, pp. 50-59. Penned by Presiding Judge Loreto S. Alog, Jr.

while, he, the hapless, unarmed and unsuspecting victim, was about to board his motorized tricycle and had no chance to resist or defend himself, and as a result, the said victim suffered 'Multiple stab wounds in the chest, upper extremities and abdomen,' that caused severe blood loss and the eventual demise of the said victim, to the prejudice and damage of his heirs.[3]

In his arraignment, Guarin pleaded not guilty[4] to the offense charged in the information. Thereafter, trial on the merits ensued.

The prosecution presented three (3) witnesses, namely: Arcadio Botial, *Barangay Kagawad* Arnold Rosario and Dr. Carlito Arenas.[5] The defense, for its part, presented Guarin as its lone witness.[6]

Version of the Prosecution

On May 27, 2016, at around 6:45 a.m., Botial and Manny F. Manaois were in Gayaman, Binmaley, Pangasinan, preparing to leave for work. Botial was loading a welding machine onboard a tricycle while Manaois was about to board and drive the said vehicle. As Manaois was busy putting the key in the ignition, Guarin, without any provocation or warning, suddenly stabbed Manaois with a knife. Manaois tried to run and escape but Guarin pursued him and stabbed him several times. Meanwhile, Botial, being stunned by the incident, was not able to move or even shout for help. At the time the stabbing ceased, Botial boarded Manaois into the tricycle to rush the latter to the Specialist Group Hospital and Trauma Center in Dagupan City.[7]

During the incident, *Barangay Kagawad* Rosario, who was living near the area where the incident happened, was preparing to go to work when he heard people shouting outside. Afterwards, he went outside to check what the commotion was about. He

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[3] Records, p. 1.

[4] *Id.* at 20.

[5] CA *rollo*, pp. 50-51.

[6] *Id.* at 52.

[7] *Id.* at 51.

then saw Guarin sitting on the floor holding a bloodied knife. *Barangay Kagawad* Rosario talked to Guarin and watched him until the police authorities arrived. During the investigation, Botial returned and told the police that he witnessed the crime. He identified Guarin as the perpetrator who stabbed Manaois several times. The police officers seized a fifteen (15)-inch knife from Guarin and brought him, together with witnesses Botial and *Barangay Kagawad* Rosario, to the Police Station in Binmaley, Pangasinan for further documentation.[8]

PO1 Ryan S. Danglacruz conducted further investigation at the Specialist Group Hospital and Trauma Center where Manaois was being treated.[9] The latter was attended to by Dr. Arenas. At the time Dr. Arenas checked on Manaois, he noticed that the victim was on the brink of death as he was gasping for breath. He looked pale, with no blood pressure and cardiac activity. Manaois suffered twelve (12) stab wounds, four (4) abrasions, and contusions. On the same day, Manaois died.[10]

Version of the Defense

On the morning of May 27, 2016, Guarin was on his way to a *sari-sari* store to buy coffee. Meanwhile, Manaois, armed with a knife and who appeared to be drunk, approached and threatened to kill Guarin. Manaois tried to stab Guarin, but the latter was not hit as he was able to step backward. For the second time, Manaois attempted to stab Guarin, but the former fell on the ground. Seizing the opportunity, Guarin disposed Manaois of the knife. However, Guarin did not know what happened next. At the time Guarin was able to regain his senses, he saw blood on his clothes and hands which made him realize that he could have harmed Manaois. Afterwards, he surrendered himself to *Barangay Kagawad* Rosario.[11]

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[8] *Id.*

[9] Records, p. 9.

[10] CA *rollo*, pp. 51-52.

[11] *Id.* at 52-53.

Guarin added in his testimony that earlier that morning, he woke up with Manaois insulting him by calling him and the other members of his family illiterate which Manaois had done several times before the incident. Due to this, an altercation between them ensued. Guarin also stated that at the time of the incident, Botial was inside his house so he could not have witnessed the same.[12]

On May 31, 2017, the RTC convicted Guarin of the crime charged. The dispositive portion of the Decision states:

> WHEREFORE, his guilt for the crime of murder defined and penalized under Article 248 of the Revised Penal Code having been proved beyond reasonable doubt, the accused Edgar Guarin y Veloso is hereby sentenced to suffer the penalty of *reclusion perpetua* and such accessory penalties provided for by law.
>
> Said accused is likewise found liable to pay the heirs of Manny Manaois indemnity, moral damages and exemplary damages in the amount of [₱]75,000.00 each, as well as temperate damages in the amount of [₱]25,000.00, all of which to earn interest at the rate of six percent (6%) per annum from the date of finality of this decision until fully paid.
>
> SO ORDERED.[13]

In concluding that the requisites of self-defense were not met to justify the killing of Manaois, the RTC ratiocinated:

> There is aggression, only when the one attacked faces real and immediate threat to his life. In the case at bar, other than the accused's testimony, no other evidence had been adduced to show that it was Manny who initiated the confrontation before the stabbing incident. Ranged against the testimony of Arcadio, such an account, notably given almost a year after the subject incident transpired which already provided the accused time to cogitate on the facts, is impaled.
>
> Even assuming that the attack was indeed initiated by Manny, the imminence of the peril on the accused's life already ceased the moment he succeeded in disarming Manny of the knife. x x x.

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[12] *Id.* at 53.

[13] *Id.* at 59.

> Moreover, gauging from the accused's testimony, it was him, not Manny, who had the reason to show aggression, he and his family members having been the objects of Manny's insulting remarks not only on the day of the subject incident but several times more previously. The incessant remarks on him and his kins being illiterates apparently took its toll on the accused that his mind became consumed by the thought of revenge. His irate mental state can in fact be seen from the number of stab wounds, about eleven in all, he inflicted on Manny.[14]

On appeal, the CA agreed with the findings of the trial court that even assuming that unlawful aggression was present on the part of Manaois, there was no longer any danger on Guarin's person from the moment he disarmed the former of his knife. The appellate court was convinced that Botial's testimony was clear, steadfast, convincing, and point to no other conclusion that Guarin stabbed Manaois to death. Likewise, the CA pointed out that the RTC correctly appreciated treachery as a circumstance to qualify the offense to murder. While the judgment of conviction was sustained, the award of damages was modified. The *fallo* of the August 30, 2018 Decision reads:

> WHEREFORE, the appeal is DENIED. The assailed Decision dated May 31, 2017 of the RTC in Criminal Case No. L-10992 is AFFIRMED with MODIFICATION in that the award of temperate damages is INCREASED to Fifty Thousand Pesos (₱50,000.00).
>
> SO ORDERED.[15]

Now before us, the People and Guarin manifested that they would no longer file a Supplemental Brief, taking into account the thorough and substantial discussions of the issues in their respective appeal briefs before the CA.

The Court resolves to dismiss the appeal for failure to sufficiently show reversible error in the judgment of conviction to warrant the exercise of our appellate jurisdiction.

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[14] *Id.* at 55; citation omitted.

[15] *Rollo*, p. 16.

Murder is defined and penalized under Article 248 of the RPC, as amended by Republic Act No. 7659. To successfully prosecute the crime, the following elements must be established: (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 Article 248 of the RPC; and (4) that the killing is not parricide or infanticide.[16] In the instant case, the prosecution was able to establish that (1) Manaois was stabbed and killed; (2) Guarin stabbed and killed him; (3) the killing of Manaois was attended by the qualifying circumstance of treachery; and (4) the killing of Manaois was neither parricide nor infanticide. We agree with the trial court's finding that the prosecution has proven Guarin's guilt beyond reasonable doubt, as the first element of the offense was proven by presenting the Certificate of Death[17] of Manaois. The RTC correctly held in its Decision that Dr. Arenas sufficiently testified that Manaois sustained multiple stab wounds in the chest, upper extremities and abdomen; that the cause of the latter's death was due to cardio-pulmonary arrest, multi-organ failure secondary to severe blood loss; and that these findings were not rebutted by the defense. Meanwhile, the other elements thereof were substantiated by Botial. In addition, the fact that Guarin invoked the justifying circumstance of self-defense is already an admission that he authored the killing of Manaois.

Considering that self-defense is an affirmative allegation and totally exonerates the accused from any criminal liability, it is well settled that when it is invoked, the burden of evidence shifts to the accused to prove it by credible, clear, and convincing evidence. The accused, claiming self-defense, must rely on the strength of his own evidence and not on the weakness of the prosecution. Self-defense cannot be justifiably appreciated when uncorroborated by independent and competent evidence or when it is extremely doubtful by itself.[18]

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[16] *Johnny Garcia Yap v. People*, G.R. No. 234217, November 14, 2018; and *People v. Racal*, 817 Phil. 665, 677 (2017).

[17] Records, p. 11.

[18] *People v. Tica*, 817 Phil. 588, 594-595 (2017).

The essential elements of self-defense are the following: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of the person defending himself. To invoke self-defense successfully, there must have been an unlawful and unprovoked attack that endangered the life of the accused, who was then forced to inflict severe wounds upon the assailant by employing reasonable means to resist the attack.[19]

While all three elements must concur, self-defense relies first and foremost on proof of unlawful aggression on the part of the victim. If no unlawful aggression is proved, no self-defense may be successfully pleaded. Unlawful aggression is a *conditio sine qua non* for upholding the justifying circumstance of self-defense; if there is nothing to prevent or repel, the other two requisites of self-defense will have no basis.[20]

In the present case, it is apparent that there is no unlawful aggression. Botial, an eyewitness, vividly narrated that at the time of the attack, he and Manaois were occupied in preparing their things in going to work. Manaois, at the time of the attack, was about to put the key in the ignition when Guarin unexpectedly stabbed him with a knife. After the initial attack, Manaois tried to flee but Guarin was determined to kill him. Guarin was able to chase Manaois and stabbed him several times.

Meanwhile, Guarin claims a different version. He maintains that on his way to the store, he saw Manaois suddenly draw a knife and tried to stab him. During the attack, he was able to step back, thus, Manaois was not able to hit him. For the second time, Manaois tried to stab Guarin but the former fell on the ground. At this instance, Guarin took the knife away from Manaois and claimed that he blacked out. Afterwards, when Guarin regained his senses, he had blood stains all over his clothes and was holding a bloodied knife.

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[19] *Id.* at 595.

[20] *Id.* at 595-596.

Even assuming that the version of facts averred by Guarin is given credence, his claim of self-defense is still wanting. "When an unlawful aggression that has begun no longer exists, the one who resorts to self-defense has no right to kill or even wound the former aggressor. To be sure, when the present victim no longer persisted in his purpose or action to the extent that the object of his attack was no longer in peril, there was no more unlawful aggression that would warrant legal self-defense on the part of the offender."[21] Undoubtedly, the unlawful aggression ceased when Manaois fell on the ground and Guarin successfully disarmed him.

Guarin went beyond the call of self-preservation when he proceeded to inflict excessive, atrocious, and fatal injuries to Manaois. Assuming, for the sake of argument, that there was unlawful aggression, the second element of self-defense is not present. The means employed by Guarin was not reasonably commensurate to the nature and extent of the alleged attack that he sought to prevent. Records show that Manaois sustained a total of sixteen (16) injuries, twelve (12) of which were stab wounds, concentrated on the area of the heart and his other vital organs, and the other four (4) were abrasions and contusions,[22] while Guarin sustained no injury. We have held in the past that the nature and number of wounds are constantly and unremittingly considered important *indicia* which disprove a plea of self-defense.[23]

Based from the foregoing, the inevitable conclusion is that the assertion of self-defense by Guarin cannot stand, absent the elements that must be proven to have a successful invocation of self-defense.

Now, it has been established that Guarin stabbed and killed Manaois without the justifying circumstance of self-defense.

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[21] *Id.* at 596.

[22] Records, pp. 61-61A.

[23] *People v. Tica*, 817 Phil. 588, 597 (2017).

The other question to be resolved is whether or not the killing was attended by the qualifying circumstance of treachery. Paragraph 16, Article 14 of the RPC defines treachery as the employment of means, methods, or forms in the execution of the crime against a person which tend directly and specially to ensure its execution, without risk to the offender arising from the defense which the offended party might make. The essence of treachery is the sudden attack by the aggressor without the slightest provocation on the part of the unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring the commission of the crime without risk to the aggressor arising from the defense which the offended party might make.[24]

In order for treachery to be properly appreciated, two elements must be present: (1) at the time of the attack, the victim was not in a position to defend himself or to retaliate or escape; and (2) the accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him.[25]

In the instant case, Guarin's attack on Manaois was sudden and unexpected. Manaois, who was then about to board his tricycle with his eyes focused on starting its engine, was not aware of any impending danger. Likewise, he was unarmed and his defenses were down. Hence, he was caught off guard when Guarin stabbed him. The stealth and swiftness by which the attack was carried out rendered Manaois defenseless, and significantly diminished the risk for Guarin to receive retaliation from the victim. Even if Manaois was able to briefly run away after being hit, he was still pursued by Guarin who continued stabbing him. In addition, Botial testified that Guarin was already holding a knife when the latter was approaching them. Hence, the attack was planned ahead of time. Clearly, the prosecution has established that the qualifying circumstance of treachery is present.

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[24] *People v. Joseph Ampo*, G.R. No. 229938, February 27, 2019.

[25] *Id.*

On the other issue, Guarin assails the RTC's reliance on the testimony of Botial, claiming that his testimony was doubtful and not worthy of full faith and credit. In support, Guarin imputes that Botial's failure to warn Manaois or shout for help is contrary to human experience and that it is not common, thus, not credible.

We are not persuaded.

The fact that Botial failed to warn Manaois or shout for help during the incident does not make his testimony highly suspicious as Guarin would want it to appear. Such reaction was not at all uncommon or unnatural so as to make his testimony incredible. Placed in the same or similar situation, some may choose to intervene, but others may opt to stay away and remain hidden. It is settled that there could be no hard and fast gauge for measuring a person's reaction or behavior when confronted with a startling, not to mention horrifying, occurrence, as in this case. Witnesses of startling occurrences react differently depending upon their situation and state of mind, and there is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience. The workings of the human mind placed under emotional stress are unpredictable, and people react differently to shocking stimulus — some may shout, some may faint, and others may be plunged into insensibility.[26]

The trial court finds no reason not to believe the testimony of Botial. Absence of any controverting evidence that the identification and recollection made by Botial were wrongly made or, otherwise, ill-motivated, they deserve full faith and credit.

The Court defers to the trial court in this respect, especially considering that it was in the best position to assess and determine the credibility of the witnesses presented by both parties. When the issues revolve on matters of credibility of witnesses, the findings of fact of the trial court, its calibration of the testimonies

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[26] *Id.*

of the witnesses, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect, if not conclusive effect because the trial court has the unique opportunity to observe the demeanor of witnesses and is in the best position to discern whether they are telling the truth. Having had the opportunity to observe the witnesses' demeanor and deportment on the stand, and the manner in which they gave their testimonies, the trial judge can better determine if such witnesses were telling the truth, being in the ideal position to weigh conflicting testimonies.[27]

The CA and the RTC correctly appreciated the mitigating circumstance of voluntary surrender in favor of Guarin. Voluntary surrender is a circumstance that reduces the penalty for the offense. Its requisites as a mitigating circumstance are that: (1) the accused has not been actually arrested; (2) the accused surrenders himself to a person in authority or the latter's agent; and (3) the surrender is voluntary.[28]

All the requisites of voluntary surrender were proven by Guarin. The established facts show that immediately after the incident, Guarin voluntarily surrendered himself and the weapon to *Barangay Kagawad* Rosario after realizing that he had hurt Manaois. In turn, *Barangay Kagawad* Rosario reported the incident to the police and endorsed him to their custody upon information that it was Guarin who killed Manaois. It is clear that there was a manifestation on the part of Guarin to freely submit himself to the *barangay* official, *Barangay Kagawad* Rosario, and to the police authorities for the killing of Manaois.

Hence, as to the penalty, this Court agrees with the CA and the RTC in imposing the penalty of *reclusion perpetua* in accordance with the provisions of Article 248 of the RPC, in relation to Article 63 of the same code.

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[27] *Id.*

[28] *People v. Placer*, 719 Phil. 268, 281-282 (2013).

Moreover, consistent with *People v. Jugueta*,[29] the CA and the RTC correctly ordered Guarin to pay the heirs of Manaois the amounts of Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity, Seventy-Five Thousand Pesos (₱75,000.00) as moral damages, and Seventy-Five Thousand Pesos (₱75,000.00) as exemplary damages. Meanwhile, the CA appropriately increased the amount of temperate damages from Twenty-Five Thousand Pesos (₱25,000.00) to Fifty Thousand Pesos (₱50,000.00), in accordance with the Court's pronouncement in *People v. Jugueta*.[30] It cannot be denied that the heirs of the victim suffered pecuniary loss, although the exact amount was not proven. Thus, the amount of Fifty Thousand Pesos (₱50,000.00) shall be awarded.

An interest at the rate of six percent (6%) *per annum* shall be imposed on all damages awarded from the date of finality of this Decision until fully paid.[31]

WHEREFORE, the appeal is **DISMISSED**. The August 30, 2018 Decision of the Court of Appeals in CA-G.R. CR-HC No. 09494, convicting Edgar Guarin *y* Veloso of Murder, is hereby **AFFIRMED**.

SO ORDERED.

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

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[29] 783 Phil. 806 (2016).

[30] *Id.*

[31] See Bangko Sentral ng Pilipinas Circular No. 799, Series of 2013, effective July 1, 2013, in *Nacar v. Gallery Frames, et al.*, 716 Phil. 267, 279-281 (2013).

FIRST DIVISION

[G.R. No. 245344. December 2, 2020]

DEL MONTE LAND TRANSPORT BUS COMPANY and NARCISO O. MORALES, *Petitioners*, *v.* **CARLITO T. ABERGOS**, *Respondent*.

APPEARANCES OF COUNSEL

Nograles Law Offices for petitioners.
Miralles and Associates Law Office for respondent.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court assailing the Decision[2] dated June 18, 2018 and Resolution[3] dated February 13, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 151770. The CA reversed the National Labor Relations Commission (NLRC) and ruled that respondent Carlito Abergos (Abergos) is entitled to reinstatement, instead of the NLRC's award of separation pay, in addition to backwages and attorney's fees.

Facts

The CA summarized the facts, as follows:

The instant controversy stemmed from a complaint for constructive dismissal and payment of damages and attorney's fees filed on October 18, 2016 before the Labor Arbiter by Carlito Torres Abergos

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[1] *Rollo*, pp. 12-82, excluding the Annexes.

[2] Id. at 83-94. Penned by Presiding Justice Romeo F. Barza and concurred in by Associate Justices Stephen C. Cruz and Carmelita Salandanan Manahan.

[3] Id. at 95-96.

(Abergos) against Del Monte Land Transport Bus Company (DLTB Co.) and Narciso Morales (Morales).

Abergos claimed that he was hired by DLTB Co. as a bus driver on September 12, 2011 with a daily average income of One Thousand Eight Hundred Pesos (PhP1,800.00). Sometime on August 28, 2016, at around 11:00 p.m., he drove the DLTB Co. bus and arrived at Matnog Port, Sorsogon, en route to Southern Leyte. The bus was arranged to be ferried by a FastCat Ferry at 3:00 a.m[.] but DLTB Co.'s facilitator or fixer gathered all the passengers so they can ride the 9:00 a.m. trip instead. The passengers got angry and confused and asked him why they were taking the later trip when they could already board the 3:00 a.m. trip. Because of the confusion, they were forced to take the 3:00 a.m. trip of Star Ferry.

Abergos alleged that on August 31, 2016, after he got back from the trip, he was summoned to Mr. Sabino's office to explain why the passengers were not able to immediately board the Star Ferry. After he submitted his written explanation, he was handed a memorandum suspending him for fifteen (15) days effective from September 1 to 15, 2016. When he reported back for work on September 16, 2016, he was told by Mr. Sabino that he was already dismissed from his employment. Hence, the instant complaint praying that he be declared as illegally dismissed from work and that [DLTB] Co. and Morales (collectively, [petitioners]) be ordered to reinstate him to his former position with payment of full backwages and other benefits, moral and exemplary damages, and attorney's fees.

[Petitioners] failed to file their position paper to contradict the above allegations.

Thus, on October 19, 2016, the Labor Arbiter rendered judgment in favor of Abergos as follows:

> ***WHEREFORE****, premises considered, judgment is hereby rendered declaring the dismissal of complainant* ***CARLITO T. ABERGOS*** *illegal. [Petitioners']* ***DEL MONTE LAND TRANSPORT BUS CO.*** *and* ***NARCISO MORALES*** *are held jointly and severally liable to pay complainant his backwages, separation pay, and ten (10%) percent by way of attorney's fees tentatively computed in the amount of P110,052.80 (₱100,048.00 + ₱10,004.80).*
>
> *Other claims are* ***DISMISSED*** *for lack of merit.*

SO ORDERED.

Abergos filed a partial appeal before the NLRC only insofar as the Labor Arbiter's finding of strained relations and order for payment of separation pay, in lieu of reinstatement, were concerned.

The NLRC, in a decision dated February 28, 2017, modified the Labor Arbiter's ruling after determining that there was no evidence or allegation of strained relations between the parties. It disposed of the case in this wise:

> *WHEREFORE, premises considered, complainant's partial appeal is granted. The Decision dated January 3, 2017 is hereby MODIFIED by DELETING the award of separation pay in the amount of ₱62,530.00 and ORDERING [petitioner] DEL MONTE LAND TRANSPORT BUS CO. to reinstate complainant CARLITO T. ABERGOS to his former position without loss of seniority rights and other privileges.*
>
> *The rest of the Decision is AFFIRMED.*
>
> *SO ORDERED.*

[Petitioners] sought a reconsideration of the above decision. They contended that Abergos was assigned to operate and manage a passenger bus that transported passengers from Batangas. As a common carrier, [DLTB] Co. encouraged its employees to at all times exhibit the highest degree of discipline in the performance of their duties. Notwithstanding his awareness of the [DLTB] Co. Code of Conduct, his performance and work attitude left much to be desired on account of the numerous infractions he committed during his assignment at [DLTB] Co.'s Eastern Visayas-Tacloban Operation Center:

> 1. Per Inspector Neil Gomez's report, Abergos violated company rules when he deliberately failed to stop for inspection barely a month from his hiring. He was given a warning and a reminder that a similar behavior [would] be dealt with more severely;
>
> 2. June 12, 2012 — not assisting passenger;
>
> 3. January 21, 2013 — passenger complaint for being arrogant;
>
> 4. On September 25, 2013, he was driving recklessly when he overtook a trail truck and two (2) buses while on a curved part of the road. When he was asked to explain, he casually argued that the truck ahead of him was too slow while the buses were directly

behind the truck. He was admonished, reminded to improve his work attitude, and sternly warned that a more severe disciplinary measure would be imposed upon repetition of a similar offense;

5. October 13, 2013 — not stopping for inspection;

6. The Human Resource (HR) Manager raised to Area Manager Burton Go-Soco (Soco) a more serious incident involving a complaint for attempted homicide and arrogance filed by spouses Castro against Abergos and a co-driver, Renato Alperez, at the LTFRB-Legaspi City. While the complaint was dismissed, it resulted to an investigation since it constituted an act of impropriety which tarnished the company's image;

7. On February 7, 2014, Soco personally witnessed Abergos' arrogant behavior when the latter threw the tickets on the table and began to shout at Inspector Tierra who was only conducting a ticket inspection in his assigned bus;

8. On October 9, 2014, another passenger complained Abergos for being arrogant. A passenger, who had a ticket from Cubao to Tacloban only, was asking for a discount from Tacloban to Ormoc because he ran out of cash. Abergos denied the passenger's request in a loud voice;

9. On February 7, 2015, he was suspended from March 12 to 16, 2015 for displaying arrogant behavior towards his superiors. He was directed to return to the company's HR Department for reassignment on March 17, 2015;

10. Various incident reports about his attitude towards his co-workers, superiors, and passengers were later reported; and

11. On August 27, 2016, in violation of the company's rule for passengers to board the ferry that arrived the earliest at the Matnog Port and despite the Star Ferry's earlier arrival, he insisted that the passengers be loaded in the FastCat Ferry. He was suspended from September 1 to 15, 2016.

[Petitioners] asserted that on September 16, 2016, Abergos was served an order reassigning him to [DLTB] Co.'s Batangas Operation Center in Nasugbu, Batangas. Instead of complying with the return to work order, Abergos refused to report for work. As a consequence, [DLTB] Co. sent him a notice to explain on September 27, 2016 directing him to submit within five (5) days from notice a written

explanation for his unauthorized absences. To their surprise, [petitioners] found that Abergos filed a complaint for constructive illegal dismissal and payment of his monetary claims.

[Petitioners] argued that the NLRC erred in modifying the decision of the Labor Arbiter and deleting the award of separation pay. They maintained that the Labor Arbiter correctly awarded separation pay based on a finding that Abergos' reinstatement would not be in the best interest of the parties. They reasoned that his reckless disregard for the safety of the passengers and the company's property justified the award of separation pay in lieu of reinstatement.

Taking into consideration the documentary evidence presented by [petitioners], the NLRC rendered the now assailed Resolution [dated May 24, 2017] reinstating the payment of separation pay in lieu of reinstatement. The dispositive portion of the resolution reads:

> *WHEREFORE, finding merit in the Motion for Reconsideration, We modify our Decision promulgated on February 28, 2017 and reinstate the Labor Arbiter's Decision granting separation pay at one (1) month pay per year of service, a fraction of six (6) months being considered as one (1) year plus backwages reckoned from his dismissal until finality of this decision in lieu of reinstatement plus 10% attorney's fees.*
>
> *SO ORDERED.*[4]

Without moving for reconsideration, Abergos filed a petition for *certiorari* under Rule 65 before the CA.

CA Decision

In the assailed Decision, the CA found that the NLRC committed grave abuse of discretion when it considered the belated evidence submitted by petitioners in ruling that strained relations existed.[5]

The CA found that petitioners did not cite an adequate reason for its failure to file a position paper before the Labor Arbiter (LA). Moreover, petitioners only presented evidence on the

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[4] Id. at 84-88.

[5] Id. at 89.

existence of strained relations when the NLRC modified the LA Decision by ordering reinstatement and again without any valid explanation. Petitioners could have easily submitted these pieces of evidence before the LA, but they failed to do so.[6]

It was therefore capricious and whimsical for the NLRC to admit and give weight to petitioners' belatedly submitted evidence when they opted not to even appeal the LA Decision. Further, the CA found that the evidence that petitioners belatedly submitted failed to demonstrate that the relationship between the parties has reached the point where it is best left severed. The CA found that Abergos has been penalized for all his infractions. In fact, Abergos has been penalized with a 15-day suspension for the infraction that gave rise to this case and transferred him to a different operations center.[7] For the CA, since DLTB Co.'s own rules impose penalties other than termination of employment, it should not impose the same.[8]

The doctrine of strained relations, according to the CA, cannot be used recklessly or applied loosely to deprive an illegally dismissed employee of his means of livelihood and deny him reinstatement.[9] It should not be given an overarching interpretation to include the resultant "strained relations" in most labor disputes because to do so would make reinstatement an impossibility.[10]

The dispositive portion of the CA Decision states:

WHEREFORE, the petition for *certiorari* is **GRANTED**. The assailed Resolution of the NLRC in NLRC LAC No. 02-000504-17 is **REVERSED** and **SET ASIDE**. Its Decision dated February 28, 2017 is **REINSTATED**.

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[6] Id. at 90.

[7] Id. at 90-91.

[8] See id. at 91.

[9] Id.

[10] See id. at 92.

SO ORDERED.[11]

Petitioners filed a motion for reconsideration but this was denied.

Hence, this Petition.

Abergos was directed to file his comment in a Resolution[12] dated July 3, 2019, but he failed to do so. The Court therefore deemed the filing of such comment as waived in a Resolution[13] dated October 5, 2020.

Issues

Petitioners raised the following issues:

a. whether the CA erred in entertaining Abergos's petition for *certiorari* despite his failure to move for the reconsideration of the NLRC's Resolution dated May 24, 2017;

b. whether the CA erred in reversing the NLRC's award of separation pay in lieu of reinstatement; and

c. whether there exists a supervening event that rendered the CA's directive of reinstatement impossible.

The Court's Ruling

The Petition is meritorious.

A motion for reconsideration is required before filing a petition for certiorari.

The records show that Abergos failed to file a motion for reconsideration prior to filing the petition for *certiorari* assailing the NLRC's Resolution dated May 24, 2017. The 2011 NLRC Rules of Procedure, as amended (2011 NLRC Rules), allows

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[11] Id. at 93.

[12] Id. at 597.

[13] Id. at 600.

the filing of a motion for reconsideration of the NLRC decision, as follows:

> SECTION 15. *Motions for Reconsideration*. — Motion for reconsideration of any decision, resolution or order of the Commission shall not be entertained except when based on palpable or patent errors; provided that the motion is filed within ten (10) calendar days from receipt of decision, resolution or order, with proof of service that a copy of the same has been furnished, within the reglementary period, the adverse party; and provided further, that only one such motion from the same party shall be entertained.[14]

It is settled that a motion for reconsideration, when allowed to be filed, is an indispensable condition to the filing of a petition for *certiorari*. As the Court held in *Sim v. National Labor Relations Commission*:[15]

> Under Rule 65, the remedy of filing a special civil action for *certiorari* is available only when there is no appeal; or any plain, speedy, and adequate remedy in the ordinary course of law. A "plain" and "adequate remedy" is a motion for reconsideration of the assailed order or resolution, the filing of which is an indispensable condition to the filing of a special civil action for *certiorari*. This is to give the lower court the opportunity to correct itself.[16] (Citations omitted)

There are, however, exceptions to this rule, as follows:

(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;

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[14] 2011 NLRC RULES OF PROCEDURE, Rule VII.

[15] G.R. No. 157376, October 2, 2007, 534 SCRA 515.

[16] Id. at 521.

(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 proceeding was *ex parte* or in which the petitioner had no opportunity to object; and

(i) where the issue raised is one purely of law or public interest is involved.[17]

Here, Abergos failed to provide any reason in his petition for *certiorari*[18] for his failure to file a motion for reconsideration. Curiously, despite being apparent in the CA's narration of facts that Abergos did not file a motion for reconsideration before filing the petition for *certiorari*, the CA did not discuss how the failure to move for reconsideration affected the propriety of the petition for *certiorari*. The CA even proceeded to rule on the merits and nullify the NLRC's Resolution. This is error.

In a similar case, the Court found that the CA correctly dismissed a petition for *certiorari* that was filed without the filing of a motion for reconsideration before the trial court. The Court held in *Cervantes v. Court of Appeals*[19] (*Cervantes*):

An examination of the records, specifically the petition for *certiorari* filed with the Court of Appeals, reveals that petitioner not only failed to explain his failure to file a motion for reconsideration of the August 27, 2004 Order of the trial court; he also failed to show

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[17] Id. at 521-522, citing *Abacan, Jr. v. Northwestern University, Inc.*, G.R. No. 140777, April 8, 2005, 455 SCRA 136, 149.

[18] *Rollo*, pp. 280-293.

[19] G.R. No. 166755, November 18, 2005, 475 SCRA 562.

sufficient justification for dispensing with the requirement. Neither did he show that the case falls under any of the above exceptions. It was only in the motion for reconsideration of the November 22, 2004 Resolution of the Court of Appeals and in the instant petition that he explained why he dispensed with the filing of prior motion for reconsideration.

It must be emphasized that a writ of *certiorari* is a prerogative writ, never demandable as a matter of right, never issued except in the exercise of judicial discretion. Hence, he who seeks a writ of *certiorari* must apply for it only in the manner and strictly in accordance with the provisions of the law and the Rules. Petitioner may not arrogate to himself the determination of whether a motion for reconsideration is necessary or not. To dispense with the requirement of filing a motion for reconsideration, petitioner must show a concrete, compelling, and valid reason for doing so, which petitioner failed to do. Thus, the Court of Appeals correctly dismissed the petition.[20] (Citations omitted)

Similarly, the CA should have dismissed the petition for *certiorari* outright. There is nothing on record to justify a relaxation of the rules. Just like in *Cervantes*, Abergos failed to provide any justification for not filing a motion for reconsideration or that his case falls under any of the exceptions. Abergos, who sought the extraordinary writ of *certiorari*, must apply for it in the manner and strictly in accordance with the provisions of the law and the Rules of Court. He failed to show any concrete, compelling and valid reason for dispensing with the motion for reconsideration.

Likewise, the CA disregarded a requirement without any explanation for such action. A relaxation of the rules may be done only in the most persuasive of reasons and strict compliance is always enjoined to facilitate the orderly administration of justice.[21] In this regard, the CA committed an error.

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[20] Id. at 570.

[21] *Saint Louis University, Inc. v. Olairez*, G.R. Nos. 162299 & 174758, March 26, 2014, 720 SCRA 74, 90.

Procedural rules are tools designed to facilitate the adjudication of cases. Courts and litigants alike are enjoined to abide strictly by the rules.[22] Although a relaxation of the rules may be allowed, it was never intended that such relaxation benefit erring litigants who violate it with impunity, much less without any explanation.[23] And while litigation is not a game of technicalities, it is also true that each case must be prosecuted in accordance with the prescribed procedure, especially here where Abergos sought to avail of an extraordinary remedy of *certiorari*. His failure to comply with the requirements to avail of such remedy is fatal to his petition.[24]

In the context of labor cases, the strict compliance with the requirements of a petition for *certiorari* bears more significance. Following the 2011 NLRC Rules, the NLRC's decisions attain finality 10 days from its receipt by the counsel or the parties or their representatives. Rule VII of the 2011 NLRC Rules states:

> SECTION 14. *Finality of Decision of the Commission and Entry of Judgment*. — a) Finality of the Decisions, Resolutions or Orders of the Commission. — Except as provided in Section 9 of Rule X, the decisions, resolutions or orders of the Commission shall become final and executory after ten (10) calendar days from receipt thereof by the counsel or authorized representative or the parties if not assisted by counsel or representative.
>
> b) Entry of Judgment. — Upon the expiration of the ten (10) calendar day period provided in paragraph (a) of this Section, the decision, resolution, or order shall be entered in a book of entries of judgment.
>
> In the absence of return cards, certifications from the post office or the courier authorized by the Commission or other proofs of service to the parties, the Executive Clerk or Deputy Executive Clerk shall consider the decision, resolution or order as final and executory after sixty (60) calendar days from date of mailing. (14a) (As amended by NLRC En Banc Resolution No. 005-14, Series of 2014)

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[22] *Nuque v. Aquino*, G.R. No. 193058, July 8, 2015, 762 SCRA 209, 219-220.

[23] See id. at 220.

[24] See id.

In fact, Rule XI of the 2011 NLRC Rules states that the NLRC's decisions shall be executed despite the filing of a petition for *certiorari* unless a restraining order is issued.

> SECTION 4. *Effect of Petition for Certiorari on Execution.* — A petition for *certiorari* with the Court of Appeals or the Supreme Court shall not stay the execution of the assailed decision unless a restraining order is issued by said courts.

It is in the context of the foregoing that the only remedy available to a party aggrieved in a decision of the NLRC is a petition for *certiorari* before the CA, and for which the petitioner must show that such remedy is the only plain, speedy, and adequate remedy.[25] As shown above, Abergos's failure to file a motion for reconsideration meant that when he filed his petition for *certiorari*, it was not the only plain, speedy, and adequate remedy available.

Having failed to perfect the remedy available to him, the Court is constrained to reinstate the NLRC Resolution dated May 24, 2017, which, following the 2011 NLRC Rules as quoted above, should have already attained finality and executed, as there is no indication in the records that the CA had issued any injunction.

If the NLRC Resolution dated May 24, 2017 has not yet been executed, interest on the monetary awards shall earn interest at six percent (6%) *per annum* counted from finality of the NLRC Resolution until fully paid.[26]

And even if the Court were to excuse Abergos's failure to file a motion for reconsideration and the CA's failure to dismiss it outright, the NLRC did not commit grave abuse of discretion when it received evidence on appeal. As the Court held in *Nicol v. Footjoy Industrial Corp.*:[27]

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[25] See *St. Martin Funeral Home v. National Labor Relations Commission*, G.R. No. 130866, September 16, 1998, 295 SCRA 494.

[26] See *Nacar v. Gallery Frames*, G.R. No. 189871, August 13, 2013, 703 SCRA 439.

[27] G.R. No. 159372, July 27, 2007, 528 SCRA 300.

Indeed, it only bears stressing that the NLRC is not precluded from receiving evidence on appeal as technical rules of evidence are not binding in labor cases. On the contrary, the Labor Code explicitly mandates it to "use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, all in the interest of due process."[28] (Citations omitted)

Important to note as well, the LA had awarded separation pay in lieu of reinstatement and to which petitioners did not file an appeal. Petitioners, in effect, already admitted to their liability to Abergos for backwages, separation pay, and attorney's fees.

However, when the NLRC modified the LA Decision to direct reinstatement, it was then that petitioners submitted the pieces of evidence to show the existence of strained relations. And to the mind of the Court, the NLRC did not commit grave abuse of discretion when it received evidence, as enumerated above, as these were timely submitted when petitioners moved for the reconsideration of the NLRC's directive to reinstate Abergos. Further, the NLRC did not commit grave abuse of discretion in its ruling on the existence of strained relations, as this was supported by substantial evidence.

The Court shall no longer discuss petitioners' argument on the existence of a supervening event as what it claims as a supervening event happened in 2019,[29] two years after the NLRC Resolution had attained finality in due course.

WHEREFORE, premises considered, the Petition is **GRANTED**. The Decision dated June 18, 2018 and Resolution dated February 13, 2019 of the Court of Appeals in CA-G.R. SP No. 151770 are **REVERSED** and **SET ASIDE**. The Resolution dated May 24, 2017 of the National Labor Relations Commission in NLRC LAC No. 02-000504-17 is **REINSTATED**. The Labor Arbiter is directed to recompute the monetary awards,

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[28] Id. at 312.

[29] See *rollo*, p. 42.

including interest, following the guidelines in this Decision, if still unpaid.

SO ORDERED.

Peralta, C.J. (Chairperson), Carandang, Zalameda, and *Gaerlan, JJ.*, concur.

FIRST DIVISION

[G.R. No. 245858. December 2, 2020]

JOHN A. OSCARES, *Petitioner, v.* **MAGSAYSAY MARITIME CORP., SK SHIPPING (SINGAPORE) PTE. LTD., AND/OR ARNOLD B. JAVIER**, *Respondents*.

APPEARANCES OF COUNSEL

Bermejo Laurino-Bermejo Law Offices for petitioner.
Reyes Reyes & Rivera-Lumibao Law Offices for respondents.

D E C I S I O N

CARANDANG, *J.:*

Before this Court is a Petition for Review on *Certiorari*[1] assailing the Decision[2] dated August 29, 2018 and Resolution[3] dated February 27, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 151822. The CA reversed and set aside the Decision[4] dated March 30, 2017 and Resolution[5] dated July 14, 2017 of the Office of the Panel of Voluntary Arbitrators (Panel) awarding US$131,797.00 as total and permanent disability fees or its equivalent in Philippine Peso at the time of payment, 10% thereof as attorney's fees or its equivalent, and ₱100,000.00 as moral damages, to petitioner John A. Oscares (Oscares).

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[1] *Rollo*, pp. 32-81.

[2] Penned by Associate Justice Gabriel T. Robeniol, with the concurrence of Associate Justices Ricardo R. Rosario (now a Member of this Court) and Ramon Paul L. Hernando (now a Member of this Court); *id.* at 8-21.

[3] Penned by Associate Justice Gabriel T. Robeniol, with the concurrence of Associate Justices Ricardo R. Rosario (now a Member of this Court) and Myra V. Garcia-Fernandez; *id.* at 23-24.

[4] Id. at 267-286.

[5] Id. at 296-297.

Facts of the Case

On August 14, 2015, the Philippine Overseas Employment Administration (POEA) approved the contract of employment between Oscares and respondent SK Shipping (Singapore) Pte. Ltd., through its manning agent respondent Magsaysay Maritime Corporation (respondents). He was certified as fit to work by respondents' examining physician on August 29, 2015. As Second Assistant Engineer on board the vessel MV K. Garnet, he was responsible for the maintenance, operation of engineering, electrical and electronic systems of the vessel.[6]

On November 4, 2015, while the vessel was anchored in Panama, Oscares was singing in front of a videoke machine together with another crew member when he slipped and fell out of balance. As a result, he suffered major knee injuries. First aid was administered to him. On November 11, 2015, he was sent to a medical facility in San Luis Hospital, Mexico. He was diagnosed with fracture fragmentary of the tibia bone epiphysis in the right leg and fracture crack of the tibia bone epiphysis in the left leg. It was recommended that he undergo major knee surgery or osteosynthesis-fixation and sterilization. Oscares was declared unfit to work for 10 weeks.[7]

On December 10, 2015, Oscares was repatriated to Manila. Upon arrival, he reported to respondents who referred him to NGC Medical Specialist Clinic, Inc. (NGC) for post-employment medical examination and management.[8] Oscares underwent x-ray of both knees on December 14, 2015. The result revealed that he had complete oblique fracture of the right medical condyle. Thus, he was recommended to undergo major knee surgery. Respondents insisted that Oscares should shoulder the cost of his surgery. Since his protests fell on deaf ears, he was compelled to undergo the necessary surgery on December 29, 2016. Oscares

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[6] Id. at 9.

[7] Id.

[8] Id.

also shouldered his physical rehabilitation which ensued thereafter. Nonetheless, he was required to report to NGC.[9]

On March 16, 2016, NGC issued an interim disability assessment of Grade 10-complete immobility of a knee joint in full flexion. However, Oscares' attending physician in Seamen's Hospital, Iloilo declared him unfit for duty on April 12, 2016. The removal of his plates was recommended thereafter.[10]

On July 28, 2016, Dr. Nicomedes G. Cruz (Dr. Cruz) issued a final disability assessment of Grade 10 for Oscares. Oscares then sought the opinion of Dr. Manuel Magtira, an orthopaedist, who issued a medical report[11] dated July 12, 2016 recommending permanent disability and considered him permanently unfit in any capacity for further sea duties. Dr. Victor Pundavela (Dr. Pundavela), another doctor consulted by Oscares, issued a medical report[12] on July 14, 2016 likewise stating that he is permanently disabled and unfit for sea duty in any capacity.[13]

Consequently, Oscares sent a demand letter[14] dated July 25, 2016 to respondents for a copy of his final assessment and referral to a third doctor. Since respondents took no action, he filed a notice to arbitrate against them. After mandatory conciliation/mediation, they reached a deadlock.[15]

On July 14, 2017, the Panel ruled that Oscares is entitled to total and permanent disability benefits worth US$131,797.00 based on the Collective Bargaining Agreement (CBA). In addition, it awarded moral damages of ₱100,000.00 for respondents' gross negligence in its delay in addressing and

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[9] Id. at 10.

[10] Id.

[11] Id. at 148-149.

[12] Id. at 150-151.

[13] Id. at 10-11.

[14] Id. at 152.

[15] Id. at 11.

refusing to shoulder the medical needs of Oscares, as well as for circumventing the provisions of the POEA-Standard Employment Contract (POEA-SEC) and the CBA. The Panel likewise awarded ten percent (10%) of the total award as attorney's fees since he was compelled to incur litigation expenses to protect his rights.[16]

According to the Panel, a work-related injury is one arising out of and in the course of employment. An injury occurs in the course of employment when it takes place within the period of employment, at a place where the employee reasonably may be in the performance of his duties, and while fulfilling those duties or engaged in something incidental thereto.[17] Under the personal comfort doctrine,[18] acts of personal ministration for the comfort or convenience of the employee is an incident of employment. Thus, the Panel held that when Oscares suffered from his injury, he was engaged in an act necessary to his physical well-being and incidental to his employment.[19]

The Panel also found no evidence to show that respondents gave Oscares a copy of his final disability assessment. Moreover, Dr. Cruz was not an expert on Oscares' case since his area of expertise is general and cancer surgery. The Panel was more convinced with the findings of Oscares' attending physician in Seamen's Hospital, Dr. Magtira, and Dr. Pundavela that his disability was total and permanent.[20]

After the Panel denied its motion for reconsideration,[21] respondents filed a petition for review[22] with the CA. Respondents

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[16] Id. at 286.

[17] Id. at 276-277.

[18] The term "personal comfort doctrine" was used by respondents in their motion for reconsideration before the panel of voluntary arbitrators.

[19] *Rollo*, p. 280.

[20] Id. at 281-283.

[21] Id. at 296-297.

[22] Id. at 300-325.

argued that the Panel erred in applying the personal comfort doctrine since it only covers acts which are related to one's personal comfort for a brief momentary period, such as using the restroom. Oscares' act of singing while jumping is not included, is a purely personal and social function, and is not incidental to his work.[23] Further, Oscares should not have consulted private physicians before respondents' designated physician issued his final assessment. Thus, the former's assessment was premature.[24] Also, Dr. Cruz and NGC's assessment should prevail since they conducted a more adequate, thorough, and exhaustive examination on Oscares. Moreover, Oscares submitted the CBA only after it submitted its position paper. Worse, it is not even the CBA stated in the contract of employment. With respect to the costs of Oscares' treatment, respondents asserted that it presented proof of payment of sickness allowance, medical and transportation reimbursements.[25]

On August 29, 2018, the CA granted the petition and reversed and set aside the decision of the panel of voluntary arbitrators. The CA held that Oscares' injury was not work-related, work-caused, or work-aggravated. It has no connection whatsoever to his official duties. Consequently, it is not compensable.[26]

Oscares filed a motion for reconsideration,[27] but it was denied by the CA. As such, he filed a petition for review on *certiorari* before Us. *First,* Oscares argues that according to the case of *Iloilo Dock & Engineering Co. v. Workmen's Compensation Commission*,[28] when the employer pays for the employee's time from the moment that he leaves his home until he returns home, any accidents occurring during the employee's rest and recreation should be considered work-related. Seafarers are being paid

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[23] Id. at 307-309.

[24] Id. at 312-313.

[25] Id. at 317-319.

[26] Id. at 20.

[27] Id. at 391-398.

[28] 135 Phil. 95 (1968).

from their embarkation on the vessel until their disembarkation. They must stay on board the vessel even during their rest and recreation. Consequently, any injury incurred by seafarers during their rest and recreation should be compensable as long as their actions are not contrary to law or that they intentionally inflicted injury on themselves.[29] *Second*, it is presumed that an injury was directly caused or rose out of the employment or was aggravated by it if it was established through evidence that the injury occurred in the course of employment. Oscares undoubtedly incurred his injury while he was in the course of his employment on the vessel. Hence, the presumption applies.[30] *Third*, respondents' designated physician failed to issue a categorical certification that Oscares was fit to work. The physician also failed to discuss the implication of his disability on his capacity to return to work. In fact, the assessment did not clarify Oscares' medical condition.[31] Due to respondents' failure to issue a final assessment in accordance with the law, Oscares is presumed to have total and permanent disability and is entitled to a Grade 1 disability rating. In any event, Oscares can no longer perform his former duties.[32] *Fourth*, respondents failed to respond to Oscares' offer to refer his case to a third physician. As such, Oscares cannot be faulted for filing the complaint without an opinion from a third doctor.[33] Also, the certification from his chosen physicians should prevail in light of respondents' refusal to respond to Oscares' request to consult a third doctor.[34]

Respondents filed their comment[35] wherein they argue *first*, that Oscares cannot argue for the first time before this Court

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[29] *Rollo*, p. 52.

[30] Id. at 57-58.

[31] Id. at 60.

[32] Id. at 64-69.

[33] *Id.* at 76-77.

[34] *Id.* at 79.

[35] Id. at 412-443.

that his right to due process was violated when respondents' designated physician didn't give him a copy of the final assessment. Oscares was well-aware of the Grade 10 disability assessment made by the designated physician because this was explained to him on his last medical visit.[36] Also, contrary to Oscares' claim, the POEA-SEC does not require the company-designated physician to discuss the implication of his disability on his capacity to work. Section 20A of the POEA-SEC only requires an assessment of fitness to work or degree of disability and the assessment made by respondents' designated physician complied with this requirement.[37] *Second*, *Iloilo Dock & Engineering Co.* does not state that rest and recreation forms part of employment.[38] In any event, it is not applicable in this case because the issue here is different. The issue in *Iloilo Dock & Engineering Co.* was the compensability of the death of the employee in relation to his proximity to the workplace when he died. In this case, the issue is whether Oscares' injury incurred during his rest and recreation is compensable.[39] *Third*, respondents insist that Oscares' injury was not work-related. He was not hired to sing on board so it cannot be said that his injury was incidental to his employment. His act of singing while jumping has no relation to his duties as Second Assistant Engineer. It was a purely personal and social function. Therefore, the injury resulting from it is not compensable.[40] *Fourth*, the mere fact that respondents did not rehire Oscares is not conclusive proof of his disability. Oscares did not show that he sought employment elsewhere but was unsuccessful due to his condition. Hence, he has no basis to claim that he has a total and permanent disability.[41] *Fifth*, Oscares failed to comply with the POEA-SEC's requirement that a final assessment must be made by

[36] Id. at 417-418.

[37] Id. at 430-431.

[38] Id. at 422.

[39] Id. at 424.

[40] Id. at 425-429.

[41] Id. at 431-433.

the company-designated physician before it can be disputed through a secondary assessment. Oscares consulted with his chosen physicians on July 12 and 14, 2016, which is before respondents' designated physician issued the final assessment on July 28, 2016, or 227 days after Oscares' repatriation.[42] Respondents even expressed their willingness to consult a third doctor before the Panel.[43] Accordingly, the assessment of respondents' designated physician should prevail over that of Oscares' chosen physicians.[44] *Sixth*, the CBA submitted by Oscares is different from the CBA in their contract. As such, he cannot claim benefits under it.[45] He is also not entitled to moral damages and attorney's fees because respondents dutifully complied with their obligations by giving him medical attention prior to the issuance of the final assessment.[46]

Issue

The sole issue before Us is whether the CA erred in setting aside the ruling of the Panel.

Ruling of the Court

We resolve to grant disability compensation to Oscares equivalent to Grade 10 as recommended by respondents' designated physician.

It is well-settled that in order for a seafarer's injury to be compensated, it must be shown that: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract.[47] A work-related injury is defined as one arising out

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[42] Id. at 434-435.

[43] Id. at 436.

[44] Id. at 438.

[45] Id. at 438-439.

[46] Id. at 441.

[47] *Guerrero v. Philippine Transmarine Carriers, Inc.*, G.R. No. 222523, October 3, 2018.

of and in the course of employment.[48] As for what can be considered in the course of employment, the Court in the case of *Iloilo Dock & Engineering Co.* held that it is when it takes place within the period of the employment, at a place where the employee reasonably may be, and while he is fulfilling his duties or is engaged in doing something incidental thereto. While the case of *Iloilo Dock & Engineering Co.* involves Act No. 3428 or the Workmen's Compensation Act, We have subsequently applied such definition in cases involving seafarers.[49] After all, entitlement to disability benefits by seafarers is a matter governed not only by the contract between the parties but also by Articles 197 to 199, Title II, Book IV of the Labor Code, in relation to Rule X of the Rules and Regulations Implementing Book IV of the Labor Code.[50] In the case of *Phil-Nippon Kyoei, Corp. v. Gudelosao*,[51] We recognized that the death benefits granted under the Labor Code are similar to those granted in the POEA-SEC, such that both are given when the death is due to a work-related cause during the term of the employee's contract.[52] Prior to the Labor Code, the Workmen's Compensation Act is the first law on workmen's compensation in the Philippines for work-related injury, illness, or death.[53] As such, We have also noted that the rule on compensation for work-related injuries of seafarers is analogous to the rule under the Workmen's Compensation Act, that a preliminary link between the illness and the employment must

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[48] 2010 POEA-SEC.

[49] *See Buenaventura, Jr. v. Career Philippines Shipmanagement, Inc.*, G.R. No. 224127, August 15, 2018; *Racelis v. United Philippine Lines, Inc.*, 746 Phil. 758, 768 (2014); *Canuel v. Magsaysay Maritime Corporation*, 745 Phil. 252 (2014); and *Sy v. Philippine Transmarine Carriers, Inc.*, 703 Phil. 190 (2013).

[50] *See Vergara v. Hammonia Maritime Services, Inc.*, G.R. No. 172933, October 6, 2008, 588 Phil. 895, 908 (2008).

[51] 790 Phil. 16 (2016).

[52] Id.

[53] Id.

first be shown before the presumption of work-relation can attach.[54]

In the case of *Luzon Stevedoring Corporation v. Workmen's Compensation Commission*,[55] the Court held that "acts reasonably necessary to health and comfort of an employee while at work, such as satisfaction of his thirst, hunger, or other physical demands, or protecting himself from excessive cold, are incidental to the employment and injuries sustained in the performance of such acts are compensable as arising out of and in the course of employment."[56] Similar to Iloilo Dock & Engineering Co., Luzon Stevedoring Corporation also involves Act No. 3428. Even so, we find that its ruling applies here since Act No. 3428, like the POEA-SEC, also makes personal injury from any accident arising out of and in the course of the employment compensable.[57]

In this case, Oscares' act of singing can be considered necessary to his health and comfort while on board the vessel. He incurred his injury while he was performing this act. Oscares neither willfully injured himself nor acted with notorious negligence. Notorious negligence is defined as something more than mere or simple negligence or contributory negligence; it signifies a deliberate act of the employee to disregard his own personal safety.[58] Jumping while singing cannot be considered as a reckless or deliberate act that is unmindful of one's safety. There is nothing inherently dangerous about jumping while singing. Respondents themselves did not allege that Oscares intentionally injured himself or was negligent. The truth is that

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[54] *See Magat v. Interorient Maritime Enterprises, Inc.*, G.R. No. 232892, April 4, 2018; *De Leon v. Maunlad Trans., Inc.*, 805 Phil. 531 (2017); and *Leonis Navigation Co., Inc. v. Obrero*, 794 Phil. 481 (2016).

[55] 193 Phil. 91 (1981).

[56] Id.

[57] Section 2, Act No. 3428, as amended.

[58] *Marlow Navigation Philippines, Inc. v. Heirs of Ganal*, 810 Phil. 956, 968 (2017).

he simply lost his balance. Accordingly, Oscares' injury is compensable. In fact, no less than respondents' designated physician assessed a disability of Grade 10 for Oscares' injury. Respondents' designated physician initially made this assessment on March 16, 2016, or 91 days after Oscares was repatriated.[59] Afterwards, Oscares continued to receive therapy[60] and consult with the company-designated physician.[61] The final disability assessment was made on July 28, 2016, or 231 days after Oscares' repatriation.[62] Notably, Oscares offered to consult another physician but respondents did not respond to his offer.[63] Respondents claim though that Oscares consulted his own physician even before respondents' designated physician issued the final assessment.[64]

Taking into consideration the medical certificates and laboratory test results detailing the extent and nature of Oscares' injury, We find that the impediment assessment of Grade 10 (20.15%) is reflective of his medical status and resulting incapacity. We reviewed the schedule of disability or impediment for injuries under the POEA-SEC, and We find a comparable disability equivalent to Grade 10 as follows:

LOWER EXTREMITIES

x x x x

23. Gomplete immobility of a knee joint in full extension . . . . . Gr. 10[65]

We apply the same grading disability to Oscares' injury. Following the POEA-SEC, the corresponding rate of

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[59] *Rollo*, p. 10.

[60] Id. at 110.

[61] Id. at 274.

[62] Id. at 10.

[63] Id. at 273.

[64] Id. at 436.

[65] 2010 POEA-SEC, Section 32.

compensation for his injury is US$10,075.00 or its peso equivalent. Oscares' injury does not qualify for a Grade 1 rating under Section 32 of the POEA-SEC. The medical conditions affecting the lower extremities under the POEA-SEC that are more severe in nature than Oscares' condition and qualify for a Grade 1 rating include loss of both feet at ankle joint or above, failure of *[sic]* fracture of both hips to unite, and paralysis of both lower extremities.

However, We do not agree with the Panel's reference to the CBA in determining the amount due to Oscares. The CBA submitted by Oscares was not signed by either respondents or the International Transport Worker's Federation.[66] It is also unclear if such CBA, which is entitled "P.N.O. "TCC" Collective Agreement," is the same referred to in the contract of employment, which is "IBF-FKSU/AMOSUP KSA." Therefore, the provisions of the 2010 POEA-SEC shall govern.

Pursuant to Section 20 (A) (3) of the 2010 POEA-SEC, Oscares is entitled to sickness allowance in an amount equivalent to his basic wage computed at the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician, but shall in no case exceed 120 days. Respondents have not submitted proof that they reimbursed Oscares for the expenses he incurred in seeking medical attention for his injury. In addition, Oscares is also entitled to a disability benefit of Grade 10, to be paid in Philippine currency at the exchange rate prevailing at the time of payment.

Oscares should likewise receive moral damages. Under Article 2220 of the Civil Code, moral damages may be awarded in breaches of contract when the defendant acted fraudulently or in bad faith. Even though respondents' designated physician recommended that Oscares undergo surgery, it was Oscares himself who shouldered his surgery. Respondents acted in bad faith when it failed to comply with their obligation under Section 20(A)(2) of the 2010 POEA-SEC which states that the

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[66] *Rollo*, p. 167.

medical attention needed by the seafarer after his repatriation shall be provided at cost to the employer. Aside from moral damages, Oscares should also receive attorney's fees. This is pursuant to Article 2208 of the Civil Code which provides for the recovery of attorney's fees in actions for indemnity under workmen's compensation and employer's liability laws.

Respondents, including Arnold Javier as the President of Magsaysay Maritime Corporation, shall be jointly and severally liable to Oscares in accordance with Section 10 of Republic Act (RA) No. 8042, as amended by RA No. 10022, which provides that "if the recruitment/placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages." In *Gargallo v. Dohle Seafront Crewing (Manila), Inc.*,[67] We explained that corporate officers or directors cannot, as a general rule, be personally held liable for the contracts entered into by the corporation because the corporation has a separate and distinct legal personality. However, "personal liability of such corporate director, trustee, or officer, along (although not necessarily) with the corporation, may validly attach when **he is made by a specific provision of law personally answerable for his corporate action**." As such, We upheld the joint and solidary liability of the officer in that case following Sec. 10 of RA No. 8042, as amended.[68] We similarly imposed joint and several liability on the foreign employer, local manning agency, and its officer/director in *Cariño v. Maine Marine Phils., Inc.*[69]

Respondents alleged that pursuant to a Writ of Execution issued by the National Conciliation and Mediation Board on October 3, 2017, they paid the full judgment award.[70] If it is

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[67] 793 Phil. 535, 543 (2016).

[68] *Id.*

[69] G.R. No. 231111, October 17, 2018.

[70] *Rollo*, p. 416.

true, Oscares must return the excess of what he received to respondents because he is only entitled to disability benefits of Grade 10, sickness allowance, moral damages, and attorney's fees. This is in accordance with Section 18, Rule XI of the 2011 National Labor Relations Commission Rules of Procedure, as amended by En Banc Resolution Nos. 11-12, Series of 2012 and 05-14, Series of 2014.[71] However, respondents have not submitted proof that it has paid the full judgment award to Oscares. Hence, We do not have any basis to order the return the excess of what they allegedly paid to Oscares.

WHEREFORE, the petition is **GRANTED**. The Decision dated August 29, 2018 and the Resolution dated February 27, 2019 of the Court of Appeals in CA-G.R. SP No. 151822 are **REVERSED** and **SET ASIDE**. The Decision dated March 30, 2017 and the Resolution dated July 14, 2017 of the Office of the Panel of Voluntary Arbitrators are **REINSTATED** with the **MODIFICATION** in that respondents Magsaysay Maritime Corp., SK Shipping (Singapore) Pte. Ltd., and/or Arnold B. Javier are jointly and severally held liable to pay petitioner John A. Oscares sickness allowance in an amount equivalent to his basic wage not exceeding 120 days and disability benefit equivalent to Grade 10 rating under the POEA-SEC.

SO ORDERED.

Peralta, C.J., Caguioa, Zalameda, and *Gaerlan, JJ.*, concur.

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[71] Restitution. — Where the executed judgment is totally or partially reversed or annulled by the Court of Appeals or the Supreme Court with finality and restitution is so ordered, the Labor Arbiter shall, on motion, issue such order of restitution of the executed award, except reinstatement wages paid pending appeal.

SECOND DIVISION

[G.R. No. 246553. December 2, 2020]

MARILYN B. MONTEHERMOSO, TANNY B. MONTEHERMOSO, EMMA B. MONTEHERMOSO OLIVEROS, EVA B. MONTEHERMOSO, TERESA B. MONTEHERMOSO CARIG, and SALVAR B. MONTEHERMOSO, *Petitioners, v.* **ROMEO BATUTO AND ARNEL BATUTO**, *Respondents*.

APPEARANCES OF COUNSEL

Belinda M. Nagui for petitioner.
Florante A. Miano for respondents.

R E S O L U T I O N

LAZARO-JAVIER, *J.*:

Under the doctrine of finality of judgment or immutability of judgment, a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land. Any act which violates this principle must immediately be struck down.[1]

Here, the case arose from a complaint for cancellation of title, reconveyance, and damages. Respondents Romeo Batuto and Arnel Batuto claimed that their property, a forty-four thousand four hundred ten-square meter (44,410 sq.m.) piece of land was erroneously included in petitioners' Marilyn B. Montehermoso, Tanny B. Montehermoso, Emma B. Montehermoso Oliveros, Eva B. Montehermoso, Teresa B. Montehermoso Carig,

[1] *People v. Santiago*, G.R. No. 228819, July 24, 2019.

and Salvar B. Montehermoso OCT No. 5781. By Decision[2] dated March 8, 2015, the Regional Trial Court (RTC) found merit in respondents' claim and consequently ordered the reconveyance of the property to them. Petitioners thereafter launched a barrage of court actions all directed to set aside the trial court's decision, *viz.*:

First, Petitioners appealed the trial court's decision which appeal was dismissed per Court of Appeals' Resolution dated August 5, 2016. The same became final and executory on September 9, 2016[3] and the corresponding writ of execution and writ of demolition[4] were issued.

Second, Petitioner Tanny Montehermoso alone filed a petition for relief from judgment about a year later, which the Court of Appeals dismissed under Resolution[5] dated September 27, 2017. Petitioner Tanny's motion for reconsideration was also denied by Resolution[6] dated April 24, 2018.

Third, Then petitioners sought to reverse the foregoing Resolutions *via* a petition for review on *certiorari* filed with the Court which denied the same under Resolution dated August 6, 2018 for failure to show that the Court of Appeals committed reversible error which warranted the Court's exercise of its discretionary appellate jurisdiction.[7]

Fourth, But petitioners did not stop there. They again filed, this time, a petition for annulment of judgment before the Court of Appeals, raising as ground the trial court's alleged lack of

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[2] *Rollo*, pp. 64-72.

[3] *Id.* at 96.

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

[5] Penned by Associate Justice Marlene B. Gonzales-Sison with concurrence of Associate Justice Ramon A. Cruz and Associate Justice Henri Jean Paul B. Inting (now a Member of this Court), *id.* at 88-90.

[6] *Id.* at 92-94.

[7] *Id.* at 102.

jurisdiction over the case. In its assailed Resolution[8] dated February 13, 2019, the Court of Appeals dismissed the petition. Petitioners' motion for reconsideration was likewise denied under Resolution[9] dated April 10, 2019.

Finally, Petitioners, once again, are back before the Court *via* Rule 45, assailing the Court of Appeals' denial of their petition for annulment of judgment.

Invariably, petitioners, for over five (5) years since the trial court rendered its Decision dated March 8, 2015, have never stopped attacking it before different *fora* and through different modes of review. This notwithstanding that the assailed decision had long attained finality on September 9, 2016[10] and had already been implemented.[11] As it was, petitioners have stubbornly refused to respect the immutability of this judgment as they keep trifling and playing around the judicial process over and over again. But enough is enough.

Spouses Aguilar v. The Manila Banking Corporation[12] aptly held:

> It is an important fundamental principle in the judicial system that every litigation must come to an end. Access to the courts is guaranteed. But there must be a limit thereto. Once a litigant's rights have been adjudicated in a valid and final judgment of a competent court, he should not be granted an unbridled license to come back for another try. The prevailing party should not be harassed by subsequent suits. For, if endless litigations were to be encouraged, then unscrupulous litigants will multiply to the detriment of the administration of justice.

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[8] Penned by Associate Justice Fernanda Lampas-Peralta and concurred in by Associate Justices Rodil V. Zalameda and Henri Jean Paul B. Inting (now Members of this Court), *id.* at 31-33.

[9] *Id.* at 35-36.

[10] *Id.* at 96.

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

[12] 533 Phil. 645, 669-670 (2006).

The Court reminds petitioners' counsel of the duty of lawyers who, as officers of the court, must see to it that the orderly administration of justice must not be unduly impeded. It is the duty of a counsel to advise his client, ordinarily a layman on the intricacies and vagaries of the law, on the merit or lack of merit of his case. If he finds that his client's cause is defenseless, then it is his bounden duty to advise the latter to acquiesce and submit, rather than traverse the incontrovertible. A lawyer must resist the whims and caprices of his client, and temper his client's propensity to litigate. A lawyer's oath to uphold the cause of justice is superior to his duty to his client; its primacy is indisputable.

There should be a greater awareness on the part of litigants and counsels that the time of the judiciary, much more so of this Court, is too valuable to be wasted or frittered away by efforts, far from commendable, to evade the operation of a decision final and executory, especially so, where, as shown in the present case, the clear and manifest absence of any right calling for vindication, is quite obvious and indisputable.

Verily, by the undue delay in the execution of a final judgment in their favor, respondents have suffered an injustice. The Court views with disfavor the unjustified delay in the enforcement of the final decision and orders in the present case. Once a judgment becomes final and executory, the prevailing party should not be denied the fruits of his victory by some subterfuge devised by the losing party. Unjustified delay in the enforcement of a judgment sets at naught the role of courts in disposing justiciable controversies with finality.

In ***Central Surety and Insurance Company v. Planters Products, Inc.***,[13] the Court found that petitioner triggered the series of delays in the execution of the RTC's final decision by filing numerous motions and appeals in the appellate courts. Petitioner was clearly merely resorting to dilatory maneuvers to skirt its legal obligation to pay respondent the adjudged sum of money. Thus, the Court ordered triple costs against petitioner and warned its counsel of severe disciplinary sanctions for any further attempt to delay the final disposition of the case.

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[13] 546 Phil. 479, 485 (2007).

In ***Reyes v. Alsons Development and Investment Corporation***,[14] the Court warned therein petitioner and her counsel that they shall be severely dealt with if they once again attempt to revive the case. In that case, petitioner and her counsel were found to have trifled with the inter-related rules and jurisprudence on forum shopping and *res judicata* all for the purpose of frustrating the satisfaction of a final judgment. In the process, they unduly taxed the manpower and financial resources not only of the judiciary, but those of the prevailing party, as well.

Here, petitioners, too, should now stop making a mockery of the judicial system through their pernicious attempts to revive the trial court's long settled and implemented decision. A violation of this injunction will be sanctioned accordingly.

As for petitioners' counsel, Atty. Belinda M. Nagui, she is reminded of her primordial duty as an officer of the court who must see to it that the orderly administration of justice must never be unduly impeded. As such, she must resist the whims and caprices of her clients, and temper her clients' propensities to litigate. Her oath to uphold the cause of justice is superior to her duty to her client; its primacy is indisputable.[15]

WHEREFORE, the petition for review on *certiorari* is **DENIED** and the assailed Resolutions dated February 13, 2019 and April 10, 2019 of the Court of Appeals in CA-G.R. SP No. 159373, **AFFIRMED**.

Petitioners as well as their counsel Atty. Belinda M. Nagui or any other counsel who may take over this case are **STERNLY WARNED** that any further attempt to revive this case in whatever form and before any forum will be severely sanctioned.

SO ORDERED.

Gesmundo (Acting Chairperson), Lopez, and *Rosario, JJ.*, concur.

Perlas-Bernabe J. (Chairperson) on official leave.

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[14] 546 Phil. 76, 86 (2007).

[15] *V.C. Ponce Company, Inc. v. Reyes*, 583 Phil. 644, 653 (2008).

FIRST DIVISION

[G.R. No. 247907. December 2, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **ANTONIO ANSUS**, *Accused-Appellant*.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CARANDANG, *J.*:

This is an appeal[1] seeking to reverse and set aside the Decision[2] dated December 7, 1918 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09711. The assailed Decision of the CA affirmed the Decision[3] dated July 10, 2017[4] of the Regional Trial Court (RTC) of Sorsogon City, Branch 53 finding accused-appellant Antonio Ansus (Ansus) guilty beyond reasonable doubt of murder and sentencing him to suffer the penalty of *reclusion perpetua*.

On November 3, 2011, Ansus was charged with the murder of Antonio M. Olitan, Jr.:

That on or about 9:30 o'clock in the evening of August 15, 2011 at Barangay Pandan, Municipality of Castilla, Province of Sorsogon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a deadly weapon, with intent to

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[1] *Rollo*, pp. 27-28.

[2] Penned by Associate Justice Amy C. Lazaro-Javier (now a Member of this Court), with the concurrence of Associate Justices Remedios A. Salazar-Fernando and Marie Christine Azcarraga-Jacob; *id.* at 3-26.

[3] Penned by Judge Rofebar F. Gerona; CA *rollo*, pp. 54-67.

[4] Penned by Presiding Judge Rofebar F. Gerona; *id.* at 54-67.

kill, and by treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and strike ANTONIO M. OLITAN, JR., inflicting upon the latter mortal wounds in the head, which caused his immediate death, to the damage and prejudice of his legal heirs.

CONTRARY TO LAW.[5]

When arraigned, Ansus pleaded not guilty.[6] During pre-trial conference,[7] the following were stipulated: (1) the identity of appellant as the person arraigned, (2) the fact of death of Antonio Olitan (Olitan) based on his Death Certificate[8] but not as regards the time, date, and place of the incident, (3) the existence and due execution of the Spot Report[9] but not its contents, and (4) the existence and due execution of the Blotter Certification[10] but not the contents thereof. Trial on the merits then ensued.

The prosecution presented: (1) Myrna Olitan; (2) Dr. Salve Bermundo-Sapinoso; (3) Magno Lacsa; and (4) Erlindo Buatis as its witnesses.

During trial, Myrna Olitan (Myrna) testified that on August 15, 2011 at 9:30 p.m., she and her husband Olitan were inside their home watching television when they noticed that a stone was hurled on their roof. After this happened for the second time, Myrna and Olitan went outside and they saw Ansus in front of his house, which is 12 meters away from their home. Olitan asked Ansus why he was hurling stones at their house. Both Myrna and Olitan walked towards Ansus.[11] Suddenly, Myrna saw — from 12 meters away — Ansus strike Olitan once at the back on the neck with a crow bar. Seeing her husband

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[5] Records, p. 1.

[6] Id. at 40-41.

[7] Id. at 47-48.

[8] Id. at 25.

[9] Id. at 26.

[10] Id. at 27.

[11] TSN dated May 23, 2012, pp. 4-6.

fall on the ground, Myrna felt scared, urinated, and immediately went inside their house.[12]

Fifteen minutes later, Myrna heard the voices of the members of the Philippine Army. Six of them went to her house along with Barangay Tanods Danilo Atisado and Jimmy Timban. Myrna went outside of their home and brought her husband to the hospital but he was declared dead on arrival.[13] When asked if she said anything to the responding members of the Philippine Army and the barangay tanods, Myrna disclosed that she was not able to say anything to them and that she even lost consciousness because she was so afraid that her husband is already dead.[14] She stated that the back of her husband was turned towards Ansus when Ansus struck her husband with a crow bar approximately one meter in length.[15] She shared that prior to the killing of her husband, Ansus and Olitan had a heated argument regarding Ansus' fence which encroached the land of their daughter's, Mylene Andes.[16]

On cross-examination, Myrna admitted that she never saw Ansus throwing stones on the roof of their house.[17] She explained that she was not able to report to the members of the Philippine Army nor to the barangay tanods that Ansus killed her husband because: (a) she lost consciousness on the night her husband was slain; and (b) that she regained consciousness when the cadaver was already loaded inside the vehicle. She divulged to the authorities that Ansus killed her husband only after the latter's burial.[18]

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[12] Id. at 7-10.

[13] Id. at 11-13.

[14] Id. at 13.

[15] Id. at 14-15.

[16] Id. at 25-26, 41.

[17] Id. at 27.

[18] Id. at 32-34.

When questioned by the RTC, Myrna demonstrated that her husband was positioned sideways to Ansus when the latter struck him. Myrna added that Ansus threatened her and her husband on April 20, 2011 but she did not report the incident to the police because she still has confidence in Ansus because they are neighbours.[19]

Magno Lacsa (Lacsa) — Olitan's brother-in-law and *compadre* to Ansus — recounted that on August 8, 2011 at 3:00 p.m., he was at Mylene Andes' (Andes) house to borrow money from his niece. Andes informed Lacsa that her father, Olitan, and Ansus had an argument.[20] Lacsa asked Andes where he can find Ansus and Andes answered that Ansus was home. Lacsa went to Andes' house and advised Ansus to peacefully resolve his issue with Olitan. Ansus told Lacsa that he would not have been upset if Olitan did not bring their issue to the barangay. When Lacsa was about to leave, Ansus followed him and asked, "If I kill your brother-in-law, will you side with him?" Lacsa replied, "It depends."[21]

On cross-examination, Lacsa revealed that Myrna is the sister of his wife but Myrna did not talk to him at all about the killing of Olitan. He stated that Ansus was angry because Olitan's fence, the house where Andes lives, encroaches on Ansus' land. He admitted that this matter was already settled before the barangay but Ansus and Olitan were arguing over the same issue once more.[22]

When questioned by the RTC, Lacsa initially declared that although he believed Ansus has intent on killing Olitan, he just went home and did not warn Olitan nor Andes. However, Lacsa subsequently professed that from Ansus' home, he went to Andes' house and warned her of Ansus' plan to kill her father.[23]

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[19] Id. at 37-40.

[20] TSN dated November, 13, 2012, pp. 5-6.

[21] Id. at 7-8.

[22] *Id.* at 10-14.

[23] Id. at 17-19.

On re-direct examination, Lacsa stated that he did not tell Olitan of Ansus' plan to kill him to avoid another confrontation between them.[24] On re-cross-examination, Lacsa admitted that while it was his moral obligation to inform Olitan of the threat on his life, he did not bother to tell Olitan of such fact because he lived in Sitio Look which was far from Olitan's house.[25]

Erlindo Buatis (Erlindo) — claiming to be an eyewitness to the incident — narrated that on August 15, 2011 at 9:30 p.m., he was on his way to the barangay proper to buy snack for his daughter-in-law, Rosiel, who was about to give birth and to fetch the midwife. While traversing the road in front of Ansus' house, he saw Ansus — from a distance of four and a half meters — strike Olitan on the nape with a corrugated and pointed-tip crow bar. Scared when he saw Olitan fall down, Erlindo went back to his home at Sitio Look — which was one and a half kilometres away from where the incident took place.[26] When he got home, Erlindo just lied down and did not tell anyone about the incident that he witnessed because his daughter-in-law gave birth already at that time and he was afraid that she might bleed. Erlindo revealed that he presented himself as a witness only on February 5, 2013 since his conscience bothered him and he wanted to give Olitan justice. He added that his fear of the ire of Ansus' relatives prevented him from coming forward earlier as a witness.[27]

When confronted on cross-examination that it was Ricky Buatis (Ricky) — not him — who fetched the midwife, Erlindo denied that he testified fetching the midwife and insisted that he testified only in buying bread for the midwife's snack. Erlindo stated that neither Olitan nor Ansus saw him at that time. He admitted that he did not execute a sworn statement on the incident which he allegedly saw on the night of August 15, 2011.[28]

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[24] Id. at 20.

[25] Id. at 21.

[26] TSN dated February 19, 2013, pp. 5-8.

[27] Id. at 8-9.

[28] TSN dated June 25, 2013, pp. 4-6.

Dr. Salve Bermundo-Sapinoso (Dr. Bermundo-Sapinoso), the Municipal Health Officer of Castilla, Sorsogon, conducted the post-mortem examination[29] on the victim's body and the following are her findings:

HEAD	: deep incised wound, 1.0cm in diameter, left occipital area, penetrating the skull.
	: deep incised wound, 2.0cm in diameter, left parietal area, penetrating the skull.
	: incised wound, 3.0cm in diameter, left temporal area.
	: deep incised wound, 4.0cm in diameter, left frontal area, penetrating the skull.
	: deep incised wound, 4.0cm in diameter, right frontal area, penetrating the skull.
	: incised wound, 2.0cm in diameter, frontal area.
CHEST	: no findings.
ABDOMEN	: no findings.
BACK	: no findings.
EXTREMITIES	: (Upper) abrasions, left arm
	: (Lower) no findings.
CAUSE OF DEATH	: HYPOVOLEMIC SHOCK SEVERE HEMORRHAGE
	MULTIPLE HACKING WOUNDS[30]

Considering the nature of the wounds sustained by the victim, Dr. Bermundo-Sapinoso attested that: (1) the assailant could have been in front and at the back left side of the victim when the wounds were inflicted; (2) the victim will not die instantly; and (3) the victim died of severe blood loss. She acknowledged

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[29] Records, p. 24.

[30] Id.

that she did not prepare the victim's death certificate[31] but she signed the same as part of her functions as the Municipal Health Officer.[32]

On cross-examination, Dr. Bermundo-Sapinoso consistently declared that a sharp-bladed instrument caused the: (a) four deep incised wounds that penetrated the victim's skull; and (b) two incised wounds. She likewise confirmed that contusion or hematoma and laceration — which are present in injuries caused by blunt objects — were absent in each injury. She added that a crow bar inflicts a lacerated wound and that two or more individuals could have caused the victim's injuries.[33]

On the other hand, Ansus, Randy Bueno, Teresita Artizado, Melina Ansus, and Gil Pareja testified for the defense.

Ansus narrated that around midnight of August 15, 2011, he and his wife, Melina, were awakened by a commotion. Peeping through his window made of bamboo slots, it turned out that Barangay Captain Randy Bueno, barangay police, and army personnel were investigating a dead body.[34] He saw Myrna crying and heard the authorities asking her, "*Mrs. Olitan, nakita mo ba kung sino ang pumatay sa asawa mo?*" to which she replied, "*Hindi po sir dahil tulog na tulog po ako.*"[35] Ansus denied killing Olitan and emphasized that their boundary dispute has already been settled[36] in the barangay. He likewise denied that he mentioned to Lacsa any plan of killing Olitan. He exposed that Lacsa visited him in jail and informed him that Myrna promised to pay him in exchange for his testimony against Ansus.[37]

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[31] Id. at 25.

[32] TSN dated July 17, 2012, pp. 3-10.

[33] Id. at 11-14.

[34] TSN dated August 5, 2014, pp. 5-7.

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

[36] Records, pp. 14-15.

[37] TSN dated August 5, 2014, pp. 10-11.

On cross-examination, appellant stated that he heard the conversation between Myrna and the investigator since they were just at the road in front of his house. He did not go out of his house because his wife was ill at that time. He said that Lacsa visited him at the Sorsogon Provincial Jail where the latter told him about the pay-off.[38]

When questioned by the RTC, Ansus stated that the police started investigating him for Olitan's death only when he received a subpoena.[39]

Melina Ansus (Melina), Ansus's wife, shared that at 9:45 p.m. of August 15, 2011, she and her husband were awakened by a commotion outside of their home. Ansus stood up and peeped through the window. Ansus told her that he saw the barangay captain who was with a crying Myrna.[40] She revealed that she did not allow her husband to go out since she was bleeding at that time because of myoma.[41]

Randy Bueno (Bueno) — who was the Barangay Chairman at the time of Olitan's killing — testified that on the night of August 15, 2011, barangay tanods Danilo Atisado and another Jimmy Timban reported to him that there was a dead person's body in front of the Barangay Health Center. Bueno proceeded to the place of the incident and he saw members of the Philippine Army. He identified the victim as Olitan. He saw Andes, the victim's daughter, and he asked her to fetch her mother, Myrna. According to Bueno, when he asked Myrna if she noticed or if she was notified that her husband was already dead, Myrna replied that she did not know because she was asleep when the incident happened. He reported the incident to the police but he was not able to give them any information regarding a possible suspect.[42]

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

[39] *Id.* at 21.

[40] TSN dated June 23, 2015, pp. 4-5.

[41] *Id.* at 6, 10.

[42] TSN dated November 4, 2014, pp. 4-6.

On cross-examination, Bueno denied being Ansus' relative, not even a distant one.[43] Bueno admitted that Olitan's body was found in front of Ansus' home but he did not question Ansus at that time. He shared that Mryna kept on crying when she arrived and that she did not divulge to him the identity of her husband's killer.[44]

Teresita Artizado (Artizado) — a trained and practicing *hilot* for 10 years — narrated that on August 15, 2011 at 5:30 p.m., Ricky, Erlindo's son, fetched her to assist his wife in giving birth.[45] From Ricky's house, they — Artizado, Erlindo, Erlindo's wife, Anching, Ricky, and Ricky's wife — transferred to Lacsa's house at 8:30 p.m. The baby boy was born at 9:45 p.m. At 10:00 p.m., Ariel and Joven Andes arrived. She heard Joven Andes, Olitan's son-in-law, tell Lacsa, "Pay Magno, my father-in-law is already gone." She relayed that Erlindo did not react when he heard the news.[46]

When cross-examined, Artizado denied that she was related to Ansus and that she is a cousin of Ansus' wife, Melina.[47] Artizado revealed that from 8:30 p.m. until the time Ricky's wife gave birth at 9:35 p.m., Erlindo never left Lacsa's house and the persons there were conversing during that time.[48]

Artizado was recalled to the witness stand and she brought a notebook containing a chronological listing of births which she administered from the year 2003 until the year 2014. She pointed to and identified entry no. 125[49] relating to the birth of Rixel F. Buatis on August 15, 2011 at 9:45 p.m. She relayed

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[43] *Id.* at 7.

[44] *Id.* at 7-10.

[45] TSN dated February 16, 2015, pp. 3-5.

[46] Id. at 5-8.

[47] Id. at 9.

[48] Id. at 12-13.

[49] Records, p. 147.

that Ricky caused the registration of the child birth in the Civil Registry.[50]

On rebuttal, Myrna stated that she and her daughter, Andes, were already at the crime scene before Bueno arrived. She denied approaching Bueno nor speaking with him at all. She reasoned that Bueno was angry at them because she called Buena's attention for using the irrigation fund to entertain his visitors. She insisted that Milena and Bueno are cousins.[51] She averred that at the time of the incident, Bueno was asleep and he was only summoned by the Army commander to the crime scene. She maintained that she did not tell any government agent present at that time who killed her husband because she was in a state of shock. She was not aware that Bueno caused the recording of the incident in the police blotter on August 16, 2011 at 10:55 p.m.[52] She acknowledged receiving a copy of Bueno's affidavit but she did not file a reply thereto. She admitted that after her husband's cadaver was released from the morgue and brought to their house, she did not bother to record her husband's killing in the police blotter.[53]

For his part, Lacsa denied on rebuttal that he: (a) was paid in exchange for his testimony against appellant; (b) met the appellant after he testified in court; and (c) visited the appellant at the Sorsogon Provincial Jail after Ansus' testimony. He admitted, however, going to the Sorsogon Provincial Jail on February 2016 to visit his son. He disclosed that since August 2015, his son has been detained for illegal possession of fire arm and that they could not post the required bail of a ₱100,000.00.[54]

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[50] TSN dated April 15, 2015, pp. 4-6.

[51] TSN dated September 30, 2015, pp. 4-6.

[52] Id. at 7-9.

[53] Id. at 11-12.

[54] TSN dated March 16, 2016, pp. 4-7.

The defense presented Gil Pareja (Pareja) on sur-rebuttal to corroborate Ansus' statement that Lacsa was paid in exchange for his testimony against Ansus. According to Pareja, a visitor of Sorsogon Provincial Jail is allowed to go inside the prisoner's cell and eat with him. He claimed that sometime in September 2015, Lacsa and a companion visited and ate with Ansus, his cellmate since July 2015. He shared that he did not see Lacsa visit his son, Argie Lacsa (Argie), who stays in cell #10.[55]

The defense submitted a Certification[56] issued by the Office of the Provincial Warden stating that the said office: (1) didn't have a visitor's logbook from 2014 until the present; and (2) allowed the inmate's immediate family to go inside their prison cells during Saturday and Sunday. The defense likewise submitted a certified true copy of the Order[57] dated March 16, 2016 of the RTC of Sorsogon City, Branch 65. The said Order approved an allowed Argie's provisional liberty in Criminal Case No. 15-1698 for violation of Republic Act No. 10591[58] upon his posting of the necessary bailbond. The defense contended that the date of release of Argie coincided with the date of his father's rebuttal testimony,[59] with the defense trying to imply that Lacsa testified against Ansus in exchange for financial consideration to fund Argie's bailbond.

Ruling of the Regional Trial Court

On July 10, 2017, the Sorsogon City RTC rendered a Decision[60] finding Ansus guilty of murder. The RTC held that while the prosecution established accused-appellant's motive in killing Olitan — the complaint filed by Olitan against Ansus

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[55] TSN dated September 5, 2016, pp. 3-6.

[56] Records, p. 187.

[57] Id. at 188.

[58] Otherwise known as the "Comprehensive Firearms and Ammunition Regulation Act."

[59] TSN dated November 29, 2016, pp. 2-4.

[60] *Supra* note 3.

arising from their boundary dispute — and that Lacsa knew of accused-appellant's idea to do so, such do not constitute evident premeditation in the absence of clear and convincing evidence that accused-appellant decided to kill Olitan, he clung to his decision, and he adopted a particular plan to carry it out. The RTC, however, found that treachery attended Olitan's killing notwithstanding that the attack was preceded by accused-appellant hurling stones at Olitan's house which prompted the latter and his wife to come out and investigate. The RTC asserted that appellant suddenly struck the victim when the latter was about to go back to his house after confronting appellant. The RTC declared that while Myrna did not see the entire incident, she was there at the onset and she saw how her husband was struck with a crowbar on his nape in a sudden and treacherous manner. The RTC added that Myrna's narration was corroborated by Erlindo, who lacked any cause or reason to pin down Ansus, making him a reliable witness. The RTC stressed that the victim's body was found close to accused-appellant's house. For the RTC, accused-appellant's failure to go out of his house while authorities were at the crime scene was highly suspicious, but at the same time, found it puzzling why the authorities did not summon appellant and his co-inhabitants for questioning.[61]

Accused-appellant was sentenced to suffer the penalty of *reclusion perpetua* and to indemnify Olitan's heirs: (a) civil indemnity; (b) moral damages; and (c) exemplary damages in the amount of ₱75,000.00 for each.[62]

Aggrieved, Ansus appealed his conviction to the CA.[63] In his Brief,[64] Ansus alleged that the prosecution witnesses' testimonies identifying him as the assailant are replete with irreconcilable inconsistencies and inherent improbabilities pertaining to material facts. For Myrna, while she claimed that

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[61] CA *rollo*, pp. 65-66.

[62] Id. at 67.

[63] Id. at 14.

[64] Id. at 37-53.

she reported the incident to the police after her husband's burial, she failed to present any evidence, such as the police blotter, to substantiate the same. She failed to disclose in her *Sinumpaang Salaysay*[65] dated September 2, 2011 that she went out of their house 15 minutes after her husband fell on the ground. Neither did she disclose that her daughter was at the place of the incident. Ansus surmised that these were deliberately done to make it appear that Myrna had a clear and positive view of him as the assailant. It is incomprehensible for a wife who witnessed her husband's murder not to give a statement to the responding authorities even after her husband's body was already brought to the hospital. Although delay in making a criminal accusation does not necessarily impair the witness' credibility, Myrna failed to satisfactorily explain her one-month silence which is inconsistent to her status as a person in authority being a barangay kagawad at that time.[66]

Accused-appellant's alleged identification by Erlindo was belatedly established, unsubstantiated, uncorroborated, and therefore, unreliable. Aside from Erlindo's admission that he had blurry vision and that he cannot properly recall the midwife's name, his testimony contained contradictory statements. While he testified on direct-examination that he was on his way to the barangay proper to buy snack for his daughter-in-law and to fetch the midwife, he changed his statement on cross-examination and insisted that he testified only in buying bread for the midwife's snack. Accused-appellant noted that Erlindo came forward as a purported eyewitness only on February 5, 2013, or more than three years after the incident. Accused-appellant added that the prosecution failed to rebut Artizado allegations that she was with Erlindo at Lacsa's residence from 6:30 p.m. until 9:45 p.m. on August 15, 2011.[67]

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[65] Records, pp. 28-29.

[66] CA *rollo*, pp. 43-44.

[67] Id. at 44-47.

Appellant averred that although Lacsa claimed that appellant told him that he would kill Olitan, Lacsa pointed out that the previous altercation between appellant and Olitan has already been settled several months prior to the latter's demise. These statements contradict each other and only unsuccessfully attempts to put him in a bad light.[68]

Ansus maintained that his version of the events on the night of August 15, 2011 is corroborated by several and impartial witnesses and are united in significant details.[69] The qualifying circumstance of treachery was not proven to have attended the commission of the offense.[70] Lastly, he insisted on the theory that "if [Ansus] deliberately prepared to kill [Olitan], it is quite baffling that he let Myrna live given the latter's claim that she witnessed the crime. If [Ansus] really planned to kill [Olitan] and succeeded in doing so, with Myrna as the eyewitness, common sense would dictate that he should have likewise eliminated Myrna so that he would have executed his plan scot-free."[71]

The Office of the Solicitor General (OSG), appearing for the prosecution, stated that the prosecution has proven accused-appellant's guilt beyond reasonable doubt. The OSG argued that Myrna positively identified accused-appellant as the perpetrator of the crime. Myrna's sworn statement is not inconsistent with her testimony and even if there are minor discrepancies between them, these would not render automatically her testimony incredible and outright justify appellant's acquittal. The OSG justified that Myrna cannot be faulted for not immediately revealing her husband's assailant since she was still in shock due to her husband's untimely passing and she took time to process her grief. Myrna also explained that she was terrified of accused-appellant because he threatened them previously because of the boundary dispute. The OSG reasoned

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[68] Id. at 47.

[69] Id. at 48.

[70] Id. at 49.

[71] Id. at 50.

that being an eye-witness to the crime makes Myrna an ultimate target as well so she cannot be expected to confront her husband's killer.[72] The OSG added that accused-appellant was likewise positively identified by Erlindo, another disinterested witness. While Erlindo may have trouble reading documents, he can see very well from a distance. The inconsistencies pointed out in his testimony are merely trivial matters that do not relate to any element of the crime and they do not affect his credibility. The OSG reminded that a perfect merging of account by different witnesses could indicate that their testimonies are fabricated and rehearsed. Lastly, accused-appellant's sudden attack with a crowbar on the victim's nape consisted of treachery.[73]

Ruling of the Court of Appeals

In its Decision[74] dated December 7, 2018, the CA affirmed the Decision of the RTC. The CA ruled that Myrna positively identified that accused-appellant killed Olitan, and Myrna's narrative was corroborated by Erlindo. For the CA, matters pertaining to: (1) the presence of Myrna's daughter at the *situs criminus*; (2) how much time she took to come out of their house again; (3) the midwife's name; and (4) the purchase of bread refer to minor details which have no bearing on accused-appellant's identity as the one who murdered the victim.[75] Myrna was naturally driven to obtain justice for her husband's murder. The failure of Myrna and Erlindo to give their statements to the police right after the incident does not affect their credibility as eyewitnesses because there is no law requiring that the testimony of a prospective witness should be reduced in writing in order for his statements in court at a future date may be believed. Myrna was understandably in a state of shock at the time of investigation.[76] Both Myrna and Erlindo admittedly feared

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[72] Id. at 86-90.

[73] Id. at 90-93.

[74] *Supra* note 2.

[75] *Rollo*, pp. 15-18.

[76] Id. at 19-20.

for their safety due to possible retaliation from Ansus' relatives. The blurry vision of Erlindo neither overthrows the credibility of his testimony because he had no trouble seeing from afar and he was only four meters away from Olitan when the latter was struck by appellant. Finally, the CA held that the qualifying circumstance of treachery was present when in a swift motion, Ansus struck Olitan with a crowbar, "catching the latter off guard and without any opportunity to defend himself or to fight back." It added that even if the appellant was in front of the victim when he struck the latter with a crow bar on the nape, a frontal attack is still treacherous when unexpectedly made on an unarmed victim who is no position to repel or to avoid the attack.[77]

Ansus filed a Notice of Appeal.[78] Both the OSG and accused-appellant manifested that they will no longer file any supplemental brief.[79]

Issue

The sole issue to be determined is whether the prosecution established Ansus' guilt beyond reasonable doubt for murder.

Ruling of the Court

The appeal is meritorious.

This Court repeats that "an appeal in criminal cases opens the entire case for review, and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned."[80] "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the

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[77] Id. at 23-24.

[78] Id. at 27-28.

[79] Id. at 35-36, 40-42.

[80] *Rivac v. People*, 824 Phil. 157, 166 (2018), citing *People v. Dahil*, 750 Phil. 212, 225 (2015). Citation omitted.

judgment appealed from, increase the penalty, and cite the proper provision of the penal law."[81]

In *People v. Pineda*,[82] We reminded that "[a] conviction for a crime rests on two bases: (1) credible and convincing testimony establishes the identity of the accused as the perpetrator of the crime; and (2) the prosecution proves beyond reasonable doubt that all elements of the crime are attributable to the accused."[83]

In the present case, accused-appellant was identified as the perpetrator by two (2) eyewitnesses: Myrna and Erlindo. In *People v. Nuñez*,[84] We revisited our ruling in *Pineda* wherein We "identified 12 danger signals that might indicate erroneous identification." The list, though not exhaustive, is as follows:

1. the witness originally stated that he could not identify anyone;
2. the identifying witness knew the accused before the crime, but made no accusation against him when questioned by the police;
3. a serious discrepancy exists between the identifying witness' original description and the actual description of the accused;
4. before identifying the accused at the trial, the witness erroneously identified some other person;
5. other witnesses to the crime fail to identify the accused;
6. before trial, the witness sees the accused but fails to identify him;
7. before the commission of the crime, the witness had limited opportunity to see the accused;
8. the witness and the person identified are of different racial groups;

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[81] Id.; *People v. Comboy*, 782 Phil. 187, 196 (2016).

[82] 473 Phil. 517, 537 (2004), citing *People v. Casinillo*, 288 Phil. 688 (1992).

[83] Id.

[84] 819 Phil. 406 (2017).

9. during his original observation of the perpetrator of the crime, the witness was unaware that a crime was involved;

10. a considerable time elapsed between the witness' view of the criminal and his identification of the accused;

11. several persons committed the crime; and

12. the witness fails to make a positive trial identification.[85]

Three of these danger signals — numbers 1, 2, and 10 — apply to the prosecution witnesses' identification of accused-appellant as the perpetrator of the crime:

> 1. On August 15, 2011, Myrna initially told then Barangay Captain Bueno and the members of the Philippine Army that she could not identify the killer of her husband.
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> 2. Myrna likewise knew Ansus before the crime was committed, but she did not accuse him of any wrongdoing when she was questioned by the authorities on the said date. **She only named Ansus as her husband's killer on September 2, 2011 when she executed her *Sinumpaang Salaysay***.
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> 3. For Erlindo, a considerable time has elapsed more than two years after the incident — between his view of Ansus as the perpetrator and his subsequent identification of Ansus.

Myrna justified her delay in revealing the identity of her husband's killer because she was still in a state of shock and that she lost consciousness. Curiously, she did not elaborate when her fainting spells happened and she had the presence of mind to go inside their home after seeing her husband fall to hide from the accused. Moreover, her fear of retaliation from the accused would have been mitigated if she only divulged his identity as her husband's killer on August 15, 2011. At that time, the authorities would have taken appellant in custody and they could have possibly recovered the weapon used. She would

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[85] Id. at 432.

not have dealt with fear and the idea that her husband's killer lives three houses away from her. She seemed to have forgotten to be fearful also for her daughter's sake who lives just beside the appellant. Indeed, such revelation of Myrna, if made, would have been more in accord with human reaction and experience. In other words, her failure to act immediately and report her neighbor Ansus as the killer of her husband is contrary to human experience.

In *Madrid v. Court of Appeals*,[86] which involved a mother and daughter as eyewitnesses who belatedly revealed the person responsible for the husband and father's death, We explained:

> Likewise, the considerable length of time which lapsed before Merdelyn and Remedios Sunido made their statements before the police puts into question the claim that they actually witnessed the killing of Angel Sunido. It is true that delay in reporting a crime, if adequately explained, is not sufficient to cast doubt on the truthfulness of a witness' testimony as, for instance, the delay may be explained by the natural reticence of most people and their abhorrence to get involved in a criminal case.
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> But the eyewitnesses involved in this case are the wife and daughter of the victim. One would naturally expect that they would not be anxious to help the police arrest the person or persons responsible for the killing of their loved one. Instead of doing so, however, Remedios and Merdelyn Sunido only made their statements to the police on June 1, 1992 and June 2, 1992, respectively, more than one week after the incident they allegedly witnessed. This fact is made even more strange by the statements of Remedios and Merdelyn Sunido that not long after the incident, Barangay Councilman Amor de los Santos arrived followed by members of the Buguey Police. In a similar case where a daughter delayed in reporting to the proper authorities who was responsible for her father's death, the Court held:
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> > x x x She had a very early opportunity to do so because the police officers of the town were there at the scene of

[86] 388 Phil. 366. (2000).

> the crime, where she was also, just two hours after her father was shot and killed. The most natural reaction of a witness to such an incident, indeed a *res gestae*, would have been to tell her mother about it, and subsequently the police authorities, who had, as earlier adverted to, responded to the summons for help two hours after the reported murder. Human nature would have compelled her to declare that she had seen, and in fact, could identify, the assailant of her father. But she withheld that vital information from everybody for an unreasonable length of time (at least four days after the commission of the crime, by her own statement), which makes her testimony suspect. Teresita's testimony smacks of fabrication and, therefore, can not support a conviction.[87] (Citations omitted)

Erlindo, on the other hand, reasoned that: (1) he did not tell anyone of what he saw because his daughter-in-law just gave birth and she might bleed; and (2) his fear of the ire of Ansus' relatives prevented him from coming forward earlier as a witness. Erlindo's reasoning is flawed because his daughter-in-law bleeding is irrelevant in sharing what he knows about the incident. As for his second justification, his fear is unfounded since he testified that neither the appellant nor victim saw him because he just suddenly arrived at the scene of the incident.[88] If at all, no one knew that he was an eyewitness to the crime.

Besides, Artizado testified that from 8:30 p.m. until the time Ricky's wife gave birth at 9:45 p.m., Erlindo never left Lacsa's house. Supported by her notebook where she chronologically lists the births she administered since 2003,[89] this Court finds more consistency in the testimony of Artizado rather than that of Erlindo. It is unimaginable for someone to invent all the names, dates, and time recorded in the notebook presented. The notebook shows that Erlindo's daughter-in-law gave birth at 9:45 p.m.. It was around this time when Olitan was killed, which

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[87] Id. at 398-399.

[88] TSN dated June 25, 2013, p. 5.

[89] TSN dated April 15, 2015, p. 4.

Erlindo claims to have witnessed as he was on his way to fetch Artizado. Given this timestamp, it is *impossible* to believe that Erlindo was actually on his way to fetch Artizado because Erlindo's daughter-in-law had already given birth.

For evidence to be believed, "it must not only proceed from the mouth of a credible witness but must be credible in itself such as the common experience and observation of mankind can approve under the circumstances. The test to determine the value of the testimony of a witness is whether such is in conformity with knowledge and consistent with the experience of mankind. Whatever is repugnant to these standards becomes incredible and lies outside of judicial cognizance."[90]

As for the physical evidence, while Myrna and Erlindo uniformly testified that Ansus struck Olitan on the neck or nape, the Post-Mortem Examination Report[91] revealed only: (a) six wounds on the head of the victim, with four of those wounds deeply penetrating his skull; and (b) abrasions on his left arm. Significantly, no wounds were found on the victim's neck or nape. According to Dr. Bermundo-Sapinoso, these six wounds are all incised wounds, which are caused by a "sharp bladed" instrument and not likely by a "blunt object." If a crow bar — a blunt object[92] — was used, the wound inflicted would be lacerated.[93] Notably, contusion or hematoma and laceration — which are present in injuries caused by blunt objects — were absent in each injury. While the prosecution argued that a crow bar has a pointed edge which could have inflicted the wounds sustained by the victim, it is highly improbable for appellant to precisely strike the victim six times using the pointed edge to inflict just incise wounds without bruising or lacerations. "Physical evidence is evidence of the highest order. It speaks more eloquently than a hundred witnesses. They have been

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[90] *People v. Contilla,* 442 Phil. 641, 651 (2002).

[91] Records, p. 24.

[92] TSN dated July 17, 2012, p. 6.

[93] *Id.* at 12.

characterized as that mute but eloquent manifestations of truth which rate high in our hierarchy of trustworthy evidence."[94]

All told, if a reasonable doubt exists as to the identity of the perpetrator of the crime charged, the verdict must be one of acquittal.

WHEREFORE, the appeal is **GRANTED**. The Decision dated December 7, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 09711 is **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Antonio Ansus is **ACQUITTED** on reasonable doubt, and is **ORDERED** to be **IMMEDIATELY RELEASED** from detention, unless he is being lawfully held for another cause.

Let a copy of this Decision be furnished the Director General of the Bureau of Corrections, Muntinlupa City for immediate implementation. The said Director General is **DIRECTED** to report the action he has taken to this Court, within five (5) days from receipt of this Decision.

SO ORDERED.

Peralta, C.J., Caguioa, Zalameda, and *Gaerlan, JJ.*, concur.

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[94] *Daayata v. People*, 807 Phil. 102 (2017), citing *People v. Sacabin*, 156 Phil. 707 (1974) and *People v. Vasquez*, 345 Phil. 380 (1997) citing *People v. Uycoque*, 316 Phil. 930 (1995).

FIRST DIVISION

[G.R. No. 248016. December 2, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **ALBERTO "BERT" MARTINEZ a.k.a. "ALBERTO BELINARIO"**, *Accused-Appellant.*

APPEARANCES OF COUNSEL

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

D E C I S I O N

CAGUIOA, *J.*:

This is an appeal filed under Section 3 (c), Rule 122 of the Rules of Court from the Decision[1] dated February 27, 2019 (Decision) of the Court of Appeals, Special Second Division (CA), in CA-G.R. CR-HC No. 10062. The CA affirmed the Decision[2] dated August 8, 2017 of the Regional Trial Court of La Trinidad, Benguet, Branch 9 (RTC), in Criminal Case Nos. 11-CR-8289, 11-CR-8290, and 11-CR-8291 finding accused-appellant Alberto Martinez, also known as Alberto Belinario (accused-appellant), guilty of three counts of rape under Article 266-A of the Revised Penal Code (RPC), as amended.[3]

The Facts and Antecedent Proceedings

Accused-appellant was charged with rape under the following Informations:

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[1] *Rollo*, pp. 3-20. Penned by Associate Justice Marie Christine Azcarraga-Jacob and concurred in by Associate Justices Amy C. Lazaro-Javier (now a Member of this Court) and Danton Q. Bueser.

[2] CA *rollo*, pp. 40-48. Penned by Judge Marietta S. Brawner-Cualing.

[3] *Rollo*, pp. 3-4.

Criminal Case No. 11-CR-8289

That on or about the 1st day of January 2010, x x x Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, did [then] and there willfully, unlawfully and feloniously have carnal knowledge with one [AAA],[4] a minor being eleven (11) years[,] eleven (11) months and twenty[-]three (23) days of age at the time of the commission of the crime, by grabbing her hand and laid her down on his bed, undressed her, fondled her breasts, licked her vagina and inserted his penis into her vagina against her will and consent, which deeds debase, degrade and demean the intrinsic worth and dignity of the said [AAA] as a human being, to her great damage, prejudice and mental anguish.

CONTRARY TO LAW.[5]

Criminal Case No. 11-CR-8290

That on or about the 2nd day of October 2010. x x x Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, did [then] and there willfully, unlawfully and feloniously have carnal knowledge

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[4] The identity of the victims or any information which could establish or compromise their identities, as well as those of their immediate family or household members, shall be withheld pursuant to Republic Act No. (RA) 7610, titled "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES," approved on June 17, 1992; RA 9262, titled "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, titled "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; and *People v. XXX and YYY*, G.R. No. 235652, July 9, 2018, 871 SCRA 424.)

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

with one [AAA], a minor being twelve (12) years of age at the time of the commission of the crime, by calling her to his room and once inside, he locked the door and brought her to his bed, undressed her, sucked her breast, licked her vagina, and inserted his penis into her vagina against her will and consent, which deeds debase, degrade and demean the intrinsic worth and dignity of the said [AAA] as a human being, to her great damage, prejudice and mental anguish.

CONTRARY TO LAW.[6]

Criminal Case No. 11-CR-8291

That on or about the 3rd day of October 2010, x x x Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did [then] and there willfully, unlawfully and feloniously have carnal knowledge with one [AAA], a minor being twelve (12) years of age at the time of the commission of the crime, by bringing her to the common comfort room and once inside, he brought down her pant[s] and panty, licked her vagina and brought out his penis and touched her vagina against her will and consent, which deeds debase, degrade and demean the intrinsic worth and dignity of the said [AAA] as a human being, to her great damage, prejudice and mental anguish.

CONTRARY TO LAW.[7]

During arraignment, accused-appellant pleaded not guilty to each of the charges.[8] Thereafter, pre-trial and trial on the merits ensued.[9] The RTC summarized the version of the prosecution as follows:

As culled from the evidence of the prosecution, it was shown that [AAA] was born on January 8, 1998 to [BBB] and [CCC]. She has five other siblings, the birth order of which is: [DDD], [EEE], [FFF], [GGG], [AAA] and [HHH]. The family is living in a one[-]story house with six rooms, five of which are being rented out to boarders

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[6] *Id.* at 5.

[7] *Id.*

[8] *Id.* at 6.

[9] *Id.*

and the sixth room was occupied by them. In one of these rooms, [accused-appellant] and his live-in partner were renting.

[AAA] narrates that from the time she was in Grade 1, [accused-appellant,] whom she refers to as Bert[,] would often ask her [for] favor[s], like buying food or kerosene for him. It was also then that he would usually abuse her.

She remembers that during the first incident, [accused-appellant] called her inside his room. When inside, he held her breast and injected something on her upper right arm. She felt dizzy and lost consciousness. When she regained consciousness[,] she saw [accused-appellant] sitting on the bench watching television and she felt pain on her breast. She sat up, put on her clothes which [accused-appellant] removed and he gave her money so she will not report the incident.

Another incident happened when [AAA] was in Grade 2. [Accused-appellant] would call her inside his room and he would insert his finger in her vagina. This was usually in the early mornings after his live-in partner would leave the house and occurred every three or four times a week.

In Grade 3, the abuses continued and escalated. He would call [AAA] to his room, remove her clothes, lick her breast and put oil in his penis and insert the same into her vagina.

In January 2010, while they were celebrating the New Year, [accused-appellant,] who was under the influence of liquor, again called [AAA] in his room. When they were inside, he locked the door, grabbed her hand and laid her down. He undressed her, fondled her breast, and licked her vagina. He then undressed his lower garment and inserted his penis inside her vagina. After the act, he gave her [P]50.00 not to tell anyone.

At noon of October 2, 2010, the same incident happened inside his room when he called her and he was able to suck her breast, lick her vagina and insert his penis into her vagina.

Finally, on October 3, 2010, at around 6:00 or 7:00 o'clock in the evening, [accused-appellant] called [AAA] inside the comfort room because his live-in partner was in their room and he put down her undergarments to her knees, licked her vagina and touched his penis to her vagina.

During all these incidents, she could not prevent him doing all these things to her because he would create trouble in their residence

and tell them that she was going out with somebody. However, on October 4, 2010 when [accused-appellant] was again calling for her to enter her [(*sic*)] room, [AAA] refused despite the trouble that he was creating by telling stories about her.

Alarmed why [accused-appellant] was acting this way towards [AAA], [BBB] confronted her daughter as to the actuations of [accused-appellant]. It was then that [AAA] revealed to her what [accused-appellant] had been doing to her since she was in Grade 1. They then filed a case against [accused-appellant].

When she was examined, it was found by Dr. Josefa Bentayen that there was an absence of hymenal tissue on the labia of [AAA] and there were healed injuries at the 4:00 o'clock position. Because of the condition of the injury, she stated that these injuries could have been occurred [(*sic*)] a year prior to her examination on November 24, 2010.

Further tests were conducted on [AAA] by the Municipal Social Welfare Officer of La Trinidad, Benguet who prepared the Social Case Study report of [AAA] and by Psychologist who diagnosed the cognitive functioning of [AAA] to be within a mild retardation level with a mental age of seven years and one month old.[10]

On the other hand, the CA summarized the version of the defense as follows:

[Accused-appellant] denied the actuations hurled against him. He proffered no knowledge why AAA charged him of the crime of rape. [Accused-appellant] claimed that from 2001-2010, he and his live-in partner Claudia Carantes, were renting a room in the house of AAA's father, CCC. [Accused-appellant] also averred that on [November 6, 2010], while he was drinking with CCC and AAA's other sibling, EEE, the older sister of AAA, got angry and threw a stone at him because EEE said he was always mentioning AAA's name. As the stone did not hit him, he just went to his room so as not to aggravate the situation. [Accused-appellant] further alleged that the only reason he can think of for them filing these criminal suits against him is because he refused to vacate his rented room after he was asked to leave the same.[11]

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[10] CA *rollo*, pp. 41-43.

[11] *Rollo*, p. 8.

Ruling of the RTC

In its Decision dated August 8, 2017, the RTC found accused-appellant guilty of three counts of rape and rendered judgment as follows:

> WHEREFORE, from the foregoing, there being proof beyond reasonable doubt that accused committed the crimes charged, ALBERTO "BERT" MARTINEZ, also known as ALBERTO BELINARIO is hereby found GUILTY of three (3) counts of rape as penalized under Article 2[6]6-A paragraph 1. He is hereby sentenced to suffer the penalty of imprisonment of *Reclusion Perpetua*.
>
> He is further directed to pay [AAA] the following for each case:
>
> a. Civil indemnity of [₱]75,000.00;
>
> b. Moral damages of [₱]75,000.00;
>
> c. Exemplary damages of [₱]75,000.00; and
>
> d. All monetary award for damages to earn interest at the legal rate of 6% [*per annum*] from the finality of this Decision until fully paid.
>
> SO ORDERED.[12]

The RTC held that the prosecution was able to prove, through the clear and straightforward testimony of AAA, the elements of the crime: 1) that accused-appellant had carnal knowledge of the offended party and 2) that the offended party is under 12 years of age.[13] As against AAA's positive assertions, the RTC refused to give credence to accused-appellant's bare denial,[14] which is an inherently weak defense.

In fact, the RTC noted that AAA's younger sister testified that she witnessed several instances when accused-appellant would be on top of AAA "doing the pumping motions."[15] She

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[12] CA *rollo*, pp. 48.

[13] *Id.* at 44.

[14] *Id.* at 47.

[15] *Id.* at 44.

likewise stated she saw accused-appellant placed his finger in the vagina of AAA and that she went to tell her mother but the latter did not believe her.[16] Although the specific criminal acts charged in the aforementioned Informations were not witnessed by AAA's younger sister, the RTC reiterated the threshold principle that "[i]n rape cases, the accused may be convicted solely on the testimony of the victim, provided the testimony is credible, natural, convincing, and consistent with human nature and the normal course of things."[17]

The RTC noted, however, that AAA had already turned 12 years old at the time when the other incidents occurred. Nevertheless, the RTC held that although AAA had already reached the age of 12 years, the prosecution proved that she had a mental age of seven years and one month. Accordingly, the RTC held that the accused-appellant may still be convicted for statutory rape.[18]

Ruling of the CA

On appeal, the CA affirmed accused-appellant's conviction in its Decision dated February 27, 2019 *in toto*. The dispositive part of the Decision reads:

WHEREFORE, all premises considered, the instant appeal is **DENIED**.

Accordingly, the *Decision dated 08 August 2017* of the Regional Trial Court, Branch 9, La Trinidad, Benguet, in Criminal Case Nos. 11-CR-8289, 11-CR-8290 and 11-CR-8291, finding accused-appellant Alberto Martinez also known as Alberto Belinario guilty beyond reasonable doubt of three (3) counts of the crime of rape, sentencing him for each count to the penalty of *reclusion perpetua*, and ordering him to pay civil indemnity, moral damages and exemplary damages in the amount of [₱]75,000.00 each, is hereby **AFFIRMED *in toto***.

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[16] *Id.*

[17] *Id.*

[18] *Id.* at 46.

The Division Clerk of Court of this Court is directed to prepare the *Mittimus* for the immediate transfer of said accused-appellant from the Benguet Provincial Jail at La Trinidad, Benguet, to the New Bilibid Prisons at Muntinlupa City, Metro Manila.

SO ORDERED.[19]

In affirming the RTC, the CA held that AAA was able to clearly, positively, and convincingly narrate her miserable ordeal in the hands of accused-appellant.[20] The CA quoted the threshold principle that the testimonies of child-victims are generally given full weight and credence as a young woman would not concoct a story of defloration, endure the embarrassment and humiliation of a public disclosure that she had been ravished, allow an examination of her private parts, and undergo the ordeal of a public trial if her story was not true.[21]

Hence, this appeal.

Issue

Whether the CA erred in finding accused-appellant guilty for three counts of Rape under Article 266-A of the RPC.

The Court's Ruling

The appeal has partial merit. Article 266-A of the RPC reads:

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;

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[19] *Rollo*, p. 19.

[20] *Id.* at 13.

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

c) By means of fraudulent machination or grave abuse of authority; and

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

x x x x

In *People v. Biala*,[22] the Court explained:

The gravamen of the offense of rape is sexual congress with a woman by force and without consent. If the woman is under 12 years of age, proof of force is not an element, as the absence of a free consent is conclusively presumed as the law supposes that a woman below this age does not possess discernment and is incapable of giving intelligent consent to the sexual act. Conviction will therefore lie, regardless of proof of force or intimidation provided sexual intercourse is proven. Force, threat, or intimidation are not elements of statutory rape, therefore proof thereof is unnecessary. But if the woman is 12 years of age or over at the time she was violated, sexual intercourse must be proven and also that it was done through force, violence, intimidation or threat.[23]

In the instant case, the RTC and the CA both found that the prosecution proved that accused-appellant raped AAA on January 1, 2010, October 2, 2010, and October 3, 2010. During her direct examination, AAA testified:

Q. Based on your statement madam witness, since when have you met the accused[-appellant]?
A. When I was in Grade 1.

Q. How old were you at that time?
A. Seven (7) years old.

Q. Okay. On question number 3 on the first page of your Sworn Statement you said here that Bert use[d] to call you and usually

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[22] G.R. No. 217975, November 23, 2015, 775 SCRA 381.

[23] *Id.* at 398-399. See also *People v. Chavez*, G.R. No. 235783, September 25, 2019, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65519>.

ask you to do a favor. Could you please tell the court what [were] these favors that the accused[-appellant] usually ask you to do?

A. Yes, ma'am.

Q. What are those?

A. He sent me to buy food, kerosene.

Q. And in addition[,] you stated here that he also called you inside his room is that true?

A. Yes, ma'am.

Q. Could you please tell the court?

A. He held my breast.

Q. Okay. And there was also a time when he injected something on you?

A. Yes, ma'am.

Q. Do you remember when did he injected [(*sic*)] that. Where were you injected?

CLERK OF COURT.

Witness pointed to her upper right arm.

x x x x

Q. So what happened next when he injected that to you?

A. I felt dizzy.

x x x x

Q. Based on your Sworn Statement you lose your consciousness[,] is that true?

A. Yes, ma'am.

Q. And when you regain[ed] your consciousness what happened next?

A. I saw him sitting on the bench watching T.V.

Q. Considering the fact that you were, you said that he injected something on you did you feel something, anything different from your body?

A. Yes, ma'am.

Q. Could you please tell the court what is that?

A. My body and then my breast.

Q. Did you feel something different?
A. Yes, ma'am.

Q. What is that different that you felt if you can describe?
A. I felt pain.

Q. Felt pain?
A. In my breast.

Q. Okay. What did you do next after that, you regain[ed] your consciousness and you felt something bad on your body?
A. I just sat and put on my clothes [that] he removed and [(accused-appellant]) gave me money so that I will not report.

Q. Referring also on question number 4 on page one of your statement when you were in Grade 2, if you could still remember the accused[-appellant] again called you inside his room?
A. Yes, ma'am.

Q. What happened next?
A. He removed my clothes and inserted his fingers to my vagina.

Q. Okay. You also said on your statement that he usually did that early in the morning and he will let his live[-]in partner leave. How many times in a week could you remember?
A. Three (3) or four (4) times a week.

Q. Did you inform you parents about this one?
A. No, ma'am.

Q. Why?
A. Because he was threatening me that if I will report to my parents[,] he will kill me.

Q. Now, when you were again in Grade 3, if you could remember he called you again in his room. What happened next?
A. He removed my clothes and licked on my breast and he put oil on his penis and inserted it into my vagina.

Q. And on your Sworn Statement also every time that he will call you and if you will not obey what does he do?
A. He would get angry to me.

Q. And there was also incident when he put something on your food is that true?
A. Yes, ma'am.

Q. And how did it taste?
A. It is bitter.

Q. On January 2010[,] you also stated here that was New Year on your statement, you said Bert was under the influence of liquor and he called you inside his room again[,]what happened next?
A. He removed my clothes and kissed my vagina and inserted his penis into my vagina.

Q. Okay. And you stated here that he gave you fifty (50) pesos?
A. Yes, ma'am.

Q. Why did he give you fifty (50) pesos?
A. So that I will not report.

Q. Okay. And on October 2, 2010[,] he called you again in his room?
A. Yes, ma'am.

Q. If you could remember[,] could you please tell again the court what happened next?
A. He removed all my clothes and kissed my whole body and inserted his penis inside my vagina.

Q. Okay. Did you tell your parents when it comes to this case already?
A. Yes, ma'am.

Q. Okay. So when you said on your statement on the second page that every time he will call you, you did not comply already?
A. Yes, ma'am.

Q. And he usually make trouble in your house is that correct?
A. Yes, ma'am.

Q. Until such time that your mother asked you [(*sic*)]?
A. Yes, ma'am.

Q. What did you tell your mother?
A. I told her everything what he did to me.

Q. Since the first time that the accused[-appellant] abused you?
A. Yes, ma'am.

Q. And that [was] when you were Grade 1?
A. Yes, ma'am.

Q. And how old were you again when you were in Grad[e] 1?
A. Seven (7) years old.

x x x x

Q. Going back before you informed your mother on October 3, 2010 at around 6:00 o'clock or 7:00 o'clock in the evening. You stated here that he called you inside the comfort room?
A. Yes, ma'am.

Q. And what happened again when he called you inside the comfort room?
A. He removed all my clothes and kissed my vagina and inserted his penis into my vagina.

Q. Okay. And on October 4, 2010[,] you stated here that when the accused[-appellant] was having drinking session with his friends at around 4:00 o'clock in the afternoon he called you, is that correct?
A. Yes, ma'am.

x x x x

Q. But according to your Sworn Statement you did not comply?
A. Yes, ma'am.

Q. What happened next? What did he do when you did not comply?
A. He is getting angry and when I played with my playmates he is there watching.

Q. Considering all these wallowing experiences how did it affect you?
A. I cannot sleep at night.

Q. So what did you do when you cannot sleep at night?
A. We went to the psychiatrist.[24]

AAA confirmed during her cross examination that accused-appellant had been "doing bad things to her" since she was in Grade 1, that she considered him as a father, and that he would threaten that he would kill her family if she reported these "bad things" to her mother, *viz.*:

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[24] Records, pp. 122-127. Transcript of Stenographic Notes (TSN) dated August 15, 2011. Underscoring supplied.

Q. And you said that since when you were in Grade 1 he had been doing bad things to you?
A. Yes, ma'am.

Q. Until 2010, until last year?
A. Yes, ma'am.

Q. So from Grade 1 until last year, how was your relationship with Alberto Belinario?
A. Because he was telling my mother that he would treat me as a daughter, so I considered him as a father. But still he was doing shameful acts to me.

Q. So madam witness, why did you not report to your mother then that bad things have been done to you when you were in Grade 1 and in Grade 2[?]
A. Because he was threatening that he will kill my family.[25]

The Court agrees with the conclusions of the lower courts' that the prosecution sufficiently established, through the foregoing testimony, that accused-appellant had carnal knowledge of AAA on January 1, 2010, October 2, 2010, and October 3, 2010. The Court finds no compelling reason to deviate from the lower courts' findings and their calibration of the credibility of AAA, who related the details of her harrowing experiences in the hands of accused-appellant in a simple yet convincing and consistent manner.

The Court has held time and again that the testimony of a child-victim is normally given full weight and credit considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified was not true. Youth and immaturity are generally badges of truth and sincerity. Hence, there is neither cause nor reason to withhold credence from AAA's testimony.[26] As against AAA's positive assertions, the Court agrees with the Office of the Solicitor General that accused-appellant's mere defense of denial and alibi, *i.e.*, that he cannot recall what he was doing on January 1,

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[25] *Id.* at 128. Underscoring supplied.

[26] *People v. Biala, supra* note 22 at 398.

2010 but that he did not commit the crimes charged and that he was at a gambling house on October 2, 2010 and October 3, 2010,[27] deserve scant consideration. It is settled that the defenses of alibi and denial, when uncorroborated, are inherently weak and easily fabricated.

However, while the lower courts correctly convicted accused-appellant 1) of statutory rape in Criminal Case No. 11-CR-8289 and 2) of rape through intimidation in Criminal Case No. 11-CR-8291, they erred in convicting accused-appellant of rape through force under Criminal Case No. 11-CR-8290 as the prosecution failed to prove the element of force. It bears emphasis that AAA was already 12 years old in October of 2010. As such, carnal knowledge through force must be alleged and proved beyond reasonable doubt. This is discussed further below.

Statutory rape under Criminal Case No. 11-CR-8289 was proven beyond reasonable doubt.

After a judicious examination of the records of the instant case, the Court finds no cogent reason to vacate the RTC's appreciation of the evidence as regards the January 1, 2010 incident, which was affirmed *in toto* by the CA. The Court agrees with the conclusions of the lower courts that the prosecution alleged[28] and proved the elements of statutory rape

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[27] *Rollo*, p. 18.

[28] *Id.* at 4. The Information in Criminal Case No. 11-CR-8289 states: "That on or about the 1st day of January 2010, x x x Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, did [then] and there wilfully, unlawfully and feloniously have carnal knowledge with one [AAA], a minor being eleven (11) years[,] eleven (11) months and twenty[-]three (23) days of age at the time of the commission of the crime, by grabbing her hand and laid her down on his bed, undressed her, fondled her breasts, licked her vagina and inserted his penis into her vagina against her will and consent, which deeds debase, degrade and demean the intrinsic worth and dignity of the said [AAA] as a human being, to her great damage, prejudice and mental anguish."

under Article 266-A, paragraph 1 (d) of the RPC. In *People v. Valenzuela*,[29] the Court explained:

> Rape under paragraph 3 [now under paragraph 266-A, paragraph 1(d)] of this article is termed *statutory rape* as it departs from the usual modes of committing rape. What the law punishes in statutory rape is carnal knowledge of a woman below twelve (12) years old. Thus, force, intimidation, and physical evidence of injury are immaterial; the only subject of inquiry is the age of the woman and whether carnal knowledge took place. The law presumes that the victim does not and cannot have a will of her own on account of her tender years; the child's consent is immaterial because of her presumed incapacity to discern evil from good.[30]

The elements of statutory rape are: 1) that the accused had carnal knowledge of the offended party, and 2) the offended party is under 12 years of age. As held in *People v. Roy*,[31] it is settled that to sustain a conviction under Article 266-A, paragraph 1 (d), "x x x [i]t is enough that the age of the victim is proven and that there was sexual intercourse.[ ] As the law presumes absence of free consent when the victim is below the age of 12, it is not necessary to prove force, intimidation or consent as they are not elements of statutory rape x x x."[32]

In the instant case, it was established by the evidence on record, *i.e.*, AAA's Birth Certificate,[33] that she was born on January 8, 1998 and was thus below the age of 12 on January 1, 2010.

It was likewise established beyond reasonable doubt, through the straightforward, positive, and convincing testimony of AAA, that accused-appellant had carnal knowledge of AAA on the

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[29] G.R. No. 182057, February 6, 2009, 598 SCRA 157.

[30] *Id.* at 164-165.

[31] G.R. No. 225604, July 23, 2018, 873 SCRA 208.

[32] *Id.* at 216. *See also People v. Eulalio*, G.R. No. 214882, October 16, 2019, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65784>.

[33] CA *rollo*, p. 46.

aforementioned date. Indeed, AAA narrated that while they were celebrating the New Year, accused-appellant, who was then under the influence of liquor, called AAA to his room, locked the door, grabbed her hand, laid her down, undressed her, fondled her breast, licked her vagina, and inserted his penis into her vagina.[34] Thereafter, he gave her ₱50.00 not to tell anyone.[35]

As the elements of statutory rape were duly proven beyond reasonable doubt, the Court affirms the conviction of accused-appellant for the rape committed on January 1, 2010.

Rape through intimidation under Criminal Case No. 11-CR-8291 was likewise proven beyond reasonable doubt.

After a careful review of the records and the transcript of stenographic notes, the Court likewise affirms the findings of the RTC and the CA that the prosecution alleged[36] and proved the elements of rape through intimidation for the acts committed on October 3, 2010. In *People v. Ricamora*,[37] the Court explained:

For rape to exist it is not necessary that the force or intimidation employed be so great or of such character as could not be resisted. It is only necessary that the force or intimidation be sufficient to

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[34] *Id.* at 42.

[35] *Id.*

[36] *Rollo*, p. 5. The Information in Criminal Case No. 11-CR-8291 states "That on or about the 3rd day of October 2010, x x x Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did [then] and there willfully, unlawfully and feloniously have carnal knowledge with one [AAA], a minor being twelve (12) years of age at the time of the commission of the crime, by bringing her to the common comfort room and once inside, he brought down her pant[s] and panty, licked her vagina and brought out his penis and touched her vagina against her will and consent, which deeds debase, degrade and demean the intrinsic worth and dignity of the said [AAA] as a human being, to her great damage, prejudice and mental anguish."

[37] G.R. No. 168628, December 6, 2006, 510 SCRA 514.

consummate the purpose which the accused had in mind. Intimidation must be viewed in the light of the victim's perception and judgment at the time of the rape and not by any hard and fast rule. It is therefore enough that it produces fear — fear that if the victim does not yield to the bestial demands of the accused, something would happen to her at the moment or thereafter, as when she is threatened with death if she reports the incident. Intimidation would also explain why there are no traces of struggle which would indicate that the victim fought off her attacker.[38]

In *People v. Arivan*,[39] the Court elucidated:

x x x The law does not impose upon a rape victim the burden of proving resistance, particularly when intimidation is exercised upon the victim and the latter submits herself to the appellant's advances out of fear for her life or personal safety. The test remains to be whether the threat or intimidation produces a reasonable fear in the mind of the victim that if she resists or does not yield to the desires of her attacker, the threat would be carried out. It is thus not necessary for the victim to have resisted unto death or to have sustained physical injuries in the hands of the accused. So long as the intercourse takes place against the victim's will and she submits because of genuine apprehension of harm to her and her family, rape is committed.[40]

In *People v. Galang*,[41] the Court held:

Intimidation in rape cases is not calibrated or governed by hard and fast rules. Since it is addressed to the mind of the victim and is therefore subjective. x x x Where such intimidation exists and the victim is cowed into submission as a result thereof, thereby rendering resistance futile. It would be extremely unreasonable, to say the least, to expect the victim to resist with all her might and strength. If resistance would nevertheless be futile because of a continuing intimidation, then offering none at all would not mean consent to the assault as to make the victim's participation in the sexual act voluntary.[42]

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[38] *Id.* at 528. Underscoring supplied.

[39] G.R. No. 176065, April 22, 2008, 552 SCRA 448.

[40] *Id.* 467-468. Underscoring supplied; emphasis omitted.

[41] G.R. Nos. 150523-25, July 2, 2003, 405 SCRA 301.

[42] *Id.* at 307-308. Underscoring supplied.

As applied to the instant case, the Court finds that the prosecution established beyond reasonable doubt the elements of rape under Article 266-A, paragraph 1 (a), *i.e.*, 1) accused-appellant had carnal knowledge of AAA 2) through intimidation.[43]

In the instant case, AAA testified that accused-appellant began sexually abusing her in various ways, *i.e.*, by injecting her with some substance and touching her breasts, inserting his finger into her vagina, licking her breast, kissing her vagina, and inserting his penis into her vagina, when she was only seven years old.[44] She could not, however, recall the specific dates.[45] When she refused to obey him, AAA testified that accused-appellant would get angry,[46] and create trouble at their residence.[47] She said that when she did not follow him, he would get angry and she would see him watching her such that she could not sleep at night.[48] During her direct and cross-examination, she unequivocally stated that she did not tell her parents because accused-appellant threatened that he would kill her[49] and her family.[50] AAA unequivocally testified that accused-appellant called her inside the comfort room, removed her clothes, kissed her vagina, and inserted his penis into her vagina on October 3, 2010.[51] AAA revealed these incidents to her mother soon after.

The fact that the foregoing traumatic incidents occurred on several occasions was corroborated by AAA's younger sister, who testified:

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[43] *See People v. Soriano*, G.R. No. 172373, September 25, 2007, 534 SCRA 140.

[44] Records, p. 7.

[45] *Id.* at 8.

[46] *Id.* at 124. TSN dated August 15, 2011.

[47] *Id.* at 125.

[48] *Id.* at 127.

[49] *Id.* at 124.

[50] *Id.* at 128.

[51] *Id.* at 129.

Q. Now on the first page of the document that you executed on the third paragraph, you said here that sometime in 2009[,] the friend of my sister [(*sic*)] was looking for her because there was something to give her?
A. Yes, ma'am.

x x x x

Q. Now based on your Affidavit you also went to the room of Alberto Martinez?
A. Yes, ma'am.

x x x x

Q. Could you please tell the court what did you see?
A. I saw Alberto inserted his fingers in the vagina of my sister.

Q. Okay. And when you saw that Alberto was inserting his finger inside your sister's vagina what did you do next?
A. I went home and I told my mother what I saw but she did not believe me.

Q. Okay. It was again on the sixth paragraph of your Affidavit you said here that one time again [(*sic*)] you cannot remember the exact date when you, [AAA], and your playmates were playing hide and seek, is that correct?
A. Yes, ma'am.

x x x x

Q. And you said here that [AAA] when it[']s time to hide, you noticed that [AAA] and Alberto Martinez went together to hide inside the room of [accused-appellant]?
A. Yes, ma'am.

x x x x

Q. And what did you do next when you followed them to the room of Alberto Belinario?
A. I saw that Alberto Belinario was doing something to my elder sister.

Q. What was he doing to your elder sister? What did you see?
A. I saw him removed [(*sic*)] the clothes of my sister and I saw him "[*ikinkinod*]" doing the pumping movement.

x x x x

Q. And according to you, you said here that Alberto said that he w anted to join your game "hilo-hilotan[",] is that correct?
A. Yes, ma'am.

x x x x

Q. And what happened next when he said to you that he wanted your sister [AAA] to be his partner?
A. When we were there playing he made my sister lay down in his bed and he was also doing the push and pull movement.

Q. What was [(*sic*)] the, so he asked [AAA] to lay on his bed?
A. Yes, ma'am.

Q. And what did he do next when he asked [AAA] to lay down on his bed?
A. He massaged her but it seems that he was not actually massaging her but he was actually doing the push and pull movement.[52]

Notably, the foregoing acts began while AAA was only a young child of seven years and continued until AAA was 12 years old. On the other hand, accused-appellant was already around 40 years old and was living with his live-in partner as boarders in AAA's house.[53] Indeed, AAA testified that she considered him as a father.[54]

In view of the foregoing, the Court finds that the element of intimidation has been duly proved. Again, intimidation must be evaluated on a case to case basis in light of the circumstances, perception, and judgment of the victim. Indeed, "x x x [t]he age, size and strength of the parties should be taken into account in evaluating the existence of the element of force or intimidation in the crime of rape x x x."[55] It is sufficient if it "x x x produces fear — fear that if the victim does not yield to the bestial demands

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[52] *Id.* at 133-137. TSN dated August 23, 2011. Underscoring supplied.

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

[54] Records, p. 128.

[55] *People v. Nequia*, G.R. No. 146569, October 6, 2003, 412 SCRA 628, 640.

of the accused, something would happen to her at the moment or thereafter, as when she is threatened with death if she reports the incident x x x."[56] The recurrence of accused-appellant's abominable deeds, the wide discrepancy in their ages and accused-appellant's many threats prove beyond reasonable doubt that AAA submitted herself to accused-appellant's carnal desires out of a reasonable fear and genuine apprehension of harm to her and her family.[57] To reiterate, "x x x [i]f resistance would nevertheless be futile because of a continuing intimidation, then offering none at all would not mean consent to the assault as to make the victim's participation in the sexual act voluntary."[58]

In view of the foregoing, the Court likewise affirms the conviction of accused-appellant under Criminal Case No. 11-CR-8291 for the rape committed on October 3, 2010.

Rape through force under Criminal Case No. 11-CR-8290 was not proven.

As regards the October 2, 2010 incident covered by Criminal Case No. 11-CR-8290 however, the Court is constrained to acquit the accused-appellant as the prosecution failed to prove the element of force. At this juncture, the Court reiterates *People v. Lagramada*,[59] which held:

> In a criminal prosecution, the law always presumes that the defendant is not guilty of any crime whatsoever, and this presumption stands until it is overcome by competent and credible proof. Where two conflicting probabilities arise from the evidence, the one compatible with the presumption of innocence will be adopted. It is therefore incumbent upon the prosecution to establish the guilt of the accused with moral certainty or beyond reasonable doubt as demanded by law.

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[56] *People v. Ricamora, supra* note 37, at 528. *See also People v. Soriano, supra* note 43.

[57] *People v. Arivan, supra* note 39, at 467-468.

[58] *People v. Galang, supra* note 41, at 308.

[59] G.R. Nos. 146357 & 148170, August 29, 2002, 388 SCRA 173.

When a person cries rape, society reacts with sympathy for the victim, admiration for her bravery in seeking retribution for the crime committed against her, and condemnation for the accused. However, being interpreters of the law and dispensers of justice, judges must look at each rape charge sans the above proclivities and deal with it with caution and circumspection. Judges must free themselves of the natural tendency to be overprotective of every girl or woman decrying her defilement and demanding punishment for the abuser. While they ought to be cognizant of the anguish and humiliation the rape victim goes through as she demands justice, they should equally bear in mind that their responsibility is to render justice in accordance with law.

Hence, accused shall be presumed innocent until the contrary is proved. Before the accused in a criminal case may be convicted, the evidence must be strong enough to overcome the presumption of innocence and to exclude every hypothesis except that of the guilt of the defendant. If the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not pass the test of moral certainty and will not suffice to support a conviction.[60]

In relation thereto, *People v. Bermas*,[61] discussed the peculiar nature of rape charges in this wise:

x x x [I]n rape cases, the accused may be convicted on the basis of the lone, uncorroborated testimony of the rape victim, provided that her testimony is clear, convincing, and otherwise consistent with human nature. This is a matter best assigned to the trial court which had the first[-]hand opportunity to hear the testimonies of the witnesses and observe their demeanor, conduct, and attitude during cross-examination. Hence, the trial court's findings carry very great weight and substance.

However, it is equally true that in reviewing rape cases, the Court observes the following guiding principles:

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[60] *Id.* at 193-194. Underscoring supplied.

[61] G.R. No. 234947, June 19, 2019, 905 SCRA 455.

(1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove;

(2) in view of the intrinsic nature of the crime where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution;

(3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.

This must be so as the guilt of an accused must be proved beyond reasonable doubt. Before he is convicted, there should be moral certainty — a certainty that convinces and satisfies the reason and conscience of those who are to act upon it. Absolute guarantee of guilt is not demanded by the law to convict a person of a criminal charge but there must, at least, be moral certainty on each element essential to constitute the offense and on the responsibility of the offender. Proof beyond reasonable doubt is meant to be that, all things given, the mind of the judge can rest at ease concerning [his] verdict. x x x[62]

It bears emphasis that the Information specifically alleged that accused-appellant had carnal knowledge of AAA through force, *viz.*:

Criminal Case No. 11-CR-8290

That on or about the 2nd day of October 2010, x x x Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, did [then] and there wilfully, unlawfully and feloniously have carnal knowledge with one [AAA], a minor being twelve (12) years of age at the time of the commission of the crime, by calling her to his room and once inside, he locked the door and brought her to his bed, undressed her, sucked her breast, licked her vagina, and inserted his penis into her vagina against her will and consent, which deeds debase, degrade and demean the intrinsic worth and dignity of the said [AAA] as a human being, to her great damage, prejudice and mental anguish.

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[62] *Id.* at 464-465. Citations and emphasis omitted; underscoring supplied.

CONTRARY TO LAW.[63]

While AAA convincingly testified as regards the fact of carnal knowledge on October 2, 2010, her testimony, as shown above, was bereft of any categorical statement that accused-appellant used force in accomplishing the lustful deed.[64]

The Court is aware and, in fact, affirms the principle that "x x x the absence of external signs of physical injuries does not prove that rape was not committed, for proof thereof is not an essential element of the crime of rape x x x"[65] and that "x x x the force employed in rape need not be irresistible so long as it is present and brings the desired result. All that is necessary is that the force be sufficient to fulfill its evil end, or that it be successfully used; it need not be so great or be of such a character that it could not be repelled. x x x"[66] While force need not be irresistible however, it must still be present and such presence must be sufficiently alleged and proved beyond reasonable doubt. Unfortunately, the afore-quoted testimonial evidence offered to prove force under this particular charge is definitely inadequate and grossly insufficient to establish the guilt of accused-appellant with the required quantum of evidence.[67] There is no testimony whatsoever about the nature of the force employed, or about any struggle, or even resistance however slight.

It is settled that "x x x [i]n rape cases alleged to have been committed by force[,] it is imperative for the prosecution to establish that the element of voluntariness on the part of the victim be absolutely lacking. The prosecution must prove that

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[63] *Rollo*, p. 5. Underscoring supplied.

[64] *People v. Estopito*, G.R. No. 136144, January 15, 2002, 373 SCRA 212, 220.

[65] *People v. Balleno*, G.R. No. 149075, August 7, 2003, 408 SCRA 513, 519.

[66] *Id.*

[67] See *People v. Dulay*, G.R. Nos. 95156-94, January 18, 1993, 217 SCRA 132, 153.

force or intimidation was actually employed by accused upon his victim to achieve his end. Failure to do so is fatal to its cause."[68] Although it is peculiar that a young child of only 12 years of age is incapacitated to enter into ordinary contracts but is deemed capacitated to give "consent" to sexual intercourse, the question is a matter of wisdom better directed to the legislative branch of government. For purposes of resolving the instant case, jurisprudence on the matter is explicit — if the woman is 12 years of age or over at the time she was violated, sexual intercourse through force, violence, intimidation or threat must be alleged and proved by the prosecution beyond reasonable doubt.[69]

Time and again, the Court has held that "[e]ach and every charge of rape is a separate and distinct crime that the law requires to be proven beyond reasonable doubt. The prosecution's evidence must pass the exacting test of moral certainty that the law demands and the rules require to satisfy the burden of overcoming the appellant's presumption of innocence."[70]

As previously discussed, the prosecution sufficiently proved that the carnal acts were attended by intimidation. In addition, the prosecution proved that although AAA had already turned 12 on October 2, 2010, she had the mental age of seven years and one month.[71] However, neither of these circumstances is relevant to Criminal Case No. 11-CR-8290 as they were not alleged in the information. "x x x It is a fundamental rule that every element of the crime charged must be aptly alleged in the information so that the accused can be fully informed of the nature and cause of the accusation. Anything less would be an infringement of his constitutional rights."[72]

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[68] *People v. Oropesa*, G.R. No. 229084, October 2, 2019 citing *People v. Tionloc*, G.R. No. 212193, February 15, 2017, 818 SCRA 1.

[69] *People v. Chavez, supra* note 23.

[70] *People v. Valenzuela, supra* note 29, at 175.

[71] CA *rollo*, p. 46.

[72] *People v. Estopito, supra* note 64, at 220.

The constitutional right to be informed of the nature and cause of the accusations against him[73] requires "x x x that [any] offense charged be stated with clarity and with certainty to inform the accused of the crime he is facing in sufficient detail to enable him to prepare his defense."[74] It is corollary to the broader right to be presumed innocent until the contrary is proved. Ineluctably, the Constitution requires the State to describe each purported criminal act with sufficient certainty because an accused is presumed to have no independent knowledge of the facts constituting the offenses charged.[75] Thus, the written accusation must fully "x x x appraise the accused of the nature of the charge against him [in order] to avoid possible surprises that may lead to injustice x x x."[76]

It bears emphasis that the State, through the prosecution, bears the burden of sufficiently informing the accused of the accusations against him so as to enable him to properly prepare his defense.[77] The reason is intuitive — as against the virtually limitless power and resources of the State, a person can only rely 1) on his or her constitutional rights to criminal due process and 2) on the court to uphold and give meaning to these rights.

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[73] Article III, Section 14, paragraph 2 of the CONSTITUTION states:

Section 14. x x x.

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

[74] *Enrile v. People*, G.R. No. 213455, August 11, 2015, 766 SCRA 1, 32.

[75] *Id.* at 35.

[76] *Id.* at 33.

[77] *People v. Solar*, G.R. No. 225595, August 6, 2019, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65742>.

As the Court held in *Secretary of Justice v. Lantion*,[78] "[t]he individual citizen is but a speck of particle or molecule *vis-a-vis* the vast and overwhelming powers of government. His only guarantee against oppression and tyranny are his fundamental liberties under the Bill of Rights which shield him in times of need x x x."[79]

The Court takes opportunity to remind the State, as represented by the public prosecutor, to be more conscientious in performing its duties and to exert more diligence in crafting Informations and in prosecuting criminal cases. "x x x [P]rosecutors perform the unique function, essential in the maintenance of the rule of law and peace and order, of ensuring that those who violate the law are brought to justice x x x."[80] The primary duty of the public prosecutor is to see that justice is done — to the State, that its penal laws are not broken and order is maintained; to the victim, that his or her rights are vindicated; and to the offender, that he is justly punished for his or her crime.[81] In crafting the Criminal Case 11-CR-8290, the prosecution grievously failed to deliver justice.

WHEREFORE, premises considered, the Decision dated February 27, 2019 of the Court of Appeals, Special Second Division, in CA-G.R. CR-HC No. 10062 is hereby **AFFIRMED** with the following **MODIFICATIONS**:

(a) In Criminal Case No. 11-CR-8289, accused-appellant is hereby found **GUILTY** beyond reasonable doubt of rape under Article 266-A, paragraph 1(d), sentenced to suffer the penalty of *reclusion perpetua*, and ordered to pay the offended party: ₱75,000.00 as civil indemnity,

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[78] *Secretary of Justice v. Lantion*, G.R. No. 139465, January 18, 2000, 322 SCRA 160.

[79] *Id.* at 619.

[80] *People v. Solar, supra* note 77.

[81] *People v. Pareja*, G.R. No. 202122, January 15, 2014, 714 SCRA 131, 160.

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

(b) In Criminal Case No. 11-CR-8291, accused-appellant is hereby found **GUILTY** beyond reasonable doubt of rape under Article 266-A, paragraph 1 (a), sentenced to suffer the penalty of *reclusion perpetua*, and ordered to pay the offended party: ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages.

(c) In Criminal Case 11-CR-8290, accused-appellant is hereby **ACQUITTED**.

(d) All monetary awards shall earn interest at the legal rate of six percent (6%) *per annum* from the finality of this decision until fully paid.

SO ORDERED.

Peralta, C.J., Carandang, Zalameda and *Gaerlan, JJ.*, concur.

SECOND DIVISION

[G.R. No. 248130. December 2, 2020]

PRUDENCIO GANAL, JR. *y* BADAJOS, *Petitioner, v.* **PEOPLE OF THE PHILIPPINES**, *Respondent.*

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This Petition for Review assails the following issuances of the Court of Appeals in CA-G.R. CR No. 41105 entitled "*People of the Philippines v. Prudencio Ganal, Jr. y Badajos*":

1) Decision[1] dated March 27, 2019, affirming the trial court's conviction of petitioner for homicide but mitigated by passion and obfuscation and voluntary surrender; and

2) Resolution[2] dated July 2, 2019, denying petitioner's motion for reconsideration.

The Facts

The Charge

By Information dated July 5, 2013, Prudencio Ganal, Jr. (petitioner) was charged with homicide for the death of Julwin Alvarez (Julwin), thus:

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[1] Penned by Associate Justice Priscilla J. Baltazar-Padilla (retired Member of this Court) and concurred in by Associate Justices Germano Francisco D. Legaspi and Ronaldo Roberto B. Martin, all members of the Special 13th Division, *rollo*, pp. 32-44.

[2] *Id.* at 46-47.

That on or about May 20, 2013 in the Municipality of Baggao, Province of Cagayan and within the jurisdiction of this Honorable Court, the said accused PRUDENCIO GANAL y Badajos armed with a handgun, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and shoot JULWIN ALVAREZ y JAVIER thereby inflicting upon him gunshot wounds on the different parts of his body which caused his death.

CONTRARY TO LAW.[3]

The case was raffled to the Regional Trial Court (RTC), Branch 3, Tuguegarao City. On arraignment, petitioner pleaded "not guilty."[4]

Proceedings before the Trial Court

Petitioner admitted the killing but invoked self-defense and defense of relative. Hence, the order of trial was reversed.

Defense's Version:

The testimonies of Barangay Captain Sherwin Mallo, Mario Ubina (Ubina), Florante Orden Castillo, Jr. (Castillo), Prudencio Ganal, Sr. (Ganal, Sr.), Erlinda Ganal, PO3 Erick Marcelino (PO3 Marcelino) and petitioner showed that about 7 o'clock in the evening of May 20, 2013, Castillo and Ubina were drinking *Ginebra Kuatro Cantos* in petitioner's house in Santor, Baggao, Cagayan. By 9:30 o'clock in the evening, petitioner's neighbor Angelo Follante (Angelo), arrived uninvited and insisted to join the drinking session. Petitioner refused because Angelo was already very drunk. Angelo then challenged petitioner to a fight but the latter advised him to just go home. Angelo got enraged and picked up stones to throw at petitioner but Ubina was quick to take the stones away. Petitioner eventually prevailed on Angelo and the latter left. Petitioner and his companions then resumed drinking.[5]

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[3] *Id.* at 32.

[4] *Id.* at 63.

[5] *Id.* at 63-64.

Thirty (30) minutes later, stones were hurled at the roofs of the adjacent houses of petitioner and his father, Ganal, Sr. Ganal, Sr. went out to check and saw Angelo together with his uncle Julwin — the deceased. The two were in the middle of the road near the front gate. Ganal, Sr. approached and asked them to go home because his wife was suffering from hypertension and should not be disturbed. Julwin replied that he did not care if Ganal, Sr.'s wife died, he would kill all of them, including petitioner. Ganal, Sr. tried to pacify the two, assuring them that they would settle whatever problem they had the following day.[6]

Julwin, then holding palm-sized stones in both hands, managed to push open the gate. As Ganal, Sr. tried to pull back the gate, Julwin hit him with a stone in the chest. Ganal, Sr. fell on the plant box made of hollow blocks and passed out.[7]

Petitioner, from the main door of his house, saw what happened. Julwin, who had a knife tucked in his waistband and holding two (2) stones, advanced towards him. Petitioner thus rushed inside his house, got his gun, and fired a warning shot into the air. Ganal, Sr. this time had regained consciousness and hid near the gate. Angelo ran away but Julwin continued advancing towards him. When Julwin was about two (2) to three (3) meters away from him, petitioner thought that the victim was intent on killing him. Petitioner fired at Julwin, who in turn, pointed a finger at him, threatening to kill everyone inside the house. Afraid that Julwin would make good on his threat, petitioner fired all the rounds in his gun. Julwin fell within a meter from petitioner's door.[8]

Petitioner borrowed the cellphone of his mother Erlinda Ganal and called the Baggao Police Station. He asked assistance from PO3 Marcelino and committed to surrender himself. When the

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[6] *Id.* at 64.

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

[8] *Id.* at 65.

police officers arrived, petitioner admitted he killed Julwin, turned over his gun, and voluntarily surrendered.[9]

The Prosecution's Version

In the evening of May 20, 2013, feast day of the patron saint of Santor, Baggao, Cagayan, Angelo dropped by petitioner's house. On his way to petitioner's house, Angelo had in his pockets stones, around 2 inches in diameter, for driving away dogs along the way. When petitioner saw the stones, he ordered Angelo to surrender them and went to get his gun. Petitioner showed the gun to Angelo and told the latter to go home if he did not want any trouble.[10]

Instead of going home, Angelo went to Julwin's house. He saw Julwin sitting on a rocking chair outside the house. After telling Julwin what happened, Angelo momentarily went inside the house but when he returned outside, Julwin was nowhere to be found. Angelo went out to look for Julwin and saw the latter walking toward petitioner's house and go through the slightly opened gate. Thereafter, petitioner and Julwin had a confrontation. Suddenly, petitioner shot Julwin in the chest. Angelo ran away in fear and heard three (3) more shots. Petitioner followed him so he ran to the house of one Gilbert Narag. Angelo later went back to Julwin's house when he heard that the latter's body was brought there by the police. The post mortem examination showed that Julwin died due to "*severe hemorrhage secondary to multiple gunshot wounds and lacerations*."[11]

Amelia Alvarez, Julwin's wife, claimed that she incurred ₱114,000.00 for the wake and burial, ₱24,000.00 of which was for the funeral service as evidenced by the Contract of Service issued by St. Claire Funeral Homes. The remaining ₱90,000.00 was spent on groceries, pigs, tomb construction, transportation and funeral mass, which were not duly receipted. Julwin was

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[9] *Id.* at 65-66.

[10] *Id.* at 33.

[11] *Id.*

a security guard at Candice Grocery in Tuguegarao City with a monthly salary of ₱5,000.00 until he resigned in December 2012. He also farmed corn on land less than a hectare in size with two (2) croppings. If lucky, his harvest was around 70-100 cavans, otherwise, it was less than 70 cavans.[12]

The Trial Court's Ruling

By Judgment[13] dated December 19, 2017, the trial court found petitioner guilty of homicide. It did not give credence to petitioner's claim of self-defense on the ground that the force he employed was not commensurate to Julwin's supposed unlawful aggression. The nature and number of wounds (5 bullet wounds and 2 lacerations) revealed petitioner's intent to kill. More, there was no incomplete self-defense because petitioner failed to present clear and convincing evidence that there was unlawful aggression on Julwin's part. Nor did it give credence to petitioner's claim of defense of property because the force employed by petitioner was not reasonably necessary. Petitioner could not also avail of defense of uncontrollable fear because he was unable to show that Julwin's actuations reduced petitioner to a mere instrument devoid of free will and acting merely out of compulsion.[14]

The trial court credited petitioner "passion and obfuscation" and "voluntary surrender" but not "vindication of a grave offense," imposed the corresponding penalty, and granted civil indemnity and damages.[15] Thus:

WHEREFORE, premises considered, the court finds accused PRUDENCIO GANAL y Badajos, Jr. GUILTY beyond reasonable doubt of the crime of HOMICIDE and applying the Indeterminate Sentence Law, it hereby sentences him:

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[12] *Id.* at 34.

[13] *Id.* at 61-74.

[14] *Id.* at 66-71.

[15] *Id.* at 71-72.

1. To suffer an indeterminate prison sentence ranging from six (6) years *prision correccional* maximum as minimum to ten (10) years of *prision mayor* medium as maximum; and

2. To pay the heirs of Julwin Alvarez y Javier the amounts of:

   a. ₱50,000.00 as death indemnity;

   b. ₱50,000.00 as moral damages; and,

   c. ₱25,000.00 as temperate damages.

SO ORDERED.[16]

Proceedings Before the Court of Appeals

On appeal, petitioner faulted the trial court for rendering the verdict of conviction. In the main, he argued that the three (3) justifying circumstances of self-defense, defense of ascendant, and lawful defense of property rights should have been appreciated. Julwin was unlawfully aggressive towards his father, Ganal, Sr., pushing his way through the gate while carrying palm-sized stones in his hands and having a knife tucked in his waistband. Despite firing a warning shot, Julwin still continued advancing towards him while threatening to kill everyone in the house. The exempting circumstance of uncontrollable fear of an equal or greater injury can also be appreciated in his favor. In the alternative, incomplete self-defense may also be considered.[17]

The Office of the Solicitor General (OSG), through Assistant Solicitor General Diana Castañeda-De Vera and Associate Solicitor Alexis Joseph Noble, essentially countered that there was no unlawful aggression on Julwin's part and the means employed by petitioner to repel the imagined attack was not reasonable and commensurate to the supposed threat.[18]

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[16] *Id.* at 73-74.

[17] *Id.* at 50-58.

[18] *Id.* at 77-88.

The Ruling of the Court of Appeals

By its assailed Decision[19] dated March 27, 2019, the Court of Appeals affirmed in full.

Petitioner sought reconsideration, which the Court of Appeals denied through its assailed Resolution[20] dated July 2, 2019.

The Present Petition

Petitioner seeks to reverse, *via* Rule 45 of the Rules of Court, the verdict of conviction for homicide rendered against him by the trial court, as affirmed by the Court of Appeals. He faults the courts below for disregarding the alleged clear evidence that it was Julwin who initiated the unlawful aggression when he smashed a large stone on his father's chest and shouted he would kill petitioner and his family. He asserts that he only shot Julwin when, even after his warning shot, the latter persisted in attacking him and his family. Thus, he insists that the justifying circumstances of self-defense and defense of relatives should be appreciated in his favor.

Ruling

We acquit.

Petitioner invokes the first and second justifying circumstances under Article 11 of the Revised Penal Code, *viz.*:

ARTICLE 11. Justifying Circumstances. — The following do not incur any criminal liability:

1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur:

First. Unlawful aggression;

Second. Reasonable necessity of the means employed to prevent or repel it;

Third. Lack of sufficient provocation on the part of the person defending himself.

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[19] *Supra* note 1.

[20] *Supra* note 2.

> 2. Anyone who acts in defense of the person or rights of his spouse, ascendants, descendants, or legitimate, natural or adopted brothers or sisters, or of his relatives by affinity in the same degrees, and those by consanguinity within the fourth civil degree, provided that the first and second requisites prescribed in the next preceding circumstance are present, and the further requisite, in case the provocation was given by the person attacked, that the one making defense had no part therein.

We note that petitioner's primary invocation is self-defense and his claim of defense of relative should be deemed subsumed therein. As it was, petitioner witnessed up close how Julwin threw stones onto the roofs of his and his father's houses, pushed his way through the gate, knocked petitioner's father unconscious, hitting the latter with a large stone on the chest, shouted threats that he would kill petitioner and his family, and advanced toward petitioner even after petitioner had already fired a warning shot. Clearly, petitioner was immediately put on the defensive when Julwin started disturbing the peace of his home and posing a risk to his safety and that of his family.

To successfully claim self-defense, an accused must satisfactorily prove these elements: (1) unlawful aggression; (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 or herself.[21]

The first element, unlawful aggression, is present here. ***People v. Nugas***[22] explains the nature of unlawful aggression, thus:

> Unlawful aggression on the part of the victim is the primordial element of the justifying circumstance of self-defense. Without unlawful aggression, there can be no justified killing in defense of oneself. **The test for the presence of unlawful aggression under the circumstances 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**.

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[21] See *People v. Dulin*, 762 Phil. 24, 36 (2015).

[22] 677 Phil. 168, 177-178 (2011).

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.

Unlawful aggression is of two kinds: (a) actual or material unlawful aggression; and (b) imminent unlawful aggression. **Actual or material unlawful aggression means an attack with physical force or with a weapon, an offensive act that positively determines the intent of the aggressor to cause the injury**. Imminent unlawful aggression means an attack that is impending or at the point of happening; it must not consist in a mere threatening attitude, nor must it be merely imaginary, but must be offensive and positively strong (like aiming a revolver at another with intent to shoot or opening a knife and making a motion as if to attack). Imminent unlawful aggression must not be a mere threatening attitude of the victim, such as pressing his right hand to his hip where a revolver was holstered, accompanied by an angry countenance, or like aiming to throw a pot. (Emphasis supplied)

Actual or material unlawful aggression contemplates the offensive act of using physical force or weapon which positively determines the intent of the aggressor to cause the injury. Here, Julwin committed a series of offensive acts that patently revealed his intent to harm petitioner.

The test is whether the aggression from the victim puts in real peril the life or personal safety of the person defending himself or herself; the peril must not be an imagined threat. Here, the attendant circumstances indubitably speak of the real and palpable peril posed by Julwin on the lives and limbs of petitioner and his father. The peril was certainly far from fiction or imaginary.

Stones were hurled at the roofs of the adjacent houses of petitioner and his father, Ganal, Sr. Ganal, Sr. went out to check and saw Angelo in the company of his uncle Julwin — the deceased. The two were in the middle of the road near the front gate. Ganal, Sr. approached and asked them to go home because his wife was suffering from hypertension and should not be disturbed. Julwin replied that he did not care if Ganal, Sr.'s wife died, he would kill all of them, including petitioner. Ganal,

Sr. tried to pacify the two, assuring them that they would settle whatever problem they had the following day.[23]

Julwin, then holding palm-sized stones in both hands, managed to push open the gate. As Ganal, Sr. tried to pull back the gate, Julwin hit him with a stone on the chest. Ganal, Sr. fell on the plant box made of hollow blocks and passed out.[24]

Petitioner, from the main door of his house, saw what happened. Julwin, who had a knife tucked in his waistband and holding two (2) stones, started to advance toward him. Petitioner thus rushed inside his house, got his gun, and fired a warning shot into the air. Ganal, Sr. this time had regained consciousness and hid near the gate. Angelo ran away but Julwin just continued moving closer and closer to petitioner who then was constrained to shoot him once. But still Julwin did not retreat. He just kept moving closer, this time even threatening to kill everyone inside petitioner's house. Responding to the situation, petitioner then used up all the four (4) bullets on Julwin who, as a result, fell dead just within a meter from petitioner's door.[25]

The third element of self-defense, lack of sufficient provocation on the part of the person defending himself or herself, is also present here.[26] In fact, both the prosecution and defense were one in saying that it was Julwin who went to petitioner's house and instigated the incident.

As for the second element, reasonable necessity of the means employed, we disagree with the trial court and the Court of Appeals, and hold that the same is likewise present. ***People v. Olarbe***[27] extensively discussed how courts may determine the reasonable necessity of the means employed:

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[23] *Supra* note 6.

[24] *Id.*

[25] *Supra* note 8.

[26] *Supra* note 21.

[27] G.R. No. 227421, July 23, 2018.

In judging pleas of self-defense and defense of stranger, the courts should not demand that the accused conduct himself with the poise of a person not under imminent threat of fatal harm. He had no time to reflect and to reason out his responses. He had to be quick, and his responses should be commensurate to the imminent harm. This is the only way to judge him, for the law of nature — the foundation of the privilege to use all reasonable means to repel an aggression that endangers one's own life and the lives of others — did not require him to use unerring judgment when he had the reasonable grounds to believe himself in apparent danger of losing his life or suffering great bodily injury. The test is whether his subjective belief as to the imminence and seriousness of the danger was reasonable or not, and the reasonableness of his belief must be viewed from his standpoint at the time he acted. The right of a person to take life in self-defense arises from his belief in the necessity for doing so; and his belief and the reasonableness thereof are to be judged in the light of the circumstances as they then appeared to him, not in the light of circumstances as they would appear to others or based on the belief that others may or might entertain as to the nature and imminence of the danger and the necessity to kill.

The remaining elements of the justifying circumstances were likewise established.

Reasonable necessity of the means employed to repel the unlawful aggression does not mean absolute necessity. **It must be assumed that one who is assaulted cannot have sufficient tranquility of mind to think, calculate and make comparisons that can easily be made in the calmness of reason. The law requires rational necessity, not indispensable need. In each particular case, it is necessary to judge the relative necessity, whether more or less imperative, in accordance with the rules of rational logic. The accused may be given the benefit of any reasonable doubt as to whether or not he employed rational means to repel the aggression**.

In determining the reasonable necessity of the means employed, the courts may also look at and consider the number of wounds inflicted. A large number of wounds inflicted on the victim can indicate a determined effort on the part of the accused to kill the victim and may belie the reasonableness of the means adopted to prevent or repel an unlawful act of an aggressor. x x x

The courts ought to remember that a person who is assaulted has neither the time nor the sufficient tranquility of mind to think, calculate and choose the weapon to be used. For, in emergencies of this kind, human nature does not act upon processes of formal reason but in obedience to the instinct of self-preservation; and when it is apparent that a person has reasonably acted upon this instinct, it is the duty of the courts to hold the actor not responsible in law for the consequences. Verily, the law requires rational equivalence, not material commensurability, *viz.*:

It is settled that reasonable necessity of the means employed does not imply material commensurability between the means of attack and defense. What the law requires is rational equivalence, in the consideration of which will enter the principal factors the emergency, the imminent danger to which the person attacked is exposed, and the instinct, more than the reason, that moves or impels the defense, and the proportionateness thereof does not depend upon the harm done, but rests upon the imminent danger of such injury. (Emphasis supplied)

Here, though petitioner inflicted five (5) bullet wounds and two (2) lacerations on Julwin, the number of wounds alone should not automatically lead to the conclusion that there was a determined effort on petitioner's part to kill the victim. Petitioner was overcome by the instinct of self-preservation on seeing that Julwin brashly entered into his property and even knocked his father unconscious for getting in the way. Julwin was determined to inflict injury on petitioner — he brought two (2) large stones and knife for the purpose.

Faced by a determined and prepared foe, petitioner, who was simply drinking with his friends, suddenly found himself in a situation where he had to defend himself and his family from serious harm or even death. Notably, petitioner first tried to simply scare off Julwin by firing a warning shot. Julwin was unfazed and still continued to advance toward him with malevolent intent. And even after petitioner shot Julwin, the latter did not even falter but instead threatened to kill petitioner and his family. How does one react to such a terrifying situation? Petitioner must have thought that his actions were so futile because Julwin was still standing there and shouting threats.

Petitioner, at that instant, must have felt he had to end it once and for all — kill or be killed. So, he shot Julwin four (4) more times until the latter fell just a meter away from him. To repeat "*the right of a person to take life in self-defense arises from his belief in the necessity for doing so; and his belief and the reasonableness thereof are to be judged in the light of the circumstances as they then appeared to him, not in the light of circumstances as they would appear to others or based on the belief that others may or might entertain as to the nature and imminence of the danger and the necessity to kill*."

Indeed, petitioner must be exonerated for he had acted only in self-defense.

ACCORDINGLY, the petition is **GRANTED**. The assailed Decision dated March 27, 2019 and Resolution dated July 2, 2019 in CA-G.R. CR NO. 41105 of the Court of Appeals are **REVERSED** and **SET ASIDE**. Petitioner **PRUDENCIO GANAL, JR.** is **ACQUITTED** of **HOMICIDE** on ground of the justifying circumstance of self-defense.

SO ORDERED.

Gesmundo,[*] *Lopez* and *Rosario,*[**] *JJ.,* concur.

Perlas-Bernabe, S.A.J. (Chairperson) J., on official leave.

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[*] Acting Chairperson vice Senior Associate Justice Perlas-Bernabe.

[**] Designated additional member per S.O. No. 2797, dated November 5, 2020.

FIRST DIVISION

[G.R. No. 249149. December 2, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, *v.* **JOSE CABALES *y* WEBBER @ "BASIL",** *Accused-Appellant*.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CARANDANG, *J.*:

This is an appeal[1] from the Decision[2] of the Court of Appeals (CA) dated January 31, 2019 in CA-G.R. CR-HC No. 09979. The decision denied the appeal of Jose Cabales *y* Webber @ "Basil" (accused-appellant) and affirmed with modification the Decision[3] dated July 19, 2017 of the Regional Trial Court's (RTC) of Manila finding him guilty of sexual assault and rape, respectively, as defined and penalized under Article 266-A, paragraphs 2 and 1 of the Revised Penal Code (RPC), as amended by Republic Act No. (R.A.) 8353, in Criminal Case Nos. 16-328863 and 16-328864.

In separate Informations,[4] Cabales was charged as follows:

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[1] *Rollo*, p. 18.

[2] Penned by Associate Justice Franchito N. Diamante, with the concurrence of Associate Justices Romeo F. Barza and Jhosep Y. Lopez; id. at 3-17.

[3] Records, pp. 181-202.

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

Criminal Case No. 16-328863

The undersigned Assistant City Prosecutor upon sworn complaint by the offended party **[AAA]**, **a minor, 15 years old, assisted by Social Welfare Officer 1 MARIA BENILDA SANTOS** accuses **JOSE CABALES y WEBBER @ "BASIL"** of the crime of RAPE as defined and penalized under Article 266-A, paragraph 2 of the Revised Penal Code as amended by Republic Act 8353, committed as follows:

That on or about **September 2, 2016**, in the City of Manila, Philippines, the said accused, with lewd designs and by means of force and intimidation, did, then and there willfully and knowingly commit sexual assault upon the said **[AAA]**, by then and there compelling her to go inside the comfort room of their house located at x x x, and once inside, directing her in removing her clothes and thereafter putting his penis inside the latter's mouth, against her will and without her consent.

Contrary to law.[5] (Emphasis in the original)

Criminal Case No. 16-328864

That on or about **September 2, 2016**, in the City of Manila, Philippines, the said accused, with lewd designs and by means of force and intimidation, did, then and there willfully and knowingly rape the said **[AAA]**, by then and there compelling her to go inside the comfort room of their house located at x x x, and once inside, succeeded in having carnal knowledge upon the latter by telling her to bend down and thereafter inserting his penis into her vagina, against her will and without her consent.

Contrary to law."[6] (Emphasis in the original)

Accused-appellant pleaded not guilty to the crimes charged.[7] The cases were consolidated and during the pre-trial conference, the defense admitted: (1) the RTC's jurisdiction over the person of accused-appellant; (2) the accused-appellant's identity as the person named in the information and as the person arraigned

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[5] Records (Crim. Case No. 16-328863), p. 1.

[6] Records (Crim. Case No. 16-328864), p. 1.

[7] Records (Crim. Case No. 16-328863), pp. 26, 43.

in the cases; and (3) that accused-appellant underwent inquest proceedings.[8] Trial on the merits then ensued.

The prosecution presented: (1) AAA;[9] (2) Dr. Melissa Joyce P. Ramboangga (Dr. Ramboangga); (3) PO3 Jennifer De Leon-Cadatal (PO3 De Leon-Cadatal); and (4) PO1 Antonio Mangaoang, Jr. (PO1 Mangaoang) as its witnesses.[10] For the defense: (1) accused-appellant;[11] and (2) AAA's mother, BBB,[12] took the witness stand.[13]

AAA stated that she was 15 years old. She shared that accused-appellant is her stepfather. Accused-appellant and her mother, BBB, have been living together since 2009 and their relationship has produced three children.[14] She revealed that accused-appellant has been repeatedly raping her since she was 12 years old and her mother knew of this fact. She and her mother tried to run away but accused-appellant chased them, caught them, and beat up BBB. BBB could not do anything about AAA's predicament because she gets beaten up by accused-appellant. The last rape incident, which prompted her to file the present case, happened on September 2, 2016.[15]

At around 9:00 or 10:00 a.m. of September 2, 2016, accused-appellant instructed AAA to go to the market and her siblings to play outside of their home. Upon arriving from the market,

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[8] Id. at 49.

[9] The victim/private complainant will be referred to as "AAA." The real name of the victim/private complainant is withheld in accordance with A.M. No. 12-7-15-SC dated July 21, 2015.

[10] Records (Crim. Case No. 16-328863), p. 49.

[11] TSN dated February 27, 2017, pp. 1-18.

[12] The mother of the victim/private complainant will be referred to as "BBB." The real name of the mother of the victim/private complainant is withheld in accordance with A.M. No. 12-7-15-SC dated July 21, 2015.

[13] TSN dated May 12, 2017, pp. 2-6.

[14] TSN dated December 8, 2016, pp. 3-5.

[15] Id. at 9-10.

AAA cooked their food. While cooking, accused-appellant told AAA to follow him inside the comfort room. Instead of doing as told, AAA just continued with her cooking in the meantime.[16]

AAA's siblings noisily went inside their home. They, along with AAA, were sent out by accused-appellant. Accused-appellant, however, whispered to AAA to quickly come back and join him inside the comfort room. Acceding to accused-appellant's command, AAA went back inside their home, entered the comfort room, and saw accused-appellant naked. AAA removed her clothing as directed by accused-appellant. Accused-appellant ordered AAA to put his penis inside her mouth. Thereafter, accused-appellant told AAA to bend over and he inserted his penis inside her vagina. AAA revealed that she does not make a sound during the despicable act because accused-appellant repetitively threatens her that if she did, he will beat her up like he did in the past.[17]

After five minutes, AAA got dressed, went out of the comfort room, and prepared their food. Emboldened and fed up with what accused-appellant was doing to her, AAA left their home, went to a friend's house, and disclosed to her friend everything that had transpired. AAA likewise revealed her predicament with her friend's mother and the latter had the accused-appellant arrested.[18]

AAA added that accused-appellant is a drug-user and that he uses drugs before he rapes AAA. She left the custody of BBB and now stays at Bahay Tuluyan. She vividly recalls what transpired on September 2, 2016 because it was BBB's birthday.[19]

The testimonies of Dr. Melissa Joyce P. Ramboanga (Dr. Ramboangga), PO3 Jennifer De Leon-Cadatal (PO3 De Leon-

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[16] Records (Crim. Case No. 16-328863), p. 6.

[17] Id.

[18] TSN dated December 8, 2016, pp. 10-11.

[19] Id. at 14-15.

Cadatal), and PO1 Antonio Mangaoang, Jr. (PO1 Mangaoang) were dispensed with after the prosecution and defense entered into stipulations of facts as regards their intended respective testimonies.[20]

For Dr. Ramboanga:

1. that she is a physician assigned at the Child Protection Unit, UP-PGH;
2. that she examined AAA on September 5, 2016 at 1:21 p.m.;
3. that the result of AAA's examination is embodied in Final Medico-Legal Report No. 2016-17113;
4. that the Ano-Genital Examination stated therein revealed (a) "*absent hymen from 6 to 8 o'clock; yellow bruise from 9 to 11 o'clock" and (b) "Anogenital findings are indicative of blunt force or penetrating trauma*";
5. that the possible cause of injury is an erect penis;
6. that she conducted an interview with AAA and issued the corresponding summary thereof;
7. that she took photos of AAA and AAA's private part as well; and
8. that she has no personal knowledge as to the facts and circumstances constituting rape allegedly committed by accused-appellant against AAA.[21]

For PO3 De Leon-Cadatal:

1. that she is a bona fide member of the PNP assigned at the Police Station No. 2, Moriones, Tondo, Manila;
2. that she is the assigned on-case investigator;

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[20] Records (Crim. Case No. 16-328863), pp. 77-80.

[21] Id. at 77-78.

3. that she prepared the Letter Endorsement to the City Prosecutor as well as the Booking Sheet and Arrest Report;

4. that she interviewed AAA, as well as arresting officers PO1 Antonio Mangaoang, Jr., PO1 Jay-Ar Valdez, PO2 Reyzen del Rosario; PO1 Clifton de Leon, and PO1 Jonathan Manalang, and that she translated their respective narrations into Judicial Affidavits and Affidavit of Apprehension; and

5. that she has no personal knowledge as to the facts and circumstances constituting rape allegedly committed by accused-appellant against AAA.[22]

For PO1 Mangaoang:

1. that he is a bona fide member of the PNP assigned at the Police Station No. 2, Moriones, Tondo, Manila;

2. that he is one of the arresting officers together with PO1 Jay-Ar Valdez;

3. that on September 4, 2016, he was at the Police Station when a certain Prescilla lodged a complaint for rape;

4. that he — along with PO1 Valdez, AAA, and Prescilla proceeded to No. 355 Sta. Isabel, Tondo, Manila;

5. that upon arrival thereat, AAA pointed at her assailant, the accused-appellant, who was standing outside of their home;

6. that accused-appellant was brought to the Gat Andres Bonifacio Medical Center for medical examination and thereafter to Police Station No. 2 for investigation;

7. that he executed a Joint Affidavit of Apprehension; and

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[22] Id. at 78-79.

8. that he has no personal knowledge as to the facts and circumstances constituting rape allegedly committed by accused-appellant against AAA.[23]

For his defense, Cabales denied the allegations against him. Cabales claimed that at 12:00 p.m. of September 2, 2016, he took a bath while his eldest son was watching television. After taking a bath, he went to see his live-in partner, BBB, at Paco Market where she was selling *kakanin* and he stayed with her until 6:00 p.m. Cabales averred that AAA eloped twice with Mico, AAA's boyfriend. AAA filed the present cases against him because he punched Mico on September 3, 2016 when AAA returned to their home after their second elopement.[24]

Cabales insisted that Ma. Benilda Santos (Santos), a Social Welfare Officer of Manila, is the aunt of Mico. Santos assisted AAA to file a complaint against him in retaliation for punching Mico. Cabales, however, admitted that he failed to blotter the incidents that led to the filing of the criminal cases against him and to file the appropriate complaints with the barangay.[25]

For her part, BBB corroborated her common-law husband's story that at 12:00 p.m. of September 2, 2016, AAA, accused-appellant, and Nestar were at Paco Market waiting for her while she sells *kakanin* using *kariton*. BBB claimed that after accused-appellant punched Mico, the latter threatened to file a complaint against Cabales. BBB maintained that AAA filed the cases against her husband because of Mico's prodding. BBB stated that AAA is now pregnant and lives in Cebu with Mico.[26]

On cross-examination, BBB revealed that AAA left their home on September 3, 2016, a day after her birthday. Prior to September 2, 2016, AAA was missing for a week. She saw AAA again on September 2, 2016 when AAA and accused-

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[23] Id. at 79-80.

[24] TSN dated February 27, 2017, pp. 3-6.

[25] Id. at 15-18.

[26] TSN dated May 12, 2017, pp. 3-5.

appellant went to the market together and brought her a cake. She got angry at AAA when she saw her and she hit AAA. BBB explained that AAA was raised by her grandmother and that she only started living with them in 2011. BBB described AAA as hard-headed. BBB declared that AAA should have informed her earlier that her live-in partner was raping her. BBB stated that she was not present when AAA testified that, "*Ang pinakikinggan mo lang naman ay yung asawa mo at hindi silang mga anak.*"[27]

BBB alleged that she leaves their home at 4:00 a.m. to go to the market and she comes back at 1:00 or 2:00 p.m. For that particular day on September 2, 2016, however, she went home with AAA and accused-appellant between 10:00 to 11:00 p.m.[28] When confronted why she was wearing a yellow shirt for detainees, BBB confirmed that she was under detention for a drug-related case.[29]

Ruling of the Regional Trial Court

On July 19, 2017, the RTC found accused-appellant guilty beyond reasonable doubt for the crimes charged.[30] AAA's narration — on how accused-appellant summoned her inside the comfort room and once there required her to put his penis inside her mouth — was clear, straight forward, and credible. The fear created by accused-appellant's repeated mauling of AAA prevented the latter from resisting the sexual assault. Accused-appellant's moral ascendancy over AAA as the latter's stepfather substituted for the elements of violence or intimidation. AAA's consistent and forthright account of how accused-appellant required her to bend over in order for him to enter her vagina from behind gives credence to her rape story. The anogenital findings indicative of "blunt force or penetrating trauma" which could have caused by an erect penis is consistent with AAA's claim that she was raped by accused-appellant.

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[27] TSN dated May 19, 2017, pp. 3-6.

[28] Records (Crim. Case No. 16-328863), pp. 185-186.

[29] TSN dated May 9, 2017, p. 7.

For the RTC, accused-appellant's contention that AAA filed the cases against him to retaliate for punching Mico is inconsistent with human experience. The RTC opined that it is too high a price to be demanded in exchange for a minor assault. The RTC observed that AAA, at her age, ordinarily would not know and would not be able to narrate details of her rape story if it did not happen to her.[31]

In Criminal Case No. 16-328863 (for rape by sexual assault), the RTC applied the penalty of *reclusion temporal* in its medium period[32] as provided in Section 5 (b), Article III of R.A. 7610[33] taking into account AAA's age (15 years old). The RTC sentenced accused-appellant to suffer the indeterminate sentence of twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum. The RTC further adjudged accused-appellant to pay: (a) civil indemnity; (b) moral damages; and (c) exemplary damages in the amount of ₱30,000.00 for each.[34]

In Criminal Case No. 16-328864 (for rape by carnal knowledge), accused-appellant was sentenced to suffer the penalty of *reclusion perpetua* and was ordered to pay: (a) ₱50,000.00 as civil indemnity; (b) ₱50,000.00 as moral damages; (c) ₱30,000.00 as exemplary damages; and (d) the costs of suit.

Aggrieved, Cabales appealed[35] his conviction to the CA. In his Brief,[36] he argued that he was unarmed during the commission of the alleged offenses depriving him of the opportunity to employ

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[30] Records (Crim. Case No. 16-328863), p. 202.

[31] Id. at 189, 193-197.

[32] Rape through sexual assault is penalized with *prision mayor*.

[33] Special Protection of Children Against Abuse, Exploitation and Discrimination Act.

[34] Records (Crim. Case No. 16-328863), p. 202.

[35] CA *rollo*, pp. 13-14.

[36] Id. at 27-65.

force or intimidation. Moral influence or ascendancy cannot be presumed as substitutes for the elements of force or intimidation absent any evidence that moral influence or ascendancy vitiated the victim's consent when her womanhood was violated. He noted that one who is being sexually abused for several years would have sought help and run away when she had the means and opportunity to do so. He claimed that AAA was ill-motivated when she filed false charges against him, and BBB corroborated his testimony on this matter. If he indeed raped AAA, BBB would not have testified against AAA, her own daughter.[37]

The Office of the Solicitor General (OSG), appearing for the prosecution, countered that the common law spouse of a biological parent may be considered as having moral ascendancy over the victim in rape cases. The prevailing doctrine of relationship as a substitute for the element of force, threat, or intimidation is well recognized by our courts. AAA failed to resist accused-appellant's repeated sexual advances because she feared being beaten up by him.[38] The OSG reminded that children of tender age cannot be expected to react or respond like adults. There is no uniform reaction to a harrowing experience like rape. The victim of sexual offenses is not burdened to prove her resistance and non-resistance is not synonymous to assent to the sexual act. The OSG highlighted that the presiding judge who rendered the appealed decision is the same judge who presided over the trial. She had the unique opportunity to personally observe AAA's demeanor, conduct, and attitude under grueling examination. After observing the witnesses and hearing their testimonies, she found AAA as credible, whose clear and straight forward testimony is worthy of belief.[39]

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[37] *I*d. at 35-39.

[38] Id. at 100-101.

[39] Id. at 103-105.

Ruling of the Court of Appeals

On January 31, 2019, the CA affirmed Cabales' conviction but increased the monetary awards of: (a) civil indemnity *ex delicto*; (b) moral damages; and (c) exemplary damages in Criminal Case No. 16-328864 to ₱75,000.00 each in accordance with prevailing jurisprudence.[40]

The CA ruled that the prosecution was able to establish the elements of the crimes charged since: (a) accused-appellant had carnal knowledge of AAA; (b) by inserting his penis into AAA's private part and mouth; (c) through force, threat, or intimidation; (d) against her will and without her consent. It asserted that resistance is not an element of rape. Physical resistance is not necessary when intimidation is exerted upon the victim who, in turn, submits against her will to the rapist's lust out of fear for her own and for her loved one's safety.[41]

The CA ruled that Cabales' arguments hinged on AAA's credibility. The trial court's assessment of the witnesses' credibility is accorded great respect, if not finality, on appeal. The CA recognized the trial court's unique and distinct position to be able to observe, personally, the witness' demeanor, conduct, and attitude whose credibility is put in issue. AAA unwaveringly recounted in her Judicial Affidavit and testimony the unfortunate experience she had with accused-appellant.[42]

The CA reduced accused-appellant's prison sentence in Criminal Case No. 16-328863 but maintained the monetary awards for the crime. The CA stated that aside from AAA's narration in her Judicial Affidavit and testimony, the records are bereft of proof to prove her actual age. The victim's age must be proved conclusively and indubitably as the crime itself. Accordingly, Cabales was made to suffer the indeterminate penalty of imprisonment from four (4) years and two (2) months

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[40] *Rollo*, p. 16.

[41] Id. at 8-9.

[42] Id. at 10-12.

of *prision correccional*, as minimum, to ten (10) years of *prision mayor*, as maximum.[43]

Cabales filed a Notice of Appeal.[44] Both the OSG and accused-appellant manifested that they will no longer file any supplemental brief.[45]

Ruling of the Court

The appeal is without merit.

This Court repeats that "an appeal in criminal cases opens the entire case for review, and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned."[46] "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."[47]

The arguments of accused-appellant are hinged primarily on AAA's lack of credibility. It is well-settled "that the assessment of the credibility of witnesses and their testimonies is best undertaken by a trial court, whose findings are binding and conclusive on appellate courts. Matters affecting credibility are best left to the trial court because of its unique opportunity to observe the elusive and incommunicable evidence of that witness' deportment on the stand while testifying, an opportunity denied to the appellate courts which usually rely on the cold pages of the silent records of the case."[48] Both the trial court

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[43] Id. at 15-16.

[44] Id. at 18-19.

[45] Id. at 31-33, 35-37.

[46] *Rivac v. People*, 824 Phil. 156, 166 (2018), citing *People v. Dahil*, 750 Phil. 212 (2015); citation omitted.

[47] Id.; *see People v. Comboy*, 782 Phil. 187, 196 (2016).

[48] *Rondina v. People*, 687 Phil. 274, 290 (2012), citing *People v. Dahilig*, 677 Phil. 92 (2011).

and the CA held that "AAA" was a credible witness. They ruled that her testimony deserved credence and is sufficient evidence that she was raped by accused-appellant. We find no persuasive reason to overturn these findings.

Accused-appellant, however, argues that his defense of denial should have been considered and given credence since it was duly corroborated by BBB — his common-law spouse and the victim's mother. In *People v. Bugna*,[49] We reiterated the "time-honored principle in jurisprudence that positive identification prevails over alibi since the latter can easily be fabricated and is inherently unreliable. Hence, **it must be supported by credible corroboration from disinterested witnesses, and if not, is fatal to the accused**."[50] Alibi is an issue of fact that hinges on the credibility of witnesses, and that the assessment made by the trial court must be accepted unless it is patently and clearly inconsistent.[51] Indeed, We have observed that "some wives are overwhelmed by emotional attachments to their husbands to such an extent that the welfare of their own offsprings takes *[sic]* back seat. *Le coeur a ses raisons que la raison ne connait point*.[52] Knowingly or otherwise, they suppress the truth and act as medium for injustice to preponderate. Though heavens fall, they would stand by their man."[53]

A review of the Decision of the CA shows that it did not commit any reversible error in affirming Cabales' conviction. The records show that Cabales: (a) sexually assaulted and forced AAA to have sex with him on September 2, 2016; and (b) threatened AAA with physical harm whenever she resisted his sexual advances. Dr. Ramboanga's anogenital findings — that

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[49] 829 Phil. 536, 549 (2018).

[50] Id.

[51] *People v. Apattad*, 671 Phil. 95, 112 (2011), citing *People v. Estoya*, 472 Phil. 602 (2004).

[52] The heart has its reasons that reason does not know.

[53] *People v. Boromeo*, 474 Phil. 605, 627 (2004), citing *People v. Dizon*, 408 Phil. 147 (2001).

an erect penis may have caused the blunt force or penetrating trauma corroborates AAA's narration. "When the testimony of a rape victim is consistent with the medical findings, there is sufficient basis to conclude that there has been carnal knowledge."[54]

We reiterate that the moral ascendancy of Cabales over AAA renders it unnecessary to show physical force and intimidation since in rape committed by a close kin, such as the common-law spouse of her mother, moral influence or ascendancy takes the place of violence or intimidation.[55]

The defense failed to show any reason why the prosecution's evidence should not be given weight or credit except for imputing ill motive or revenge on the part of the victim since accused-appellant punched AAA's boyfriend. However, "[m]otives such as family feuds, resentment, hatred or revenge have never swayed this Court from giving full credence to the testimony of a rape victim. Also, ill motives become inconsequential if there is an affirmative and credible declaration from the rape victim, which clearly establishes the liability of the accused."[56] "The charges against appellant involve a heinous offense, and a minor disagreement, even if true, does not justify dragging a young girl's honor to a merciless public scrutiny that a rape trial brings in its wake."[57]

The CA modified the penalty in Criminal Case No. 16-328863 (rape by sexual assault) opining that while the Information[58] alleged that AAA was 15 years old, the parties' stipulation as regards AAA's age during the pre-trial on her minority (through

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[54] *People v. Manaligod*, 831 Phil. 204, 212-213 (2018), citing *People v. Mercado*, 664 Phil. 747 (2011).

[55] *People v. Belen*, 803 Phil. 751, 767 (2017).

[56] *Rondina v. People*, 687 Phil. 274, 292 (2012), citing *Dizon v. People*, 616 Phil. 498 (2009).

[57] *People v. Hermosa*, 452 Phil. 404, 412 (2003).

[58] Records (Crim. Case No. 16-328863), p. 1.

AAA's narration in her Judicial Affidavit) and AAA's testimony were insufficient evidence to prove that she was 15 years old when the crimes were committed. The CA cited Our ruling in *People v. Soria*[59] that independent evidence, other than the testimonies of prosecution witnesses and the absence of denial by the accused, are needed to prove the victim's age. The independent and competent evidence alluded to are the victim's original or duly certified birth certificate, baptismal certificate, or school records.

However, in *People v. Pruna*[60] this Court *En Banc* laid down the guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance, and declared that "[i]n the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused."[61] In the case at bar, while AAA failed to present her Certificate of Live Birth, AAA testified that: (a) she was born on July 13, 2001; and (b) she was 15 years old.[62] During accused-appellant's direct examination, the trial court acutely observed that accused-appellant admitted that AAA was 14 or 15 years of age.[63] Surely, accused-appellant is aware of AAA's age and competent to testify on the same since he professed during cross-examination that AAA has been in his custody for eight (8) years already.[64]

In *People v. Tulagan*,[65] We declared that rape by sexual assault committed against a child twelve (12) years of age and below

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[59] 698 Phil. 676, 696 (2012).

[60] 439 Phil. 440, 471 (2002).

[61] Id.

[62] TSN dated December 8, 2016, pp. 2-3.

[63] TSN dated February 27, 2017, p. 4.

[64] Id. at 13.

[65] G.R. No. 227363, March 12, 2019.

eighteen (18) years old is Lascivious Conduct under Section 5(b), Article III of R.A. 7610 and is penalized by *reclusion temporal* in its medium period to *reclusion perpetua*.[66]

Under Article 64 of the RPC, when there are neither aggravating nor mitigating circumstances, the penalty prescribed by law shall be imposed in its medium period, which is seventeen (17) years, four (4) months and one (1) day to twenty (20) years of *reclusion temporal*. Applying the Indeterminate Sentence Law, the minimum term shall be within the range of the penalty next lower in degree, which is *prision mayor* in its medium period to *reclusion temporal* in its minimum period, ranging from eight (8) years, and one (1) day, to fourteen (14) years and eight (8) months. Hence, Cabales should be meted the indeterminate sentence of ten (10) years, two (2) months, and twenty-one (21) days of *prision mayor*, as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal*, as maximum.

Following this Court's pronouncement in *Tulagan*, the monetary awards for civil indemnity, moral damages, and exemplary damages in Criminal Case No. 16-328863 should each be increased from ₱30,000.00 to ₱50,000.00.

Finally, the CA did not commit any reversible error in increasing the amount of civil indemnity, moral damages, and exemplary damages awarded in Criminal Case No. 16-328864 (rape by carnal knowledge) in line with prevailing jurisprudence.[67]

WHEREFORE, the instant appeal is **DISMISSED**. The Decision dated January 31, 2019 of the Court of Appeals in CA-G.R. CR-HC No. 09979 is **AFFIRMED** with **MODIFICATION** as follows:

(1) in Criminal Case No. 16-328864, accused-appellant Jose Cabales *y* Webber @ "Basil" is found **GUILTY** beyond reasonable doubt for rape and is sentenced to suffer

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[66] *Id.*

[67] *People v. Jugueta*, 783 Phil. 806 (2016).

the penalty of *reclusion perpetua*. Accused-appellant Jose Cabales *y* Webber @ "Basil" is **ORDERED** to pay AAA: (1) ₱75,000.00 as civil indemnity; (2) ₱75,000.00 as moral damages; and (3) ₱75,000.00 as exemplary damages; and

(2) in Criminal Case No. 16-328863 accused-appellant Jose Cabales y Webber @ "Basil" is found **GUILTY** beyond reasonable doubt of Lascivious Conduct under Section 5(b), Article III of Republic Act No. 7610, and is sentenced to suffer the indeterminate penalty of ten (10) years, two (2) months, and twenty-one (21) days of *prision mayor*, as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal*, as maximum. Accused-appellant Jose Cabales y Webber @ "Basil" is **ORDERED** to pay AAA: (1) ₱50,000.00 as civil indemnity; (2) ₱50,000.00 as moral damages; and (3) ₱50,000.00 as exemplary damages.

All the monetary awards shall earn interest at the legal rate of six percent (6%) *per annum* from date of finality of this judgment until fully paid.

SO ORDERED.

Peralta, C.J., Zalameda, and *Gaerlan, JJ.*, concur.

Caguioa, J., see concurring and dissenting opinion.

CONCURRING AND DISSENTING OPINION

CAGUIOA, *J.*:

I concur with the *ponencia* insofar as it affirms the guilt of the accused-appellant **Jose Cabales y Webber @ "Basil"** (Cabales) for the crime he was charged with.

I disagree, however, that the nomenclature of the crime he was convicted of should be "Lascivious Conduct under Section 5(b), Republic Act No. 7610," and with the imposition of the penalty of ten (10) years, two (2) months, and twenty-

one (21) days of *prision mayor*, as minimum to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal*, as maximum."[1] Cabales should instead be convicted of the crime of Sexual Assault under paragraph 2 of Article 266-A of the Revised Penal Code (RPC), as amended by Republic Act (R.A.) No. 8353.

I reiterate and maintain my position in *People v. Tulagan*[2] that R.A. No. 7610 and the RPC, as amended by R.A. No. 8353, "have different spheres of application; they exist to complement each other such that there would be no gaps in our criminal laws. They were not meant to operate simultaneously in each and every case of sexual abuse committed against minors."[3] Section 5(b) of R.A. No. 7610 applies only to the **specific** and **limited instances** where the child-victim is "exploited in prostitution or subjected to other sexual abuse" (EPSOSA).

In other words, for an act to be considered under the purview of Section 5(b), R.A. No. 7610, so as to trigger the higher penalty provided therein, "the following essential elements need to be proved: (1) the accused commits the act of sexual intercourse or lascivious conduct; (2) the said act is performed with a child 'exploited in prostitution or subjected to other sexual abuse'; and (3) the child whether male or female, is below 18 years of age."[4] Hence, it is not enough that the victim be under 18 years of age. The element of the victim being EPSOSA — *a separate and distinct element* — must first be both alleged and proved before a conviction under Section 5(b), R.A. No. 7610 may be reached.

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[1] *Ponencia*, p. 11. Penalty imposed under Republic Act No. 7610, Section 5 (b) for Lascivious Conduct after the application of the Indeterminate Sentence Law.

[2] G.R. No. 227363, March 12, 2019.

[3] J. Caguioa, Concurring and Dissenting Opinion in *People v. Tulagan*, G.R. No. 227363, March 12, 2019, p. 33; emphasis, italics and underscoring omitted.

[4] *Id.* at 21, citing *People v. Abella*, 601 Phil. 373, 392 (2009).

Specifically, in order to impose the higher penalty provided in Section 5 (b) as compared to Article 266-B of the RPC, as amended by R.A. No. 8353, it must be **alleged** and **proved** that the child — (1) for money, profit, or any other consideration or (2) due to the coercion or influence of any adult, syndicate or group — indulges in sexual intercourse or lascivious conduct.[5]

In this case, the Information only alleged that the victim was a 15-year old minor, but it did not allege that she was EPSOSA. Likewise, there was no proof or evidence presented during the trial that she indulged in sexual intercourse or lascivious conduct either for a consideration, or due to the coercion or influence of any adult.

Thus, while I agree that Cabales's guilt was proven beyond reasonable doubt, it is my view that his conviction should be for Sexual Assault under paragraph 2 of Article 266-A of the RPC, as amended by R.A. No. 8353.

Accordingly, the penalty that ought to be imposed on him should be within the range of *prision correccional*, as minimum and *prision mayor*, as maximum instead of the one imposed by the *ponencia*, which is within the range of *prision mayor* to *reclusion temporal*.

[5] *Id.* at 28.

SECOND DIVISION

[A.C. No. 12877. December 7, 2020]

"IN RE: OMB-C-C-13-0104 ATTY. SOCRATES G. MARANAN *v.* **FRANCISCO DOMAGOSO",** *Complainant, v.* **ATTY. SOCRATES G. MARANAN,** *Respondent*.

D E C I S I O N

PERLAS-BERNABE, *J.*:

The present administrative case stemmed from the 1st Indorsement[1] dated March 11, 2014 filed by Graft Investigation and Prosecution Officer II Anna Francesca M. Limbo of the Office of the Ombudsman (Ombudsman), referring its Resolution[2] in OMB-C-C-13-0104[3] to the Integrated Bar of the Philippines (IBP) in order to determine whether respondent Atty. Socrates G. Maranan (Atty. Maranan) committed a violation of the 2004 Rules on Notarial Practice[4] (2004 Notarial Rules) and/or Code of Professional Responsibility in relation to his notarization of the consultancy contracts subject of the said case.

The Facts

Records bear out that Atty. Maranan filed a criminal complaint before the Ombudsman against then Vice Mayor Francisco "*Isko Moreno*" Domagoso (Domagoso) of the City of Manila, charging him with Falsification of Public Documents and violation of Section 3(e) of Republic Act No. 3019 for having signed, in behalf of the Manila City Government, consultancy contracts with persons who were either deceased or out of the country

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[1] *Rollo*, p. 4.

[2] Id. at 5-10. Approved by Ombudsman Conchita Carpio Morales.

[3] For Falsification of Public Documents and violation of Section 3 (e) of Republic Act No. 3019.

[4] A.M. No. 02-8-13-SC (August 1, 2004).

for extended periods of time.[5] In defense, Domagoso claimed, among others, that he signed the consultancy contracts upon the assurance of his former Secretary, Abraham Cabochan, that everything was in order, and pointed out that it was Atty. Maranan who actually notarized the subject contracts.[6] After due proceedings, the Ombudsman dismissed the charges against Domagoso[7] and referred the matter to the IBP for determination of Atty. Maranan's administrative liability for having notarized the consultancy contracts.[8]

For his part, Atty. Maranan denied having authored or notarized the consultancy contracts, as shown by the wide disparity between his alleged signatures in the said contracts and his signatures appearing in the facsimile of signatures submitted to the Notarial Section of the Office of the Clerk of Court, Regional Trial Court of Manila (RTC). Moreover, he averred that the consultancy contracts do not appear in any of his monthly notarial reports that he regularly submitted to the RTC.[9]

The IBP's Report and Recommendation

In a Report and Recommendation[10] dated July 15, 2015, the Investigating Commissioner **recommended the dismissal** of the administrative case against Atty. Maranan for lack of merit, finding that there was lack of clear and convincing evidence to substantiate the allegations against him.[11]

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[5] Records show that the consultancy agreements were executed between Domagoso and Patricia D.L. Brucelango and Fernando S. Baltazar, who were both allegedly deceased, and Thelma G. Emutan and Dennis D.V. Caingat, who were both abroad at the time the agreements were executed. (See *rollo*, pp. 5-6, 42-60, and 136).

[6] See id. at 6 and 137.

[7] See id. at 6-8 and 137-138.

[8] *Id.* at 12.

[9] See id. at 21-31.

[10] Id. at 108-110. Signed by Commissioner Maria Editha A. Go-Binas.

[11] See id. at 109-110.

In a Resolution[12] dated August 26, 2016, however, the IBP Board of Governors resolved to **reverse** the recommendation of the Investigating Commissioner. In an Extended Resolution[13] dated March 1, 2017, the IBP Board of Governors found that there was substantial evidence to prove that Atty. Maranan violated the 2004 Notarial Rules, considering that it was his responsibility to impose safeguards against the unauthorized notarization of documents in his register. Indeed, even if the signatures above his name as notary public in the consultancy contracts do not appear to be his, Atty. Maranan cannot sever himself from the supposed notarized documents as the same bore his notarial seal. Accordingly, the IBP Board of Governors recommended that: *(a)* Atty. Maranan be suspended from the practice of law for a period of six (6) months; *(b)* he be disqualified from being commissioned as a notary public for a period of two (2) years; and *(c)* his current notarial commission be immediately revoked.[14]

Aggrieved, Atty. Maranan moved for reconsideration,[15] which was denied in a Resolution[16] dated June 18, 2019.

The Issue Before the Court

The sole issue for the Court's consideration is whether or not grounds exist to hold Atty. Maranan administratively liable.

The Court's Ruling

After a judicious review of the records, the Court concurs with the findings and recommendations of the IBP Board of Governors that Atty. Maranan should be held administratively liable in this case.

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[12] Id. at 106-107. Signed by Secretary Avelino V. Sales, Jr.

[13] Id. at 136-145. Signed by Assistant Director Juan Orendain P. Buted.

[14] Id. at 143-144.

[15] See motion for reconsideration dated September 8, 2017; id. at 121-126.

[16] Id. at 130.

The act of notarization is not an ordinary routine but is imbued with substantive public interest.[17] A notary public is empowered to perform a variety of notarial acts, most common of which are the acknowledgment and affirmation of documents or instruments. In the performance of these notarial acts, the notary public must be mindful of the significance of the notarial seal affixed on documents. **The notarial seal converts a document from a private to a public instrument, after which it may be presented as evidence without need for proof of its genuineness and due execution**.[18] A notarized document is entitled to full faith and credit upon its face. Thus, a notary public should observe utmost care in performing his duties to preserve public confidence in the integrity of notarized documents.[19]

A notarial seal is a mark, image or impression on a document which would indicate that the notary public has officially signed it.[20] Section 2, Rule VII of the 2004 Notarial Rules states that every notary public shall have his own notarial seal, which shall have the name of the city or province and the word "Philippines," and his own name on the margin and the roll of attorney's number on its face. The said seal shall ***only*** be possessed by the notary public, to wit:

> Section 2. *Official Seal*. — (a) **Every person commissioned as notary public shall have a seal of office, to be procured at his own expense, which shall not be possessed or owned by any other person**. It shall be of metal, circular in shape, two inches in diameter, **and shall have the name of the city or province and the word "Philippines" and his own name on the margin and the roll of attorney's number on the face thereof**, with the words "notary public" across the center. A mark, image or impression of such seal shall be made directly on the paper or parchment on which the writing appears.

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[17] See *Ang v. Atty. Belaro, Jr.*, A.C. No. 12408, December 11, 2019.

[18] *Castro v. Atty. Bigay, Jr.*, 813 Phil. 882, 892 (2017), citation omitted.

[19] See *Atty. Bartolome v. Atty. Basilio*, 771 Phil. 1, 5 (2015).

[20] *Spouses Chua v. Msgr. Soriano*, 549 Phil. 578, 591 (2007).

x x x x (Emphases supplied)

Further, the 2004 Notarial Rules is explicit on the duties and obligations of the notary public,[21] which include the duty to secure and safeguard his notarial seal so that no unauthorized persons can have access thereto, *viz.*:

Section 2. *Official Seal.* — x x x

x x x x

(c) **When not in use, the official seal *shall* be kept safe and secure and *shall* be accessible *only* to the notary public or the person duly authorized by him**.

x x x x (Emphasis and italics supplied)

In this case, Atty. Maranan denied having authored or notarized the consultancy contracts and claimed that his signatures therein as notary public were forged. Although the IBP observed that Atty. Maranan's signatures[22] in the subject contracts were strikingly dissimilar to his specimen signatures[23] on file before the Notarial Section of the RTC, and while it may likewise be true that said contracts were not included in the notarial reports he submitted thereto, he cannot claim full deniability and be exculpated from administrative liability because the contracts bore his notarial seal.

Instead of offering any plausible explanation as to how the consultancy contracts came to be stamped with his notarial seal, Atty. Maranan merely insisted that he never notarized nor authored said contracts, that his signatures therein were forgeries, and that said contracts were not included in his notarial reports.[24] No justifiable explanation was given to prove that he had performed his mandatory duties as a notary public as set forth

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[21] *Santiago v. Atty. Rafanan*, 483 Phil. 94, 103 (2004).

[22] *Rollo*, pp. 42-60.

[23] See id. at 64.

[24] See id. at 21-22 and 29-31.

under the 2004 Notarial Rules, which include the duty to safeguard his notarial seal to prevent possible tampering or misuse thereof. Clearly, Atty. Maranan had been remiss in his obligation as a notary public. Had he been more vigilant in the performance of his notarial duties, his notarial seal would not have been affixed in the subject contracts. Indubitably, this failure on the part of Atty. Maranan constitutes a transgression of the 2004 Notarial Rules,[25] for which he must be held administratively liable.

The determination of the appropriate penalty to be imposed upon Atty. Maranan involves the exercise of sound judicial discretion based on the facts of the case.[26] In *Ang v. Atty. Belaro, Jr.*,[27] the Court imposed the following penalties upon the respondent lawyer who committed a similar violation of the notarial law, *i.e.*, failure to safeguard his notarial seal: *(a)* suspension from the practice of law for a period of six (6) months; *(b)* disqualification from reappointment as a notary public for a period of two (2) years; and *(c)* revocation of his notarial commission, if any. Finding the said penalties to have been imposed by the IBP Board of Governors and in light of the similarity in the infraction committed in this case, the Court therefore affirms the same.

WHEREFORE, respondent Atty. Socrates G. Maranan (Atty. Maranan) is found **GUILTY** of violating the 2004 Rules on Notarial Practice. Accordingly, he is **SUSPENDED** from the practice of law for a period of six (6) months, effective upon receipt of a copy of this Decision. Moreover, his notarial commission, if any, is hereby **IMMEDIATELY REVOKED**, and he is **DISQUALIFIED** from being commissioned as a notary public for a period of two (2) years.

Atty. Maranan is **DIRECTED** to immediately file a manifestation to the Court that his suspension has started, copy

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[25] See *Ang v. Atty. Belaro, Jr.*, supra note 17.

[26] *Endaya v. Atty. Oca*, 457 Phil. 314, 329 (2003).

[27] Supra note 17.

furnished all courts and quasi-judicial bodies where he had entered his appearance as counsel.

Let copies of this Decision be furnished the Office of the Bar Confidant to be entered in Atty. Maranan's personal records as a member of the Philippine Bar, the Integrated Bar of the Philippines for distribution to all its chapters, and the Office of the Court Administrator for circulation to all courts.

SO ORDERED.

Gesmundo, Lazaro-Javier, Lopez, and *Rosario,*[*] *JJ.*, concur.

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[*] Designated additional member per Special Order No. 2797 dated November 5, 2020.

THIRD DIVISION

[G.R. No. 203815. December 7, 2020]

EFRAIM D. DANIEL, *Petitioner, v.* **NANCY O. MAGKAISA, CECILIA O. MAGKAISA, IMELDA O. MAGKAISA, AND MARISSA ODA,** *Respondents*.

APPEARANCES OF COUNSEL

Abrenica Ardiente-abrenica & Partners for petitioners.
Jacinto P. Dominguez for respondents.

D E C I S I O N

HERNANDO, *J.*:

This Petition for Review on *Certiorari*[1] assails the April 19, 2012 Decision[2] and September 27, 2012 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 90185 which affirmed the January 9, 2006 Decision[4] and July 5, 2006 Order[5] of the Regional Trial Court (RTC) of Imus, Branch 20, Cavite, in Civil Case No. 1604-97 ordering the reconveyance of the subject properties in favor of herein respondents.

The Facts:

Respondents Nancy, Cecilia and Imelda, all surnamed Magkaisa, (Magkaisas), and Marissa Oda (Oda; collectively, respondents), are the grandchildren of Consuelo Jimenez Oda

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[1] *Rollo*, pp. 27-60.

[2] Id. at 7-20; penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Marlene B. Gonzales-Sison and Leoncia Real-Dimagiba.

[3] Id. at 22-23.

[4] Id. at 184-186; penned by Presiding Judge Fernando L. Felicen.

[5] Id. at 240.

(Consuelo). The mother of the Magkaisas, Mercedita Oda Magkaisa, and the deceased father of Oda, Hermogenes Oda, are Consuelo's children. Consuelo had three sisters, namely, Nelidia J. Daniel (Nelidia), Esperanza Jimenez, and Josefina Jimenez (Josefina). Only Josefina is alive, however.[6] Petitioner Efraim D. Daniel (Efraim) is Nelidia's husband, and the couple had no children.[7]

During her lifetime, Consuelo owned three parcels of land covered by Original Certificate of Title (OCT) Nos. P-2360[8] and P-2361,[9] located at Manggahan, Kawit, Cavite (Manggahan lots), and Transfer Certificate of Title (TCT) No. T-3220,[10] located at Medicion, Imus, Cavite (Medicion lot). Consuelo supposedly sold these properties to her sister, Nelidia, as reflected in a Deed of Sale.[11] Apparently, Consuelo instructed Nelidia that upon her (Nelidia's) death, the properties should be transferred to Consuelo's grandchildren, specifically herein respondents.[12]

To comply with Consuelo's instruction, Nelidia executed a Declaration of Trust[13] dated September 6, 1993 with the conformity of Efraim, who likewise signed therein. In the said document, Nelidia acknowledged that she held in trust the three parcels of land in favor of the respondents.[14] Eventually, Nelidia

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[6] There is no notice if she is still alive or if she already passed away while the case is pending.

[7] *Rollo*, pp. 7-8.

[8] Id. at 90-91.

[9] Id. at 92-93.

[10] Id. at 94-96.

[11] Id. at 163-166.

[12] Id. at 8.

[13] Id. at 86-89.

[14] Id. at 184.

caused the issuance of new TCTs in her name, as evidenced by TCT Nos. T-408005,[15] T-408004,[16] and T-408003.[17]

When Nelidia died on November 1, 1996, it was only then that the respondents discovered the existence of the Declaration of Trust. Since then, Efraim purportedly had possession over the properties and refused to surrender the titles to the respondents.[18] Hence, respondents filed a Complaint[19] for Reconveyance Plus Damages, with Prayer for Preliminary Injunction dated October 8, 1997 against Efraim. They alleged that they received reliable information that Efraim has transferred the subject properties in his name or is about to do so, with the intention of disposing the same, to their damage and prejudice.[20]

Efraim admitted in his Answer with Counterclaims[21] the existence of the trust. However, he alleged that it has already been revoked through a document entitled Revocation of Declaration of Trust.[22] The said document of revocation was not signed by Nelidia, the respondents, and the notary public. Efraim presented other documents, specifically another Declaration of Trust,[23] Extra-Judicial Settlement of the Estate of the Late Esperanza Jimenez,[24] and Deed of Donation,[25] which were all unsigned due to Nelidia's death.

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[15] Id. at 97.

[16] Id. at 98.

[17] Id. at 99; *records*, pp. 21-22.

[18] Id. at 163-166.

[19] Id. at 79-85.

[20] Id. at 83.

[21] Id. at 100-117.

[22] Id. at 132-135.

[23] Id. at 136-141.

[24] Id. at 142-144.

[25] Id. at 145-148.

Efraim also argued that there is no showing that the respondents accepted the trust and that it was not registered with the Registry of Deeds as to bind third parties.[26] Nonetheless, Efraim contended that notwithstanding the respondents' entitlement to the properties, he could not reconvey the same to them since he is not the registered owner. He also argued that the case was not referred to the *Lupong Tagapamayapa* before it was filed in court and that no earnest efforts were exerted in order to arrive at a compromise between the parties.[27] He added that only Nancy Magkaisa (Nancy) verified the Complaint and certified the portion on non-forum shopping.[28]

The RTC, in an Order[29] dated January 20, 1998, issued a writ of preliminary injunction enjoining Efraim from transferring the properties to his name and disposing or selling the same, upon the respondents' filing of a bond.

During her testimony, Nancy admitted that her family is in actual possession of the Manggahan lots.[30] She averred, though, that Efraim exercised possession over the Medicion lot by building a rest house therein.[31] Efraim held the titles to all the properties which he refused to surrender to the respondents.[32] Nancy asserted that Consuelo paid for the taxes during her lifetime and that after her death, Nelidia took over the payments, followed by Efraim after Nelidia's death.[33] Nancy acknowledged that Nelidia and Efraim incurred expenses in the ejectment of

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[26] Id. at 104.

[27] Id. at 9, 184.

[28] Id. at 113.

[29] Records, p. 73.

[30] TSN, May 22, 2000, pp. 13, 14, 17; July 14, 2000, p. 6.

[31] TSN, July 14, 2000, p. 12.

[32] TSN, May 22, 2000, p. 14; July 14, 2000, pp. 12-13.

[33] TSN, May 22, 2000, pp. 17-18.

the squatters in the properties.[34] Nancy contended that they discovered the existence of the trust only after Nelidia's death.[35]

Atty. Lourdes Florentino (Atty. Florentino) testified that she was the one who drafted the Declaration of Trust upon Nelidia's request. She recalled that Nelidia admitted to her that she did not own the properties as these were actually Consuelo's and that eventually, ownership to said properties should be transferred to the respondents. Atty. Florentino informed Nelidia of the consequences of giving the properties to respondents as there are other heirs which would be left out. Nelidia insisted on the drafting of the trust declaration despite Atty. Florentino's advice.[36] She confirmed that none of the respondents knew of the execution of the trust.[37]

Atty. Florentino asserted that the documents showing the revocation of the trust were not signed due to objections within the family.[38] She averred that as far as she knew, Nelidia had custody of the titles to the properties.[39] She stated that Nelidia wanted Efraim to properly manage the lots, and that Efraim himself admitted that he did not own the properties.[40]

Efraim, for his part, denied that he kept the titles to the properties[41] or that he intended to transfer possession or ownership to others.[42] He asserted that Nelidia held the titles at the time of the signing of the Declaration of Trust but that he had no idea if she still kept the said titles up to the time of

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[34] Id. at 18.

[35] Id. at 19.

[36] TSN, March 23, 2001, pp. 8-9, 14.

[37] Id. at 15-16.

[38] Id. at 26-27.

[39] Id. at 29.

[40] Id. at 32-33.

[41] TSN, May 27, 2003, p. 9.

[42] TSN, August 30, 2002, p. 33.

her death.[43] Even so, he stated that Josefina had the titles since Nelidia entrusted it to her.[44] Furthermore, Efraim averred that after Nelidia's death, he paid the taxes for the properties.[45] Nelidia did not inform the respondents that the properties were being held in trust for them.[46]

Ruling of the Regional Trial Court:

In a Decision[47] dated January 9, 2006, the RTC noted that there is no dispute as to the validity of the Declaration of Trust because Efraim himself admitted its existence and due execution. Ergo, the terms of the document bind Efraim as he signified his conformity therein by signing as Nelidia's husband. Since the provisions of the Declaration of Trust expressly provide that Nelidia merely held the properties in trust for herein respondents (the beneficiaries), Efraim is likewise bound to honor this condition.[48]

The RTC ruled that the document denominated as Revocation of Trust has no probative value and effect since it was not even signed by Nelidia, the respondents, or the notary public to whom it was supposedly acknowledged, who, coincidentally, is the counsel on record of Efraim.[49] The trial court additionally explained that:

> [Efraim] also belatedly assails the validity of the Declaration of Trust by raising the alleged failure of the [respondents] to accept the trust which is a mandatory requirement of the law. This argument is misleading because under Article 1446 of the New Civil Code,

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[43] TSN, May 27, 2003, p. 6.

[44] TSN, August 30, 2002, p. 34; May 27, 2003, pp. 10-11.

[45] TSN, August 30, 2002, p. 38.

[46] TSN, May 27, 2003, p. 17.

[47] *Rollo*, pp. 184-186.

[48] Id. at 185.

[49] Id.

acceptance is dispensed with if the trust imposes no onerous condition upon the beneficiaries, and in such case acceptance is presumed. There being no onerous condition imposed upon the [respondents] under the Declaration of Trust, acceptance is no longer necessary as it is implied.

Not having been effectively revoked, the Declaration of Trust is still valid and existing and, therefore, governs the rights of the parties over the parcels of land involved. Thus, upon the death of the trustee, ownership, both naked and beneficial, over these properties reverted back by operation of law to the beneficiaries of the trust, who are the [respondents] herein. [Corollarily], [Efraim] has no right to possess the subject properties not being the owner thereof nor his possession in tandem with any color of title over the said properties.[50]

The dispositive portion of the RTC's Decision reads:

WHEREFORE, judgment is hereby rendered declaring NANCY O. MAGKAISA, CECILIA O. MAGKAISA, IMELDA O. MAGKAISA and MARISSA ODA the true and lawful owners of the properties covered by Transfer Certificates of Title No. T-408005, T-408004 and T-408003 of the Register of Deeds for the Province of Cavite. Considering that these [TCTs] are in the name of Nelidia J. Daniel who is merely a Trustee of the said properties under the Declaration of Trust she executed on 6 September 1993 in favor of the plaintiffs, the Register of Deeds of Cavite is ORDERED to cancel the aforesaid [TCTs] and issue another one in the names of the [respondents] as pro indiviso co-owners.

Defendant [Efraim] is ordered to surrender the possession over the said properties to the [respondents herein] and pay the latter the sum of PhP40,000.00 as reasonable attorney's fees and expenses of litigation.

SO ORDERED.[51]

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[50] Id.

[51] Id. at 186.

Aggrieved, Efraim filed a Motion for Reconsideration[52] but it was denied in an Order[53] dated July 5, 2006. He then appealed[54] to the CA.

Ruling of the Court of Appeals:

The CA, in its assailed April 19, 2012 Decision,[55] affirmed the ruling of the RTC.[56] It held that the Declaration of Trust is a valid contract until revoked. In the absence of any reservation of the power to revoke, a voluntary trust is irrevocable without the consent of the beneficiary. The unsigned documents which were intended to revoke the trust did not produce any legal effect.[57]

Efraim cannot assail the validity of the sale of Consuelo's properties to Nelidia and the Declaration of Trust on the ground that it would disinherit Mercedita Oda Magkaisa, Consuelo's heir. This is because disinheritance can be effected only through the existence of a valid will, and the Declaration of Trust cannot be construed as a will which may be contested. Thus, the issue of disinheritance should be determined in an intestate proceeding and not in the case at bar, as the respondents only sought for the reconveyance of the properties pursuant to the Declaration of Trust. Furthermore, Efraim is not the proper party to raise the issue on disinheritance since he was not privy to the contract between Consuelo and Nelidia, and more importantly, he is not Consuelo's heir.[58]

Also, the CA ruled that Efraim could be compelled to surrender possession of the Medicion lot.[59]

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[52] Id. at 187-202.

[53] Id. at 240.

[54] Id. at 241-242; CA *rollo*, p. 14.

[55] *Rollo*, pp. 7-20.

[56] Id. at 19.

[57] Id. at 15.

[58] Id. at 15-16.

[59] Id. at 17.

Moreover, the appellate court ruled that the case is an exception to the rule that conciliation efforts before the *barangay's lupon* should be undertaken before filing an action because the case at bench is coupled with a prayer for preliminary injunction. Even if the case were not referred to conciliation, the said process is not a jurisdictional requirement, such that non-compliance therewith cannot affect the jurisdiction which the court has otherwise acquired over the subject matter or over the person of the defendant. As the RTC already made a determination with regard to the issues, a dismissal based solely on this non-compliance with the referral to *barangay* conciliation would be unwarranted.[60] Lastly, the CA affirmed the grant of attorney's fees in favor of the respondents.[61]

Efraim asked for a reconsideration[62] which the CA denied in a Resolution[63] dated September 27, 2012.

Discontented, he filed the instant Petition for Review on *Certiorari*[64] raising the following —

Issues:

I

THE COURT OF APPEALS COMMITTED SERIOUS ERRORS IN REQUIRING PETITIONER TO DELIVER POSSESSION OF THE SUBJECT PROPERTIES TO RESPONDENTS BEING CONTRARY [TO] RESPONDENT NANCY MAGKAISA'S ADMISSION THAT THE SUBJECT MANGGAHAN AND MEDICION PROPERTIES WERE IN THEIR POSSESSION AND THE SAID FINDINGS ARE BASED ON CONFLICTING AND MISAPPREHENSION OF FACTS.

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[60] Id. at 18-19.

[61] Id. at 19.

[62] Id. at 329-338.

[63] Id. at 22-23.

[64] Id. at 27-56.

II

THE COURT OF APPEALS COMMITTED SERIOUS ERRORS IN REQUIRING PETITIONER TO DELIVER THE TITLES OF THE SUBJECT PROPERTIES TO RESPONDENTS WHEN THE SAID TITLES WERE IN [THE] POSSESSION [OF] JOSEFINA JIMENEZ, THE GRANDMOTHER OF RESPONDENTS AND NOT WITH PETITIONER. THE FINDINGS OF THE COURT OF APPEALS ARE MANIFESTLY MISTAKEN AND ABSURD.

III

THE COURT OF APPEALS COMMITTED SERIOUS ERRORS IN CONCLUDING THAT PETITIONER HAS TO PAY RESPONDENTS ATTORNEY'S FEES BY THE FORMER'S REFUSAL TO SURRENDER THE TITLES AND POSSESSION OF THE SUBJECT PROPERTIES. THE SAID FINDINGS ARE BASED ON CONJECTURE [AND HAVE] NO LEGAL BASIS.[65]

The main issue is whether or not the respondents are entitled to the reconveyance of the subject properties in their favor.

Arguments of Efraim:

Efraim asserts that Nancy admitted during the trial that her family is in possession of the properties.[66] He adds that had the trial court granted the motion to conduct ocular inspection on the properties, it would have discovered that he did not have possession over the same, notwithstanding the allegation that he built a rest house therein.[67] He points out that Nelidia would not have instituted ejectment proceedings[68] against illegal settlers in the Manggahan lots if they had actual possession of the same.[69]

Efraim insists that Josefina held the titles to the properties. Thus, the CA erred in shifting the burden to him to prove that

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[65] Id. at 38.

[66] Id. at 40-42.

[67] Id. at 42-43.

[68] Id. at 118-131.

[69] Id. at 43-44.

the titles were indeed with Josefina.[70] He states that his claim that Josefina had the titles should be given credence, given that Nancy confirmed that Josefina kept the Declaration of Trust in her (Josefina's) *bodega*.[71] Moreover, he argues that the respondents did not send a letter demanding him to surrender the titles before filing the case.[72] He asserts that the lots were Nelidia's paraphernal properties in which he held no interest.[73]

He questions the award of attorney's fees since he could not have been in bad faith given that he did not have the titles and he did not claim ownership.[74] Also, the Declaration of Trust cannot be enforced against him as he is not a party thereto and he is not the owner of the properties.[75] He asks the Court to delete the order for him to surrender possession of the lots to the respondents and to pay attorney's fees.[76]

Arguments of the Respondents:

Respondents contend that the grounds raised by Efraim had already been passed upon by the CA.[77] Efraim raised questions of fact which have likewise been resolved by the appellate court. They allege that since Efraim did not raise questions of law, the petition should not be entertained by this Court.[78]

Our Ruling

The petition has no merit.

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[70] Id. at 45-47.

[71] Id. at 50-51.

[72] Id. at 47-50.

[73] Id. at 50.

[74] Id. at 51-53.

[75] Id. at 53.

[76] Id. at 54-55.

[77] Id. at 461.

[78] Id. at 461-462.

According to case law, "[a] trust is the legal relationship between one person having an equitable ownership of property and another person owning the legal title to such property, the equitable ownership of the former entitling him to the performance of certain duties and the exercise of certain powers by the latter."[79] In the case at bench, Nelidia, as the trustee, had the duty to properly manage the properties for the benefit of the beneficiaries, respondents herein. Notably, Efraim is not a party to this trust and he only signed the document evidencing the trust as Nelidia's husband. Nonetheless, there is no dispute that Efraim readily admitted the due execution and validity of the Declaration of Trust.[80] Thus, as a signatory, he is bound by the intent and contents of the said document and thus should honor the directives contained therein. The Declaration of Trust expressly provides that:

2. Trustee [Nelidia] desires to acknowledge and declare that she is not the true owner of the three (3) lots described in the First Whereas but she is holding them in trust for the Beneficiaries [respondents].[81]

There is no contest that since the trust is now considered as terminated[82] after the trustee's (Nelidia) death, the properties should be transferred to the names of the respondents as the beneficiaries of the said trust. Both the RTC and the CA uniformly arrived at this conclusion, and consequently ordered the transfer of possession of the lots to the respondents. This finding, however, should not prejudice an action, if any, which would involve the settlement of the estate of Consuelo and Nelidia, given that Efraim claimed (and which Atty. Florentino mentioned) that disinheritance or preterition may occur. Such

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[79] *Cañezo v. Rojas*, 563 Phil. 551, 563-564 (2007) citing *Tigno v. Court of Appeals*, 345 Phil. 486, 497 (1997).

[80] TSN, May 22, 2000, p. 12.

[81] *Rollo*, p. 88.

[82] *See Estate of Cabacungan v. Laigo*, 671 Phil. 132-163 (2011) citing *Cañezo v. Rojas*, 563 Phil. 551 (2007).

matter should be resolved in a separate probate or intestate proceeding, whichever is applicable, and not in the case at bench.[83] Since this is a Complaint for reconveyance, it is "an action which admits the registration of title of another party but claims that such registration was erroneous or wrongful. It seeks the transfer of the title to the rightful and legal owner, or to the party who has a superior right over it, without prejudice to innocent purchasers in good faith."[84] Pursuant to the Declaration of Trust, the respondents have a superior right to reconveyance of the subject properties in their favor.

We observe, though, that the Deed of Sale between Consuelo and Nelidia only involved the Manggahan lots. The Medicion lot which was previously titled under Consuelo's name was cancelled, and is currently under the name of Nelidia. Although it is unclear how Consuelo transferred the Medicion lot to Nelidia, what matters in this case is that the said lot was specified as part of the properties which Nelidia held in trust for the respondents.

Also, the Court notes that during the trial, Nancy admitted her family's possession of the Manggahan lots. Yet, the respondents contend that Efraim is exercising possession over the Medicion lot since he constructed a rest house therein. Without sufficient proof disproving the respondents' allegation, Efraim's mere denial cannot be accorded great weight. Withal, in compliance with the trust, the appellate court correctly ordered Efraim to surrender possession of the Medicion lot to the respondents.

This Court is not a trier of facts. "The function of the Court in petitions for review on *certiorari* under Rule 45 of the Rules of Court is limited to reviewing errors of law that may have been committed by the lower courts. As a matter of sound practice

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[83] *See Spouses Salitico v Heirs of Felix*, G.R. No. 240199, April 10, 2019.

[84] *Magalang v. Spouses Heretape*, G.R. No. 199558, August 14, 2019 citing *Toledo v. Court of Appeals*, 765 Phil. 649, 659 (2015).

and procedure, the Court defers and accords finality to the factual findings of trial courts. To do otherwise would defeat the very essence of Rule 45 and would convert the Court into a trier of facts, which is not its intended purpose under the law."[85]

Efraim's insistence that he does not have possession of the lots or its titles is a factual issue which ought to have been threshed out and settled during the trial stage. We note that both the trial court and the appellate court ordered Efraim to surrender the possession of the properties to the respondents. Considering Nancy's admission that they are already in possession of the Manggahan lots, we hold that Efraim should be ordered to surrender possession only of the Medicion lot.

Similarly, the RTC did not order Efraim to surrender the titles but ordered the Register of Deeds to cancel the titles in Nelidia's name and issue new ones in favor of the respondents. The CA, however, stated that Efraim did not effectively dispute the respondents' claim that he had the titles since he did not present Josefina as a witness to clarify if she indeed kept it or not, notwithstanding the fact that Nancy found the copy of the Declaration of Trust in Josefina's storage.

Furthermore, Atty. Florentino testified that as far as she knew, Nelidia held the titles to the properties. Thus, it is reasonable to assume that Nelidia had the titles until her death as it was issued in her name, absent a contrary assertion corroborated with preponderant evidence[86] that someone else kept the titles for her. Thence, it would likewise be reasonable to assume that as Nelidia's husband, Efraim would have access to all of Nelidia's belongings after her death, which included the titles. Given that Efraim was not able to sufficiently prove that he did not have the means to locate the titles or that he had absolutely no knowledge about where they were being kept, he should be tasked to locate and produce the same.

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[85] *Pascual v. Pangyarihan Ang*, G.R. No. 235711, March 11, 2020 citing *Gepulle-Garbo v. Spouses Garabato*, 750 Phil. 846, 855 (2015).

[86] RULES OF COURT, Rule 133, §1.

Alternatively, if Efraim truly does not have the titles to the properties, then he should ask for it from Josefina, since he insisted that she had the pertinent documents anyway. If, as Efraim claims, he has no interest in the properties because he is not the owner and it was supposedly Nelidia's paraphernal properties, then there should be no great impediment for him to locate and surrender the titles to the respondents. In fact, he would be aiding the courts in finally securing the titles in order to give the same to the respondents, who in turn can present it to the Register of Deeds for the reconveyance of the lots in their names. It would be a waste of the judiciary's resources if the case would be remanded to the RTC just to conduct an inspection and validation of the whereabouts of the titles.

Based on the foregoing, and in order to expedite the process, Efraim, aside from surrendering possession of the Medicion lot, should likewise be required to find the titles to the properties and subsequently turn them over to the respondents. This would be in keeping with the intent of the Declaration of Trust which Nelidia willingly executed and Efraim himself signed. In the event that the titles, with reasonable certainty and despite earnest efforts, can no longer be located, then Efraim should inform the RTC immediately. In any case, the RTC already ordered the Register of Deeds to cancel the titles in the name of Nelidia and issue new ones in favor of the respondents.

WHEREFORE, the instant petition is hereby **DENIED**. The assailed April 19, 2012 Decision and the September 27, 2012 Resolution of the Court of Appeals in CA-G.R. CV No. 90185 are hereby **AFFIRMED** with **MODIFICATION** in that Efraim D. Daniel is **ORDERED** to locate and surrender the titles of the subject properties to the respondents with dispatch. If his efforts prove futile, he should so inform the Regional Trial Court immediately.

SO ORDERED.

Leonen (*Chairperson*), *Inting, Delos Santos,* and *Rosario, JJ.*, concur.

FIRST DIVISION

[G.R. No. 234462. December 7, 2020]

MARIA ELENA BUSTAMANTE DYTIANQUIN, *Petitioner*, *v.* **EDUARDO DYTIANQUIN,** *Respondent*.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Quino Law Offices for respondent.

D E C I S I O N

PERALTA, *C.J.*:

This is Petition for Review on *Certiorari* under Rule 45 seeking the reversal of the Decision[1] of the Court of Appeals *(CA)* dated March 15, 2017 in CA-G.R. CV No. 105382, and the Resolution[2] dated September 4, 2017 which denied petitioner's motion for reconsideration. The Decision of the CA granted the appeal of herein respondent Eduardo Dytianquin *(Eduardo)* and set aside the Decision[3] of the Regional Trial Court *(RTC)*, Branch 136 of Makati City, dated September 15, 2014, which dismissed the petition filed by herein respondent for the annulment of his marriage to herein petitioner Maria Elena Bustamante Dytianquin *(Elena)*, on the ground of his and petitioner's psychological incapacity.

Eduardo and Elena first met in 1969 when they were in high school; the former was a senior while the latter was a sophomore.[4]

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[1] Penned by Associate Justice Mario V. Lopez (now a Member of the Supreme Court), with Associate Justices Remedios A. Salazar-Fernando and Eduardo B. Peralta, Jr., concurring; *rollo*, pp. 37-44.

[2] *Id.* at 70.

[3] Penned by Judge Rico Sebastian D. Liwanag; *id.* at 130-138.

[4] *Id.* at 157.

It was love at first sight for the two. After months of being in a relationship, Elena introduced Eduardo to her parents, who opposed their relationship as Elena's father wanted her to finish her studies first. Despite the objection of Elena's parents, the couple decided to elope. They eventually got married on October 18, 1970 in Makati City.[5]

Eduardo and Elena lived harmoniously for the first few months of their married life. However, after a year, the newlyweds started having frequent and violent fights. Eduardo would always go out with his friends and stay with his grandmother instead of going home to his wife. Elena would then confront and shout invectives at Eduardo, insulting him and his family. This would prompt Eduardo to leave the house and stay with his own family. He would also leave whenever Elena's father was due to visit them. Every time Eduardo left their home, Elena would fetch him to bring him home and settle their issues.[6]

This cycle in the couple's married life went on for quite some time. When Elena did not change her nagging and loud behavior, Eduardo started resenting her and her condescending attitude towards him. He began spending more time with his friends and relatives instead of with his wife. He became more preoccupied with his mother and his siblings. Eduardo also started to realize that he was happier without his wife, and that was nothing good in their marriage. At the same time, Elena started complaining that Eduardo was a failure as a husband. She likewise accused him of being a womanizer and an alcoholic.[7]

Things took a turn for the worse for the couple in 1972, when Eduardo left their conjugal home and Elena did not fetch him as she usually did. They lost communication with each other from then on, with Elena eventually finding out that Eduardo had engaged in an extramarital affair. In 1976, without

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[5] *Id.* at 131.

[6] *Id.* at 38.

[7] *Id.*

any hope of reconciling with each other, the couple finally decided to separate.[8]

On February 25, 2013, Eduardo filed before the RTC, Branch 136 of Makati City a Petition[9] for declaration of absolute nullity of marriage under Article 36 of the Family Code, docketed as Civil Case No. 13-178. He alleged that he and Elena were unfit to assume and perform the essential obligations of marriage, adding that their relationship was weak and short-lived as the same began when both of them were still immature and not yet prepared to fulfill their roles and duties as a married couple. Eduardo averred that it was their respective psychological incapacities which caused their marriage to end, their personality aberrations already being grave, severe, and beyond repair despite any intervention or psychotherapy.[10] In support of his Petition, Eduardo attached a copy of the psychological assessment report *(Report)*[11] conducted by clinical psychologist Dr. Nedy L. Tayag *(Dr. Tayag)* who diagnosed him with *Passive Aggressive Personality Disorder* and Elena with *Narcissistic Personality Disorder*. A portion of the Dr. Tayag's Report on Eduardo states:

x x x x

Analysis of projective data shows a person who has this feeling of insecurity that hinders him from being able to do well in his various endeavors. He is someone who has ambitions but then he easily gets affected by the troubles he is likely to encounter. With this, he loses gumption and drive to pursue his goals and would likely push the blame on others when regrets begin form. *(sic)* Just like anyone else, he likes to see himself in a good stand together with his loved ones but with his passive and negative ways, he tends to lose interests and would just likely sulk over things instead of giving things another shot.

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[8] *Id.*

[9] *Id.* at 71-73.

[10] *Id.* at 72.

[11] *Id.* at 76-101; referred to as "Judicial Affidavit of Nedy Tayag" in some parts of the *rollo*.

He is the sort who does not want to be criticized and fails to assert himself well. Though the criticisms and feedbacks are for his development and growth, he sees these are attack *(sic)* to his person such that he would retaliate through means that would likely strain and affect his ties with others. The passive attitude that he shows when dealing with others does not enable him to have better relations as he just lets others take control of the situation while he would repress his feelings and thoughts.

x x x x

As regards Elena, Dr. Tayag's Report reads:

x x x x

Analysis of projective data shows a person who is quite impulsive and this rash behaviors *(sic)* hinder her from being able to plan well and fulfill the expectations that others have of her. Despite this, she is unable to introspect and see the flaws of her functioning as her high sense of esteem and confidence makes her feel that she is ideal and that there is no more need for improvements. Having this kind of mindset, she tends to limit her own self from further development and other experience that can enhance her in more ways. Frustration sets in easily in her as she tends to force things to happen in the way that she expects instead of her trying to adapt and making the most of the situation. From here, her capacity to deal satisfactorily with problems tend to be poor as she tends to put things that would be beneficial for her instead of looking at the matter in *(sic)* the whole perspective and beneficial for everyone who is involved.

In interpersonal stance, she is seen to have a vivacious personality which immediately attracts people to seek her out and try to get to know her. But then, she tends to be self-oriented such that there are instances that she overlooks the feelings and views of other people. The domineering stance that she takes tends to push away those who are unable to adjust to her ways. The gaps in her interpersonal ties are not overcome but are likely to turn worse with her failure to acknowledge her shortcomings and be more considerate of the people around her.

In her Answer,[12] Elena denied the material allegations of the Petition and contended that: she was not psychologically incapacitated to comply with her marital obligations, as she remained faithful to Eduardo and never gave up on her love for the latter despite his vices, which included his alcoholism and womanizing; sometime in 1976, Eduardo abandoned her under the pretext that he would mend his ways, so that when he would be ready to comply with his obligations as a husband; she waited for him to come back but he never did, discovering later on that the reason he left was because he had been living with another woman; and contrary to Eduardo's claim that the two of them have not communicated since 1972, she confronted Eduardo about his affair and the latter readily admitted to it as well as to having sired a child with the other woman. In sum, Elena claimed that she was a doting wife to the petitioner, that she had already forgiven him of all his shortcomings; and that she was willing to welcome him with open arms should he return and live with her.

In its September 15, 2014 Decision,[13] the RTC dismissed Eduardo's petition. It found that there was no showing that the behavior of either Eduardo or Elena manifested a disordered personality which made them completely unable to discharge the essential obligations of a marital state. The RTC established that Eduardo's habit of walking out and staying with his mother and siblings every time he and Elena argued instead of resolving the issues between them was rooted not on some psychological disorder but, rather, on his mere refusal or unwillingness to assume the essential marital obligation of marriage.

Eduardo filed his motion for reconsideration, which the RTC denied in its Order[14] dated July 13, 2015.

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[12] *Id.* at 102-107.

[13] *Id.* at 130-138.

[14] *Id.* at 172.

Aggrieved, Eduardo filed a notice of appeal, claiming that there was adequate and credible evidence to establish psychological incapacity.[15]

In a Decision dated March 15, 2017, the appellate court granted the appeal and declared void the marriage between Eduardo and Elena, thus:

> FOR THESE REASONS, the appeal is GRANTED. The September 15, 2014 Decision of the Regional Trial Court is SET ASIDE. The marriage between the parties contracted on October 18, 1970 is declared void.
>
> SO ORDERED.[16]

In reversing the trial court, the CA found that both parties were psychologically incapacitated to fulfill the basic duties of marriage as corroborated on material points by the conclusions of Dr. Tayag. It found that the link between the acts that manifest incapacity and the psychological disorders was fully explained.

The CA gave credence to the findings of Dr. Tayag that Elena's behavioral pattern fell under the classification of Narcissistic Personality Disorder. It found that Elena was domineering and had a condescending attitude towards Eduardo, constantly berating the latter and insulting his family every time she was angry. Likewise, the CA gave weight to Dr. Tayag's finding that Eduardo had a Passive Aggressive Personality Disorder, characterized by his pervasive pattern of negativistic attitude and passive resistance. The CA noted that Eduardo was unable to effectively function emotionally, intellectually, and socially towards Elena in relation to the duties of mutual love, fidelity, respect, help, and support.

The CA added that given the psychological incapacities of the two parties, they were considered poles apart. It ruled that the totality of evidence presented by the parties was adequate to sustain a finding that both Eduardo and Elena were afflicted with grave, severe, and incurable psychological incapacity.

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[15] *Id.* at 39.

[16] *Id.* at 44.

Elena, through the Office of the Solicitor General, filed a motion for reconsideration which, in a Resolution[17] dated September 4, 2017, was denied by the CA.

Hence, this petition which calls on the Court to determine whether the appellate court erred in declaring the marriage between Elena and Eduardo void on the ground that both parties are psychologically incapacitated to fulfill their marital obligations.

The Court grants the petition.

It is a constitutionally enshrined policy of the State to protect and strengthen the family as a basic autonomous social institution,[18] and marriage as the foundation of the family.[19] Because of this, the Constitution decrees marriage as legally inviolable and protects it from dissolution at the whim of the parties.[20]

At the same time, Article 36 of the Family Code states:

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

This Court has consistently upheld its doctrinal ruling in *Santos v. CA and Bedia-Santos*[21] that psychological incapacity under Article 36 must be characterized by gravity, juridical antecedence, and incurability.[22] In *Republic of the Phils. v. Court*

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[17] *Id.* at 70.

[18] Article II, Section 12 of the 1987 Constitution.

[19] Article XV, Section 2 of the 1987 Constitution.

[20] *Gerardo A. Eliscupidez v. Glenda C. Eliscupidez*, G.R. No. 226907, July 22, 2019.

[21] *Leouel Santos v. Court of Appeals and Bedia-Santos*, 310 Phil. 21, 39 (1995).

[22] *Yambao v. Rep. of the Phils.*, 655 Phil. 346, 357 (2011); *Rep. of the Phils. v. De Gracia*, 726 Phil. 502, 510 (2014); *Mallillin v. Jamesolamin*,

of Appeals,[23] the Court laid down the more definitive guidelines in the interpretation and application of Article 36 of the Family Code, to wit:

(1) The burden of proof to show the nullity of the marriage belongs to the plaintiff. Any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity. x x x

(2) The *root cause* of the psychological incapacity must be (a) medically or clinically identified, (b) alleged in the complaint, (c) sufficiently proven by experts, and (d) clearly explained in the decision. Article 36 of the Family Code requires that the incapacity must be psychological — not physical, although its manifestations and/or symptoms may be physical. x x x

(3) The incapacity must be proven to be existing at "the time of the celebration" of the marriage. x x x

(4) Such incapacity must also be shown to be medically or clinically permanent or *incurable*. Such incurability may be absolute or even relative only in regard to the other spouse, not necessarily absolutely against everyone of the same sex. x x x

(5) **Such illness must be *grave* enough to bring about the disability of the party to assume the essential obligations of marriage.** Thus, "mild characterological peculiarities, mood changes, occasional emotional outbursts" cannot be accepted as *root* causes. **The illness must be shown as downright incapacity or inability, not a refusal, neglect or difficulty, much less ill will.** In other words, there is a natal or supervening disabling factor in the person, an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage.

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et al., 754 Phil. 158, 174 (2015); *Castillo v. Rep. of the Phils., et al.*, 805 Phil. 209, 219 (2017); *Espina-Dan v. Dan*, G.R. No. 209031, April 16, 2018, 861 SCRA 219, 240; *Gerardo A. Eliscupidez v. Glenda C. Eliscupidez*, G.R. No. 226907, July 22, 2019.

[23] 335 Phil. 664 (1997).

(6) The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children. x x x

(7) Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts. x x x

(8) The trial court must order the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the state. x x x[24] (Emphasis supplied)

In fine, jurisprudence dictates that to warrant a declaration of nullity on the basis of psychological incapacity, the incapacity "must be grave or serious such that the party would be incapable of carrying out the ordinary duties required in marriage; it must be rooted in the history of the party antedating the marriage although the overt manifestations may emerge only after the marriage; and it must be incurable or even if it were otherwise, the cure would be beyond the means of the party involved."[25]

Applying the foregoing standards to the case at bar, the Court finds that, contrary to the findings of the CA, the totality of the evidence presented failed to prove sufficient factual or legal basis to rule that the parties' personality disorders amount to psychological incapacity under Article 36 of the Family Code. Eduardo had the burden of proving the nullity of his marriage to Elena based on psychological incapacity. He failed to discharge this burden.

Eduardo's evidence consisted of his own testimony; the testimony of his brother's wife, Losbanita De Juan-Dytianquin, who described Eduardo and Elena's relationship as "not peaceful"

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[24] *Id.* at 676-679.

[25] *Anacleto Alden Meneses v. Jung Soon Linda Lee-Meneses*, G.R. No. 200182, March 13, 2019.

owing to their frequent fights;[26] and the aforementioned Report of Dr. Tayag.

While the Report of Dr. Tayag submitted that Eduardo suffered from a Passive-Aggressive Personality Disorder and was "obstructive and intolerant of others, expressing negative or incompatible attitudes,"[27] the Court finds that the incapacity of Eduardo is premised not on some debilitating psychological condition, but rather from his refusal or unwillingness to perform the essential marital obligations. As Dr. Tayag stated in her Report herself, Eduardo "is quite resistive and whenever arguments would arise between him and the respondent [Elena], he would just leave the house and would not even come home on his own accord such that it created more strain between him and his wife, who eventually got tired of his attitude."[28]

Moreover, in his testimony before the RTC, Eduardo stated:

Q: How did you find your wife as a person before your marriage?
A: She was kind and always ready to go with me.

xxx xxx xxx

Q: How about you, how do you describe your relationship with the respondent prior to your marriage with her?
A: Because I was in high school at that time, I can say we do not have any problem we do not think of any responsibility so our relationship was just like nothing serious we are just having fun at that time.

Q: Did you change after your marriage?
A: No ma'am.

Q: Why?
A: Because after my marriage, I still sleep and go out with my friends and family and having fun although I have a wife that I need to slept *[sic]* with and be with always **but I find it very difficult for me to do that**.

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[26] *Rollo*, p. 161.

[27] *Id.* at 95.

[28] *Id.*

Q: What was the reaction of your wife?
A: She confronted me but nothing changed.

Q: What was the situation between you and your wife after your marriage?
A: **Our fighting became more and more often and becoming worse because of my constant going out and sleeping to be with my parents and grandmother and I decided to live on my own and separate from my wife. And after some time of reflection, I realized I am happy without her.**[29]

Based on the foregoing, the Court sustains the finding of the RTC that the alleged incapacity of Eduardo is premised not on his personality disorder or on some debilitating psychological condition, but rather on his outright refusal or unwillingness to perform his marital obligations.

The Court has held that mere difficulty, refusal or neglect in the performance of marital obligations or ill will on the part of the spouse is different from incapacity rooted in some debilitating psychological condition or illness; irreconcilable differences, sexual infidelity or perversion, emotional immaturity and irresponsibility and the like, do not by themselves warrant a finding of psychological incapacity under Article 36, as the same may only be due to a person's refusal or unwillingness to assume the essential obligations of marriage.[30]

On the other hand, Dr. Tayag diagnosed Elena with Narcissistic Personality Disorder, characterized by "a pervasive pattern of grandiosity, need for admiration and lack of empathy along with manic-depressive features."[31] She found Elena as someone who is self-oriented, with a tendency to push away those who are unable to adjust to her ways.[32]

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[29] *Id.* at 134-135.

[30] *Suazo v. Suazo*, 629 Phil. 157, 180-181 (2010).

[31] *Rollo*, p. 97.

[32] *Id.* at 93.

However, as found by the RTC, the existence of such Narcissistic Personality Disorder was not sufficiently proven during trial. To this Court, Dr. Tayag's finding of "careless disregard for personal integrity and a self-important indifference to the rights of other" on the part of Elena was even contradicted by the evidence on record, as Eduardo himself admitted that whenever they would fight and he would leave their house, Elena would fetch him and settle their issues.[33]

As determined by the trial court, there was no showing that the behavior of either party demonstrated a disordered personality which made them completely unable to discharge the essential obligations of a marital state. What is evident from these circumstances is that while the alleged personality disorders of Eduardo and Elena made it difficult for them to comply with their marital duties, the same did not make them psychologically incapacitated to fulfill their essential marital obligations.

Psychological incapacity must be more than just a "difficulty," "refusal" or "neglect" in the performance of the marital obligations; it is not enough that a party prove that the other failed to meet the responsibility and duty of a married person.[34] A mere showing of irreconcilable differences and conflicting personalities in no wise constitutes psychological incapacity.[35] These differences do not rise to the level of psychological incapacity under Article 36 of the Family Code and are not manifestations thereof which may be a ground for declaring their marriage void.[36]

While it is apparent to the Court that the union between Elena and Eduardo was an acrimonious and unpleasant one, the same did not invalidate their marriage. An unsatisfactory marriage

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[33] *Id.* at 38.

[34] *Del Rosario v. Del Rosario*, 805 Phil. 978, 993 (2017).

[35] *Republic of the Phils. v. Court of Appeals, supra* note 22, at 674.

[36] *Rep. of the Phils. v. Pangasinan*, 792 Phil. 808, 824 (2016).

is not a null and void marriage.[37] The Court has repeatedly underscored that psychological capacity under Article 36 is not to be confused with a divorce law that cuts the marital bond at the time the causes therefor manifest themselves.[38] While this Court commiserates with the predicament of Eduardo and Elena, this Court has no option but to apply the applicable law and jurisprudence that addresses only an overly specific situation — a relationship where no marriage could have validly been concluded because the parties, or one of them, by reason of a grave and incurable psychological illness existing when the marriage was celebrated, did not appreciate the obligations of marital life and, thus, could not have validly entered into a marriage.[39]

WHEREFORE, the petition for review on *certiorari* is **GRANTED**. The Decision dated March 15, 2017 and the Resolution dated September 4, 2017 of the Court of Appeals in CA-G.R. CV No. 105382 which declared void the marriage between Eduardo Dytianquin and Maria Elena Bustamante Dytianquin on the ground of the psychological incapacities of the parties is hereby **REVERSED and SET ASIDE**. The petition for declaration of nullity of marriage docketed as Civil Case No. 13-178 is hereby **DISMISSED**.

SO ORDERED.

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

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[37] *Baccay v. Baccay, et al.*, 651 Phil. 68, 86 (2010).

[38] *Aspillaga v. Aspillaga*, 619 Phil. 434, 442 (2009); *Ochosa v. Alano*, 655 Phil. 512, 534; *Mary Christine Go-Yu v. Romeo A. Yu*, G.R. No. 230443, April 3, 2019.

[39] *So v. Valera*, 606 Phil. 309, 336 (2009).

THIRD DIVISION

[G.R. No. 238405. December 7, 2020]

THE PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **XXX,**[1] *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

HERNANDO, *J.*:

Challenged in this appeal is the April 25, 2017 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08168, which affirmed with modifications the December 4,[3] 2015 Judgment[4] of the Regional Trial Court (RTC), Branch 61 of Gumaca, Quezon, in Criminal Case Nos. 9994-G, 9995-G, and 10479-G.

The Antecedents:

Accused-appellant XXX was charged in three Informations which alleged:

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[1] Initials were used to identify the accused-appellant pursuant to Amended Administrative Circular No. 83-15 dated September 5, 2017 Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders using Fictitious Names/ Personal Circumstances issued on September 5, 2017.

[2] *Rollo*, pp. 2-17; penned by Associate Justice Rodil V. Zalameda (now a member of this Court) and concurred in by Associate Justices Sesinando E. Villon and Ma. Luisa Quijano-Padilla.

[3] Promulgated on December 9, 2015.

[4] CA *rollo*, pp. 11-23; penned by Presiding Judge Maria Chona E. Pulgar-Navarro.

Criminal Case No. 9994-G — Object Rape

That on or about September 5, 2007, at [redacted],[5] Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused [Nicanor [XXX]], with lewd design, did then and there committed an act of sexual assault on one [AAA],[6] an eight-year old female child, by forcing the said child to perform *fellatio* on him, that is, by inserting his penis into the said child's mouth, to gratify his sexual desire.

That the accused is the common-law spouse of [AAA's] mother, [BBB].[7]

That in committing the offense, the said accused abused his moral ascendancy and influence over the said child and showed moral depravity by telling her, "*huwag kang masamok kay Mama at kapag may asawa ka na ay hindi na kita [g]agalawin*."

Contrary to law.[8]

Criminal Case No. 9995-G — Statutory Rape

That on or about September 5, 2007, at [redacted] Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused [Nicanor [XXX]], with lewd design, did then and there have carnal knowledge of one [AAA], an eight-year old female child, by inserting his penis inside her vagina, against her will.

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[5] "The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, Providing Penalties for its Violation, and for Other Purposes; Republic Act No. 9262, An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes; and 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. Dumadag*, 667 Phil. 664, 669 [2011]).

[6] Id.

[7] Id.

[8] Records (Crim. Case No. 9994-G), p. 2.

That the accused is the common-law spouse of [AAA's] mother, [BBB].

That in committing the offense, the said accused abused his moral ascendancy and influence over the said child and showed moral depravity by telling her, "*huwag kang masamok kay Mama at kapag may asawa ka na ay hindi na kita gagalawin.*"

Contrary to law.[9]

In Criminal Case No. 10479-G — Statutory Rape

That on or about the month of September 2007, [redacted] Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused [Nicanor [XXX]], with lewd design, did then and there have carnal knowledge of one [AAA], an eight-year old female child, by inserting his penis inside her vagina, against her will.

That the accused is the common-law spouse of [AAA's] mother, [BBB].

Contrary to law.[10]

XXX pleaded "not guilty" to all charges.[11] The three criminal cases were tried jointly[12] by the RTC.

Version of the Prosecution:

The prosecution established that XXX is the common-law husband of AAA's mother, BBB.[13]

In Criminal Case No. 10479-G, the prosecution claimed that sometime in September 2007, AAA was lying naked on the floor inside the room of their house when XXX laid on top of

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[9] Records (Crim. Case No. 9995-G), p. 2.

[10] Records (Crim. Case No. 10479-G), p. 2.

[11] Records (Crim. Case No. 9994-G), p. 13; records (Crim. Case No. 10479), pp. 22, 25.

[12] *Rollo*, p. 6.

[13] Records (Crim. Case No. 9994-G), p. 38.

her and twice inserted his penis into her vagina, then threatened her not to tell her mother.[14]

With regard to Criminal Case Nos. 9994-G and 9995-G, the prosecution alleged that on September 5, 2007, XXX summoned AAA, who was eight years old at the time, inside their house. Thereafter, XXX brought her inside a room. He then removed her shorts and placed his penis inside her mouth. Thereafter, he inserted his penis into AAA's vagina. Eventually, AAA confided to BBB about the rape incidents, prompting the latter to report the matter to the authorities which led to the arrest of XXX.[15]

AAA's birth certificate[16] showed that she was born on February 6, 1999. Thus, she was only eight years old when XXX sexually molested her in September 2007.

Dr. Genevive Bayongan Laguerta (Dr. Laguerta) examined AAA. In her Medical Legal Certificate,[17] Dr. Laguerta stated that she found redness on the opening of AAA's vulva and hymenal lacerations at 7, 11 and 1 o'clock positions. Dr. Laguerta opined that an object, such as a penis, was inserted inside the opening of the hymen by force.[18]

In her *Salaysay*,[19] AAA narrated that she could not recall the number of times XXX had sexually molested her. She did not report the rape incidents to anyone because of the threats made by XXX. AAA recalled what transpired on September 5, 2007, to wit:

07. TANONG: Maari mo bang isalaysay ang buong pangyayari kung paano kang iniyot ni [XXX]?

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[14] CA *rollo*, pp. 48-49.

[15] Id. at 49, 89.

[16] Records (Crim. Case No. 9995-G), p. 14.

[17] Id. at 11.

[18] TSN, May 23, 2012, pp. 4-6.

[19] Records (Crim. Case No. 9995-G), p. 10.

SAGOT: Opo, kapag po umaalis si Mama ay tinatawag po ko ni [XXX] sa loob [ng aming] bahay at sinasabi po ni [XXX] na huwag akong maingay at iyong pong aking mga kapatid ay hindi pinapapasok sa loob at hinubad [na po] ni [XXX] ang aking suot na short at pinasok [na po] ni [XXX] ang kanyang ari sa aking puki at pagkatapos po ay pinapadede ni [XXX] ang kanyang ari sa akin at hinihimas niya ang aking dede at pagkatapos po ay sinasabi po ni [XXX] sa akin na 'HUWAG KANG MASAMOK KAY MAMA AT KAPAG MAY ASAWA KA NA AY HINDI NA KITA GAGALAWIN.'[20]

The victim added that the last time she was sexually molested, BBB saw XXX forcing her (AAA) to perform fellatio on him.[21]

BBB recounted what she saw on September 5, 2007 in her *Salaysay voz.*:[22]

05. TANONG: Maari mo bang isalaysay kung paano ginahasa ni [XXX] ang iyong anak na si AAA?

SAGOT: Opo, [n]oon pong petsa 5 ng Setyembre 2007 oras humigit kumulang sa ika tatlo (3:00pm) ng hapon pag uwi ko po ng aming bahay galing sa paglaba ay naabutan ko po ang aking anak na si [AAA] at ang aking kinakasamang si XXX na nasa loob ng aming bahay na nakita ko po na pinapasuso ni XXX ang aking anak na si [AAA] sa kanyang ari habang nakahiga si XXX sa gilid ng aming lamesa habang ang anak ko ay [magulong-magulo] ang buhok at ng makita po niya ako ay pinahawakan ni XXX ang kanyang kamay sa aking anak na si [AAA] na pinapahilot ang kanyang kamay, at ng tinanong ko po ang aking anak ay sinabi po niya sa akin na huwag ko daw pong sasabihin kay XXX na nagsumbong siya sa akin na pinapadede siya ni XXX sa kanyang ari, nilalamas ang suso at iniiyot ni XXX.[23]

BBB confirmed that AAA is her child with her previous husband and not with XXX.[24]

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[20] Id.

[21] Id.

[22] Id. at 9.

[23] Id.

[24] Id.

The victim vividly described the sexual assault and rape incidents on September 5, 2007 as follows:

T Sabi mo mag-isa ka sa kuwarto noong mangyari yoon?
S Opo.

T Natutulog ka ba?
S Hindi po.

T Ano ang ginagawa mo?
S Tinawag po niya ako sa labas.

T Si XXX ba ang tumawag sa iyo sa labas?
S Opo.

T Lumabas ka ba?
S Pumasok po ako sa loob.

T Saan ka pumasok?
S Pumasok po ako sa loob ng bahay.

T Andoon ba si XXX sa loob ng bahay?
S Opo, sinara po niya ang mga kurtina.

T Siya mismo ang nagsara ng mga kurtina?
S Opo.

x x x x

T Pagkasara ng kurtina, ano ang nangyari?
S Pumasok po siya sa loob ng kuwarto.

T Saan siya pumasok?
S Sa loob po ng kuwarto.

x x x x

T Pagkatapos niyang pumasok sa kuwarto ano ang nangyari?
S Sabi po niya ay maghubad ako.

T Ano ang nangyaring kasunod, naghubad ka ba?
S Opo.

x x x x

T Ano ang nangyari pagkatapos tanggalin ang short mo, [m]ay nangyari ba?
S Opo.

T Ano ang ginawa sa iyo, may ipinasok ba siya sa bibig mo?
S Opo.

T Ano ang ipinasok sa bibig mo, ano ang tawag doon, meron ka ba noon?
S Wala po.

x x x x

T Yoong ipinasok sa iyong bibig, ano ang hitsura?
S Ari niya.

T Titi niya ba yon?
S Opo.

T Ilang beses niya ipinasok sa bibig mo yong titi niya?
S Isa (1) lamang po.

x x x x

T Alam mo ba kung nasaan ang pipi mo?
S [(Witness pointed to her vagina)].

T May ipinasok ba siya sa pipi mo?
S Opo, meron.

T Kailan, yon ding araw na yoon na ipinasok niya ang ari niya sa bibig mo?
S Opo.

x x x x

T Halimbawa ito ang pipi mo, ituro mo nga kung paano niya ipinasok. (Fiscal Begonia is demonstrating her hands to the witness)
S [(The witness [pushed] the forefinger of this representation inside the fist of her left hand indicating the penis is penetrating the vagina.)]

T Ano ang naramdaman mo ng pumasok ang ari niya sa pipi mo?
S Masakit po.

T Inilabas pasok ba niya?
S Opo.

T Paglabas pasok nasaktan ka ba?
S Opo.

T May sinabi ka [ba sa] kanya ng ipinasok at inilabas niya sa pipi mo ang ari niya?
S Wala po.

T Umiyak ka ba?
S Opo.

x x x x

T Nagsabi ka ba sa Mama mo tungkol doon sa ginawa sa iyo ni XXX?
S Opo.

T Kailan ka nagsabi kay Mama?
S Noong kinabukasan po.

x x x x

T Pag-naaalala mo ba yong nangyari sa iyo, naiiyak ka pa ba, ano ang nararamdaman mo?
S Natatakot po ako.

T Natatakot ka ba kay XXX?
S Opo.

T Bakit ka natatakot kay XXX?

S Sinasaktan po kami[25]

When recalled to the witness stand, AAA related the incident as follows:

Q You earlier mentioned that the accused inserted his penis to your vagina, before the said incident, what were you doing then in the said room?
A I was lying [down], sir.

Q How about the accused, what [was] the accused doing [in] the said room?
A He was on top of me, sir.

x x x x

Q You mean he is totally naked then?
A He was not wearing short, sir.

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[25] TSN, September 24, 2008, pp. 6-10, 12-13.

Q You said naked, he is naked on his lower portion?
A Yes, sir.

Q How about you when you said he was on top of you, what then [were you] wearing?
A None, sir.

Q Did the accused have any weapon then?
A None, he was not carrying any, sir.

Q Was he uttering anything?
A Yes, sir.

Q What is that?
A 'Huwag ko daw pong sasabihin kay mama.'

x x x x

Q Do you recall how many times the said accused inserted his penis inside your vagina?
A Two (2) times/twice, sir.

x x x x

Q When you said that the penis was inserted twice, after the second insertion, what happened next?
A He kissed me, sir.

Q After that?
A He was inserting his penis inside my vagina, sir.[26]

BBB also testified that on September 5, 2007, she saw AAA sitting in between the legs of XXX and said, "Pinadede po niya [XXX] sa ari niya iyong anak ko [AAA]."[27]

Version of the Defense:

The defense presented XXX as its lone witness. He confirmed during his cross-examination that he and BBB were not legally married.[28] He denied the allegations against him. He stated that he raised AAA since she was two years old until she was

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[26] TSN, June 1, 2011, pp. 6-8.

[27] TSN, March 14, 2013, p. 10.

[28] TSN, January 5, 2015, p. 3.

around eight.[29] Notably, he admitted that he was with AAA on September 5, 2007.[30]

Ruling of the Regional Trial Court:

In a Judgment[31] dated December 4, 2015, the RTC adjudged XXX guilty as charged. The trial court gave more weight to the victim's statements which were corroborated by the testimonies of her mother and the doctor and remained unrefuted by the defense. AAA's testimony was detailed and convincing, as well as consistent with human nature and the normal course of things.[32] AAA's minority was established by the presentation in evidence of her birth certificate.[33] It rejected the defense's denial and claim of ill motive in view of the child victim's positive identification of XXX as the perpetrator of the crimes.[34]

The trial court found XXX guilty of Rape by Sexual Assault or Object Rape in Criminal Case No. 9994-G and Statutory Rape in both Criminal Case Nos. 9995-G and 10479-G. The dispositive portion of the trial court's Judgment reads:

WHEREFORE, finding that [the] prosecution evidence has established the guilt of the accused beyond reasonable doubt in all three cases, accused [XXX] is adjudged **GUILTY** [in] Criminal Cases Nos. 9994-G, 9995-G and 10479-G. He is hereby sentenced as follows:

1. In Criminal Case No. 9994-G for Object Rape, [XXX] is hereby sentenced to suffer the penalty of 12 years of *prision mayor* as minimum to 20 years of *reclusion temporal* as maximum. Accused is ordered to pay the private complainant [the] amounts of P30,000.00 as civil indemnity, P30,000.00 as moral damages, and P30,000.00 as exemplary damages.

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[29] *Id.* at 5.

[30] *Id.* at 6.

[31] CA *rollo*, pp. 10-23.

[32] *Id.* at 16-17.

[33] *Id.* at 23.

[34] *Id.* at. 23-24.

2. In Criminal Cases Nos. 9995-G and 10479-G, accused is sentenced to suffer the penalty of *Reclusion Perpetua* in each case. He is likewise ordered to pay the private [complainant] the amounts of P75,000.00 as civil indemnity, P75,000.00 as moral damages, and P30,000.00 as exemplary damages for each case.

SO ORDERED.[35]

Ruling of the Court of Appeals:

The CA affirmed XXX's conviction for Rape by Sexual Assault in Criminal Case No. 9994-G and for Statutory Rape in Criminal Case No. 10479-G but absolved him from the charge of Statutory Rape in Criminal Case No. 9995-G based on reasonable doubt.

The appellate court considered the qualifying circumstances of minority and relationship and held that XXX should be held liable for Qualified Rape.[36]

The dispositive portion of the assailed CA Decision reads:

WHEREFORE, premises considered, the instant Appeal is **PARTLY GRANTED**. The Judgment dated 04 December 2015 of Branch 61, Regional Trial Court of Gumaca, Quezon is hereby **AFFIRMED but with the following MODIFICATIONS**, in that —

x x x x

1. In Criminal Case No. 9994-G for **Qualified Rape by Sexual Assault, [XXX] is hereby CONVICTED of the crime charged** and sentenced to suffer the **indeterminate penalty of nine (9) years of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum.** Accused is ordered to pay the private complainant [the] amounts of P30,000.00 as civil indemnity, P30,000.00 as moral damages, and P30,000.00 as exemplary damages.

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[35] Id. at 24-25.

[36] *Rollo*, p. 13.

2. In Criminal Case No. 10479-G for **Qualified Rape**, accused is **hereby CONVICTED of the crime charged** and sentenced to suffer the penalty of ***reclusion perpetua*, without eligibility for parole.** He is likewise ordered to pay the private [complainant] **the amounts of P100,000.00 as civil indemnity, P100,000.00 as moral damages, and P100,000.00 as exemplary damages**.

3. **Interest at the rate of six percent (6%) per *annum* is imposed on all the damages awarded in this case from date of finality of this judgment until fully paid**.

4. In Criminal Case [No.] 9995-G, accused-appellant is hereby **ACQUITTED** due to reasonable doubt.

x x x x

SO ORDERED.[37]

XXX filed a Motion for Partial Reconsideration[38] which the CA denied in a Resolution[39] dated September 29, 2017.

Issue

Whether or not XXX is guilty beyond reasonable doubt of Qualified Rape.

Our Ruling

We dismiss the appeal.

After a judicious review of the records, we find no reason to deviate from the findings of the trial court as affirmed by the appellate court. AAA's testimony was candid, straightforward, and unrehearsed. Indeed, "[t]he trial court's determination of witness credibility will seldom be disturbed on appeal unless significant matters were overlooked. A reversal of these findings becomes even more inappropriate when affirmed by the Court of Appeals."[40] Absent any indication that the RTC

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[37] Id. at 16.

[38] CA *rollo*, pp. 134-138.

[39] Id. at 148-149.

[40] *People v. Lita*, G.R. No. 227755, August 14, 2019, citing *People v. Dimapilit*, 816 Phil. 523, 540-541 (2017).

and the CA committed any error in the evaluation of the evidence, the Court sees no reason to deviate from the factual findings that XXX sexually assaulted and had carnal knowledge of AAA.[41]

Notably, AAA was only nine[42] and 12[43] years old when placed on the witness stand. Jurisprudence dictates that —

> x x x When the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true. Youth and immaturity are generally badges of truth and sincerity. Errorless recollection of a harrowing incident cannot be expected of a witness, especially when she is recounting details of an experience so humiliating and so painful as rape. What is important is that the victim's declarations are consistent on basic matters constituting the elements of rape and her positive identification of the person who did it to her.[44]

Moreover, Dr. Laguerta's medical findings that AAA suffered hymenal lacerations suggesting that an object or a male organ had penetrated her vagina corroborated AAA's testimony that she was raped. Thus, "[w]here the victim's testimony is corroborated by physical findings of penetration, there is sufficient basis for concluding that sexual intercourse did take place."[45]

We are not convinced by XXX's contention that BBB was moved by ill motive when she filed the cases against him. "[I]t is settled that motives, such as those attributable to revenge, family feuds and resentment cannot destroy the credibility of

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[41] *People v. Traigo*, 734 Phil. 726-732 (2014).

[42] TSN, September 24, 2008.

[43] TSN, June 1, 2011.

[44] *People v. ZZZ*, G.R. No. 224584, September 4, 2019, citing *People v. Araojo*, 616 Phil. 275 (2009) and *People v. Daco*, 589 Phil. 335, 348 (2008).

[45] *People v. ZZZ*, G.R. No. 224584, September 4, 2019, citing *People v. Lumaho*, 744 Phil. 233, 243 (2002).

a minor complainant who gave an unwavering testimony in open court."[46] We note that XXX did not even offer a solid alibi which would account for his whereabouts during the rape incidents. On the contrary, he admitted that he was at home with AAA.

Anent the qualifying circumstances of minority and relationship, we find the same to have been satisfactorily alleged in the Informations and established during the trial. AAA was a minor when the felonies were committed against her, as confirmed by her birth certificate. XXX was the common-law spouse of BBB, AAA's mother. XXX himself did not deny such fact.

Article 266-A of the Revised Penal Code (RPC) reads as follows:

> Article 266-A. *Rape; When and How Committed*. — Rape is committed —
>
> 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
>
> a) Through force, threat, or intimidation;
>
> b) When the offended party is deprived of reason or is otherwise unconscious;
>
> c) By means of fraudulent machination or grave abuse of authority; and
>
> d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.
>
> 2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.[47] (Emphasis supplied)

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[46] *People v. Laguerta*, G.R. No. 233542, July 9, 2018, citing *People v. Itdang*, 397 Phil. 692, 700-701 (2000).

Rape through sexual intercourse and rape through sexual assault are further described as follows:

> In rape under paragraph 1 or rape through sexual intercourse, carnal knowledge is the crucial element which must be proven beyond reasonable doubt. This is also referred to as 'organ rape' or 'penile rape' and must be attended by any of the circumstances enumerated in subparagraphs (a) to (d) of paragraph 1. There must be evidence to establish beyond reasonable doubt that the perpetrator's penis touched the *labia* of the victim or slid into her female organ, and not merely stroked the external surface thereof, to ensure his conviction of rape by sexual intercourse.
>
> On the other hand, rape under paragraph 2 of the above-quoted article is commonly known as rape by sexual assault. The perpetrator, under any of the attendant circumstances mentioned in paragraph 1, commits this kind of rape by inserting his penis into another person's mouth or anal orifice, or any instrument or object into the genital or anal orifice of another person. It is also called 'instrument or object rape,' also 'gender-free rape,' or the narrower 'homosexual rape.'[48]

Before determining the appropriate felony committed by XXX, it is important to emphasize that the title of the felony as stated in the Information is not controlling but the allegations in the body therein. Indeed, what controls is not the title of the information or the designation of the offense, but the actual facts recited in the information constituting the crime charged."[49] The Court clarified in *Quimvel v. People*[50] that:

> Jurisprudence has already set the standard on how the requirement is to be satisfied. Case law dictates that the allegations in the Information must be in such form as is sufficient to enable a person

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[47] REVISED PENAL CODE, Article 266-A, as amended by Republic Act No. 8353 (1997).

[48] *People v. Gaduyon*, 720 Phil. 750, 767 (2013), citing *People v. Brioso*, 600 Phil. 530 (2009) and *People v. Abulon*, 557 Phil. 428 (2007).

[49] *People v. Molejon*, G.R. No. 208091, April 23, 2018, citing *People v. Ursua*, 819 Phil. 467 (2017).

[50] *Quimvel v. People*, 808 Phil. 889 (2017).

of common understanding to know what offense is intended to be charged and enable the court to know the proper judgment. The Information must allege clearly and accurately the **elements** of the crime charged. The facts and circumstances necessary to be included therein are determined by reference to the definition and elements of the specific crimes.

The main purpose of requiring the elements of a crime to be set out in the Information is to enable the accused to suitably prepare his defense because he is presumed to have no independent knowledge of the facts that constitute the offense. The allegations of facts constituting the offense charged are substantial matters and the right of an accused to question his conviction based on facts not alleged in the information cannot be waived. As further explained in *Andaya v. People*:

> No matter how conclusive and convincing the evidence of guilt may be, an accused cannot be convicted of any offense unless it is charged in the information on which he is tried or is necessarily included therein. To convict him of a ground not alleged while he is concentrating his defense against the ground alleged would plainly be unfair and underhanded. The rule is that a variance between the allegation in the information and proof adduced during trial shall be fatal to the criminal case if it is material and prejudicial to the accused so much so that it affects his substantial rights.[51] (Citations omitted.)

The Information in Criminal Case No. 9994-G denominated the felony as Object Rape under Article 266-A, paragraph 2 of the RPC, otherwise known as Rape by Sexual Assault. Based on the facts, and as found by both the RTC and the CA, XXX forced AAA to perform *fellatio* on him by placing his penis inside her mouth. By this, XXX should be adjudged guilty of Rape by Sexual Assault under the RPC. However, the recent case of *People v. Tulagan (Tulagan)*[52] prescribed guidelines regarding the proper designation or nomenclature of acts constituting sexual assault and the corresponding penalty depending on the victim's age, to wit:

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[51] Id. at 912-913.

[52] G.R. No. 227363, March 12, 2019.

Considering the development of the crime of sexual assault from a mere 'crime against chastity' in the form of acts of lasciviousness to 'crime against persons' akin to rape, as well as the ruling in Dimakuta and Caoili, We hold that if the acts constituting sexual assault are committed against a victim under 12 years of age or is demented, the nomenclature of the offense should now be 'Sexual Assault under paragraph 2, Article 266-A of the RPC in relation to Section 5(b) of R.A. No. 7610' and no longer 'Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5(b) of R.A. No. 7610,' because sexual assault as a form of acts of lasciviousness is no longer covered by Article 336 but by Article 266-A(2) of the RPC, as amended by R.A. No. 8353. Nevertheless, the imposable penalty is still *reclusion temporal* in its medium period, and not *prision mayor*.[53]

Thus, pursuant to *Tulagan*, and considering the fact that AAA was eight years old when the crime was committed against her, the proper designation of the crime in Criminal Case No. 9994-G should be "Sexual Assault under paragraph 2, Article 266-A of the RPC in relation to Section 5 (b) of R.A. No. 7610."[54] Moreover, this crime shall be punished by *prision mayor* in accordance with Article 266-B of the RPC. However,

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[53] Id.

[54] SEC. 5. *Child Prostitution and Other Sexual Abuse*. —

Children, whether male or female, who for money, profit or any other consideration or due to coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse. The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

x x x

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse: *Provided*, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct as the case may be: *Provided*, that the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period; x x x

the penalty shall be increased to *reclusion temporal* if an aggravating or qualifying circumstance is present in the case.[55]

Considering the attending circumstances of the minority of the victim and the fact that the offender is the common-law spouse of the parent of the victim, which circumstances were both alleged in the Information and proved during trial, the imposable penalty in Criminal Case No. 9994-G is *reclusion temporal*. Applying the Indeterminate Sentence Law, XXX should be sentenced to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years of *prision mayor*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum, and to pay the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages.[56]

In Criminal Case No. 10479-G, it was proved that sometime in September 2007, XXX had carnal knowledge of AAA by inserting his penis inside her vagina against her will. Undeniably, these details confirmed that XXX committed rape by sexual intercourse.

According to Article 266-B of the RPC, rape under paragraph 1 of Article 266-A (rape by sexual intercourse) shall be punished by *reclusion perpetua*. However, the rape shall be qualified and the death penalty shall be imposed:

> 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[.][57]

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[55] REVISED PENAL CODE, Article 266-A, as amended by Republic Act No. 8353 (1997).

[56] *People v. Macasilang*, G.R. No. 241791, January 22, 2020; *see People v. Tulagan*, supra note 52.

[57] REVISED PENAL CODE, Article 266-B, as amended by Republic Act No. 8353 (1997).

The elements of qualified rape are: "(1) sexual congress; (2) with a woman; (3) done by force and without consent; (4) the victim is under [eighteen] years of age at the time of the rape; and (5) the offender is [either] a parent (whether legitimate, illegitimate or adopted), [ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent] of the victim."[58]

According to *People v. Begino*,[59] the "qualifying circumstances must be properly pleaded in the indictment. If the same are not pleaded but proved, they shall be considered only as aggravating circumstances since the latter admit of proof even if not pleaded. It would be a denial of the right of the accused to be informed of the charges against him and consequently, a denial of due process, if he is charged with simple rape and be convicted of its qualified form, although the attendant circumstance qualifying the offense and resulting in the capital punishment was not alleged in the indictment on which he was arraigned."

Here, AAA's minority was properly alleged in the Information and proven during trial. The Information likewise alleged that XXX was the common-law husband of BBB, which was subsequently proven during the trial and admitted by XXX himself.[60]

To reiterate, in order to qualify the rape charge, the victim's minority **and** her relationship with the offender should **both** be alleged in the Information and proven beyond reasonable doubt during trial. This is because these circumstances have the effect of altering the nature of the rape and its corresponding penalty. Otherwise, the death penalty (or *reclusion perpetua*, because of the prohibition on the imposition of death penalty)

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[58] *People v. Salaver*, G.R. No. 223681, August 20, 2018, citing *People v. Colentava*, 753 Phil. 361 (2015).

[59] 601 Phil. 182, 191 (2009), citing *People v. Garcia*, 346 Phil. 475, 504-505 (1997).

[60] *People v. Vañas y Balderama*, G.R. No. 225511, March 20, 2019.

cannot be imposed upon the offender.[61] Since **both** the qualifying circumstances of minority **and** relationship were properly pleaded and proved during trial, the CA correctly convicted XXX of Qualified Rape under paragraph 1 (d) of Article 266-A in relation to Article 266-B of the RPC as amended by RA No. 8353 in Criminal Case No. 10479-G.

The CA correctly affirmed the penalty of *reclusion perpetua* in light of the prohibition on the imposition of the death penalty as mandated by Republic Act No. 9346, without eligibility for parole. Likewise, it rightly imposed the amounts of ₱100,000.00 each for civil indemnity, moral damages, and exemplary damages in accordance with recent jurisprudence.[62]

With regard to the rate of interest, the CA appropriately held that all the monetary awards (granted for each felony) should be subject to the interest rate of six percent (6%) per *annum* from the finality of the Decision until fully paid.[63]

WHEREFORE, the instant appeal is **DISMISSED**. The assailed April 25, 2017 Decision of the Court of Appeals in CA-G.R. CR-HC No. 08168 is **AFFIRMED with MODIFICATIONS**.

In Criminal Case No. 9994-G, accused-appellant XXX is found **GUILTY** beyond reasonable doubt of Sexual Assault under paragraph 2, Article 266-A of the RPC in relation to Section 5 (b) of Republic Act No. 7610. He is sentenced to suffer the indeterminate penalty of twelve (12) years of *prision mayor*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum, and to pay the amounts of ₱50,000.00 as civil

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[61] *People v. Begino*, 601 Phil. 182, 190 (2009) citing *People v. Ferolino*, 386 Phil. 161, 179 (2000); *People v. Bayya*, 384 Phil. 519, 527 (2000); *People v. Maglente*, 366 Phil. 221 (1999); *People v. Ilao*, 357 Phil. 656, 672 (1998); *People v. Ramos*, 357 Phil. 559, 575 (1998).

[62] *People v. Jugueta*, 783 Phil. 806 (2016).

[63] *People v. Roy*, G.R. No. 225604, July 23, 2018 citing *Nacar v. Gallery Frames*, 716 Phil. 267, 283 (2013).

indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages.

In Criminal Case No. 10479-G, accused-appellant XXX is found **GUILTY** beyond reasonable doubt of Qualified Rape under paragraph 1 (d) of Article 266-A in relation to Article 266-B of the RPC as amended by Republic Act No. 8353. He is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole. He is ordered to pay the amounts of ₱100,000.00 each as civil indemnity, moral damages, and exemplary damages.

The monetary awards shall earn interest at the rate of six percent (6%) per *annum* from date of finality of this Decision until fully paid.

SO ORDERED.

Leonen (*Chairperson*), *Inting, Delos Santos,* and *Rosario, JJ.*, concur.

THIRD DIVISION

[G.R. No. 238622. December 7, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **RANDY LICAROS *y* FLORES,** *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.*:

Assailed in this ordinary appeal[1] is the Decision[2] dated August 14, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08235 which affirmed the Decision[3] dated March 16, 2016 of Branch 214, Regional Trial Court (RTC), [redacted] finding Randy Licaros *y* Flores (accused-appellant) guilty beyond reasonable doubt of the crime of Rape under paragraph 1, Article 266-A of the Revised Penal Code (RPC).

The Antecedents

Accused-appellant was charged with the crime of Rape under paragraph 1, Article 266-A of the RPC in an Information[4] dated July 3, 2009 which reads:

That on or about the 9t[h] day of April 2009, in the [redacted] Philippines, and within the jurisdiction of this Honorable Court, the

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[1] See Notice of Appeal dated September 13, 2017, *rollo*, pp. 13-14.

[2] *Id.* at 2-12; penned by Associate Justice Ramon M. Bato, Jr. with Associate Justices Samuel H. Gaerlan (now a member of the Court) and Jhosep Y. Lopez, concurring.

[3] CA *rollo*, pp. 38-52; penned by Presiding Judge Imelda L. Portes-Saulog.

[4] Records, p. 1-2.

above-named accused, with lewd designs, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of [AAA],[5] against her will and consent.

CONTRARY TO LAW.[6]

During his arraignment on February 15, 2011, accused-appellant entered a plea of not guilty to the charge against him.[7] Trial ensued.

Version of the Prosecution

On April 9, 2009, AAA, who was then living with her aunt, BBB, engaged in a drinking spree with her uncle, BBB, and some neighbors at BBB's house. The drinking started earlier that day. Accused-appellant, AAA's cousin, later arrived and joined the drinking spree.[8]

At around 11:00 p.m., AAA felt dizzy from drinking alcohol and decided to go to sleep. Accused-appellant assisted AAA in going to the bedroom upstairs. When they reached the room, he helped AAA as she lied down on the floor to sleep. To AAA's shock and surprise, she felt accused-appellant suddenly move

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[5] The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. (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.

[6] Records, p. 1.

[7] See Certificate of Arraignment, *id.* at 56.

[8] As culled from the Brief for Plaintiff-Appellee, CA *rollo*, p. 74.

on top of her and kiss her from her neck downwards. AAA struggled to resist his advances by kicking and pushing him away, but accused-appellant refused to stop what he was doing. AAA also tried to shout, but no voice came out of her lips.[9]

Thereafter, accused-appellant began pulling down AAA's shorts and underwear while pinning with his one hand AAA's clenched fists to her chest. When AAA's garments reached below her knees, he tugged down his own basketball shorts and underwear, inserted his penis into AAA's vagina, and made push and pull movements. After several minutes, he was done with his dastardly act. He then dressed up and left AAA crying alone in the room.[10]

Though shocked and dismayed with what happened to her, AAA continued to live in BBB's house. AAA, however, did not tell anyone about the incident out of fear that her father might kill accused-appellant, or the latter might be killed if the rape incident would be known.[11]

Eventually, AAA decided to confide to her stepmother, CCC, that she had been raped by accused-appellant. CCC then contacted DDD, AAA's biological mother, who accompanied AAA to the Women and Children Protection Desk at the [redacted] Police Station to report the rape incident. AAA thereafter underwent a medical examination at the Philippine National Police Crime Laboratory in Camp Crame.[12] Per the medico-legal report, AAA's hymen had shallow healed lacerations at the 3 and 9 o'clock positions and a deep healed laceration at the 6 o'clock position which clearly evinced previous blunt force or penetrating trauma.[13]

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[9] *Id.* at 75-76.

[10] *Id.* at 76-77.

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

[12] CA *rollo*, pp. 78-79.

[13] See the Initial Medico-Legal Report signed by PCI Jesille Cui Baluyot, M.D., Duty Medico-Legal Officer, records, p. 11.

Version of the Defense

For his part, accused-appellant raised the defense of denial, *viz.*:

> 5.1. On April 9, 2009, he and his cousin, [EEE], among others, were drinking gin at [redacted]. At around 2:00 or 3:00 o'clock in the afternoon, AAA joined them. When their drinking session ended at 7:00 o'clock in the evening, he saw AAA lying in front of the door of the house. His mother instructed him to bring AAA to the second floor of the house since they were about to sleep. Together with [EEE], they brought AAA upstairs, after which, they went down and continued drinking. [His sister,] [FFF], who was at the second floor "texting," saw AAA being assisted by the accused. She ([FFF]) slept at around 10:00 o'clock in the evening. When she woke up at 9:00 o'clock in the morning, AAA was already gone.[14]

The RTC Ruling

In a Decision[15] dated March 16, 2016, the RTC convicted accused-appellant of the crime charged.[16] It found AAA's testimony, which was fully supported by the medico-legal's findings,[17] to be a straightforward, categorical, and candid narration of the rape incident.[18] It also gave more weight to AAA's positive identification of accused-appellant as her rapist over the latter's defense of denial.[19]

Accordingly, the RTC sentenced accused-appellant to suffer the penalty of *reclusion perpetua* and ordered him to pay AAA the following amounts: (a) ₱50,000.00 as civil indemnity; (b) ₱50,000.00 as moral damages; and (c) ₱30,000.00 as exemplary

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[14] CA *rollo*, p. 30.

[15] *Id.* at 38-52.

[16] *Id.* at 51.

[17] *Id.* at 50.

[18] *Id.* at 48-49.

[19] *Id.* at 49.

damages. It also imposed interest at the legal rate of 6% *per annum* on the monetary award from the date of finality of the judgment until fully paid.[20]

Accused-appellant thereafter appealed before the CA.

The CA Ruling

In its Decision[21] dated August 14, 2017, the CA affirmed the RTC Decision with *modification* in that it increased the amounts of civil indemnity, moral damages, and exemplary damages to ₱75,000.00 each in view of recent jurisprudence.[22]

The CA ruled that AAA had given a clear, positive, and straightforward account of the rape incident.[23] It thus concluded that:

> In the present case, it has been sufficiently established that the accused-appellant employed force in order to succeed in his lustful act. AAA testified that as soon as she was laid down on the floor, accused-appellant went on top of her, and pinned her hands to her chest as he removed her undergarments and inserted his penis into her vagina. The medico-legal report also revealed the presence of shallow healed lacerations at 3 and 9 o'clock positions and deep healed laceration at 6 o'clock position. Furthermore, the findings stated that there is clear evidence of previous blunt force or penetrating trauma. Clearly, the evidence shows that the accused-appellant employed force in order to attain his lustful act. And, when the consistent and forthright testimony of a rape victim is consistent with medical findings, there is sufficient basis to warrant a conclusion that the essential requisites of carnal knowledge have been established.[24]

Thus, the instant appeal.

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[20] *Id.* at 51.

[21] *Rollo*, pp. 2-12.

[22] *Id.* at 11.

[23] *Id.* at 7.

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

The Issues

Accused-appellant raises the following issues for the Court's resolution: *first*, whether the lower courts committed an error in giving full credence to AAA's "doubtful" and "improbable" testimony;[25] and *second*, whether the prosecution was able to prove the essential element of force or intimidation beyond reasonable doubt.[26]

The Court's Ruling

The appeal is without merit.

In cases where the issue rests upon the credibility of witnesses, the settled rule is that "appellate courts accord the highest respect to the assessment made by the trial court because of the trial judge's unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude under grueling examination."[27]

Thus, the Court explained in *People v. Espino, Jr.*[28] that the findings of the trial court will not be overturned *unless* it is clearly shown that it had *overlooked*, *misunderstood*, or *misapplied* some facts or circumstances of weight or substance that could have altered the outcome of the case.[29] "The rule finds an even more stringent application where said findings are sustained by the [CA]."[30]

In this case, the Court finds no cogent reason to overturn the RTC's factual findings and conclusions, as affirmed by the CA, since they are neither arbitrary nor unfounded.

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[25] As culled from the Brief for the Accused-Appellant, CA *rollo*, pp. 31-32.

[26] *Id.* at 33-34.

[27] *People v. Aquino*, 396 Phil. 303, 306-307 (2000).

[28] 577 Phil. 546 (2008).

[29] *Id.* at 562.

[30] *Id.* at 563, citing *People v. Cabugatan*, 544 Phil. 468, 479 (2007). Emphasis omitted.

A careful perusal of the records shows that AAA was straightforward, categorical, and candid when she described the rape incident in detail and identified accused-appellant as her assailant, *viz.*:

PROS. LALUCES

Q: Good Morning [AAA], during the last hearing where you actually was not able to continue on testifying, I asked you, my last question was who actually assisted you in going to the room where you have to pass through this ladder which you identified previously, can you be able to tell us now who actually assisted you?

WITNESS

A: My cousin ma'am.

Q: *Who is this "pinsan" you are referring to?*

A: *Randy Licaros ma'am.*

Q: Who is Randy Licaros in this trial?

x x x

INTERPRETER

Witness is pointing to a person inside the court room wearing a yellow shirt and when asked to identify his name as Randy Licaros.[31]

x x x

PROS. LALUCES

Q: What happened after he assisted you in going to the second floor, in your room?

A: As I went upstairs he assisted me to lie down ma'am.

x x x

Q: After he assisted you to lie down on the floor what happened next?

A: After lying down I was shocked because he suddenly went on top of me and kissed me on the neck downwards ma'am.

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[31] TSN, October 11, 2011, pp. 3-4. Italics supplied.

Q: You said you were shocked when he suddenly kissed you downwards, what did you do when he did this to you?

A: *I was shocked I pushed him away, I was kicking and I was not able to shout ma'am.*

x x x

Q: *Now you also mentioned that you tried to kick him, what happened with this action that you did to the accused?*

A: *He did not stop ma'am.*

Q: How about your hands madam, where were your arms at the time that the accused was on top of you?

INTERPRETER

Witness is demonstrating clenched fist on top of her chest.

Q: How about the hands of the accused if you recall [AAA]?

A: One hand is pulling down my shorts and my underwear ma'am.

Q: How about the other hand [AAA]?

A: *The other hand he was trying to push my hand on my chest ma'am.*[32]

x x x

Q: *Now [AAA], I'll go back to my question, after he was able to pull down his own shorts and pull down your shorts and your underwear, what happened next?*

A: *"Ipinasok niya po yung ari nya sa ari ko."*[33]

x x x

COURT

By the way madam witness, before you proceed that question you said "pinasok ang ari" was he able to do that, was he able to successfully do that? This is an offense that carries a very heavy penalty so you cannot just manifest that he did that and that's all, you have to tell the court what happened.

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[32] *Id.* at 5-7. Italics supplied.

[33] *Id.* at 8-9. Italics supplied.

A: "Nung pinasok nya po ang ari niya sa ari ko."

Q: What does it mean? You have to tell the court.

A: "*Labas, pasok ang ari niya sa ari ko po.*"[34]

In an attempt to discredit the above-quoted testimony, accused-appellant posits that AAA's story was highly doubtful and inherently impossible due to the close proximity of her relatives and some neighbors to her bedroom where she was supposedly raped. He further questions AAA's failure to shout for help, or make any noise considering the presence of other people in the house during the incident.[35] Lastly, he asserts that the absence of any physical injury on AAA necessarily implied the lack of force or intimidation during the alleged commission of the rape.[36]

The Court disagrees. It is settled that the close proximity of other relatives to the scene of the rape does *not* render the commission of the crime impossible or incredible.[37] "Rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house where there are other occupants, and even in the same room where other members of the family are also sleeping."[38] After all, "[l]ust is no respecter of time and place; neither is it deterred by age nor relationship."[39]

Moreover, AAA's failure to shout for help does *not* in any way disprove the commission of the rape.[40] The absence of any physical injuries on AAA's body, too, does *not* imply that she had consented to the sexual act.[41] "*The force used in the*

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[34] *Id.* at 11-12. Italics supplied.

[35] See Brief for the Accused-appellant, CA *rollo*, p. 31.

[36] *Id.* at 33.

[37] *People v. Descartin, Jr.*, 810 Phil. 881, 892 (2017).

[38] *Id.*

[39] *Id.*, citing *People v. Cabral*, 623 Phil. 809, 815 (2009).

[40] See *People v. Pareja*, 724 Phil. 759, 778 (2014).

[41] See *People v. Ramos*, G.R. No. 210435, August 15, 2018, 877 SCRA 424, 440.

commission of rape need not be overpowering or absolutely irresistible."[42] In this case, it is sufficient that the force employed by accused-appellant when he pinned AAA down on the floor had enabled him to succeed in his lewd objective despite her persistent struggling.[43]

The Court likewise rejects the defense of denial proffered by accused-appellant to exonerate himself from the rape charge against him. *"Denial is an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility."*[44] In other words, a denial, which necessarily constitutes self-serving negative evidence, *cannot* prevail over the declaration of credible witnesses who testify on affirmative matters.[45] Here, AAA's positive and straightforward testimony that she was raped by accused-appellant deserves far greater evidentiary weight than the latter's *uncorroborated* denial of his participation in the incident.

In light of these, the Court finds that the prosecution had sufficiently established beyond reasonable doubt that accused-appellant had carnal knowledge of AAA, through force and intimidation, by inserting his penis into her vagina against her will and without her consent. Indeed, a rape victim's sole account of the incident is sufficient to support a conviction of rape *if* it is straightforward and candid;[46] especially so when it is corroborated by the medical findings of the examining physician, as in this case.[47]

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[42] *People v. Barangan*, 560 Phil. 811, 836 (2007), citing *People v. Villaflores*, 255 Phil. 776, 784 (1989).

[43] See *People v. Ramos, supra*.

[44] *People v. Descartin, Jr., supra* note 37 at 894, citing *People v. Cadano, Jr.*, 729 Phil. 576 (2014).

[45] See *People v. Deloso*, 822 Phil. 1003, 1013-1014 (2017), citing *People v. Francisco*, 397 Phil. 973, 985 (2000).

[46] See *People v. Baraoil*, 690 Phil. 368 (2012).

[47] See *People v. Agalot*, 826 Phil. 541, 555 (2018), citing *People v. Lumaho*, 744 Phil. 233, 243 (2014).

As for the proper penalty, the crime of Simple Rape is penalized under Article 266-B of the RPC, as amended by Republic Act No. 8353, or the Anti-Rape Law of 1997, with *reclusion perpetua*. Given that the guilt of accused-appellant had been proven beyond reasonable doubt, the Court upholds the ruling of the lower courts sentencing him to suffer the penalty of *reclusion perpetua*,[48] and affirms the awards of civil indemnity, moral damages, and exemplary damages at ₱75,000.00 each, in conformity with prevailing jurisprudence.[49]

WHEREFORE, the appeal is **DISMISSED** for lack of merit. The Decision dated August 14, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08235 convicting accused-appellant Randy Licaros *y* Flores of the crime of Rape under paragraph 1, Article 266-A of the Revised Penal Code is hereby **AFFIRMED**.

Accordingly, accused-appellant Randy Licaros *y* Flores is sentenced to suffer the penalty of *reclusion perpetua*. He is further 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.

All damages awarded shall be subject to legal interest at the rate of 6% *per annum* from the finality of this Decision until fully paid.

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[48] Item II (1) of A.M. No. 15-08-02-SC, entitled "*Guidelines for the Proper Use of the Phrase 'Without Eligibility for Parole' in Indivisible Penalties*," dated August 4, 2015 provides:

> II.
>
> In these lights, the following guidelines shall be observed in the imposition of penalties and in the use of the phrase "*without eligibility for parole*":
>
> (1) In cases where the death penalty is not warranted, there is no need to use the phrase "*without eligibility for parole*" to qualify the penalty of *reclusion perpetua*; it is understood that convicted persons penalized with an indivisible penalty are not eligible for parole;

[49] See *People v. Jugueta*, 783 Phil. 806, 849 (2016).

SO ORDERED.

Leonen (*Chairperson*), *Hernando, Delos Santos,* and *Rosario, JJ.*, concur.

THIRD DIVISION

[G.R. No. 246989. December 7, 2020]

HEIRS OF JOSE V. LAGON, namely: MARIA JOCELYN LAGON-RODRIGUEZ, ARMANDO L. LAGON, JONALD JOSE L. LAGON, JOSELITO L. LAGON, LEILANIE L. LAGON, JOSE L. LAGON, JR., MARY EMILIE LAGON-SANCHEZ, STEFANIE GRACE L. LAGON, RYAN NEIL L. LAGON, NENITA L. LAGON, JR., and NENITA L. LAGON, *Petitioners, v.* **ULTRAMAX HEALTHCARE SUPPLIES, INC., MARGIE K. HUAN, MELODIE ANNE KO HUAN, MAEL ALLISON KO HUAN, GIANNE CARLO KO HUAN, ROSANA M. NAVARRO, and the REGISTER OF DEEDS FOR THE PROVINCE OF SOUTH COTABATO,** *Respondents*.

APPEARANCES OF COUNSEL

Rex G. Rico for petitioner.
Raul O. Tolentino for respondents.

D E C I S I O N

LEONEN, *J.*:

It is a well-established rule that no evidence may be introduced during trial if it was not identified and pre-marked during pre-trial. However, the rule allows for an exception: If good cause has been shown, the trial court may allow documentary or object evidence not previously marked to be introduced. By good cause, it must be shown that there is a "substantial reason that affords a legal excuse."[1]

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[1] *Cruz v. People*, 810 Phil. 801 (2017) [Per J. Leonen, Second Division].

This Court resolves a Petition for Review on Certiorari[2] filed by the Heirs of Jose Lagon, assailing the Decision[3] and Resolution[4] of the Court of Appeals, which affirmed the Regional Trial Court Resolutions[5] admitting an evidence not identified and marked on pre-trial.

Spouses Jose and Nenita Lagon (the Lagon Spouses) are the registered owners of two parcels of land in Marbel, Koronadal City, covered by Transfer Certificate of Title (TCT) Nos. T-72558 and T-72564.[6]

In July 2011, the Lagon Spouses discovered that both titles were cancelled by the Registry of Deeds of South Cotabato and were replaced with TCT Nos. T-141372 and T-131373, issued in the name of Ultramax Healthcare Supplies, Inc. (Ultramax).[7]

This prompted the Lagon Spouses to file on September 29, 2011 a Complaint[8] against Ultramax for annulment of the new titles. They denied selling the lands, alleging that the cancellation and subsequent transfer of titles were caused by a falsified deed of absolute sale in favor of Ultramax.[9]

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[2] *Rollo*, pp. 9-26.

[3] Id. at 28-33. The January 31, 2019 Decision in CA-G.R. SP No. 08653-MIN was penned by Associate Justice Oscar V. Badelles, and concurred in by Associate Justices Evalyn M. Arellano-Morales and Florencio M. Mamauag, Jr. of the Special Twenty-Third Division, Court of Appeals, Cagayan de Oro City.

[4] Id. at 28-33. The May 8, 2019 Resolution in CA-G.R. SP No. 08653-MIN was penned by Associate Justice Oscar V. Badelles, and concurred in by Associate Justices Evalyn M. Arellano-Morales and Florencio M. Mamauag, Jr. of the Former Special Twenty-Third Division, Court of Appeals, Cagayan de Oro City.

[5] Id. at 227-228 and 260-261.

[6] Id. at 11.

[7] Id.

[8] Id. at 40-45.

[9] Id. at 42.

In their Answer, Ultramax recounted that in 2009, Margie Huan (Huan), one of its directors, loaned ₱2.3 million with a 4% monthly interest to the Lagon Spouses, who allegedly used their two properties as collateral.[10] They later informed Huan that they could not pay their loan and agreed to cede the two properties to Huan, but with Ultramax as transferee. Consequently, a representative of the spouses delivered TCT Nos. T-72558 and T-72564 to Huan; in exchange, Huan gave all the evidence of indebtedness to the representative.[11]

Jose Lagon died while the case was pending. His wife, Nenita, then moved to have Jose's heirs substitute him.[12] On June 17, 2013, the trial court granted the Motion, and trial ensued.[13]

On August 2, 2013, one Al Barrometro deposed before the branch clerk of court that he facilitated the registration of TCT Nos. T-141372 and T-131373 by presenting a Deed of Absolute Sale to the Registry of Deeds of Koronadal City. The deed appeared to be executed by the Lagon Spouses and notarized by Atty. Damaso Cordero of Sultan Kudarat.[14]

On September 7, 2013, Jose's heirs moved to have the Deed of Absolute Sale examined by a forensic handwriting expert from the National Bureau of Investigation (NBI), which was granted. Upon examination, the signatures on the deed were found to have indeed been falsified.[15]

Afterward, Jose's heirs filed their Formal Offer of Evidence and rested their case. All the pieces of evidence they presented were admitted by the trial court.[16]

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[10] Id. at 29.

[11] Id. at 29-30.

[12] Namely, his spouse, Nenita Lagon, and their children, Maria Jocelyn, Armando, Jonald Jose, Joselito, Leilanie (at times referred to as Lailani), Jose Jr., Mary Emilie Lagon, Stefanie Grace, Ryan Neil, and Nenita Jr.

[13] Id. at 30.

[14] Id.

[15] Id.

[16] Id. at 30-31 and 139.

On November 20, 2015, Ultramax filed a Request for Admission addressed to Nenita, asking for the admission of two documents, a Real Estate Mortgage (Deed of Mortgage) and a Deed of Absolute Sale, both dated December 2009.[17] Jose's heirs objected, stating that the documents were immaterial.[18]

On January 28, 2016, Ultramax again requested that the documents be admitted, this time addressed to two of the heirs, Jocelyn and Leilani Lagon.[19] Jose's heirs reiterated their objection.[20]

On May 18, 2016, Ultramax filed a Supplemental Judicial Affidavit[21] executed by Huan, which introduced a Deed of Mortgage[22] signed by the Lagon Spouses — the same document they had requested to be admitted. Jose's heirs vehemently objected, stating that the Deed of Mortgage was never alleged in Ultramax's Answer and may not be introduced so late in the case.[23] They also reiterated that it was irrelevant here.[24]

On July 1, 2016, the Regional Trial Court issued a Resolution[25] admitting the Supplemental Judicial Affidavit on the ground of substantial justice and equity. It also permitted the introduction of the Deed of Mortgage, not to prove its existence, but to prove "previously existing obligations" of Jose's heirs.[26]

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[17] Id. at 140-141.

[18] Id. at 146-148.

[19] Id. at 155-156. The request was erroneously addressed to "Lailani" instead of Leilani.

[20] Id. at 159-161.

[21] Id. at 211-215. To supplement Huan's Judicial Affidavit dated May 3, 2014 (rollo, pp. 173-183).

[22] Id. at 216.

[23] Id. at 218.

[24] Id.

[25] Id. at 227-228.

[26] Id.

Ultramax then moved to have the Deed of Mortgage examined by an NBI[27] handwriting expert to determine the genuineness of the Lagon Spouses' signatures and use it as comparison to determine the authenticity of their signatures on the Deed of Absolute Sale.[28] Jose's heirs objected.[29]

On March 10, 2017, the Regional Trial Court granted Ultramax's Motion and directed the examination.

Jose's heirs asked for reconsideration,[30] to no avail.[31]

Consequently, they filed a Petition for Certiorari[32] before the Court of Appeals, alleging that the trial court acted with grave abuse of discretion when it granted Ultramax's Motion since the document was never mentioned in the previous pleadings. They further alleged that the document had already been ruled inadmissible by the trial court.[33]

On January 31, 2019, the Court of Appeals dismissed[34] the Petition. It held that in granting the Motion to have the Deed of Mortgage examined, the trial court only aimed to determine the authenticity of the Lagon Spouses' purported signatures, but "did not rule on the admissibility of the [Deed of Mortgage] per se."[35] It also held that the trial court has the authority to admit or reject evidence deemed determinative of the outcome of the case.[36]

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[27] Id. at 278-280.

[28] Id. at 229-230.

[29] Id. at 234-236.

[30] Id. at 262-266.

[31] Id. at 281.

[32] Id. at 282-298.

[33] Id. at 282.

[34] Id. at 28-33.

[35] Id. at 32.

[36] Id. at 33.

Jose's heirs moved for reconsideration, but the Court of Appeals denied their Motion in its May 8, 2019 Resolution.[37]

In their Petition for Review on Certiorari,[38] Jose's heirs assert that the Court of Appeals erred when it dismissed its Petition for Certiorari.[39] They state that since the Deed of Mortgage was not mentioned in respondents' Answer or other pleadings and had already been deemed inadmissible by the trial court, the Motion to have it examined should have been disallowed.[40] They likewise claim that the Court of Appeals turned a blind eye to the fact that the Deed of Mortgage is not the one being questioned in the Complaint, but the Deed of Absolute Sale.[41]

In its Comment, respondent Ultramax claims that the Court of Appeals was correct in finding no fault on the part of the trial court, since presenting the Deed of Mortgage is a matter of defense evidence that is not prohibited by the Rules on Evidence.[42] It also asserts that the Deed of Mortgage is relevant to the case as it aims to prove that the signatures found in it are authentic and executed by the same people that signed the other documents relevant to the case.[43]

In their Reply,[44] petitioners reiterate that the examination of the Deed of Mortgage serves no purpose. They add that while respondents are allowed to prove that petitioners have other existing obligations against it, they cannot use the Deed of Mortgage to do so.[45]

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[37] Id. at 35-37.

[38] Id. at 9-26.

[39] Id. at 19.

[40] Id. at 17 and 20.

[41] Id. at 17.

[42] Id. at 381.

[43] Id. at 380.

[44] Id. at 386-392.

[45] Id. at 389.

The main issue for this Court's resolution is whether or not the Court of Appeals erred in finding that the Regional Trial Court did not gravely abuse its discretion in granting the Motion to have the Deed of Mortgage examined by a handwriting expert.

In actions for certiorari, such as that filed by petitioners before the Court of Appeals, courts are asked to determine if the lower court "acted with grave abuse of discretion amounting to excess or lack of jurisdiction in the exercise of its judgment, such that the act was done in a capricious, whimsical, arbitrary[,] or despotic manner."[46] Hence, as long as the courts do not overstep their authority, any alleged errors committed in their discretion will not suffice to grant certiorari.

Here, the Court of Appeals was called to ascertain if the trial court was correct in granting respondents' Motion and directing that the Deed of Mortgage be examined by a handwriting expert.

We agree with the Court of Appeals. The Regional Trial Court did not gravely abuse its discretion in issuing the assailed Resolutions.

Petitioners rely on technicalities, but these rules are not so rigid as to frustrate the full adjudication of cases. Procedural rules are designed to aid the courts in resolving cases. They neither create nor take away vested rights, but merely facilitate the trial court's reception and evaluation of all evidence given the facts and circumstances presented by the parties.[47] They give litigants the opportunity to establish the merits of their complaint or defense rather than lose life, liberty, or property on mere technicalities.[48] This Court should not demand a strict

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[46] *Lara's Gift and Decors, Inc. v. PNB General Insurers Co., Inc.*, 824 Phil. 652, 663 (2018) [Per J. Velasco, Jr., Third Division].

[47] *Republic v. Spouses Gimenez*, 776 Phil. 233, 237-238 (2016) [Per J. Leonen, Second Division].

[48] *Heirs of Zaulda v. Zaulda*, 729 Phil. 639, 651 (2014) [Per J. Mendoza, Third Division].

application of these rules when such would exacerbate the situation rather than promote substantial justice.

Section 2 of the Judicial Affidavit Rule mandates parties to submit their witnesses' judicial affidavits, together with the documentary and object evidence, before the pre-trial or preliminary conference.[49] Nevertheless, the same provision allows for an exception. The trial court may, during trial, allow the introduction of additional evidence despite it not being previously marked or identified during pre-trial *if good cause is shown*.[50]

In *Cruz v. People*,[51] petitioner Anthony Cruz (Cruz) was found guilty of violating Section 9 (a) and (e) of Republic Act No. 8484 for using a counterfeit access device to purchase a pair of designer shoes. Aggrieved, Cruz went before this Court, asserting that the prosecution was not able to prove his guilt since the counterfeit credit card he allegedly used was still admitted on trial despite not being presented and marked during pre-trial. In affirming the finding of guilt, this Court held that under A.M. No. 03-1-09-SC,[52] the admission of evidence not pre-marked during pre-trial is not absolutely prohibited. It discussed:

> A.M. No. 03-1-09-SC, sec. I(A)(2) provides that:
>
> 2. The parties shall submit, at least three (3) days before the pre-trial, pre-trial briefs containing the following:
>
> . . . .
>
> d. The documents or exhibits to be presented, stating the purpose thereof. (No evidence shall be allowed to be presented and offered during the trial in support of a party's

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[49] JUD. AFFIDAVIT RULE, Sec. 2.

[50] *Cruz v. People*, 810 Phil. 801, 815 (2017) [Per J. Leonen, Second Division].

[51] 810 Phil. 801 (2017) [Per J. Leonen, Second Division].

[52] Re: Proposed Rule on Guidelines to be Observed by Trial Court Judges and Clerks of Court in the Conduct of Pre-Trial and Use of Deposition-Discovery Measures.

> evidence-in-chief other than those that had been earlier identified and pre-marked during the pre-trial, except if allowed by the court for good cause shown)[.]
>
> The rule is that no evidence shall be allowed during trial if it was not identified and pre-marked during trial. This provision, however, allows for an exception: when allowed by the court for good cause shown. There is no hard and fast rule to determine what may constitute "good cause," though this Court has previously defined it as any substantial reason "that affords a legal excuse."
>
> The trial court retains its discretion to allow any evidence to be presented at trial even if not previously marked during pre-trial. Here, the trial court allowed the presentation of the counterfeit credit card at trial due to the prosecution's explanation that during pre-trial, the counterfeit credit card was still in the Criminal Investigation and Detective Group's custody.[53] (Citations omitted)

Here, the Regional Trial Court found it appropriate to admit the Supplemental Judicial Affidavit which introduced the Deed of Mortgage to allow respondents an opportunity to refute petitioners' evidence. To recall, petitioners moved to have a forensic handwriting expert examine the Deed of Absolute Sale during the presentation of evidence. When the forensic examination results were presented in court, only then did respondents discover that it had to repudiate the findings. Thus, the need to introduce the separate but related Deed of Mortgage only arose after the pre-trial.

As the main issue pending before the trial court is the alleged falsification of the Deed of Absolute Sale, the trial court admitted the Deed of Mortgage and allowed its examination. This was not to prove an existing obligation on petitioners' part, but to compare the signatures found in the document to those supposedly forged signatures on the questioned Deed of Absolute Sale.

Thus, petitioners' claim that the Deed of Mortgage is irrelevant does not hold water. Rule 128 of the Rules of Court describes what is relevant evidence:

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[53] Id. at 814-815.

SECTION 4. *Relevancy; collateral matters.* — Evidence must have such a relation to the fact in issue as to induce belief in its existence or non-existence. Evidence on collateral matters shall not be allowed, except when it tends in any reasonable degree to establish the probability or improbability of the fact in issue. (4a)

The main question of the Complaint before the trial court is the falsification of the Deed of Absolute Sale, and the signatures on the Deed of Mortgage may establish the probability of such falsification.

Moreover, a reading of the trial court's Resolutions will show that it did not unequivocally state that the Deed of Mortgage was inadmissible and prohibited from being presented. The July 1, 2016 Resolution reads:

> In the case at bar, the Court is convinced that the SJA of said witness defendant, despite the aforementioned procedural and evidentiary obstacles, is relevant evidence which may tend to reinforce her claims affecting the plaintiffs' liability leading to the execution of the questioned deed of conveyance. While the SJA is not part of the answer, it may still be considered as part of her answer and the same is justified by jurisprudence, *viz.*:
>
> > Equity requires that an amended answer which alters (the) theory of the defense be admitted when, if proved, it would negate the defendant's liability.
>
> In furtherance of the above discussions, while the Court may not permit the defendants to prove the existence of an ancillary (mortgage) contract, they may be permitted to prove the plaintiffs' previously existing valid obligations as the same is logical and in consonance with their defenses in this case.[54] (Citation omitted)

Meanwhile, the March 2017 Resolution reads:

> In the first place, what is being sought in the motion is to prove the plaintiffs' signature in the questioned Deed of Sale by presenting other evidence similar to those presented by the plaintiffs to impeach the same. While it is true that the plaintiffs would neither confirm

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[54] Id. at 227-228.

nor deny the existence of the Deeds of Mortgage now bannered by the defendants, nay, opposes the presentation of the same as defendants' evidence, the signatures therein are relevant and material evidence to prove what the plaintiffs have already attempted to disprove.

Elsewise stated, the defendants are only asking for an opportunity to compare the signatures of the plaintiffs in the questioned Deed of Sale as well as in the ignored "Deed of Mortgage."[55]

Lastly, it can be gleaned from the Pre-Trial Order[56] that both petitioners and respondents reserved their rights to present additional evidence without objection against the other party. This reservation amounts to waiving the application of Section 2 of the Judicial Affidavit Rule.[57] Petitioners cannot now disown their previous declaration for their convenience and to the prejudice of respondents.

WHEREFORE, the Petition is **DENIED** for lack of merit. The January 31, 2019 Decision and May 8, 2019 Resolution of the Court of Appeals in CA-G.R. SP No. 08653-MIN are **AFFIRMED**.

SO ORDERED.

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

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[55] Id. at 260.

[56] Id. at 89-94.

[57] *Lara's Gift and Decors, Inc. v. PNB General Insurers Co., Inc.*, 824 Phil. 652, 670 (2018) [Per J. Mendoza, Third Division].

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ACTIONS

Accion Publiciana — The Court observes that even as Nicasio's RTC Complaint is captioned as an "*Accion Reivindicatoria* with Damages," it does not include a prayer for recovery of ownership or annulment of the title relied upon by respondents; these allegations indicate that the RTC Complaint is essentially an action for recovery of possession, or *accion publiciana*; that the RTC Complaint is one for recovery of possession is further confirmed by the allegations in the present Petition. (Macutay *v.* Samoy, *et al.;* G.R. No. 205559; Dec. 2, 2020) p. 131

— While denominated as one for Quieting of Title, Recovery of Possession, Specific Performance, and Damages, a perusal of the amended complaint shows that it is essentially a suit for recovery of possession; specifically, it is in the nature of an *accion publiciana*, which is a plenary action for recovery of possession in an ordinary civil proceeding, in order to determine who has the better and legal right to possess, independently of title. (Palacat *v.* Heirs of Florentino Hontanosas, represented by Malco Hontanosas, *et al.;* G.R. No. 237178; Dec. 2, 2020) p. 387

Accion Reivindicatoria — The proper action for the final determination of ownership and possession (as a consequence of such ownership), particularly with regard to the overlapping portion covered by OCT Nos. P-4319 (now TCT No. T-8058) and P-20478 is an *accion reivindicatoria* that may be filed against the registered owner of the land. (Macutay *v.* Samoy, *et al.;* G.R. No. 205559; Dec. 2, 2020) p. 131

Action for Reconveyance — Since this is a Complaint for reconveyance, it is an action which admits the registration of title of another party but claims that such registration was erroneous or wrongful; it seeks the transfer of the title to the rightful and legal owner, or to the party who has a superior right over it, without prejudice to innocent purchasers in good faith; pursuant to the Declaration of Trust, the respondents have a superior right to

reconveyance of the subject properties in their favor. (Daniel *v.* Magkaisa, *et al.;* G.R. No. 203815; Dec. 7, 2020) p. 627

Action for Specific Performance — The Court agrees with the CA that petitioners' invocation of Section 8, Rule 89 is misplaced because that section presupposes that there is no controversy as to the contract contemplated therein, and if objections obtain, the remedy of the person seeking the execution of the contract is an ordinary and separate action to compel the same; the institution by respondents of the actions for specific performance was thus the proper recourse because petitioners dispute the validity of the conveyances over the contested properties. (Heirs of Corazon Villeza, namely: Imelda V. Dela Cruz, I, *et al*. *v.* Aliangan, et al.; G.R. Nos. 244667-69 [formerly UDK 16373-75]; Dec. 2, 2020) p. 443

Prescription of Actions — It is settled that an allegation of prescription can effectively be used to seek the dismissal of an action only when the complaint on its face shows that the action has indeed prescribed; the issue of prescription is one involving evidentiary matters requiring a full-blown trial on the merits and cannot be determined in a mere motion to dismiss. (Palacat *v*. Heirs of Florentino Hontanosas, represented by Malco Hontanosas, *et al.;* G.R. No. 237178; Dec. 2, 2020) p. 387

ADMINISTRATIVE OFFENSES

Gross Neglect of Duty or Negligence — Criminal gross negligence is treated differently from administrative gross negligence; while good faith may exculpate a public official from criminal liability, the same does not necessarily relieve him from administrative liability. (Trinidad, Jr. *v*. Office of the Ombudsman, *et al*.; G.R. No. 227440; Dec. 2, 2020) p. 268

— Gross negligence, thus, involves an element of intent, more than mere carelessness or indifference to do one's duty; to be held liable for gross negligence, a public official must have intentionally shirked his duty, fully

aware that he is duty-bound to perform; simply, gross negligence involves consciously avoiding to do one's work. (*Id.*)

— Gross negligence is characterized by want of even the slightest 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, or by flagrant and palpable breach of duty; it denotes a flagrant and culpable refusal or unwillingness of a person to perform a duty. (*Id.*)

Simple Neglect of Duty or Negligence — Dereliction of duty may be classified as gross or simple neglect of duty or negligence; simple negligence is defined as the failure of an employee to give proper attention to a required task expected of him, or to discharge a duty due to carelessness or indifference. (Trinidad, Jr. *v.* Office of the Ombudsman, *et al.*; G.R. No. 227440; Dec. 2, 2020) p. 268

— We cannot reasonably conclude that Ricardo's failure to check the actual attendance of the workers amounts to gross negligence; nonetheless, Ricardo's carelessness in relying on his subordinate's logbook in signing the workers' DTRs, and in his duty of supervising the workers of the Oyster Program—believing that such a minor task does not entail his full attention—is tantamount to simple negligence. (*Id.*)

AGRARIAN REFORM

Jurisdiction of the Department of Agrarian Reform (DAR) Secretary and the Department of Agrarian Reform Adjudication Board (DARAB) — R.A. No. 6657 lays out the role and jurisdiction of the DAR; particularly, under Section 50, Chapter XII thereof, the DAR is vested with the authority to administratively adjudicate agrarian reform disputes; the DAR is likewise authorized, within the ambit of judicial review and by way of special jurisdiction, to resolve petitions for determination of

just compensation, among others. (Marasigan, Jr. *v.* Provincial Agrarian Reform Officer, *et al.*; G.R. No. 222882; Dec. 2, 2020) p. 214

— There is nothing contradictory between the provision of Section 50 granting the DAR primary jurisdiction to determine and adjudicate "agrarian reform matters" and exclusive original jurisdiction over "all matters involving the implementation of agrarian reform," which includes the determination of questions of just compensation, and the provision of Section 57 granting Regional Trial Courts "original and exclusive jurisdiction" over (1) all petitions for the determination of just compensation to landowner, and (2) prosecutions of criminal offenses under R.A. No. 6657; the first refers to administrative proceedings, while the second refers to judicial proceedings. (*Id.*)

Protests Against a Petition to Lift CARP Coverage — That petitioner availed and insisted on the wrong remedy is further shown by the fact that the pertinent rules likewise provided for the remedy he should have resorted to; as correctly submitted by respondents, petitioner was not without a remedy when he objected to the inclusion of the subject property under the CARP coverage; Sections 7 and 8, Rule II, in relation to Section 2, Rule I of the 2003 Rules of Procedure for Agrarian Reform Implementation (ALI) cases clearly provided so, to wit: … "SECTION 8. *Jurisdiction over protests or petitions to lift coverage*. The Regional Director shall exercise primary jurisdiction over protests against CARP coverage or petitions to lift notice of coverage. If the ground for the protest or petition to lift CARP coverage is exemption or exclusion of the subject land from CARP coverage, the Regional Director shall either resolve the same if he has jurisdiction, or refer the matter to the Secretary if jurisdiction over the case belongs to the latter." (Marasigan, Jr. *v.* Provincial Agrarian Reform Officer, *et al.;* G.R. No. 222882; Dec. 2, 2020) p. 214

Provincial Agrarian Reform Officer (PARO) — Paragraph (d), Section 16, Chapter V of R.A. No. 6657 belies petitioner's contentions that the PARO should or could have first suspended or otherwise referred the case to the proper agency, instead of denying the same; on the contrary, said provision clearly shows that the PARO was not at liberty to delay or otherwise suspend the decision in the summary administrative proceedings brought before him, since the latter was required to decide said cases within 30 days after they had been submitted for resolution. (Marasigan, Jr. *v.* Provincial Agrarian Reform Officer, *et al.;* G.R. No. 222882; Dec. 2, 2020) p. 214

— As rightly held by the CA, the PARO's decisions both dated November 17, 2011 for Cases Nos. LV-0401-041-09 and LV-0401-049-09 have long become final, for petitioner's failure to appeal them before the proper RTC-SAC. (*Id.*)

— Paragraph (f), Section 16, Chapter V of R.A. No.6657 additionally provides that in the event that a party disagrees with the PARO's decision in a summary administrative proceeding, the remedy allowed is for said party to bring the case before the court of proper jurisdiction for final determination of the just compensation due; instead, and fatally for his cause, petitioner filed an appeal before the DARAB, which under the applicable DARAB Rules is no longer allowed; this is consistent with the clear jurisdiction of the RTC-SACs provided for under Sections 56 and 57 of R.A. No. 6657. (*Id.*)

AGGRAVATING OR QUALIFYING CIRCUMSTANCES

Age — In *People v. Pruna*, this Court *En Banc* laid down the guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance, and declared that "[i]n the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and

clearly admitted by the accused." (People *v.* Cabales @ "Basil;" G.R. No. 249149; Dec. 2, 2020) p. 601

Dwelling — In the crime of robbery by the use of force upon things, the breaking of the jalousies in BBB's house is a means of committing the crime and as such can no longer be considered to increase the penalty; similarly, with the separation of the crimes committed and the crime of robbery established is with the use of force upon things, the aggravating circumstance of dwelling can no longer be considered as it is inherent in the offense. (People *v.* Barrera; G.R. No. 230549; Dec. 1, 2020) p. 55

— In view of the separation of the crimes, the aggravating circumstance of dwelling having been properly alleged in the Information must still be appreciated; while dwelling cannot be considered in the crime of robbery, the Court deems it proper to consider the same in determining the penalty of sexual assault, the same having been proven during trial; when the crime of rape through sexual assault is committed in the dwelling of the offended party, and the latter has not given any provocation, dwelling may be appreciated as an aggravating circumstance. (*Id.*)

Treachery — In order for treachery to be properly appreciated, two elements must be present: (1) at the time of the attack, the victim was not in a position to defend himself; and (2) the accused consciously and deliberately adopted the particular means, methods or forms of attack employed by him; (People *v.* Guarin *a.k.a.* "Banong"; G.R. No. 245306; Dec. 2, 2020) p. 492

(People *v.* Bernardo; G.R. No. 216056; Dec. 2, 2020) p. 181

— The essence of treachery is the sudden and unexpected attack by an aggressor on the unsuspecting victim, depriving the latter of any chance to defend himself and thereby ensuring its commission without risk of himself. (People *v.* Bernardo; G.R. No. 216056; Dec. 2, 2020) p. 181

— Paragraph 16, Article 14 of the RPC defines treachery as the employment of means, methods, or forms in the execution of the crime against a person which tend directly and specially to ensure its execution, without risk to the offender arising from the defense which the offended party might make; the essence of treachery is the sudden attack by the aggressor without the slightest provocation on the part of the unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring the commission of the crime without risk to the aggressor arising from the defense which the offended party might make. (People *v.* Guarin *a.k.a.* "Banong"; G.R. No. 245306; Dec. 2, 2020) p. 492

(People *v.* Bernardo; G.R. No. 216056; Dec. 2, 2020) p. 181

Use of Unlicensed Firearm — The special aggravating circumstance of use of unlicensed firearm was correctly appreciated; under Section 1 of R.A. No. 8294, "[i]f homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance"; there are two (2) requisites to establish such circumstance, namely: (a) the existence of the subject firearm; and (b) the fact that the accused who owned or possessed the gun did not have the corresponding license or permit to carry it outside his residence. (People *v.* Bernardo; G.R. No. 216056; Dec. 2, 2020) p. 181

ALIBI

— Alibi can easily be fabricated; thus it is viewed with suspicion and received with caution; for alibi to prosper, accused-appellant must prove not only that he was at some other place when the crime was committed but that it was physically impossible for him to be at the *locus criminis* at the time of its commission. (People *v.* Dereco; G.R. No. 243625; Dec. 2, 2020) p. 428

— Alibi is the weakest of all defenses, for it is easy to contrive and difficult to disprove; hence, generally rejected;

for alibi to be appreciated, it must be proven by the accused that: 1) he was not at the *locus delicti* at the time the offense was committed; and 2) it was physically impossible for him to be at the scene at the time of its commission. (People *v.* BBB; G.R. No. 229937; Dec. 2, 2020) p. 289

— In *People v. Bugna*, We reiterated the "time-honored principle in jurisprudence that positive identification prevails over alibi since the latter can easily be fabricated and is inherently unreliable; hence, it must be supported by credible corroboration from disinterested witnesses, and if not, is fatal to the accused"; alibi is an issue of fact that hinges on the credibility of witnesses, and that the assessment made by the trial court must be accepted unless it is patently and clearly inconsistent. (People *v.* Cabales @ "Basil"; G.R. No. 249149; Dec. 2, 2020) p. 601

ALIBI AND DENIAL

Weight — As against AAA's positive assertions, the Court agrees with the Office of the Solicitor General that accused-appellant's mere defense of denial and alibi, *i.e.*, that he cannot recall what he was doing on January 1, 2010 but that he did not commit the crimes charged and that he was at a gambling house on October 2, 2010 and October 3, 2010, deserve scant consideration; it is settled that the defenses of alibi and denial, when uncorroborated, are inherently weak and easily fabricated. (People *v.* Alberto "Bert" Martinez *a.k.a.* "Alberto Belinario"; G.R. No. 248016; Dec. 2, 2020) p. 559

— The accused-appellant's defense of denial and alibi, in the absence of clear and convincing proof to substantiate the same, will not stand against the categorical statement and positive identification of the prosecution witnesses; notably, the accused-appellant failed to make account of his whereabouts during that period after he left the house and prior to the time he went to the seashore to help his father and was captured by the barangay officials; considering the proximity of these places to the scene of the crime, the accused-appellant was not able to prove

that it is impossible for him to be somewhere else when the crime was committed and that it was physically impossible for him to have been at the scene of the crime. (People *v.* Barrera; G.R. No. 230549; Dec. 1, 2020) p. 55

APPEALS

Appeals in Criminal Cases — This is axiomatic in appeals in criminal cases where the whole case is thrown open for review on issues of both fact and law, and the court may even consider issues which were not raised by the parties as errors; the appeal confers the appellate court full jurisdiction over the case and renders such competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law. (People *v.* Cabales @ "Basil"; G.R. No. 249149; Dec. 2, 2020) p. 601

(People *v.* Ansus; G.R. No. 247907; Dec. 2, 2020) p. 537

Appeal in Rape Cases — The Court has also laid down the following guidelines in its review of rape cases: (a) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the person accused, though innocent, to disprove the charge; (b) considering that, in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (c) the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense. (People *v.* Ansano; G.R. No. 232455; Dec. 2, 2020) p. 360

Factual Findings of Administrative or Quasi-Judicial Agencies — It is a long-standing rule that findings of administrative agencies are accorded not only respect but also finality absent unfairness or arbitrariness that would amount to grave abuse of discretion. (Collado, Supply Officer III, Philippine Science High School, Diliman Campus, Quezon

City *v.* Hon. Villar, *et al.*; G.R. No. 193143; Dec. 1, 2020) p. 1

Factual Findings of Trial Courts — The Court sees no reason to depart from the factual findings of the RTC that the accused-appellant committed acts of Sexual Assault against AAA by licking and inserting his tongue inside her vagina; owing to its unique position to observe directly the demeanor of witnesses, the trial court's evaluation of the testimony of witnesses is accorded the highest respect by the Court, more so, when as in this case, the CA made a similar conclusion. (People *v.* Barrera; G.R. No. 230549; Dec. 1, 2020) p. 55

Factual Findings of Trial Courts and the Court of Appeals, if Contradictory — It is not this Court's task to go over the proofs presented below to ascertain if they were weighed correctly; however, this rule of limited jurisdiction admits of exceptions and one of them is when the factual findings of the CA and the RTC are contradictory; in this case, the RTC held that there was no preponderant evidence to hold Victoria civilly liable while the CA ruled otherwise; considering these conflicting findings warranting the examination of evidence, this Court will entertain the factual issue on whether substantial evidence exists to prove that Victoria is civilly liable despite her acquittal. (Collado *v.* Dr. Dela Vega; G.R. No. 219511; Dec. 2, 2020) p. 206

Petition for Review on Certiorari Under Rule 45 — Petitioners having availed of a review of the CA Decision via a Rule 45 *certiorari* petition are precluded from raising factual issues; Section 2 of Rule 45 of the Rules of Court is clear; only questions of law may be raised in the *certiorari* petition and must be distinctly set forth. (Heirs of Corazon Villeza, namely: Imelda V. Dela Cruz, I, *et al. v.* Aliangan; *et al.*, G.R. Nos. 244667-69 [formerly UDK 16373-75]; Dec. 2, 2020) p. 443

— On the matter of petitioner's consistent assertion that the subject property should not have been included in the CARP coverage to begin with, the Court finds that

said factual issue is beyond the province of the instant case, since the same goes into an appreciation of facts, and this Court is not a trier of facts; time and again, the Court reminds that its function in petitions for review on *certiorari* under Rule 45 of the Rules is limited to reviewing errors of law that may have been committed by the lower courts; as a matter of sound practice and procedure, the Court generally defers and accords finality to the factual findings of the lower courts. (Marasigan, Jr. *v.* Provincial Agrarian Reform Officer, *et al.;* G.R. No. 222882; Dec. 2, 2020) p. 214

— The determination of whether an employer-employee relationship exists between the parties involves factual matters that are generally beyond the ambit of this Petition as only questions of law may be raised in a petition for review on *certiorari*; however, this rule allows certain exceptions, such as: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. (Luces, *et al. v.* Coca-cola Bottlers Phils. Inc., *et al.;* G.R. No. 213816; Dec. 2, 2020) p. 149

— The Rules of Court requires that only questions of law should be raised in petitions filed under Rule 45; this

Court is not a trier of facts; it will not entertain questions of fact as the factual findings of the appellate courts are "final, binding, or conclusive on the parties and upon this court" when supported by substantial evidence; factual findings of the appellate courts will not be reviewed nor disturbed on appeal to this court; however, these rules do admit of exceptions; over time, the exceptions to these rules have expanded; at present, there are ten (10) recognized exceptions that were first listed in *Medina v. Mayor Asistio, Jr.:* (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record; these exceptions similarly apply in petitions for review filed before this court involving civil, labor, tax or criminal cases. (Arrivas *v.* Bacotoc; G.R. No. 228704; Dec. 2, 2020) p. 277

— This Court is not a trier of facts; in a petition for review on *certiorari* under Rule 45, the Court's judicial review is generally confined only to errors of law; while it is widely held that this rule of limited jurisdiction admits of exceptions, none exist in the instant case. (Trinidad, Jr. *v.* Office of the Ombudsman, *et al*.; G.R. No. 227440; Dec. 2, 2020) p. 268

— This Court is not a trier of facts; "the function of the Court in petitions for review on *certiorari* under Rule

45 of the Rules of Court is limited to reviewing errors of law that may have been committed by the lower courts; as a matter of sound practice and procedure, the Court defers and accords finality to the factual findings of trial courts; to do otherwise would defeat the very essence of Rule 45 and would convert the Court into a trier of facts, which is not its intended purpose under the law." (Daniel *v.* Magkaisa, *et al.;* G.R. No. 203815; Dec. 7, 2020) p 627

Reception of Evidence on Appeal — Even if the Court were to excuse Abergos's failure to file a motion for reconsideration and the CA's failure to dismiss it outright, the NLRC did not commit grave abuse of discretion when it received evidence on appeal; important to note as well, the LA had awarded separation pay in lieu of reinstatement and to which petitioners did not file an appeal; petitioners, in effect, already admitted to their liability to Abergos for backwages, separation pay, and attorney's fees; however, when the NLRC modified the LA Decision to direct reinstatement, it was then that petitioners submitted the pieces of evidence to show the existence of strained relations; and to the mind of the Court, the NLRC did not commit grave abuse of discretion when it received evidence, as enumerated above, as these were timely submitted when petitioners moved for reconsideration of the NLRC's directive to reinstate Abergos. (Del Monte Land Transport Bus Company, *et al. v.* Abergos; G.R. No. 245344; Dec. 2, 2020) p. 504

ATTORNEYS

Duties of Lawyers — As for petitioners' counsel, she is reminded of her primordial duty as an officer of the court who must see to it that the orderly administration of justice must never be unduly impeded; as such, she must resist the whims and caprices of her clients, and temper her clients' propensities to litigate; her oath to uphold the cause of justice is superior to her duty to her client. (Montehermoso, et al. *v.* Batuto, et al.; G.R. No. 246553; Dec. 2, 2020) p. 532

ATTORNEY'S FEES

Award of — Aside from moral damages, Oscares should also receive attorney's fees; this is pursuant to Article 2208 of the Civil Code which provides for the recovery of attorney's fees in actions for indemnity under workmen's compensation and employer's liability laws. (Oscares *v.* Magsaysay Maritime Corp., *et al.;* G.R. No. 245858; Dec. 2, 2020) p. 518

— With respect to the award of attorney's fees, the Civil Code allows attorney's fees to be awarded if, as in this case, exemplary damages are imposed. (Dela Fuente *v.* Fortune Life Insurance Co., Inc.; G.R. No. 224863; Dec. 2, 2020) p. 243

CERTIORARI

Grave Abuse of Discretion — It is recognized in jurisprudence that the constitutional rule requiring a clear and distinct statement of factual and legal basis of a resolution/decision is an indispensable component of the litigant's right to due process; violation thereof amounts to grave abuse of discretion; however, the mere brevity of the COA Proper's resolution does not equate to grave abuse. (Zamboanga City Water District and its employees, represented by General Manager Leonardo Rey D. Vasquez *v.* Commission on Audit; G.R. No. 218374; Dec. 1, 2020) p. 29

Motion for Reconsideration — Abergos failed to provide any reason in his petition for *certiorari* for his failure to file a motion for reconsideration; curiously, despite being apparent in the CA's narration of facts that Abergos did not file a motion for reconsideration before filing the petition for *certiorari*, the CA did not discuss how the failure to move for reconsideration affected the propriety of the petition for *certiorari*; the CA even proceeded to rule on the merits and nullify the NRLC's Resolution; this is error; the CA should have dismissed the petition for *certiorari* outright; there is nothing on record to justify a relaxation of the rules; Abergos failed to provide

any justification for not filing a motion for reconsideration or that his case falls under any of the exceptions; Abergos, who sought the extraordinary writ of *certiorari*, must apply for it in the manner and strictly in accordance with the provisions of the law and the Rules of Court; he failed to show any concrete, compelling and valid reason for dispensing with the motion for reconsideration. (Del Monte Land Transport Bus Company, *et al. v.* Abergos; G.R. No. 245344; Dec. 2, 2020) p. 504

— The 2002 COA Decision was rendered by the COA-CP; it is therefore of no moment that the Petition for Review was denominated as such given that a "petition for review" under Rule V of the 1997 COA Rules is appropriate only for final decisions or orders issued by the Director; thus, by filing the Petition for Review with the COA-CP—the very same body that rendered the 2002 COA Decision—Collado was actually seeking a reconsideration of the 2002 COA Decision; in this regard, in the 2008 COA Decision, the COA-CP was correct in treating the Petition for Review as a first motion for reconsideration. (Collado, Supply Officer III, Philippine Science High School, Diliman Campus, Quezon City *v.* Hon. Villar, *et al.*; G.R. No. 193143; Dec. 1, 2020) p. 1

— The records show that Abergos failed to file a motion for reconsideration prior to filing the petition for *certiorari* assailing the NLRC's Resolution dated May 24, 2017; the 2011 NLRC Rules of Procedure, as amended (2011 NLRC Rules), allows the filing of a motion for reconsideration of the NLRC decision; it is settled that a motion for reconsideration, when allowed to be filed, is an indispensable condition to the filing of a petition for *certiorari*. (Del Monte Land Transport Bus Company, *et al. v.* Abergos; G.R. No. 245344; Dec. 2, 2020) p. 504

— Upon the denial of the first motion for reconsideration, Collado should have already filed a petition for *certiorari* with the Court within the period provided in Rule 64 of the Rules; instead, Collado resorted to filing the Letter dated June 10, 2008, purportedly questioning the 2008

COA Decision, and thereafter filed another Letter dated March 17, 2010; the records herein indicate that the 2008 COA Decision—the final dispositive act of the COA-CP on the motion for reconsideration of the 2002 COA Decision—was received by Collado on May 15, 2008; following the last sentence of Section 3, Rule 64 of the Rules, Collado had only five days therefrom, or until May 20, 2008, within which to file the proper petition. (Collado, Supply Officer III, Philippine Science High School, Diliman Campus, Quezon City *v.* Hon. Villar, *et al.*; G.R. No. 193143; Dec. 1, 2020) p. 1

Petition for Certiorari Under Rule 65 — Following the 2011 NLRC Rules, the NLRC's decisions attain finality 10 days from its receipt by the counsel or the parties or their representatives; in fact, Rule XI of the 2011 NLRC Rules states that the NLRC's decisions shall be executed despite the filing of a petition for *certiorari* unless a restraining order is issued; it is in the context of the foregoing that the only remedy available to a party aggrieved in a decision of the NLRC is a petition for *certiorari* before the CA, and for which the petitioner must show that such remedy is the only plain, speedy, and adequate remedy; Abergos's failure to file a motion for reconsideration meant that when he filed his petition for *certiorari*, it was not the only plain, speedy, and adequate remedy available; having failed to perfect the remedy available to him, the Court is constrained to reinstate the NLRC Resolution dated May 24, 2017, which, following the 2011 NLRC Rules as quoted above, should have already attained finality and executed, as there is no indication in the records that the CA had issued any injunction. (Del Monte Land Transport Bus Company, *et al. v.* Abergos; G.R. No. 245344; Dec. 2, 2020) p. 504

— In actions for *certiorari*, such as that filed by petitioners before the Court of Appeals, courts are asked to determine if the lower court "acted with grave abuse of discretion amounting to excess or lack of jurisdiction in the exercise of its judgment, such that the act was done in a capricious,

whimsical, arbitrary, or despotic manner"; as long as the courts do not overstep their authority, any alleged errors committed in their discretion will not suffice to grant *certiorari*. (Heirs of Jose V. Lagon, namely: Maria Jocelyn Lagon-Rodriguez, *et al. v.* Ultramax Healthcare Supplies, Inc., *et al*.; G.R. No. 246989; Dec. 7, 2020) p. 688

— The provision requires a petition for *certiorari* assailing a judgment of the COA to be filed within 30 days from notice thereof, which period shall only be interrupted by the filing of a motion for new trial or reconsideration; if such motion is denied, the aggrieved party may only file the petition within the remainder of the 30-day period, which in any event shall not be less than five days from notice of such denial. (Collado, Supply Officer III, Philippine Science High School, Diliman Campus, Quezon City *v.* Hon. Villar, *et al.*; G.R. No. 193143; Dec. 1, 2020) p. 1

Petition Under Rule 64 — The petition must show when notice of the assailed judgment or order or resolution was received; when the motion for reconsideration was filed; and when notice of its denial was received; the rationale for requiring a complete statement of material dates is to determine whether the petition is timely filed. (Angeles *v*. Commission on Audit (COA), *et al*.; G.R. No. 228795; Dec. 1, 2020) p. 44

— Under Section 3, Rule 64 of the Rules of Court, an aggrieved party may file a petition for review on *certiorari* within 30 days from notice of the COA's judgment; the reglementary period includes the time taken to file the motion for reconsideration, and is only interrupted once the motion is filed; if the motion is denied, the party may file the petition only within the period remaining from the notice of judgment; the aggrieved party is not granted a fresh period of 30 days. (*Id.*)

— The Court emphasizes that Our power to review COA decisions *via* Rule 64 petitions is limited to jurisdictional errors or grave abuse of discretion; the Court generally

upholds the COA's ruling, especially in the clear absence of grave abuse on its part. (Zamboanga City Water District and its employees, represented by General Manager Leonardo Rey D. Vasquez *v.* Commission on Audit; G.R. No. 218374; Dec. 1, 2020) 29

CHILD ABUSE

Essential Elements of the Offense — The elements of Section 5(b) of R.A. No. 7610 are: 1) offender is a man; 2) who indulges in sexual intercourse with a female child exploited in prostitution or other sexual abuse, who is 12 years old or below 18, or above 18 years old, under special circumstances; and 3) coercion or influence of any adult, syndicate or group is employed against the child to become a prostitute; as regards the second element of Section 5(b), a "child exploited in prostitution or other sexual abuse" is one who, for money or profit or any other consideration, or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct; regarding the coercion or influence in the third element of Section 5(1), the same is exerted upon the child to indulge in sexual intercourse NOT by the offender (who engaged in sexual intercourse with the child) but by another "adult, syndicate or group" whose liability is found in Section 5(a) of the same law for engaging in, promoting, facilitating or inducing child prostitution. (People *v.* BBB; G.R. No. 229937; Dec. 2, 2020) p. 289

CONTRACTS

Contract of Sale — According to Article 1483 of the Civil Code, "[s]ubject to the provisions of the Statute of Frauds and of any other applicable statute, a contract of sale may be made in writing, or by word of mouth, or partly in writing and partly by word of mouth, or may be inferred from the conduct of the parties"; this provision echoes Article 1356, which provides that contracts shall be obligatory in whatever form they may be entered into provided all the essential requisites for their validity are present; however, when the law requires that a contract

be in some form in order that it may be valid or enforceable, or that a contract be proved in a certain way, that requirement is absolute and indispensable. (Heirs of Corazon Villeza, namely: Imelda V. Dela Cruz, I, *et al. v.* Aliangan, *et al.;* G.R. Nos. 244667-69 [formerly UDK 16373-75]; Dec. 2, 2020) p. 443

— When Corazon received the full consideration of the sales from Elizabeth and Rosalina, which is supported by the undisturbed finding of both the RTC and CA that the respective purchase prices for the Bunay and Poblacion properties had been fully paid by Elizabeth and Rosalina to Corazon, there was ratification of the oral contracts of sale by acceptance of benefits, making them enforceable; with the complete payment of the consideration by respondents, the oral contracts of sale covering the Bunay and Poblacion properties have been "partially executed," rendering the Statute of Frauds inapplicable. (*Id.*)

— With respect to the Statute of Frauds, which is provided in Article 1403(2) of the Civil Code, an agreement for the sale of real property or of an interest therein is unenforceable by action, unless the same, or some note or memorandum thereof, be in writing, and subscribed by the party charged, or by his agent; and evidence of the agreement cannot be received without the writing, or a secondary evidence of its contents. (*Id.*)

Novation — It is well-settled that novation is never presumed – *novatio non praesumitur*; as the party alleging novation, the *onus* of showing clearly and unequivocally that novation had indeed taken place rests on the petitioner. (Arrivas *v.* Bacotoc; G.R. No. 228704; Dec. 2, 2020) p. 277

— Novation is defined as the extinguishment of an obligation by the substitution or change of the obligation by a subsequent one which terminates the first, either by changing the object or principal conditions, or by substituting the person of the debtor, or subrogating a third person in the rights of the creditor. (*Id.*)

Relativity of Contracts — The first paragraph of Article 1311 — "Contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law; the heir is not liable beyond the value of the property he received from the decedent" – expresses the doctrine of the relative and personal character of contracts; under relativity of contracts, it is a general principle of law that a contract can only bind the parties who had entered into it or their successors or heirs who have assumed their personality or juridical possession, and that, as a consequence, such contract cannot favor or prejudice a third person (in conformity with the axiom *res inter alios acta aliis neque nocet podest*). (Heirs of Corazon Villeza, namely: Imelda V. Dela Cruz, I, *et al. v.* Aliangan, *et al.;* G.R. Nos. 244667-69 [formerly UDK 16373-75]; Dec. 2, 2020) p. 443

Note or Memorandum — In *Litonjua v. Fernandez*, the Court elucidated on what the note or memorandum should contain, *viz*.: for a note or memorandum to satisfy the statute, it must be complete in itself and cannot rest partly in writing and partly in parol; the note or memorandum must contain the names of the parties, the terms and conditions of the contract and a description of the property sufficient to render it capable of identification; such note or memorandum must contain the essential elements of the contract expressed with certainty that may be ascertained from the note or memorandum itself, or some other writing to which it refers or within which it is connected, without resorting to parol evidence; to be binding on the persons to be charged, such note or memorandum must be signed by the said party or by his agent duly authorized in writing; even if the requirement of a note, memorandum or writing in Article 1403(2) is not met, contracts infringing the Statute of Frauds become enforceable when they are ratified by the failure to object to the presentation of oral evidence to prove the same, or by acceptance of benefits under

them according to Article 1405 of the Civil Code. (Heirs of Corazon Villeza, namely: Imelda V. Dela Cruz, I, *et al. v*. Aliangan, et al.; G.R. Nos. 244667-69 [formerly UDK 16373-75]; Dec. 2, 2020) p. 443

CO-OWNERSHIP

Alienations and Encumbrances of Common Property — Pending liquidation of the conjugal partnership, the alienations and encumbrances of the parties or co-owners must be considered limited to their respective undivided interests, and cannot involve any particular or specific property or physical part of it; this means that the alienation or encumbrance may be valid as to the undivided interest of the vendor but not as to the corpus or body or physical portion of the property; and the vendee will get the property that may be adjudicated in the partition to the vendor, but not any portion of what may be allotted to the other co-owners; the foregoing is consistent with the ownership rights of each co-owner, which are spelled out in Article 493 of the Civil Code. (Heirs of the Late Apolinario Caburnay, namely, Lydia Caburnay, *et al. v.* Heirs of Teodulo Sison, namely, Rosario Sison, *et al.;* G.R. No. 230934; Dec. 2, 2020) p. 320

— The disposition or encumbrance of the entire property is valid only if the other heirs or co-owners give their consent thereto pursuant to Article 491 of the Civil Code, which provides that none of the co-owners shall, without the consent of the others, make alterations in the thing owned in common, even though benefits for all would result therefrom; alteration includes any act of ownership or strict dominion such as alienation of the thing by sale or donation. (*Id.*)

Unliquidated Conjugal Properties — In many instances, however, the surviving spouse and the heirs of the deceased spouse do not liquidate the conjugal properties and they keep them undivided; in such case, a co-ownership is deemed established for the management, control and enjoyment of the common property; since the conjugal partnership no longer subsists, the fruits of the common

property are divided according to the law on co-ownership; that is, in proportion to the share or interest of each party; that share or part of the co-heir in the co-ownership prior to partition is *pro indiviso*, undivided or abstract, not specific, delineated or demarcated by metes and bounds. (Heirs of the Late Apolinario Caburnay, namely, Lydia Caburnay, *et al. v.* Heirs of Teodulo Sison, namely, Rosario Sison, *et al.;* G.R. No. 230934; Dec. 2, 2020) p. 320

CORPORATIONS

Liability for Obligations — Respondents, including Arnold Javier as the President of Magsaysay Maritime Corporation, shall be jointly and severally liable to Oscares in accordance with Section 10 of Republic Act (R.A.) No. 8042, as amended by R.A. No. 10022, which provides that "if the recruitment/placement agency is a juridical being, the corporate officers and directors and partners, as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages"; in *Gargallo v. Dohle Seafront Crewing* (Manila), Inc., We explained that corporate officers or directors cannot, as a general rule, be personally held liable for the contracts entered into by the corporation because the corporation has a separate and distinct legal personality; however, "personal liability of such corporate director, trustee, or officer, along (although not necessarily) with the corporation, may validly attach when he is made by a specific provision of law personally answerable for his corporate action"; we upheld the joint and solidary liability of the officer in that case following Sec. 10 of R.A. No. 8042, as amended. (Oscares *v.* Magsaysay Maritime Corp., *et al.;* G.R. No. 245858; Dec. 2, 2020) p. 518

COURTS

Jurisdiction — We hold that the power and authority given to the Director of Lands to alienate and dispose of public lands does not divest the regular courts of their jurisdiction over possessory actions instituted by occupants or

applicants against others to protect their respective possessions and occupations; while the jurisdiction of the Bureau of Lands [now the Land Management Bureau] is confined to the determination of the respective rights of rival claimants to public lands or to cases which involve disposition of public lands, the power to determine who has the actual, physical possession or occupation or the better right of possession over public lands remains with the courts. (Palacat *v.* Heirs of Florentino Hontanosas, represented by Malco Hontanosas, *et al.;* G.R. No. 237178; Dec. 2, 2020) p. 387

— Well-settled is the rule that jurisdiction over the subject matter of a case is conferred by law; the nature of an action, as well as which court or body has jurisdiction over it, is determined by the allegations contained in the complaint, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein; the averments in the complaint and the character of the relief sought are the determining factors; once vested, jurisdiction remains even if it is established at trial that the plaintiff is not entitled to recover from all or some of the claims raised in the complaint. (*Id.*)

CRIMINAL PROCEDURE

Allegations in an Information — The Court observes that the four Informations subject of the present appeal, all alleging sexual intercourse "by means of force and intimidation," charged BBB of violation "of Art. 335 of the [RPC] in relation to R.A. No. 7610"; a perusal, of the said Informations reveal that the crime charged is, and that BBB may only be prosecuted for, rape under the RPC and not likewise [for] violation of R.A. 7610, specifically Section 5 thereof; while all the elements of rape under the RPC are alleged, the second and third elements of Section 5(b) of R.A. 7610 are missing; hence, BBB must be prosecuted under the RPC which likewise provides for a graver penalty consistent with the policy of the State to provide special protection to children against abuses; BBB cannot both be prosecuted under

the RPC and R.A. 7610 despite the designation made in the Informations; what controls is not the title of the information or the designation of the offense, but the actual facts recited in the Information. (People *v.* BBB; G.R. No. 229937; Dec. 2, 2020) p. 289

Conviction in Criminal Cases — A conviction for a crime rests on two bases: (1) credible and convincing testimony establishes the identity of the accused as the perpetrator of the crime; and (2) the prosecution proves beyond reasonable doubt that all elements of the crime are attributable to the accused. (People *v.* Ansus; G.R. No. 247907; Dec. 2, 2020) p. 537

Degree of Proof in Criminal Cases — An accused in a criminal prosecution is presumed innocent until his guilt is proven beyond reasonable doubt; this requirement, however, does not mean such a degree of proof 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. (People *v.* BBB; G.R. No. 229937; Dec. 2, 2020) p. 289

Duplicitous Information — The right of the accused to information is also the basis for the rule that a Complaint or Information, to be valid, must charge only one offense; failure to comply with this rule is a ground for quashing the duplicitous Complaint or Information; however, the accused must raise the defect in a motion to quash before arraignment, otherwise the defect is deemed waived; in this case, the accused-appellant entered a plea of not guilty without moving for the quashal of the Information, hence, he is deemed to have waived his right to question the same; the accused-appellant equally failed to object to the duplicitous information during trial; as a result, the court may convict the accused-appellant of as many offenses as charged and proved during trial, and impose upon him the penalty for each offense. (People *v.* Barrera; G.R. No. 230549; Dec. 1, 2020) p. 55

DAMAGES

Moral Damages — Oscares should receive moral damages; under Article 2220 of the Civil Code, moral damages may be awarded in breaches of contract when the defendant acted fraudulently or in bad faith; even though respondents' designated physician recommended that Oscares undergo surgery, it was Oscares himself who shouldered his surgery; respondents acted in bad faith when it failed to comply with their obligation under Section 20(A)(2) of the 2010 POEA-SEC which states that the medical attention needed by the seafarer after his repatriation shall be provided at cost to the employer. (Oscares *v.* Magsaysay Maritime Corp., *et al.;* G.R. No. 245858; Dec. 2, 2020) p. 518

DENIAL

Weight of the Defense of Denial — Denial is an intrinsically weak defense which must be supported by strong evidence of non-culpability to merit credibility. (People *v.* BBB; G.R. No. 229937; Dec. 2, 2020) p. 289

— "[M]ere denial cannot prevail over the positive testimony of a witness; the defense of denial is treated as a self-serving negative evidence which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters." (People *v.* Licaros; G.R. No. 238622; Dec. 7, 2020) p. 676

EMPLOYMENT

Backwages — Backwages are granted on grounds of equity to workers for earnings lost due to their illegal dismissal from work; they are a reparation for the illegal dismissal of an employee based on earnings which the employee would have obtained, either by virtue of a lawful decree or order, as in the case of a wage increase under a wage order, or by rightful expectation, as in the case of one's salary or wage; the outstanding feature of backwages is thus the degree of assuredness to an employee that he would have had them as earnings had he not been illegally

terminated from his employment. (Luces, *et al. v.* Coca-Cola Bottlers Phils. Inc., *et al.;* G.R. No. 213816; Dec. 2, 2020) p. p. 149

Illegal Dismissal — In illegal dismissal cases, before the employer must bear the burden of proving that the dismissal was legal, the employee must first establish by substantial evidence the fact of his dismissal from service. (Jarabelo *v.* Household Goods Patrons, Inc., *et al.*; G.R. No. 223163; Dec. 2, 2020) p. 233

— Settled is the rule that 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 up to the time of actual reinstatement; if reinstatement is not possible, however, the award of separation pay is proper. (Luces, *et al. v.* Coca-cola Bottlers Phils. Inc., *et al.;* G.R. No. 213816; Dec. 2, 2020) p. 149

Separation Pay — Generally, when there is no dismissal, "the Court merely declares that the employee may go back to his work and the employer must then accept him because the employment relationship between them was never actually severed"; there have been instances, however, where the Court directed the payment of separation pay even if there was no dismissal of the employee instead of a directive for the employee to return to work and for the employer to accept him. (Jarabelo *v.* Household Goods Patrons, Inc., *et al.*; G.R. No. 223163; Dec. 2, 2020) p. 233

ESTAFA

Elements — The elements of *Estafa* under Article 315, paragraph l(b) are: (1) the offender's receipt of money, goods, or other personal property in trust, or on commission, or for administration, or under any other obligation involving the duty to deliver, or to return, the same; (2) misappropriation or conversion by the offender

of the money or property received, or denial of receipt of the money or property; (3) the misappropriation, conversion or denial is to the prejudice of another; and (4) demand by the offended party that the offender return the money or property received. (Arrivas *v.* Bacotoc; G.R. No. 228704; Dec. 2, 2020) p. 277

Misappropriation — Even assuming that the ₱20,000.00 payment is for the value of the diamond ring, which it is not as ruled by the trial court and the CA, failure to account, upon demand for funds or property held in trust, is circumstantial evidence of misappropriation. (Arrivas *v.* Bacotoc; G.R. No. 228704; Dec. 2, 2020) p. 277

EVIDENCE

Burden of Proof — Considering that self-defense is an affirmative allegation and totally exonerates the accused from any criminal liability, it is well settled that when it is invoked, the burden of evidence shifts to the accused to prove it by credible, clear, and convincing evidence; the accused, claiming self-defense, must rely on the strength of his own evidence and not on the weakness of the prosecution; self-defense cannot be justifiably appreciated when uncorroborated by independent and competent evidence or when it is extremely doubtful by itself. (People *v.* Guarin *a.k.a.* "Banong"; G.R. No. 245306; Dec. 2, 2020) p. 492

— In the context of life insurance policies, the burden of proving suicide as the cause of death of the insured to avoid liability rests on the insurer. (Dela Fuente *v.* Fortune Life Insurance Co., Inc.; G.R. No. 224863; Dec. 2, 2020) p. 243

— Nicasio attempts to evade the issue of double registration by insisting on respondent's alleged failure to present proof of their authority to occupy and cultivate the Disputed Portion as Eugenio's tenants; suffice it to state, however, that in actions involving real property, petitioners must rely on the strength of their own title, and not on the

weakness of respondents' claim. (Macutay *v.* Samoy, *et al.;* G.R. No. 205559; Dec. 2, 2020) p. 131

— The Court finds that, contrary to the findings of the CA, the totality of the evidence presented failed to prove sufficient factual or legal basis to rule that the parties' personality disorders amount to psychological incapacity under Article 36 of the Family Code; Eduardo had the burden of proving the nullity of his marriage to Elena based on psychological incapacity; he failed to discharge this burden. (Dytianquin *v.* Dytianquin; G.R. No. 234462; Dec. 7, 2020) p. 642

Doctrine of Processual Presumption — Where a foreign law is not pleaded or, even if pleaded, is not proved, the presumption is that foreign law is the same as ours. (In the Matter of the Testate Estate of Aida A. Bambao, *et al. v.* Sekito, Jr.; G.R. No. 237449; Dec. 2, 2020) p. 398

Dying Declaration — Jurisprudence elaborates on the requisites of a dying declaration; for its admissibility, the following should concur: 1) the declaration must concern the cause and surrounding circumstances of the declarant's death; this refers not only to the facts of the assault itself, but also to matters both before and after the assault having a direct causal connection with it; statements involving the nature of the declarant's injury or the cause of death; those imparting deliberation and willfulness in the attack, indicating the reason or motive for the killing; justifying or accusing the accused; or indicating the absence of cause for the act are admissible; 2) at the time the declaration was made, the declarant must be under the consciousness of an impending death; the rule is that, in order to make a dying declaration admissible, a fixed belief in inevitable and imminent death must be entered by the declarant; it is the belief in impending death and not the rapid succession of death in point of fact that renders the dying declaration admissible; it is not necessary that the approaching death be presaged by the personal feelings of the deceased; the test is whether the declarant has abandoned all hopes of survival and looked on death

as certainly impending; 3) the declarant is competent as a witness; the rule is that where the declarant would not have been a competent witness had he survived, the proffered declarations will not be admissible; thus, in the absence of evidence showing that the declarant could not have been competent to be a witness had he survived, the presumption must be sustained that he would have been competent; and 4) the declaration must be offered in a criminal case for homicide, murder, or parricide, in which the declarant is the victim. (People *v.* Bernardo; G.R. No. 216056; Dec. 2, 2020) p. 181

— The victim himself told his wife that accused-appellant shot him; such statement constitutes as a dying declaration sufficient to justify a conviction; while witnesses in general can only testify to facts derived from their own perception, a report in open court of a dying person's declaration is recognized as an exception to the rule against hearsay if it is "made under the consciousness of an impending death that is the subject of inquiry in the case"; it is considered as "evidence of the highest order and is entitled to utmost credence since no person aware of his impending death would make a careless and false accusation." (*Id.*)

Expert Testimony — The CA also erroneously gave credence to the testimony of Dr. Fortun despite the fact that she did not perform an autopsy on the body of Reuben which had already been cremated; though Dr. Fortun is a renowned expert in the field of forensic pathology, her analysis and opinion were confined to documentary evidence, including the medico-legal report, investigation report, and photographs that We consider insufficient to conclude with certainty that Reuben took his own life; between the testimony of Dr. Fortun, who admitted that she did not conduct a post-mortem examination on Reuben, and Dr. Nulud, who actually conducted an autopsy on Reuben and prepared the medico-legal report, the latter should be given more weight; while Fortun tried to discredit the findings of Dr. Nulud during his cross-examination by pointing out that he had no training in forensic or clinical pathology, it cannot be denied that

he is competent to conduct an autopsy considering the 9600 medico-legal cases, 8,246 autopsies he had previously handled and 2,627 gunshot wound cases. (Dela Fuente *v.* Fortune Life Insurance Co., Inc.; G.R. No. 224863; Dec. 2, 2020) p. 243

Identification of the Accused — We "identified 12 danger signals that might indicate erroneous identification"; the list, though not exhaustive, is as follows: 1. the witness originally stated that he could not identify anyone; 2. the identifying witness knew the accused before the crime, but made no accusation against him when questioned by the police; 3. a serious discrepancy exists between the identifying witness' original description and the actual description of the accused; 4. before identifying the accused at the trial, the witness erroneously identified some other person; 5. other witnesses to the crime fail to identify the accused; 6. before trial, the witness sees the accused but fails to identify him; 7. before the commission of the crime, the witness had limited opportunity to see the accused; 8. the witness and the person identified are of different racial groups; 9. during his original observation of the perpetrator of the crime, the witness was unaware that a crime was involved; 10. a considerable time elapsed between the witness' view of the criminal and his identification of the accused; 11. several persons committed the crime; and 12. The witness fails to make a positive trial identification. (People *v.* Ansus; G.R. No. 247907; Dec. 2, 2020) p. 537

Judicial Affidavit Rule — Section 2 of the Judicial Affidavit Rule mandates parties to submit their witnesses' judicial affidavits, together with the documentary and object evidence, before the pre-trial or preliminary conference; the same provision allows for an exception; the trial court may, during trial, allow the introduction of additional evidence despite it not being previously marked or identified during pre-trial if good cause is shown. (Heirs of Jose V. Lagon, namely: Maria Jocelyn Lagon-Rodriguez, *et al. v.* Ultramax Healthcare Supplies, Inc., *et al.;* G.R. No. 246989; Dec. 7, 2020) p. 688

— A reservation by the parties of their right to present additional evidence amounts to waiving the application of Section 2 of the Judicial Affidavit Rule. (*Id.*)

Physical Evidence — As for the physical evidence, while Myrna and Erlindo uniformly testified that Ansus struck Olitan on the neck or nape, the Post-Mortem Examination Report revealed only: (a) six wounds on the head of the victim, with four of those wounds deeply penetrating his skull; and (b) abrasions on his left arm; significantly, no wounds were found on the victim's neck or nape; according to Dr. Bermundo-Sapinoso, these six wounds are all incised wounds, which are caused by a "sharp bladed" instrument and not likely by a "blunt object"; notably, contusion or hematoma and laceration—which are present in injuries caused by blunt objects—were absent in each injury; "physical evidence is evidence of the highest order; it speaks more eloquently than a hundred witnesses; they have been characterized as that mute but eloquent manifestations of truth which rate high in our hierarchy of trustworthy evidence." (People *v.* Ansus; G.R. No. 247907; Dec. 2, 2020) p. 537

Proof of Public Documents of a Sovereign Authority or Tribunal — It is settled that foreign laws do not prove themselves in this jurisdiction, and our courts are not authorized to take judicial notice of them; like any other fact, they must be properly pleaded and proved; under the Rules of Court, the record of public documents of a sovereign authority or tribunal may be proved by (1) an official publication thereof, or (2) a copy attested by the officer having the legal custody thereof; such official publication or copy must be accompanied, if the record is not kept in the Philippines, with a certificate that the attesting officer has the legal custody thereof; the certificate may be issued by any of the authorized Philippine embassy or consular officials stationed in the foreign country in which the record is kept, and authenticated by the seal of his office; the attestation must state in substance that the copy is a correct copy of the original, or a specific part thereof, as the case may be, and must be under the

official seal of the attesting officer; the requirements for proving foreign laws and judgments are not mere technicalities, and Our courts are not at liberty to exercise judicial notice without contravening Our own rules on evidence. (In the Matter of the Testate Estate of Aida A. Bambao, *et al. v.* Sekito, Jr.; G.R. No. 237449; Dec. 2, 2020) p. 398

Res Gestae — Section 36 of Rule 130 of the Rules provides that "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"; *res gestae*, one of the exceptions to the hearsay rule, is found in Section 42 of Rule 130; in *People v. Dianos*, the Court explained that the exclamations and statements contemplated in this exception are made by either the participants, victims, or spectators to a crime. (Dela Fuente *v.* Fortune Life Insurance Co., Inc.; G.R. No. 224863; Dec. 2, 2020) p. 243

Totality of Circumstances Test — The totality of circumstances test was first applied by the Court in *People v. Teehankee*, wherein it applied the test as laid down by the Supreme Court of the United States (SCOTUS) in *Neil v. Biggers* and *Manson v. Brathwaite*; 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.

(People *v.* Ansano; G.R. No. 232455; Dec. 2, 2020) p. 360

EXHAUSTION OF ADMINISTRATIVE REMEDIES

— Petitioner insists that the MCTC was correct in dismissing respondents' amended complaint for failure to exhaust administrative remedies; allegedly, the disputed property is a public land, and as such, the DENR had jurisdiction over the issues, not the regular courts; however, the doctrine of exhaustion of administrative remedies is inapplicable since ownership was never raised as an issue; as such, jurisdiction remains with the regular courts. (Palacat *v.* Heirs of Florentino Hontanosas, represented by Malco Hontanosas, *et al.;* G.R. No. 237178; Dec. 2, 2020) p. 387

GOVERNMENT EXPENDITURES OR DISBURSEMENTS

Defense of Good Faith — The Court also does not find merit in the Board's claim that they acted in good faith because they merely relied on the OGCC opinion seemingly allowing them to proceed with the financial subsidy's payout; their good faith is negated by their decision to issue the subject resolution and internal guidelines instructing the financial subsidy disbursement without even bothering to wait for the formal issuance of OGCC's opinion; the facts reveal that by the time the OGCC had issued its opinion, the Board had already completed the disbursement; in other words, the opinion was already rendered obsolete by the Board's premature actions; any reliance on the belated OGCC opinion could only be discounted as mere afterthoughts. (Zamboanga City Water District and its employees, represented by General Manager Leonardo Rey D. Vasquez *v.* Commission on Audit; G.R. No. 218374; Dec. 1, 2020) p. 29

— The Court finds that there are attendant circumstances which support the conclusion that Collado acted in good faith: first, the Court notes that the disallowance resulted from failure to deduct the correct amount of liquidated damages from progress billings paid to the contractor,

N.C. Roxas, Inc; nothing in the records would indicate that Collado received any portion of, or benefited from, the disallowed amounts; second, the disallowed amounts were paid out for the 4th to 15th progress billings from December 18, 1989 to January 28, 1991; it was only on September 10, 1998, or approximately eight years later, that the Notices of Disallowance were issued by the COA Auditor; Collado had no notice of any irregularity in the computations; the foregoing circumstances may be taken as indications of Collado's good faith; while an error was made in the computation of liquidated damages, nothing in the records would support the conclusion that such an error amounted to bad faith, malice, or even gross negligence, consequently making Collado liable under Sections 38 and 39, Chapter 9, Book I of the Administrative Code of 1987. (Collado, Supply Officer III, Philippine Science High School, Diliman Campus, Quezon City *v.* Hon. Villar, *et al.*; G.R. No. 193143; Dec. 1, 2020) p. 1

Excessive Expenditures — There is no law supporting the Board's self-determination of the financial subsidy amount; thus, their decision to grant and pay the subject financial subsidy was made *ultra vires*, which renders the subsequent disbursement illegal; parenthetically, even the amount so granted by the Board—a full month's salary—finds no basis in law; first, MC 174 granted the financial subsidy to enable government employees to gain more access to the Botika ng Bayan and to low-cost medicine; a month's salary, especially those received by high-ranking officials, appears to be disproportionate to the medicine purchases envisioned by the circular and incoherent to its overall objective; second, the subject subsidy may be considered as a form of medical benefit, which is typically subject to the limits set by applicable laws; thus, even if the Court brushes aside the *ultra vires* character of Board Resolution No. 206, the subject disbursement may still be disallowed for being unnecessary and/or excessive. (Zamboanga City Water District and its employees, represented by General Manager Leonardo Rey D. Vasquez

v. Commission on Audit; G.R. No. 218374; Dec. 1, 2020) p. 29

Liability of Approving or Certifying Officials — The civil liability of officers for acts done in performance of official duties is rooted in Sections 38 and 39, Chapter 9, Book I of the Administrative Code of 1987; clarifying the import of the foregoing provisions, this Court further said that: 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 officials duties with bad faith, malice or gross negligence; the determination of whether good faith and regularity in the performance of official functions may be appreciated in favor of approving/ certifying officers will be done by the Court on a case-to-case basis. (Collado, Supply Officer III, Philippine Science High School, Diliman Campus, Quezon City *v.* Hon. Villar, *et al.*; G.R. No. 193143; Dec. 1, 2020) p. 1

— The general rule is that a verifier and/or certifier of an illegal disbursement is/are liable for audit disallowances under the above-quoted provisions of Sections 16.1.2 and 16.1.3 of COA Circular No. 006-09, respectively; however, this liability does not "automatically attach simply because one took part in the disbursement approval process." (National Transmission Corporation *v.* Commission on Audit, *et al.*; G.R. No. 232199; Dec. 1, 2020) p. 107

Persons Liable for Disallowed Amounts — Public properties and funds for official use and purpose shall be utilized with the diligence of a good father of a family; thus, Section 105 of the Government Auditing Code of the Philippines hold the accountable officers liable in case of their negligence in keeping or using government properties or funds resulting in loss, damage or deterioration; differently stated, the officers may be relieved from accountability absent evidence that they acted negligently in handling public properties or funds, or when the loss occurs while they are in transit or if the

loss is caused by fire, theft, or other casualty or force majeure. (Angeles *v.* Commission on Audit (COA), *et al.*; G.R. No. 228795; Dec. 1, 2020) p. 44

— The COA determines the extent of one's liability for each illegal expenditure as follows:

Sec. 16. Determination of Persons Responsible/Liable.—

16.1 The Liability of public officers and other persons for audit disallowances/charges shall be determined on the basis of (a) the nature of the disallowance/charge; (b) the duties and responsibilities or obligations of officers/employees concerned; (c) the extent of their participation in the disallowed/charged transaction; and (d) the amount of damage or loss to the government, thus:

…

16.1.2 Public officers who certify as to the necessity, legality and availability of funds or adequacy of documents shall be liable according to their respective certifications;

16.1.1.3 Public officers who approve or authorize expenditures shall be liable for losses arising out of their negligence or failure to exercise the diligence of a good father of a family;

…

16.1.5 The payee of an expenditure shall be personally liable for a disallowance where the ground thereof is his failure to submit the required documents, and the Auditor is convinced that the disallowed transaction did not occur or has no basis in fact. (National Transmission Corporation *v.* Commission on Audit, *et al.*; G.R. No. 232199; Dec. 1, 2020) p. 107

Persons Liable for Unlawful Expenditures — Book VI, Chapter V, Section 43 of Executive Order No. 292, or the Administrative Code of 1987, enumerates the persons liable for an illegal expenditure; thus, the general rule is that "public officials who are directly responsible for, or participated in, making the illegal expenditures, as

well as those who actually received the amounts therefrom shall be solidarily liable for their reimbursement." (National Transmission Corporation *v.* Commission on Audit, *et al.*; G.R. No. 232199; Dec. 1, 2020) p. 107

— Following the guidelines laid down in *Madera v. Commission on Audit*, the following persons shall be liable for the subject disallowance: (a) All ZCWD officials and employees who received the financial subsidy, as passive recipients, are liable to return the amount they individually received based on *solutio indebiti*; (b) Aside from what they have received by virtue of Board Resolution No. 206, the Board shall be solidarily liable for the disallowed amount on account of their unauthorized and imprudent directive to pay the subject financial subsidy. (Zamboanga City Water District and its employees, represented by General Manager Leonardo Rey D. Vasquez *v.* Commission on Audit; G.R. No. 218374; Dec. 1, 2020) p. 29

Power to Fix Compensation, Allowance, and Benefits of GOCCs —Under Section 12(c) of the EPIRA [Electric Power Industry Reform Act (EPIRA) of 2001 (R.A. No. 9136)], the power to fix the compensation, allowance, and benefits of TRANSCO employees rests upon its Board; in other words, to be valid, salaries and benefits of TRANSCO employees must be determined via a board resolution; however, to recall, the Length of Service Multiplier was incorporated to TRANSCO's separation pay computation thru Circular No. 2009-0010 issued by TRANSCO's President and CEO. (National Transmission Corporation *v.* Commission on Audit, *et al.*; G.R. No. 232199; Dec. 1, 2020) p. 107

Recipients' Liability to Return Disallowed Amounts — Macapodi's liability to return the disallowed amount is grounded not on the COA rules, but on the basic principle that no one can be unjustly enriched by money mistakenly paid to him; a government instrumentality's disbursement of salaries that contravenes the law is a payment through error or mistake; a person who receives such erroneous

payment has the quasi-contractual obligation to return it because no one shall be unjustly enriched at the expense of another, especially if public funds are at stake; the law constitutes the person receiving money through mistake a trustee of a constructive trust for the benefit of the person from whom the property comes, which, in this case, is the government; that the amount was already released to the employee through no fault of his own does not diminish the payment's patent illegality or cure its defect; his obligation to return arose because the payment was a clear mistake; he has no right to retain the amount, irrespective of his good faith in receiving it. (National Transmission Corporation *v.* Commission on Audit, *et al*.; G.R. No. 232199; Dec. 1, 2020) p. 107

— The government is not without remedy, as deficiency, liquidated damages may still be recovered from the payee-contractor, N.C. Roxas, Inc; N.C. Roxas, Inc.'s liability to return the disallowed amount may be enforced based on the principle of *solutio indebiti*; the Court recognized that the liability to return amounts disallowed by the COA is a civil liability, to which the concept of *solutio indebiti* rightly applies; evidently, because of the erroneous computation of liquidated damages, the contractor N.C. Roxas, Inc., through mistake, received more than what was due to it under the contract; there being no binding obligation on the part of PSHS to pay the excess amount, N.C. Roxas, Inc. is therefore bound to return the same. (Collado, Supply Officer III, Philippine Science High School, Diliman Campus, Quezon City *v.* Hon. Villar, *et al.*; G.R. No. 193143; Dec. 1, 2020) p. 1

— The COA Rules and Regulations on Settlement of Accounts holds a payee personally liable for a disallowed amount, provided the following conditions concur: (a) The payee failed to submit required documents, and (b) the disallowance was grounded on such failure; however, we cannot impute liability to Macapodi based on this rule; the disallowance here was grounded on the expenditure's illegality *(i.e.*, violating the EPIRA), not

on Macapodi's failure to submit documents. (National Transmission Corporation *v.* Commission on Audit, *et al.*; G.R. No. 232199; Dec. 1, 2020) p. 107

— The government is not without remedy, as deficiency, liquidated damages may still be recovered from the payee-contractor, N.C. Roxas, Inc; N.C. Roxas, Inc.'s liability to return the disallowed amount may be enforced based on the principle of *solutio indebiti*; the Court recognized that the liability to return amounts disallowed by the COA is a civil liability, to which the concept of *solutio indebiti* rightly applies; evidently, because of the erroneous computation of liquidated damages, the contractor N.C. Roxas, Inc., through mistake, received more than what was due to it under the contract; there being no binding obligation on the part of PSHS to pay the excess amount, N.C. Roxas, Inc. is therefore bound to return the same. (Collado, Supply Officer III, Philippine Science High School, Diliman Campus, Quezon City *v.* Hon. Villar, *et al.*; G.R. No. 193143; Dec. 1, 2020) p. 1

Separation Pay — Section 63 of the EPIRA provides that an affected employee's separation pay shall be equal to "one and one-half month salary for every year of service in the government"; in other words, the formula only has three components, *viz.*: (a) base amount consisting of the monthly salary; (b) multiplier of one and one-half or 1.5; and (c) length of service. (National Transmission Corporation *v.* Commission on Audit, *et al.*; G.R. No. 232199; Dec. 1, 2020) p. 107

INFORMATION

Allegations of the Details of Qualifying or Aggravating Circumstances — The non-allegation of a detail that aggravates his liability is to prohibit the introduction or consideration against the accused of evidence that tends to establish that detail, and the accused shall be convicted of the offense proved included in the offense charged, or of the offense charged included in the offense proved; nonetheless, the Court finds the defect in the allegations

of the Information insufficient to cause the downgrade of the accused-appellant's conviction, for his failure to timely assert his right in the proceedings before the RTC and CA. (People *v.* Bernardo; G.R. No. 216056; Dec. 2, 2020) p. 181

— According to the guidelines set by the Court in *People v. Solar*, when an information failed to state the ultimate facts relating to a qualifying or aggravating circumstance, the accused should file a motion to quash or a motion for a bill of particulars; otherwise, his right to question the defective statement is deemed waived. (*Id.*)

— In *People v. Valdez*, this Court made a pronouncement that in criminal cases, the State must specify in the information the details of the crime and any circumstance that may qualify the crime or aggravate an accused's liability; hence, it is no longer sufficient to merely allege the qualifying circumstances of "treachery" or "evident premeditation" without including supporting factual averments; the prosecution must now specify in the information the acts and circumstances constituting the alleged attendant circumstance in the crime committed. (*Id.*)

Remedies for Vague or Defective Information — There are various procedural remedies available to an accused who believes that the information is vague or defective; Section 9 of Rule 116 of the Rules of Court provides that the accused may, before arraignment, move for a bill of particulars to enable him properly to plead and prepare for trial; likewise, Rule 117 thereof allows an accused to file a motion to quash a patently insufficient or defective information; in both instances, Our procedural rules require the accused to avail of these remedies prior to arraignment; hence, in order to successfully object to the information, the objection must not only be meritorious, but must also be timely exercised. (People *v.* Bernardo; G.R. No. 216056; Dec. 2, 2020) p. 181

Sufficiency of an Information — Part of the constitutional rights guaranteed to an accused in a criminal case is to

be informed of the nature and cause of the charge against him; correlatively, the State has the obligation to sufficiently allege the circumstances constituting the elements of the crime; thus, the Information must correctly reflect the charge against the accused before any conviction may be made. (People *v.* Bernardo; G.R. No. 216056; Dec. 2, 2020) p. 181

INSURANCE

Insurable Interest — The policy of the State against wagering contracts is apparent in Section 3 of the Insurance Code, as amended, requiring the presence of insurable interest for a contract of insurance to be valid; this is meant to eliminate the temptation of taking out a policy for speculative or evil purposes; insurance policies should be obtained in good faith, and not for the purpose of speculating upon the hazard of a life in which one has no interest in. (Dela Fuente *v.* Fortune Life Insurance Co., Inc.; G.R. No. 224863; Dec. 2, 2020) p. 243

Insurance Policy Taken by a Debtor or Creditor — A distinction should be made between a policy taken by a debtor on his life and made payable to his creditor, and one taken by a creditor on the life of his debtor; where a debtor in good faith insures his life for the benefit of his creditor, full payment of the debt does not invalidate the policy; in such case, the proceeds should go to the estate of the debtor; meanwhile, in a situation where an insurance is taken by a creditor on the life of his debtor, Professor Guevara adopted the ruling in *Godsall v. Boldero* and rationalized that: The insuring creditor could only recover such amount as remains unpaid at the time of the death of the debtor — such that, if the whole debt has already been paid, then recovery on the policy is no longer permissible. (Dela Fuente *v.* Fortune Life Insurance Co., Inc.; G.R. No. 224863; Dec. 2, 2020) p. 243

JUDGMENTS

Immutability of Judgments — Under the doctrine of finality of judgment or immutability of judgment, a decision

that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land; any act which violates this principle must immediately be struck down. (Montehermoso, *et al. v.* Batuto, *et al.;* G.R. No. 246553; Dec. 2, 2020) p. 532

Judgment of Acquittal — As a rule, every person criminally liable is also civilly liable; however, an acquittal will not bar a civil action in the following cases: (1) where the acquittal is based on reasonable doubt as only preponderance of evidence is required in civil cases; (2) where the court declared that the accused's liability is not criminal, but only civil in nature; and (3) where the civil liability does not arise from, or is not based upon the criminal act of which the accused was acquitted. (Collado *v.* Dr. Dela Vega; G.R. No. 219511; Dec. 2, 2020) p. 206

JUSTIFYING CIRCUMSTANCES

Self-Defense — An accused who pleads self-defense admits to the commission of the crime charged; he has the burden to prove, by clear and convincing evidence, that the killing was attended by the following circumstances: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of the person resorting to self-defense. (Ganal, Jr. *v.* People; G.R. No. 248130; Dec. 2, 2020) p. 588

Unlawful Aggression — Actual or material unlawful aggression contemplates the offensive act of using physical force or weapon which positively determines the intent of the aggressor to cause the injury; the test is whether the aggression from the victim puts in real peril the life or personal safety of the person defending himself or herself; the peril must not be an imagined threat. (Ganal, Jr. *v.* People; G.R. No. 248130; Dec. 2, 2020) p. 588

— To invoke self-defense successfully, there must have been an unlawful and unprovoked attack that endangered the life of the accused, who was then forced to inflict severe wounds upon the assailant by employing reasonable means to resist the attack. (People *v.* Guarin *a.k.a.* "Banong"; G.R. No. 245306; Dec. 2, 2020) p. 492

LABOR

Job Contracting — Jurisprudence has established that this Court does not set an absolute figure for what it considers substantial capital for an independent job contractor, but it measures the same against the type of work which the contractor is obligated to perform for the principal; a finding that a company has substantial capitalization does not automatically result to a finding that it is an independent job contractor; we are not convinced that Interserve and Hotwired are legitimate job contractors in absence of proof that they have substantial investment in tools, equipment, machineries among others. (Luces, *et al. v.* Coca-Cola Bottlers Phils. Inc., *et al.;* G.R. No. 213816; Dec. 2, 2020) p. 149

— Share capital refers to the money paid or required to be paid by the members for the conduct of the operation of the cooperative; paid-up capital pertains to the portion of the subscribed share capital which has been paid by the members of the cooperative; donated capital is defined as the subsidies, grants, donations and aids received by the cooperative from any person, whether natural or juridical, local or foreign both government and private; statutory funds or reserves refer to earnings of the cooperative allocated to various statutory accounts such as: (a) Reserved fund; (b) Education and training fund; (c) Community development Fund; and (d) Optional fund. (*Id.*)

— Since share capital refers to the total number of shares paid or required to be paid by its members, the paid-up capital of a cooperative is only a fraction or portion of share capital; share capital is not automatically equivalent to the paid-up capital because it may include unpaid

shares of the cooperative; the amount of paid-up capital may only be equal to the amount of share capital if all share capital have been paid. (*Id.*)

Labor-Only Contracting — Labor-only contracting refers to the arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job or work for a principal. (Luces, *et al. v.* Coca-Cola Bottlers Phils. Inc., *et al.;* G.R. No. 213816; Dec. 2, 2020) p. 149

— There are two instances when a contractor or subcontractor is deemed to be engaged in labor-only contracting; in the first instance, there are two indicators: (1) the contractor or subcontractor does not have substantial capitalization or it does not have investment in tools, equipment, machineries, supervision and work premises and (2) its employees are performing activities or jobs which are directly related and indispensable to the main business of the principal; in the second instance, the principal, not the contractor or subcontractor, exercises the power of control over the manner and method of the employees' work. (*Id.*)

— Under Sec. 5 of the DOLE Department Order No. 174, Series of 2017, there is labor-only contracting when: (a) the contractor or subcontractor does not have substantial capital or does not have investment in tools equipment, machineries, supervision and work premises and the employees are performing activities which are directly related to the main business of the principal; or (b) the contractor or subcontractor does not exercise the right of control over the work of the employees except as to the result thereto. (*Id.*)

LAND REGISTRATION

Double Registration — The Disputed Portion appears to have been registered under two (2) overlapping titles issued in the name of two (2) different persons; this situation has been squarely addressed by the Court in the early case of *Legarda v. Saleeby*, thus: We are of the opinion

and so decree that in case land has been registered under the Land Registration Act in the name of two different persons, the earlier in date shall prevail. (Macutay *v.* Samoy, *et al.;* G.R. No. 205559; Dec. 2, 2020) p. 131

MARRIAGES

Effects of Non-liquidation of the Conjugal Partnership After the Death of a Spouse — Article 130 provides two consequences if no liquidation is effected within the one-year period: (1) "any disposition or encumbrance involving the conjugal partnership property of the terminated marriage shall be void;" and (2) "should the surviving spouse contract a subsequent marriage, a mandatory regime of complete separation of property shall govern the property relations of the subsequent marriage"; when a complete or total separation of property governs the property relations, no portion of the properties of the marriage will be common, and the fruits of the properties of either spouse, as well as his or her earnings from any profession, work or industry, will belong to him or her as exclusive property; each spouse owns the property which he or she brings to the marriage or which he or she may acquire during the marriage by onerous or gratuitous title; the ownership rights of each spouse in a regime of separation of property are provided in Article 145 of the Family Code. (Heirs of the Late Apolinario Caburnay, namely, Lydia Caburnay, *et al. v.* Heirs of Teodulo Sison, namely, Rosario Sison, *et al*.; G.R. No. 230934; Dec. 2, 2020) p. 320

— Is this right of disposition by the surviving spouse under Article 145 of the Family Code, which is consistent with Article 493 of the Civil Code insofar as the right of alienation by a co-owner of his or her interest or share in the co-ownership is concerned, abrogated by the provision of Article 130 of the Family Code which provides that "any disposition or encumbrance involving the conjugal partnership property of the terminated marriage shall be void" if no liquidation of the terminated

marriage property is made upon the lapse of one year from the death of the deceased spouse?

While there appears to be a seeming conflict in the cited provisions of the Family Code and the Civil Code, the provisions are not irreconcilable…. [T]he disposition or encumbrance is valid only to the extent of the share or interest of the surviving spouse in the terminated marriage property, and can[not] in no way bind the shares or interests therein of the other heirs of the deceased spouse.

The above formulation, which recognizes as valid the disposition by the surviving spouse of his separate property—equivalent to his undivided share in the conjugal property with his deceased wife and his share as legal heir in the latter's estate—pursuant to Article 145 of the Family Code despite the proviso in Article 130 to the effect that such disposition is considered void, is consistent with Lopez and supported by Heirs of Go, Domingo and Uy.

... [I]f the disposition is made after the remarriage of the surviving spouse during the effectivity of the Family Code, then with more reason that the disposition is not void because the surviving spouse's undivided interest in the terminated marriage property is already recognized as his separate property, which he can freely dispose of under Article 145 of the Family Code. (*Id.*)

Legal Consequences of the Death of a Married Person — The death of a married person triggers legal consequences, among which are: termination or dissolution of the marriage; termination of the absolute community or conjugal partnership; and succession with respect to the estate of the deceased spouse. (Heirs of the Late Apolinario Caburnay, namely, Lydia Caburnay, *et al. v.* Heirs of Teodulo Sison, namely, Rosario Sison, *et al.;* G.R. No. 230934; Dec. 2, 2020) p. 320

— When Perpetua died on July 19, 1989, the conjugal partnership between her and Teodulo was terminated pursuant to Article 126 (1) of the Family Code; the rule

was the same under Article 175 (1) of the Civil Code: "The conjugal partnership of gains terminates . . . upon the death of either spouse . . .;" with Perpetua's death, the liquidation of the conjugal partnership between her and Teodulo should have ensued; pursuant to Article 129 of the Family Code, after inventory, mutual restitution and payment of debts, the net remainder of the conjugal properties, constituting the profits of the conjugal partnership, shall be divided equally between the spouses and/or their respective heirs, unless a different proportion has been agreed upon in their marriage settlements, or unless the surviving spouse or the heirs of the deceased renounce their shares, and the presumptive legitimes of the common children shall be then delivered, to be taken from the total properties (the share in the conjugal properties and the balance of separate properties) pertaining to each spouse in proper cases in accordance with Article 51 of the Family Code; in the case, however, of the dissolution of the marriage due to the death of a spouse, the common children are entitled to their respective shares as legal heirs in the estate of the deceased spouse. (*Id*.)

Methods of Liquidation of Conjugal Property — When the marriage is terminated by death, Article 130 of the Family Code specifically provides for the liquidation of the conjugal partnership within one year from the death of the deceased spouse; parenthetically, a similar provision (Article 103) governs with respect to the absolute community property regime; three methods of liquidation of the conjugal property are mentioned in the above-quoted provision: (1) judicial settlement in a testate or intestate proceeding; (2) judicial action, or ordinary action for partition; and (3) extrajudicial settlement; any of the three should be resorted to within one year from the death of the deceased spouse. (Heirs of the Late Apolinario Caburnay, namely, Lydia Caburnay, *et al. v.* Heirs of Teodulo Sison, namely, Rosario Sison, *et al.;* G.R. No. 230934; Dec. 2, 2020) p. 320

***Psychological Incapacity* —** A mere showing of irreconcilable differences and conflicting personalities in no wise constitutes psychological incapacity; these differences do not rise to the level of psychological incapacity under Article 36 of the Family Code and are not manifestations thereof which may be a ground for declaring their marriage void. (Dytianquin *v.* Dytianquin; G.R. No. 234462; Dec. 7, 2020) p. 642

— In *Republic of the Phils. v. Court of Appeals*, the Court laid down the more definitive guidelines in the interpretation and application of Article 36 of the Family Code, to wit: (1) The burden of proof to show the nullity of the marriage belongs to the plaintiff; any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity; (2) The *root cause* of the psychological incapacity must be (a) medically or clinically identified, (b) alleged in the complaint, (c) sufficiently proven by experts and (d) clearly explained in the decision; Article 36 of the Family Code requires that the incapacity must be psychological — not physical, although its manifestations and/or symptoms may be physical; (3) The incapacity must be proven to be existing at "the time of the celebration" of the marriage; (4) Such incapacity must also be shown to be medically or clinically permanent or *incurable*; such incurability may be absolute or even relative only in regard to the other spouse, not necessarily absolutely against everyone of the same sex; (5) Such illness must be *grave* enough to bring about the disability of the party to assume the essential obligations of marriage; thus, "mild characterological peculiarities, mood changes, occasional emotional outbursts" cannot be accepted as *root* causes; the illness must be shown as downright incapacity or inability, not a refusal, neglect or difficulty, much less ill will; in other words, there is a natal or supervening disabling factor in the person, an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage;

(6) The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children; (7) Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts; (8) The trial court must order the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the state. (*Id.*)

— Jurisprudence dictates that to warrant a declaration of nullity on the basis of psychological incapacity, the incapacity "must be grave or serious such that the party would be incapable of carrying out the ordinary duties required in marriage; it must be rooted in the history of the party antedating the marriage although the overt manifestations may emerge only after the marriage; and it must be incurable or even if it were otherwise, the cure would be beyond the means of the party involved." (*Id.*)

— Psychological incapacity under Article 36 is not to be confused with a divorce law that cuts the marital bond at the time the causes therefor manifest themselves; while this Court commiserates with the predicament of Eduardo and Elena, this Court has no option but to apply the applicable law and jurisprudence that addresses only an overly specific situation—a relationship where no marriage could have validly been concluded because the parties, or one of them, by reason of a grave and incurable psychological illness existing when the marriage was celebrated, did not appreciate the obligations of marital life and, thus, could not have validly entered into a marriage. (*Id.*)

— The Court has held that mere difficulty, refusal or neglect in the performance of marital obligations or ill will on the part of the spouse is different from incapacity rooted in some debilitating psychological condition or illness;

irreconcilable differences, sexual infidelity or perversion, emotional immaturity and irresponsibility and the like, do not by themselves warrant a finding of psychological incapacity under Article 36, as the same may only be due to a person's refusal or unwillingness to assume the essential obligations of marriage. (*Id.*)

MOTIONS FOR RECONSIDERATION

Period to File a Motion for Reconsideration — A motion for reconsideration of a judgment or final resolution should be filed within 15 days from notice; the 15-day reglementary period for filing a motion for reconsideration is non-extendible and if no appeal or motion for reconsideration is timely filed, the judgment or final resolution shall be entered by the clerk in the book of entries of judgment as provided under Section 10, Rule 51 of the same Rules. (Dela Fuente *v.* Fortune Life Insurance Co., Inc.; G.R. No. 224863; Dec. 2, 2020) p. 243

MURDER

Elements — Murder is defined and penalized under Article 248 of the RPC, as amended by R.A. No. 7659; to successfully prosecute the crime, the following elements must be established: (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 Article 248 of the RPC; and (4) that the killing is not parricide or infanticide. (People *v.* Guarin *a.k.a.* "Banong"; G.R. No. 245306; Dec. 2, 2020) p. 492

— The essential elements of murder, which the prosecution must prove beyond reasonable doubt, are: (1) that a person was killed; (2) that the accused killed him; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 [of the Revised Penal Code (RPC)]; and (4) that the killing is not parricide or infanticide. (People *v.* Bernardo; G.R. No. 216056; Dec. 2, 2020) p. 181

NOTARIAL PRACTICE

Nature of Notarization — The act of notarization is not an ordinary routine but is imbued with substantive public interest; a notary public is empowered to perform a variety of notarial acts, most common of which are the acknowledgment and affirmation of documents or instruments. (In re: OMB-C-C-13-0104 Atty. Socrates G. Maranan v. Francisco Domagoso, *v.* Atty. Maranan; A.C. No. 12877; Dec. 7, 2020) p. 620

Notarial Seal — A notarial seal is a mark, image or impression on a document which would indicate that the notary public has officially signed it; Section 2, Rule VII of the 2004 Notarial Rules states that every notary public shall have his own notarial seal, which shall have the name of the city or province and the word "Philippines," and his own name on the margin and the roll of attorney's number on its face; the said seal shall *only* be possessed by the notary public; further, the 2004 Notarial Rules is explicit on the duties and obligations of the notary public, which include the duty to secure and safeguard his notarial seal so that no unauthorized persons can have access thereto. (In re: OMB-C-C-13-0104 Atty. Socrates G. Maranan v. Francisco Domagoso *v.* Atty. Maranan; A.C. No. 12877; Dec. 7, 2020) p. 620

— In the performance of these notarial acts, the notary public must be mindful of the significance of the notarial seal affixed on documents; the notarial seal converts a document from a private to a public instrument, after which it may be presented as evidence without need for proof of its genuineness and due execution; a notarized document is entitled to full faith and credit upon its face. (*Id.*)

PRESCRIPTION

Prescription Against the State — The Court's observation that the COA's Notices of Disallowance were issued eight years after the fact is not meant to inspire the conclusion that the disallowed amount may no longer be

recovered from the recipient thereof; basic is the rule that prescription does not run against the state. (Collado, Supply Officer III, Philippine Science High School, Diliman Campus, Quezon City *v.* Hon. Villar, *et al.*; G.R. No. 193143; Dec. 1, 2020) p. 1

PRESUMPTIONS

Presumption of Regularity in the Performance of Official Duties — In as much as these personnel are public officers, they are presumed to have performed their duties regularly and in good faith; absent proof of "bad faith or malice, public officers are not personally liable for damages resulting from the performance of official duties"; in the present case, there is no evidence showing that either Ilagan or Singson performed their duties in bad faith or negligently; thus, there is no reason for the Court to dispel the presumption of regularity and good faith favoring them. (National Transmission Corporation *v.* Commission on Audit, *et al.*; G.R. No. 232199; Dec. 1, 2020) p. 107

PROBATE

Extrinsic or Intrinsic Validity of a Will — The extrinsic validity of a will, that is, that the document purporting to be a will is determined to be authentic and duly executed by the decedent, is different from its intrinsic validity; the intrinsic validity of the will "or the manner in which the properties were apportioned," refers to whether the order and allocation of successional rights are in accordance with law; it can also refer to whether an heir has not been disqualified from inheriting from the decedent; the probate of a will only involves its extrinsic validity and does not delve into its intrinsic validity, unless there are exceptional circumstances which would require the probate court to touch upon the intrinsic validity of the will. (In the Matter of the Testate Estate of Aida A. Bambao, *et al. v.* Sekito, Jr.; G.R. No. 237449; Dec. 2, 2020) p. 398

— The extrinsic validity of the will refers to a finding by a trial court that all the formalities of either a holographic

or notarial will have been sufficiently complied with, leading to the legal conclusion that the will submitted to probate is authentic and duly executed. (*Id.*)

Jurisdiction of a Probate Court — Subject to settled exceptions not present in the instant three cases, the law does not extend the jurisdiction of a probate court to the determination of questions of ownership, and similarly, a court of administration proceedings cannot determine questions which arise as to the ownership of property alleged to be part of the decedent's estate, but claimed by some other person to be his or her property, not by virtue of any right of inheritance from the decedent, but by title adverse to that of the decedent and the latter's estate. (Heirs of Corazon Villeza, namely: Imelda V. Dela Cruz, I, *et al. v.* Aliangan, et al.; G.R. Nos. 244667-69 [formerly UDK 16373-75]; Dec. 2, 2020) p. 443

Non-Applicability of Estoppel in Probate Proceedings — Linda's failure to object at the onset of the probate proceedings does not relieve the proponent of the will from establishing that it complied with the legal formalities; estoppel is not applicable in probate proceedings because they involve public interest; otherwise, the truth as to the circumstances surrounding the execution of a testament may not be ascertained which is inimical to public policy. (In the Matter of the Testate Estate of Aida A. Bambao, *et al. v.* Sekito, Jr.; G.R. No. 237449; Dec. 2, 2020) p. 398

Probate of an Alien's Will — Philippine laws require that no will shall pass either real or personal property unless it has been proved and allowed; our laws do not prohibit the probate of wills executed by foreigners abroad; a foreign will can be given legal effects in our jurisdiction; Article (Art.) 816 of the Civil Code is instructive, *viz;* ART. 816; the will of an alien who is abroad produces effect in the Philippines if made with the formalities prescribed by the law of the place in which he resides, or according to the formalities observed in his country, or in conformity with those which this Code prescribes.

(In the Matter of the Testate Estate of Aida A. Bambao, *et al. v.* Sekito, Jr.; G.R. No. 237449; Dec. 2, 2020) p. 398

— Wills of foreigners executed in the Philippines may be probated if they have estate in the Philippines, because probate of the properties can only be effected under Philippine law. (*Id.*)

PROPERTY REGISTRATION

Direct and Collateral Attack on Torrens Title — The RTC Complaint is in the nature of an *accion publiciana* which is limited to the recovery of the better right of possession independent of title or ownership; since an *accion publiciana* solely involves the issue of better right of possession, any determination of ownership made in such connection is neither final nor binding, but rather, merely provisional; a provisional determination of ownership, whether made in an ejectment or *publiciana* proceeding, does not pose a "real attack" on the Torrens title in dispute since courts do not possess the jurisdiction to order the alteration, modification or cancellation of Torrens titles in such cases; this is because Section 48 of Presidential Decree No. 1529 explicitly bars the alteration, modification or cancellation of a certificate of title, "except in a direct proceeding in accordance with law." (Macutay *v.* Samoy, et al.; G.R. No. 205559; Dec. 2, 2020) p. 131

PROSECUTION OF OFFENSES

Designation of an Offense — Where the victim is below 18 years old and the charge is carnal knowledge through force, threat or intimidation, the accused must be prosecuted under the RPC; in the instances that the information wrongfully designates the crime as rape under the RPC in relation to Section 5(b) of R.A. No. 7610, like in the present case, the accused must still be prosecuted pursuant to the RPC; this is not only because the elements of the crimes are different, but likewise that the graver penalty provided under the RPC furthers the avowed policy of the Congress in enacting R.A. No. 7610. (People *v.* BBB; G.R. No. 229937; Dec. 2, 2020) p. 289

Required Allegations in an Information — As pointed out by the trial court, the prosecution should have indicted accused-appellant for rape through sexual assault; accused-appellant should have been convicted of two (2) counts of rape, *i.e.*: (1) rape through sexual intercourse by means of force, threat and intimidation, as described and punishable under paragraph 1 of Art. 266-A of the RPC, and (2) rape through sexual assault, as described and punishable under paragraph 2 of Art. 266-A of the same Code; however, due to the failure of the prosecution to allege in the information the rape through sexual assault, as described and punishable under paragraph 2 of Art. 266-A of the RPC, accused-appellant can only be found guilty of rape through force, threat, and intimidation, even though rape through sexual assault was also proven during trial; this is due to the material differences and substantial distinctions between the two modes of rape; thus, the first mode is not necessarily included in the second, and vice-versa; consequently, to convict accused-appellant of rape by sexual assault when what he was charged with was rape through carnal knowledge, would be to violate his constitutional right to be informed of the nature and cause of the accusation against him; it is fundamental that, in criminal prosecutions, every element constituting the offense must be alleged in the Information before an accused can be convicted of the crime charged; no matter how conclusive and convincing the evidence of guilt may be, an accused cannot be convicted of any offense unless it is charged in the information on which he is tried or is necessarily included therein. (People *v.* Dereco; G.R. No. 243625; Dec. 2, 2020) p. 428

— Before determining the appropriate felony committed by XXX, it is important to emphasize that the title of the felony as stated in the Information is not controlling but the allegations in the body therein; what controls is not the title of the information or the designation of the offense, but the actual facts recited in the information constituting the crime charged." (People *v.* XXX; G.R. No. 238405; Dec. 7, 2020) p. 655

— The constitutional right to be informed of the nature and cause of the accusations against him requires that any offense charged be stated with clarity and with certainty to inform the accused of the crime he is facing in sufficient detail to enable him to prepare his defense; it is corollary to the broader right to be presumed innocent until the contrary is proved; ineluctably, the Constitution requires the State to describe each purported criminal act with sufficient certainty because an accused is presumed to have no independent knowledge of the facts constituting the offenses charged; thus, the written accusation must fully appraise the accused of the nature of the charge against him in order to avoid possible surprises that may lead to injustice. (People *v.* Alberto "Bert" Martinez *a.k.a.* "Alberto Belinario"; G.R. No. 248016; Dec. 2, 2020) p. 559

— The prosecution sufficiently proved that the carnal acts were attended by intimidation; in addition, the prosecution proved that although AAA had already turned 12 on October 2, 2010, she had the mental age of seven years and one month; however, neither of these circumstances is relevant to Criminal Case No. 11-CR-8290 as they were not alleged in the information; it is a fundamental rule that every element of the crime charged must be aptly alleged in the information so that the accused can be fully informed of the nature and cause of the accusation; anything less would be an infringement of his constitutional rights. (*Id.*)

PUBLIC FUNDS

Degree of Diligence in Handling Government Property or Public Funds — There is nothing that could have prompted Estelita or Lily to request a security escort for that particular transaction; it is improper for COA to conclude that a higher degree of diligence is expected from the accountable municipal officers in withdrawing the payroll money; only the diligence of a good father of a family is required in handling government properties and funds; the conclusion that the accountable officers,

in hindsight, should have requested a security escort is insufficient to establish negligence. (Angeles *v.* Commission on Audit (COA), *et al.*; G.R. No. 228795; Dec. 1, 2020) p. 44

— We rule that Estelita and Lily exercised the reasonable care and caution that an ordinary prudent person would have observed in a similar situation; they have performed what is humanly possible under the circumstances; foremost, the cashier and the revenue collection officer used the service vehicle driven by the municipal driver in going to and from the bank which is safer compared to other means of transportation; they followed the existing practice of securing travel pass and the procedure in withdrawing the payroll money; the bank transaction was made during regular office hours; unfortunately, armed men attacked them while they were *en route* back to their office; as Estelita aptly argued, the robbery was unexpected to occur in broad daylight on a public street; the violent robbery, which resulted in injuries to the driver and the death of the cashier, could not have been prevented; taken together, the COA committed grave abuse of discretion when it denied the request for relief from accountability. (*Id.*)

— Public properties and funds for official use and purpose shall be utilized with the diligence of a good father of a family; thus, Section 105 of the Government Auditing Code of the Philippines hold the accountable officers liable in case of their negligence in keeping or using government properties or funds resulting in loss, damage or deterioration; differently stated, the officers may be relieved from accountability absent evidence that they acted negligently in handling public properties or funds, or when the loss occurs while they are in transit or if the loss is caused by fire, theft, or other casualty or force majeure. (*Id*.)

PUBLIC OFFICERS AND EMPLOYEES

Duties of Public Officials — A public officer's duty, no matter how miniscule, must still be diligently accomplished;

no less than the Constitution sanctifies the principle that public office is a public trust, and enjoins all public officers and employees to serve with the highest degree of responsibility, integrity, loyalty, and efficiency. (Trinidad, Jr. *v.* Office of the Ombudsman, *et al.*; G.R. No. 227440; Dec. 2, 2020) p. 268

Presumption of Regular Performance of Official Functions — In as much as these personnel are public officers, they are presumed to have performed their duties regularly and in good faith; absent proof of "bad faith or malice, public officers are not personally liable for damages resulting from the performance of official duties"; in the present case, there is no evidence showing that either Ilagan or Singson performed their duties in bad faith or negligently. (National Transmission Corporation *v.* Commission on Audit, *et al.*; G.R. No. 232199; Dec. 1, 2020) p. 107

RAPE

Absence of Physical Injuries — The absence of any physical injuries on AAA's body, too, does not imply that she had consented to the sexual act. (People *v.* Licaros; G.R. No. 238622; Dec. 7, 2020) p. 676

Burden of Proof in Rape Cases — Time and again, the Court has held that each and every charge of rape is a separate and distinct crime that the law requires to be proven beyond reasonable doubt; the prosecution's evidence must pass the exacting test of moral certainty that the law demands and the rules require to satisfy the burden of overcoming the appellant's presumption of innocence. (People *v.* Alberto "Bert" Martinez *a.k.a.* "Alberto Belinario"; G.R. No. 248016; Dec. 2, 2020) p. 559

Elements of Rape — Article 335 of the RPC, prior to its amendment by R.A. 8353, applies; under this provision, the relevant elements of rape are: (a) the offender had carnal knowledge of the victim; and (b) said carnal knowledge was accomplished through the use of force

or intimidation. (People *v.* BBB; G.R. No. 229937; Dec. 2, 2020) p. 289

— Article 266-A of the Revised Penal Code defines when and how the felony of rape is committed; in the instant case, both the RTC and the CA correctly found that all the elements of rape were established by the prosecution; the prosecution sufficiently established beyond reasonable doubt that on August 26, 2009, accused-appellant had carnal knowledge with AAA, and inserted his finger inside AAA's genitalia, while Biboy acted as look-out; it was also proven that accused-appellant employed force, threat, and intimidation upon AAA when he continuously poked a knife at AAA's left side. (People *v.* Dereco; G.R. No. 243625; Dec. 2, 2020) p. 428

Elements of Qualified Rape — The elements of qualified rape are: "(1) sexual congress; (2) with a woman; (3) done by force and without consent; (4) the victim is under eighteen years of age at the time of the rape; and (5) the offender is either a parent (whether legitimate, illegitimate or adopted), [ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent] of the victim"; according to *People v. Begino*, the "qualifying circumstances must be properly pleaded in the indictment. (People *v.* XXX; G.R. No. 238405; Dec. 7, 2020) p. 655

Elements of Statutory Rape — As held in *People v. Roy*, it is settled that to sustain a conviction under Article 266-A, paragraph 1(d), "it is enough that the age of the victim is proven and that there was sexual intercourse; as the law presumes absence of free consent when the victim is below the age of 12, it is not necessary to prove force, intimidation or consent as they are not elements of statutory rape." (People *v.* Alberto "Bert" Martinez *a.k.a.* "Alberto Belinario"; G.R. No. 248016; Dec. 2, 2020) p. 559

— The Court agrees with the conclusions of the lower courts that the prosecution alleged and proved the elements of

statutory rape under Article 266-A, paragraph 1(d) of the RPC; the elements of statutory rape are: 1) that the accused had carnal knowledge of the offended party, and 2) the offended party is under 12 years of age. (*Id.*)

Intimidation — Intimidation must be evaluated on a case to case basis in light of the circumstances, perception, and judgment of the victim; indeed, the age, size and strength of the parties should be taken into account in evaluating the existence of the element of force or intimidation in the crime of rape; it is sufficient if it produces fear—fear that if the victim does not yield to the bestial demands of the accused, something would happen to her at the moment or thereafter, as when she is threatened with death if she reports the incident. (People *v.* Alberto "Bert" Martinez *a.k.a.* "Alberto Belinario"; G.R. No. 248016; Dec. 2, 2020) p. 559

— The recurrence of accused-appellant's abominable deeds, the wide discrepancy in their ages and accused-appellant's many threats prove beyond reasonable doubt that AAA submitted herself to accused-appellant's carnal desires out of a reasonable fear and genuine apprehension of harm to her and her family. (*Id.*)

Medical Findings — Dr. Laguerta's medical findings that AAA suffered hymenal lacerations suggesting that an object or a male organ had penetrated her vagina corroborated AAA's testimony that she was raped; thus, where the victim's testimony is corroborated by physical findings of penetration, there is sufficient basis for concluding that sexual intercourse did take place. (People *v.* XXX; G.R. No. 238405; Dec. 7, 2020) p. 655

Minority of Victim and Relationship to the Accused — As found by the RTC and borne by the records, the prosecution was able to prove the aggravating circumstances alleged in the Informations: 1) that AAA was under 18 years old at the time of the incidents and 2) that BBB is her father; as regards AAA's minority, the same was established by her Birth Certificate presented by the

prosecution, which shows that she was born on November 19, 1980; hence, during the rape incidents, she was under 18 years of age; anent her paternal relationship with BBB, the same is not disputed and is, in fact, admitted by BBB; Article 335 of the RPC, as amended by R.A. No. 7659, qualifies rape when the same is committed with the concurrence of both the minority of the victim and that the offender is her parent, among others, and makes mandatory the imposition of the death penalty. (People *v.* BBB; G.R. No. 229937; Dec. 2, 2020) p. 289

Moral Ascendancy — The moral ascendancy of Cabales over AAA renders it unnecessary to show physical force and intimidation since in rape committed by a close kin, such as the common-law spouse of her mother, moral influence or ascendancy takes the place of violence or intimidation. (People *v.* Cabales @ "Basil"; G.R. No. 249149; Dec. 2, 2020) p. 601

Penalty — As for the proper penalty, the crime of Simple Rape is penalized under Article 266-B of the RPC, as amended by Republic Act No. 8353, or the Anti-Rape Law of 1997, with *reclusion perpetua*. (People *v.* Licaros; G.R. No. 238622; Dec. 7, 2020) p. 676

Place of Commission — It is settled that the close proximity of other relatives to the scene of the rape does not render the commission of the crime impossible or incredible. (People *v.* Licaros; G.R. No. 238622; Dec. 7, 2020) p. 676

— "Rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house where there are other occupants, and even in the same room where other members of the family are also sleeping"; after all, "lust is no respecter of time and place; neither is it deterred by age nor relationship." (*Id.*)

Principles in Rape Cases — In assessing the guilt or innocence of an accused in a rape case, the Court takes guidance from three settled principles, to wit: (1) an accusation of rape can be made with facility and while the accusation

is difficult to prove, it is even more difficult for the person accused, though innocent, to disprove the charge: (2) considering that, in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence of the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense. (People *v.* BBB; G.R. No. 229937; Dec. 2, 2020) p. 289

Rape Through Force — For purposes of resolving the instant case, jurisprudence on the matter is explicit — if the woman is 12 years of age or over at the time she was violated, sexual intercourse through force, violence, intimidation or threat must be alleged and proved by the prosecution beyond reasonable doubt. (People *v.* Alberto "Bert" Martinez *a.k.a.* "Alberto Belinario"; G.R. No. 248016; Dec. 2, 2020) p. 559

— It is settled that in rape cases alleged to have been committed by force, it is imperative for the prosecution to establish that the element of voluntariness on the part of the victim be absolutely lacking; the prosecution must prove that force or intimidation was actually employed by accused upon his victim to achieve his end; failure to do so is fatal to its cause. (*Id.*)

— The Court is aware and, in fact, affirms the principle that the absence of external signs of physical injuries does not prove that rape was not committed, for proof thereof is not an essential element of the crime of rape and that the force employed in rape need not be irresistible so long as it is present and brings the desired result; all that is necessary is that the force be sufficient to fulfill its evil end, or that it be successfully used; it need not be so great or be of such a character that it could not be repelled; while force need not be irresistible however, it must still be present and such presence must be sufficiently alleged and proved beyond reasonable doubt; unfortunately, the testimonial evidence offered to prove

force under this particular charge is definitely inadequate and grossly insufficient to establish the guilt of accused-appellant with the required quantum of evidence; there is no testimony whatsoever about the nature of the force employed, or about any struggle, or even resistance however slight. (*Id.*)

— The force used in the commission of rape need not be overpowering or absolutely irresistible. (People *v.* Licaros; G.R. No. 238622; Dec. 7, 2020) p. 676

Rape Through Sexual Intercourse Distinguished from Rape Through Sexual Assault — It can be inferred that it was never the intention of the legislature to redefine the traditional concept of rape; R.A. No. 8353 merely expanded the crime by including another mode in which the crime of rape may be committed; simply, the legislature only found it fit to categorize acts previously classified and punished as "Acts of Lasciviousness" as the second mode of committing the crime of rape, that is, through sexual assault; in doing so, legislative intent is clear in that while encompassed in the definition of rape, sexual assault should be treated less severely than rape through carnal knowledge; in the exercise of its discretion and wisdom, the legislature resolved that a more severe penalty should be imposed when rape is committed through sexual intercourse owing to the fact that it may lead to unwanted procreation, an outcome not possible nor present in sexual assault. (People *v.* Barrera; G.R. No. 230549; Dec. 1, 2020) p. 55

— The expansion of the definition of the crime of rape by including acts of sexual assault notwithstanding, it is evident that R.A. No. 8353 does not view the two modes of commission on an equal footing; the distinction between rape committed through sexual intercourse (first mode) on the one hand and sexual assault (second mode) on the other is exhibited by the penalty which the legislature determined appropriate to impose; R.A. No. 8353 punishes rape through the first mode more severely as depending on the attendance of circumstances, it provides for the

penalty within the range of *reclusion perpetua* to death; whereas, rape under the second mode is generally punishable with penalty ranging from *prision mayor* to *reclusion temporal*, save for instances where homicide attended its commission, then penalty of *reclusion perpetua* is imposed; the imposition of a more severe penalty for rape through sexual intercourse shows that the legislature found such mode of commission more appalling than the other thus warranting a more severe punishment as a form of chastisement and deterrence; the distinction between the two modes — the traditional concept of rape and sexual assault, has been exhaustively and judiciously discussed in the landmark case of *People v. Tulagan*; the case highlighted that R.A. No. 8353 merely upgraded Rape from a "crime against chastity" (a private crime) to a "crime against persons" (a public crime) for facility in prosecution; and reclassified specific acts constituting "acts of lasciviousness" as a distinct crime of "sexual assault." (*Id.*)

Resistance — If resistance would nevertheless be futile because of a continuing intimidation, then offering none at all would not mean consent to the assault as to make the victim's participation in the sexual act voluntary. (People *v.* Alberto "Bert" Martinez *a.k.a.* "Alberto Belinario"; G.R. No. 248016; Dec. 2, 2020) p. 559

Testimony of the Victim — A rape victim's sole account of the incident is sufficient to support a conviction of rape if it is straightforward and candid; especially so when it is corroborated by the medical findings of the examining physician, as in this case. (People *v.* Licaros; G.R. No. 238622; Dec. 7, 2020) p. 676

Victim's Failure to Shout — AAA's failure to shout for help does not in any way disprove the commission of the rape. (People *v.* Licaros; G.R. No. 238622; Dec. 7, 2020) p. 676

REAL ESTATE MORTGAGE

Interest Due Upon Redemption — That DBP had never taken possession of the subject property is an established fact; DBP, therefore, has not enjoyed the fruits of the subject property; the "interest that would accrue otherwise on the account" is equivalent to the fruits of the property; by their actions, BMC, WNC, and V2, successively, have effectively deprived DBP of the fruits of its property; in light of DBP being deprived of the fruits of its property, We find no basis for the CA's declaration that the computation of the redemption price is limited to until 12 November 1991 only; the interest should continue to run from 24 August 1989, the date of the foreclosure sale, until the date of actual redemption by V2 or its successor-in-interest, whenever it may be; BMC, WNC, and V2 have held the property hostage and prevented DBP from enjoying its fruits since 1989, all the while evading its duty to pay proper compensation; the . . . accrued interest due to DBP should thus be computed until actual redemption, that is, until full payment of redemption amount. (Development Bank of the Philippines *v.* West Negros College, Inc., substituted by V-2 SAC Management and Development Corporation; G.R. No. 241981; Dec. 2, 2020) p. 409

Redemption Price — The redemption price due to DBP, then, should exclude the unsubstantiated amount for expenses and interest on expenses; the total claim as of the date of actual redemption has two components: (1) the total claim as of the expiry date of redemption, and (2) the interest from the expiry date of redemption until the actual redemption date; accordingly, the total claim as of 11 July 1991, or the expiry date of redemption, is Php34,677,637.64; this amount includes the straight interest of 12% per annum from 25 August 1989, or the day after the public auction, until 11 July 1991; on the other hand, there is a need to determine the number of days from 12 July 1991, or the date after the expiry date of redemption, until the actual redemption date; the number of days should be divided by 365, or the number of days

in a year, then subsequently multiplied by 12%, or the interest rate per annum; the result should be multiplied by Php32,526,133.62, or the base amount of the redemption price, to determine the amount of interest due from 12 July 1991 until the actual redemption date. (Development Bank of the Philippines *v.* West Negros College, Inc., substituted by V-2 SAC Management and Development Corporation; G.R. No. 241981; Dec. 2, 2020) p. 409

— We already declared that the redemption price for properties mortgaged with the DBP consists of the total indebtedness, plus contractual interest; this pronouncement finds legal basis on Sec. 16 of E.O. No. 81, the DBP Charter as amended by R.A. No. 8523; the right of redemption may be exercised only by paying to DBP "all the amount owed at the date of sale, with interest on the total indebtedness at the rate agreed upon in the obligation from the said date, unless the bidder has taken material possession of the property or unless this has been delivered to him, in which case the proceeds of the property shall compensate the interest." (*Id.*)

RETROACTIVE EFFECTIVITY OF LAWS

— The penalty must be accordingly modified in line with the settled rule on the retroactive effectivity of laws; for as long as it is favorable to the accused, said recent legislation shall find application; the accused shall be entitled to the benefits of the new law warranting him to serve a lesser sentence. (Arrivas *v.* Bacotoc; G.R. No. 228704; Dec. 2, 2020) p. 277

RIGHTS OF THE ACCUSED

Presumption of Innocence — A successful prosecution of a criminal action largely depends on proof of two things: the identification of the author of the crime and his actual commission of the same; an ample proof that a crime has been committed has no use if the prosecution is unable to convincingly prove the offender's identity; "[t]he greatest care should be taken in considering the identification of the accused, especially when this

identification is made by a sole witness and the judgment in the case totally depends on the reliability of the identification"; this stems from the recognition that testimonial evidence, unlike other forensic evidence such as fingerprint and DNA testing which are real or object evidence, are subject to human errors which may be intentional or unintentional. (People *v.* Ansano; G.R. No. 232455; Dec. 2, 2020) p. 360

— "The Court, in the course of its review of criminal cases elevated to it, still commences its analysis from the fundamental principle that the accused before it is presumed innocent"; this presumption continues although the accused had been convicted in the trial court, as long as such conviction is still pending appeal. (*Id.*)

Right to be Informed of the Charges — The Constitution guarantees the right of an accused in a criminal prosecution to be informed of the nature and cause of accusation against him; flowing from the said right, it is required that every element of the offense charged must be alleged in the his Complaint or Information, to afford the accused an opportunity to adequately prepare defense; consequently, an accused cannot be convicted of a crime, even if duly proven, unless it is alleged or necessarily included in the Information. (People *v.* Barrera; G.R. No. 230549; Dec. 1, 2020) p. 55

ROBBERY WITH RAPE

Original Intent to Take Another's Property — In robbery with rape, the true intent of the accused must be to take, with intent to gain, the property of another; rape must be committed only as an accompanying crime; Article 294 does not distinguish when rape must be committed, for as long as it is contemporaneous with the commission of robbery. (People *v.* Barrera; G.R. No. 230549; Dec. 1, 2020) p. 55

Elements — For a successful prosecution of the said crime, the following elements must be established beyond reasonable doubt: a) the taking of personal property is

committed with violence or intimidation against persons; b) the property taken belongs to another; c) the taking is done with intent to gain or *animus lucrandi*; and d) the robbery is accompanied by rape. (People *v.* Barrera; G.R. No. 230549; Dec. 1, 2020) p. 55

Penalty — The penalty of *reclusion perpetua* to death for the special complex crime of robbery and rape should be limited to instances when rape is accomplished through sexual intercourse or "organ penetration"; the penalty should not be unduly extended to cover sexual assault considering that the acts punishable under such mode were not yet recognized as "Rape" but as "Acts of Lasciviousness" at the time the severe penalty of death was imposed; all the more, to repeat for the sake of emphasis, as even after the inclusion of sexual assault in the definition of rape by R.A. No. 8353, Congress deliberations show that the law never intended to redefine the traditional concept of rape; rather, the law merely expanded the definition of the crime of rape, with the intent of maintaining the existing distinction between the two modes of commission; in the case at bar, R.A. No. 7659, insofar as it imposes the penalty of *reclusion perpetua* to death for the special complex crime of robbery with rape, is bereft of any statement to suggest that it contemplates any and all forms of rape which may subsequently be defined; thus, the law which imposes a harsher penalty should not be extended to include sexual assault, which was recognized as rape only after its passage. (People *v.* Barrera; G.R. No. 230549; Dec. 1, 2020) p. 55

RULES OF PROCEDURE

Relaxation of Rules — A relaxation of the rules may be done only in the most persuasive of reasons and strict compliance is always enjoined to facilitate the orderly administration of justice; procedural rules are tools designed to facilitate the adjudication of cases; courts and litigants alike are enjoined to abide strictly by the rules; although a relaxation of the rules may be allowed, it was never intended that such relaxation benefit erring

litigants who violate it with impunity, much less without any explanation; and while litigation is not a game of technicalities, it is also true that each case must be prosecuted in accordance with the prescribed procedure, especially here where Abergos sought to avail of an extraordinary remedy of *certiorari*; his failure to comply with the requirements to avail of such remedy is fatal to his petition. (Del Monte Land Transport Bus Company, *et al. v.* Abergos; G.R. No. 245344; Dec. 2, 2020) p. 504

— Courts have always tried to maintain a healthy balance between the strict enforcement of procedural laws and the guarantee that every litigant be given the full opportunity for the just disposition of his cause; rules of procedure are mere tools designed to facilitate the attainment of justice. (Angeles *v.* Commission on Audit (COA), *et al.*; G.R. No. 228795; Dec. 1, 2020) p. 44

— Procedural rules are designed to aid the courts in resolving cases; they neither create nor take away vested rights, but merely facilitate the trial court's reception and evaluation of all evidence given the facts and circumstances presented by the parties; they give litigants the opportunity to establish the merits of their complaint or defense rather than lose life, liberty, or property on mere technicalities; this Court should not demand a strict application of these rules when such would exacerbate the situation rather than promote substantial justice. (Heirs of Jose V. Lagon, namely: Maria Jocelyn Lagon-Rodriguez, *et al. v.* Ultramax Healthcare Supplies, Inc., *et al.;* G.R. No. 246989; Dec. 7, 2020) p. 688

— The Court has recognized that there are instances when a strict application of the rules on timeliness would work against rather than towards substantial justice; in the instant case, no less than the property rights of Collado hang in the balance; the Court is convinced that the belated filing of her petition was the result of an honest mistake and not an attempt to frustrate the proceedings of the COA or this Court; hence, in the higher interest of equity and substantial justice, the Court shall look

into the remaining issues of the case. (Collado, Supply Officer III, Philippine Science High School, Diliman Campus, Quezon City *v.* Hon. Villar, *et al.*; G.R. No. 193143; Dec. 1, 2020) p. 1

— Under exceptional circumstances, such as when stringent application of the rules will result in manifest injustice, the Court may set aside technicalities and proceed with the petition for review on *certiorari*; the present petition deserves the liberality of the Court considering that the substantial issues Susan raised will ultimately affect the final disposition in this case. (Dela Fuente *v*. Fortune Life Insurance Co., Inc.; G.R. No. 224863; Dec. 2, 2020) p. 243

SALES

Concept or Definition — Article 1458 of the Civil Code defines a contract of sale as a contract where one of the parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other party to pay therefor a price certain in money or its equivalent. (Heirs of the Late Apolinario Caburnay, namely, Lydia Caburnay, *et al. v.* Heirs of Teodulo Sison, namely, Rosario Sison, *et al.;* G.R. No. 230934; Dec. 2, 2020) p. 320

— The definition of sale in Article 1458 envisions both a contract of sale and a contract to sell as understood in the Uniform Sales Act; in a contract of sale, the seller transfers the property sold to the buyer for a consideration called the price, which means ownership is transferred to the buyer upon its execution through any of the modes of delivery or tradition; on the other hand, in a contract to sell, the seller merely "agrees to transfer" the property object of the sale to the buyer for a consideration called the price, which implies that ownership is not right away transferred to the buyer. (Heirs of Corazon Villeza, namely: Imelda V. Dela Cruz, I, *et al. v.* Aliangan, *et al.;* G.R. Nos. 244667-69 [formerly UDK 16373-75]; Dec. 2, 2020) p. 443

Contract of Sale — Under Article 1475 of the Civil Code, the contract of sale is perfected at the moment there is a meeting of the minds upon the thing which is the object of the contract and upon the price, and from that moment, the parties may reciprocally demand performance, subject to the provisions of the law governing the forms of contracts; according to Article 1462, the goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or goods to be manufactured, raised, or acquired by the seller after the perfection of the contract of sale, called "future goods"; there may even be a contract of sale of goods, whose acquisition by the seller depends upon a contingency which may or may not happen. (Heirs of Corazon Villeza, namely: Imelda V. Dela Cruz, I, *et al. v.* Aliangan, *et al.;* G.R. Nos. 244667-69 [formerly UDK 16373-75]; Dec. 2, 2020) p. 443

Contract to Sell — Going back to the DCS, the provision: "[t]hat the corresponding Deed of Absolute Sale shall be executed by the VENDORS upon full payment of the balance" is sanctioned by Article 1478 of the Civil Code, which allows the parties to stipulate that the ownership in the thing shall not pass to the purchaser until he has fully paid the price; the provision where the seller agrees to execute a deed of absolute sale when the buyer has paid in full the purchase price has been construed by the Court to signify that the seller has withheld the transfer of ownership until the purchase price has been paid in full, making the agreement between the seller and the buyer a contract to sell and not a contract of sale. (Heirs of Corazon Villeza, namely: Imelda V. Dela Cruz, I, *et al. v.* Aliangan, *et al.;* G.R. Nos. 244667-69 [formerly UDK 16373-75]; Dec. 2, 2020) p. 443

— Not only is the DCS a binding perfected contract, the buyers, herein respondents, have in fact fully paid the agreed purchase price of 450,000.00 and have complied with their prestation under the DCS; with the payment in full of the purchase price by the buyers, the DCS has been performed or consummated; at that point, had the

sellers, been still alive, they could be compelled by court action to execute the DAS over the Centro I property, which they contractually promised to execute upon full payment of the purchase price; as the sellers, it was incumbent upon them to comply with their obligations under Article 1458 of the Civil Code, which are "to transfer the ownership of and to deliver a determinate thing," and Article 1495, which provides that "the vendor is bound to transfer the ownership of and deliver, as well as warrant the thing which is the object of the sale." (*Id.*)

Constructive Delivery — The execution of a public instrument, such as a deed of absolute sale, is equivalent to the delivery of the object of the sale pursuant to Article 1498 of the Civil Code, which states: when the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot clearly be inferred; with respect to the Centro I property, there was no physical delivery thereof upon the execution of the DCS [Deed of Conditional Sale] and Corazon remained in possession thereof until she died, with her heirs continuing such possession after her death; thus, the execution of the DAS [Deed of Absolute Sale] upon full payment of the purchase price was contemplated as the mode of delivery to transfer ownership of the Centro I property to respondents with the possessors vacating the premises. (Heirs of Corazon Villeza, namely: Imelda V. Dela Cruz, I, *et al. v.* Aliangan, *et al.;* G.R. Nos. 244667-69 [formerly UDK 16373-75]; Dec. 2, 2020) p. 443

Mode of Payment in Execution Sales — The mode of payment therefore does not affect the validity of the execution sale, as the rules do not specifically state that payment be made in cash. (Crisologo, *et al. v.* Hao, *et al.*; G.R. No. 216151; Dec. 2, 2020) p. 195

Oral Contract of Sale of Real Property — With respect to the Poblacion property, the Court finds that the remittances

together with the Acknowledgement Receipt sufficiently satisfy the note or memorandum requirement under Article 1403(2) of the Civil Code; specifically, the Acknowledgement Receipt contains the names of the parties, the terms and conditions of the contract (*i.e.*, the 85,000.00 being the remaining balance of the purchase price, which amounted to the 85,000.00 plus the previous remittances), a description of the property sufficient to render it capable of identification and signature of Corazon, the party charged; nonetheless, the remittances and receipts are sufficient proof that the oral sales had been ratified by Corazon. (Heirs of Corazon Villeza, namely: Imelda V. Dela Cruz, I, *et al. v.* Aliangan, *et al.;* G.R. Nos. 244667-69 [formerly UDK 16373-75]; Dec. 2, 2020) p. 443

Prestations of the Seller — From the definition of obligation under Article 1156 as "a juridical necessity to give, to do or not to do," the prestations of the seller are: (1) to transfer the ownership of a determinate thing and (2) to deliver that determinate thing while the corresponding prestation of the buyer is to pay therefor a price certain in money or its equivalent; given that the seller is obligated to transfer not only the ownership of the determinate thing sold but also to deliver the thing, the seller may withhold ownership of the thing sold despite its delivery to the buyer; this is expressly allowed under Article 1478 of the Civil Code; without such stipulation, ownership of the thing sold is transferred to the buyer upon its delivery in consonance with Article 1477. (Heirs of the Late Apolinario Caburnay, namely, Lydia Caburnay, *et al. v.* Heirs of Teodulo Sison, namely, Rosario Sison, *et al.;* G.R. No. 230934; Dec. 2, 2020) p. 320

Sale by a Non-owner of the Object of Sale — The fact that the seller is not the owner of the object of the sale at the time it is sold and delivered does not prevent title or ownership from passing to the buyer by operation of law if subsequently the seller acquires title thereto or becomes the owner thereof pursuant to Article 1434 of the Civil Code. (Heirs of Corazon Villeza, namely: Imelda V.

Dela Cruz, I, *et al. v.* Aliangan, *et al.;* G.R. Nos. 244667-69 [formerly UDK 16373-75]; Dec. 2, 2020) p. 443

Third Party Claim in a Certificate of Sale — Pursuant to the express mandate of Section 26, Rule 39 of the Rules of Court, the certificates of sale must indicate the existence of a third-party claim; the existence of a third-party claim must likewise be annotated upon the titles of the subject properties, so as to protect the interest of the respondents should their claim prosper; the basis of the purchase by the judgment obligee is the satisfaction of a debt or obligation; on the other hand, the main consideration of the instant third-party claim is ownership based on another mode of acquisition or factual justification; the respondents, as third-party claimants, who are not joined as parties in the civil action which served as basis for the execution sale, cannot be affected thereby; pending determination of the merit of the third-party claim therefore, its annotation on the certificate of title is necessary in order to warn other persons that while the subject properties have been redeemed by the petitioners in the execution sale, the latter's right is subject to another party's claim and may be nullified should such claim be later found meritorious. (Crisologo, *et al. v.* Hao, *et al.*; G.R. No. 216151; Dec. 2, 2020) p. 195

— Following the rule of statutory construction, as opposed to Section 21, the interpretation of Section 26 would fall under the exception; under the premises, to demand strict compliance of the requirement under Section 26 for the certificate of sale to expressly state the existence of the third-party claim would defeat the very purpose for which the rule has been created; in the case of *Republic v. NLRC*, the Court affirmed that the *raison d'être* behind Section 26 (then Section 28), Rule 39 of the Rules of Court is to protect the interest of a third-party claimant; thus, where the third-party claim has been dismissed or when such claim is adequately protected, the failure of the certificate of sale to expressly state the existence of third-party claim shall not affect the validity of the sale. (*Id.*)

Transfer of Ownership — At such time when the contract of sale or contract to sell is perfected, the seller does not need to have the right to transfer ownership of the object of the sale; all that is required is that provided by Article 1459 of the Civil Code which states that "the vendor must have a right to transfer the ownership thereof at the time it is delivered"; thus, while the seller may not own the object of the sale at the time the contract is perfected, for the sale to be validly consummated, the seller must be the owner thereof at the time of its delivery or tradition to the buyer. (Heirs of Corazon Villeza, namely: Imelda V. Dela Cruz, I, *et al. v.* Aliangan, *et al.;* G.R. Nos. 244667-69 [formerly UDK 16373-75]; Dec. 2, 2020) p. 443

— Pursuant to Article 1478 of the Civil Code, even if the object of the sale is delivered to the buyer upon the execution of the contract, the parties may still stipulate that the ownership in the thing shall not pass to the purchaser until he has fully paid the price; the withholding of ownership despite delivery of the object to the buyer must be expressly stipulated; otherwise, with the delivery or tradition of the object to the buyer, ownership is acquired by the buyer; under Article 712, ownership and other real rights over property are acquired and transmitted by tradition, in consequence of certain contracts, like sale; specifically, in sales, Article 1496 states that: "The ownership of the thing sold is acquired by the vendee from the moment it is delivered to him in any of the ways specified in Articles 1497 to 1501, or in any other manner signifying an agreement that the possession is transferred from the vendor to the vendee"; the instance wherein the transfer of ownership is withheld by the seller despite delivery of the object sold highlights the two obligations of the seller in a contract of sale under Article 1495, which provides: "The vendor is bound to transfer the ownership of and deliver, as well as warrant the thing which is the object of the sale;" to fully comply with his obligations, the seller has still to transfer the ownership of the object of the sale despite its delivery to

the buyer at an earlier time if transfer of ownership has been withheld until full payment of the consideration. (*Id.*)

SEAFARERS

Compensability of an Injury or Illness — In the case of *Luzon Stevedoring Corporation v. Workmen's Compensation Commission*, the Court held that "acts reasonably necessary to health and comfort of an employee while at work, such as satisfaction of his thirst, hunger, or other physical demands, or protecting himself from excessive cold, are incidental to the employment and injuries sustained in the performance of such acts are compensable as arising out of and in the course of employment"; similar to *Iloilo Dock & Engineering Co., Luzon Stevedoring Corporation* also involves Act No. 3428; even so, we find that its ruling applies here since Act No. 3428, like the POEA-SEC, also makes personal injury from any accident arising out of and in the course of the employment compensable. (Oscares *v.* Magsaysay Maritime Corp., *et al.;* G.R. No. 245858; Dec. 2, 2020) p. 518

— It is well-settled that in order for a seafarer's injury to be compensated, it must be shown that: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract; a work-related injury is defined as one arising out of and in the course of employment; as for what can be considered in the course of employment, the Court in the case of *Iloilo Dock & Engineering Co*. held that it is when it takes place within the period of the employment, at a place where the employee reasonably may be, and while he is fulfilling his duties or is engaged in doing something incidental thereto. (*Id.*)

Notorious Negligence — Notorious negligence is defined as something more than mere or simple negligence or contributory negligence; it signifies a deliberate act of the employee to disregard his own personal safety; jumping

while singing cannot be considered as a reckless or deliberate act that is unmindful of one's safety; respondents themselves did not allege that Oscares intentionally injured himself or was negligent; the truth is that he simply lost his balance. (Oscares *v.* Magsaysay Maritime Corp., *et al.;* G.R. No. 245858; Dec. 2, 2020) p. 518

Sickness Allowance — Pursuant to Section 20(A)(3) of the 2010 POEA-SEC, Oscares is entitled to sickness allowance in an amount equivalent to his basic wage computed at the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician, but shall in no case exceed 120 days; respondents have not submitted proof that they reimbursed Oscares for the expenses he incurred in seeking medical attention for his injury; in addition, Oscares is also entitled to a disability benefit of Grade 10, to be paid in Philippine currency at the exchange rate prevailing at the time of payment. (Oscares *v.* Magsaysay Maritime Corp., *et al.;* G.R. No. 245858; Dec. 2, 2020) p. 518

SELF-DEFENSE

Elements — The essential elements of self-defense are the following: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of the person defending himself. (People *v.* Guarin *a.k.a.* "Banong"; G.R. No. 245306; Dec. 2, 2020) p. 492

— While all three elements must concur, self-defense relies first and foremost on proof of unlawful aggression on the part of the victim; if no unlawful aggression is proved, no self-defense may be successfully pleaded; unlawful aggression is a *conditio sine qua non* for upholding the justifying circumstance of self-defense; if there is nothing to prevent or repel, the other two requisites of self-defense will have no basis. (*Id.*)

SETTLEMENT OF ESTATE OF DECEASED PERSONS

Sale, Mortgages, and Other Encumbrances of Decedents' Property — Section 8, Rule 89 presupposes a pending probate or administration proceeding for the testate or intestate estate of a decedent; the heirs of Corazon have not initiated a special proceeding for the settlement of her estate where an administrator has been appointed; without such special proceeding, respondents are not required to make an application to authorize the administrator to convey the subject properties according to the contracts that Corazon entered into but was unable to execute due to her death. (Heirs of Corazon Villeza, namely: Imelda V. Dela Cruz, I, *et al. v.* Aliangan, *et al.;* G.R. Nos. 244667-69 [formerly UDK 16373-75]; Dec. 2, 2020) p. 443

— Section 9 of Rule 89 [Sale, Mortgages, and Other Encumbrances of Property of Decedent] finds no application in these cases inasmuch as the subject properties located in Centro I, Bunay and Poblacion were not held in trust by Corazon for respondents or any other person; respondents have not even alleged any trust arrangement in any of the three Amended Complaints. (*Id.*)

SEXUAL ASSAULT

Proper Designation of the Offense — Based on the facts, and as found by both the RTC and the CA, XXX forced AAA to perform fellatio on him by placing his penis inside her mouth; by this, XXX should be adjudged guilty of Rape by Sexual Assault under the RPC; pursuant to *People v. Tulagan*, and considering the fact that AAA was eight years old when the crime was committed against her, the proper designation of the crime in Criminal Case No. 9994-G should be "Sexual Assault under paragraph 2, Article 266-A of the RPC in relation to Section 5(b) of R.A. No. 7610." (People *v.* XXX; G.R. No. 238405; Dec. 7, 2020) p. 655

— The more reasonable interpretation is that when Sexual Assault under Article 266-A paragraph 2 of the RPC accompanied the robbery, the accused should not be punished of the special complex crime of robbery with rape but that of two separate and distinct crimes, as it would be more favorable to the accused. (People *v.* Barrera; G.R. No. 230549; Dec. 1, 2020) p. 55

STATUTORY CONSTRUCTION

Interpretation of a Memorandum Circular — That the circular was silent as to the financial subsidy amount cannot be construed as a government instrumentality's implied authority to fix it on its own; to be sure, ZCWD Board has no authority to fill in the details of what MC 174 may have been lacking; verily, the Provincial Water Utilities Act of 1973 empowers the boards of local water districts such as ZCWD to promulgate rules and regulations; however, their rule-making power shall be limited to setting policies in relation to "local water supply and wastewater disposal systems to achieve national goals and the objective of providing public waterworks services to the greatest number at least cost." (Zamboanga City Water District and its employees, represented by General Manager Leonardo Rey D. Vasquez *v.* Commission on Audit; G.R. No. 218374; Dec. 1, 2020) p. 29

Interpretation of Penal Statutes — It is a fundamental rule in criminal law that any ambiguity shall be always construed strictly against the State and in favor of the accused. (People *v.* Barrera; G.R. No. 230549; Dec. 1, 2020) p. 55

— Penal laws are not to be extended or enlarged by implications, intendments, analogies or equitable considerations; they are not to be strained by construction to spell out a new offense, enlarge the field of crime or multiply felonies. (*Id.*)

— The interpretation of penal statutes is subjected to a strict and careful scrutiny in order to safeguard the rights

of the accused; when confronted with two reasonable and contradictory interpretations, that which favors the accused is always preferred. (*Id.*)

Plain Meaning Rule — Basic is the rule in statutory construction that where the words of the law or rule are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation; in which case, the law or rule is applied according to its express terms; interpretation would be resorted to only where a literal interpretation would either be absurd, impossible, or would lead to an injustice. (Crisologo, *et al. v.* Hao, *et al.*; G.R. No. 216151; Dec. 2, 2020) p.195

— The circular's plain meaning instructs government agencies to give certain benefits (*i.e.*, shuttle service, financial subsidy, scholarship programs, PX mart) for the direct enjoyment and consumption of its employees; as clear as it is, the circular must be given its literal meaning and applied without attempted interpretation. (Zamboanga City Water District and its employees, represented by General Manager Leonardo Rey D. Vasquez *v.* Commission on Audit; G.R. No. 218374; Dec. 1, 2020) p. 29

SUCCESSION

Inheritance — To better understand Article 1311 insofar as heirs are concerned, it must be construed in relation to Article 776, which provides: "The inheritance includes all the property, rights and obligations of a person which are not extinguished by his death"; in determining which rights are intransmissible (extinguished by a person's death) or transmissible (not extinguished by his death), the following general rules have been laid down: First: That rights which are purely personal, not in the inaccurate equivalent of this term in contractual obligations, but in its proper sense, are, by their nature and purpose, intransmissible, for they are extinguished by death; examples, those relating to civil personality, to family rights, and to the discharge of public office; second:

That rights which are patrimonial or relating to property are, as a general rule, not extinguished by death and properly constitute part of the inheritance, except those expressly provided by law or by the will of the testator, such as usufruct and those known as personal servitudes; third: That rights of obligation are by nature transmissible and may constitute part of the inheritance, both with respect to the rights of the creditor and as regards the obligations of the debtor; only money debts are chargeable against the estate left by the deceased; these are the obligations which do not pass to the heirs, but constitute a charge against the hereditary property; there are other obligations, however, which do not constitute money debts; these are not extinguished by death, and must still be considered as forming part of the inheritance; in *National Housing Authority v. Almeida*, the Court ruled that the obligations of the seller and the buyer in a contract to sell are transmissible. (Heirs of Corazon Villeza, namely: Imelda V. Dela Cruz, I, *et al. v*. Aliangan, *et al*.; G.R. Nos. 244667-69 [formerly UDK 16373-75]; Dec. 2, 2020) p. 443

Legal or Intestate Succession — Article 996 of the Civil Code states: "If a widow or widower and legitimate children or descendants are left, the surviving spouse has in the succession the same share as that of each of the children"; since there are two or more heirs, the whole estate of the decedent is, before its partition, owned in common by such heirs, subject to the payment of debts of the deceased, as provided in Article 1078 of the Civil Code. (Heirs of the Late Apolinario Caburnay, namely, Lydia Caburnay, *et al. v.* Heirs of Teodulo Sison, namely, Rosario Sison, *et al.;* G.R. No. 230934; Dec. 2, 2020) p. 320

— Aside from the dissolution of the marriage between Perpetua and Teodulo and their conjugal partnership, Perpetua's death triggered the transfer of her inheritance or hereditary estate to her legal heirs pursuant to Article 777 of the Civil Code, which provides: "The rights to the succession are transmitted from the moment of the

death of the decedent"; since there is no mention of any will that she left, Perpetua died intestate. (*Id.*)

Patrimonial Obligations — It is quite clear that with respect to "obligations," similar to "rights", patrimonial obligations or those pertaining to property are by nature generally transmissible and not extinguished by death; thus, patrimonial obligations form part of the inheritance of the decedent, which are transmitted to or acquired by the heirs upon the decedent's death; this is pursuant to Article 774 of the Civil Code which recognizes succession as a mode of acquisition whereby the property, rights and obligations to the extent of the value of the inheritance of a person are transmitted through his death to another or others either by his will or by operation of law, and Article 777 which provides the transmission of the rights to the inheritance at the precise moment of the death of the decedent; a contract of sale or a contract to sell with land or immovable property as its object certainly involves patrimonial rights and obligations, which by their nature are essentially transmissible or transferable; thus, the heirs of the seller and the buyer are bound thereby and the former cannot be deemed as "third persons" or non-privies to the contract of sale or contract to sell; consequently, Article 1311 of the Civil Code upon which petitioners rely to negate their liability is itself the very basis of the obligation that respondents are exacting from them; since the obligations of the sellers in the DCS and the two oral contracts of sale were transmitted upon the death of Corazon and Rosario to petitioners and the other defendants, the latter are bound to comply with the obligations to deliver and transfer ownership of the Centro I property to respondents, the Bunay property to Elizabeth, and the Poblacion property to Rosario. (Heirs of Corazon Villeza, namely: Imelda V. Dela Cruz, I, *et al. v.* Aliangan, *et al.;* G.R. Nos. 244667-69 [formerly UDK 16373-75]; Dec. 2, 2020) p. 443

TRUSTS

Concept — According to case law, "[a] trust is the legal relationship between one person having an equitable ownership of property and another person owning the legal title to such property, the equitable ownership of the former entitling him to the performance of certain duties and the exercise of certain powers by the latter"; Nelidia, as the trustee, had the duty to properly manage the properties for the benefit of the beneficiaries, respondents herein; Efraim is not a party to this trust and he only signed the document evidencing the trust as Nelidia's husband; nonetheless, there is no dispute that Efraim readily admitted the due execution and validity of the Declaration of Trust; thus, as a signatory, he is bound by the intent and contents of the said document and thus should honor the directives contained therein. (Daniel *v.* Magkaisa, *et al.;* G.R. No. 203815; Dec. 7, 2020) p. 627

Beneficiaries After Termination of the Trust — Since the trust is now considered as terminated after the trustee's (Nelidia) death, the properties should be transferred to the names of the respondents as the beneficiaries of the said trust; both the RTC and the CA uniformly arrived at this conclusion, and consequently ordered the transfer of possession of the lots to the respondents; this finding, however, should not prejudice an action, if any, which would involve the settlement of the estate of Consuelo and Nelidia, given that Efraim claimed (and which Atty. Florentino mentioned) that disinheritance or preterition may occur. (Daniel *v.* Magkaisa, *et al.;* G.R. No. 203815; Dec. 7, 2020) p. 627

VOLUNTARY SURRENDER

Elements — Voluntary surrender is a circumstance that reduces the penalty for the offense; its requisites as a mitigating circumstance are that: (1) the accused has not been actually arrested; (2) the accused surrenders himself to a person in authority or the latter's agent; and (3) the surrender

is voluntary. (People *v.* Guarin *a.k.a.* "Banong"; G.R. No. 245306; Dec. 2, 2020) p. 492

WILLS

Notarial Will and Holographic Will, Distinguished — A will may either be holographic or notarial; a person may execute a holographic will which must be entirely written, dated, and signed by the hand of the testator himself; it is subject to no other form, and may be made in, or out of the Philippines, and need not be witnessed; in contrast, a notarial will must comply with solemnities including attestation, subscription and acknowledgment; the attestation refers to the act of three or more witnesses themselves who certify to the execution of the will before them, and to the manner of its execution; the acknowledgment is the act of the one who executed the will in going to a competent officer and declaring that the will is [his/her] act or deed; the subscribing or attesting witnesses are likewise required to acknowledge the will before the notary public; these requirements are indispensable for the validity of the will. (In the Matter of the Testate Estate of Aida A. Bambao, *et al. v.* Sekito, Jr.; G.R. No. 237449; Dec. 2, 2020) p. 398

Substantial Compliance Rule — Assuming the CA correctly appreciated substantial compliance with the formalities of the attestation clause under Art. 805, the same cannot be applied to the requirement of acknowledgment under Art. 806; Aida and the witnesses did not acknowledge the will before a notary public; the CA did not even bother to discuss this requirement; we cannot, by any stretch of imagination, accept the supposed validity of the will absent total compliance with the requisite acknowledgment. (In the Matter of the Testate Estate of Aida A. Bambao, *et al. v.* Sekito, Jr.; G.R. No. 237449; Dec. 2, 2020) p. 398

— It bears emphasis that the CA adopted the substantial compliance rule in allowing the will despite the defects in its attestation clause; in *Lopez v. Lopez*, however, We held that the attestation must state the number of pages

used upon which the will is written; the purpose is to safeguard against possible interpolation, or omission of one, or some of its pages and prevent any increase or decrease in the pages; further, the substantial compliance rule applies only to imperfections which can be explained through an examination of the will itself. (*Id.*)

WITNESSES

Credibility of Testimony — For evidence to be believed, it must not only proceed from the mouth of a credible witness but must be credible in itself such as the common experience and observation of mankind can approve under the circumstances; the test to determine the value of the testimony of a witness is whether such is in conformity with knowledge and consistent with the experience of mankind; whatever is repugnant to these standards becomes incredible and lies outside of judicial cognizance. (People *v.* Ansus; G.R. No. 247907; Dec. 2, 2020) p. 537

— Rape is almost always committed in isolation or in secret; hence, conviction therein frequently rests on the basis of the testimony of the victim so long as such is credible, natural, convincing, and consistent with human nature and the normal course of things; thus, in resolving such cases, the credibility of the victim is of utmost consideration. (People *v.* BBB; G.R. No. 229937; Dec. 2, 2020) p. 289

Delay in Reporting the Crime — The failure of AAA to immediately report to her mother or the police authorities the incidents of rape does not likewise tarnish her credibility; as observed by the RTC, BBB's constant threats upon the life of AAA and her family in all the instances of rape were enough to cower her into silence and keep her from immediately reporting the incidents; delay in reporting a rape does not negate its occurrence nor affect the credibility of the victim; in the face of constant threats of violence and death, not just on the victim but extending to her kin, a victim may be excused for tarrying in reporting her ravishment. (People *v.* BBB; G.R. No. 229937; Dec. 2, 2020) p. 289

— The first two factors: opportunity to view, and degree of attention; discussions relating to these factors include, for example, the duration of the commission of the crime, the lighting conditions, and whether the eyewitness was put on alert that he or she must remember the identity of the particular person, among others. (People *v.* Ansano; G.R. No. 232455; Dec. 2, 2020) p. 360

Delay in Revealing the Identity of the Offender — Myrna justified her delay in revealing the identity of her husband's killer because she was still in a state of shock and that she lost consciousness; curiously, she did not elaborate when her fainting spells happened and she had the presence of mind to go inside their home after seeing her husband fall to hide from the accused; moreover, her fear of retaliation from the accused would have been mitigated if she only divulged his identity as her husband's killer on August 15, 2011; at that time, the authorities would have taken appellant in custody and they could have possibly recovered the weapon used; she would not have dealt with fear and the idea that her husband's killer lives three houses away from her; she seemed to have forgotten to be fearful also for her daughter's sake who lives just beside the appellant; indeed, such revelation of Myrna, if made, would have been more in accord with human reaction and experience. (People *v.* Ansus; G.R. No. 247907; Dec. 2, 2020) p. 537

Identification of the Perpetrator of the Crime — Doubts—no matter how slight, as long as they are reasonable—created in the identity of the perpetrator of the crime, should be resolved in favor of the accused. (People *v.* Ansano; G.R. No. 232455; Dec. 2, 2020) p. 360

— In *People v. Rodrigo,* a time lapse of 5 ½ months between the commission of the crime and the out-of-court identification was one of the factors that led the Court to hold that the identification of the accused was unreliable; the present case, in comparison, even involves a longer passage of time; while a longer passage of time *per se* will not automatically make an eyewitness recollection

unreliable, it certainly impacts its overall reliability when considered along with the other factors in the totality of circumstances test. (*Id.*)

— The Court notes that AAA did not show a high level of certainty in her initial identification of Ansano; the records reflect that the present charge was once consolidated with a case filed by BBB against Ansano, but BBB eventually decided to not pursue the case and this case thus proceeded on its own; to the mind of the Court, there is a reasonable possibility that the confluence of these circumstances may have, albeit inadvertently, improperly suggested to the mind of AAA that Ansano was her assailant; it is true that the latter finding—on the possible effect of BBB on the identification—did not arise from State action; thus, this finding would not amount to a violation of Ansano's right to due process that would render the identification inadmissible; "admissibility of evidence should not be equated with weight of evidence"; hearsay evidence, for instance, cannot be given credence whether objected to or not for it has no probative value; eyewitness testimony, like all other evidence, must not only be admissible—it must be able to convince. (*Id.*)

Inconsistencies in Testimonies — As long as the testimony of the witness is coherent and intrinsically believable as a whole, discrepancies of minor details and collateral matters do not affect the veracity, or detract from the essential credibility of the witnesses' declarations; in fact, the accused may be convicted solely on the basis of the testimony of the victim that is credible, convincing, and consistent with human nature and the normal course of things. (People *v.* Dereco; G.R. No. 243625; Dec. 2, 2020) p. 428

— BBB attempts to cast doubt on the credibility of AAA by pointing out inconsistencies in the latter's statements, specifically as to the dates when the rapes were committed and how AAA's husband reacted to her revelation that she was raped by her father; however, it has been held

that inconsistencies in a witness' testimony do not, by themselves, diminish the credibility of such witness; this is especially true when, as in the present case, these alleged inconsistencies refer to collateral matters which are not elements of the crime. (People *v.* BBB; G.R. No. 229937; Dec. 2, 2020) p. 289

Motive — The defense failed to show any reason why the prosecution's evidence should not be given weight or credit except for imputing ill motive or revenge on the part of the victim since accused-appellant punched AAA's boyfriend; however, motives such as family feuds, resentment, hatred or revenge have never swayed this Court from giving full credence to the testimony of a rape victim; also, ill motives become inconsequential if there is an affirmative and credible declaration from the rape victim, which clearly establishes the liability of the accused; the charges against appellant involve a heinous offense, and a minor disagreement, even if true, does not justify dragging a young girl's honor to a merciless public scrutiny that a rape trial brings in its wake. (People *v.* Cabales @ "Basil"; G.R. No. 249149; Dec. 2, 2020) p. 601

— We are not convinced by XXX's contention that BBB was moved by ill motive when she filed the cases against him; it is settled that motives, such as those attributable to revenge, family feuds and resentment cannot destroy the credibility of a minor complainant who gave an unwavering testimony in open court; we note that XXX did not even offer a solid alibi which would account for his whereabouts during the rape incidents; on the contrary, he admitted that he was at home with AAA. (People *v.* XXX; G.R. No. 238405; Dec. 7, 2020) p. 655

Testimonies of Child Victims — The Court has held time and again that the testimony of a child-victim is normally given full weight and credit considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified was not true; youth and immaturity are generally badges

of truth and sincerity; hence, there is neither cause nor reason to withhold credence from AAA's testimony. (People *v.* Alberto "Bert" Martinez *a.k.a.* "Alberto Belinario"; G.R. No. 248016; Dec. 2, 2020) p. 559

— Youth and immaturity are generally badges of truth; it is highly improbable that a girl of tender years, one not yet exposed to the ways of the world, would impute to any man a crime so serious as rape if what she claims is not true. (People *v.* Barrera; G.R. No. 230549; Dec. 1, 2020) p. 55

Testimony on Minor Details — Anent the defense's point that AAA's memory of the act of rape is impeccable but that she can barely recall the matters outside the rape incident and that this casts doubt on her credibility, the Court is not persuaded; as the Court held in *People v. Saludo*, such lapse in a rape victim's memory is but a natural consequence of her trauma. (People *v.* BBB; G.R. No. 229937; Dec. 2, 2020) p. 289

Trial Court's Assessment of the Credibility of Witnesses — AAA's testimony was candid, straightforward, and unrehearsed; the trial court's determination of witness credibility will seldom be disturbed on appeal unless significant matters were overlooked; a reversal of these findings becomes even more inappropriate when affirmed by the Court of Appeals; absent any indication that the RTC and the CA committed any error in the evaluation of the evidence, the Court sees no reason to deviate from the factual findings that XXX sexually assaulted and had carnal knowledge of AAA. (People *v.* XXX; G.R. No. 238405; Dec. 7, 2020) p. 655

— Anent the credibility of the victim, the trial court's assessment thereof deserves great weight, and is even conclusive and binding, unless the same is tainted with arbitrariness or oversight of some fact or circumstance of weight and influence; this is because that trial court had the full opportunity to observe directly the deportment and the manner of testifying of the witnesses before it, thus, putting it in the better position than the appellate

court to properly evaluate testimonial evidence; this rule holds stronger in cases where the CA sustained the findings of the trial court. (People *v.* BBB; G.R. No. 229937; Dec. 2, 2020) p. 289

— In cases where the issue rests upon the credibility of witnesses, the settled rule is that "appellate courts accord the highest respect to the assessment made by the trial court because of the trial judge's unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude under grueling examination." (People *v.* Licaros; G.R. No. 238622; Dec. 7, 2020) p. 676

— It is settled that the RTC's findings on the credibility of witnesses and their testimonies are entitled great weight and respect and the same should not be overturned on appeal in the absence of any clear showing that the trial court overlooked, misunderstood, or misapplied some facts or circumstances which would have affected the case; questions on the credibility of witnesses are best addressed to the trial court due to its unique position to observe the witnesses' deportment on the stand while testifying. (People *v.* Dereco; G.R. No. 243625; Dec. 2, 2020) p. 428

— It is well-settled "that the assessment of the credibility of witnesses and their testimonies is best undertaken by a trial court, whose findings are binding and conclusive on appellate courts; matters affecting credibility are best left to the trial court because of its unique opportunity to observe the elusive and incommunicable evidence of that witness' deportment on the stand while testifying, an opportunity denied to the appellate courts which usually rely on the cold pages of the silent records of the case"; both the trial court and the CA held that "AAA" was a credible witness. (People *v.* Cabales @ "Basil"; G.R. No. 249149; Dec. 2, 2020) p. 601

— Questions on credibility of witnesses are generally left for the trial court to determine as it had the unique opportunity to observe the witness' deportment and demeanor on the witness stand; the trial court's evaluation

is accorded the highest respect and will not be disturbed on appeal in the absence of any showing that significant facts have been overlooked or disregarded, which could have otherwise affected the outcome of the case; this rule is more stringently observed when the assessment and conclusion of the RTC is concurred in by the CA. (People *v.* Barrera; G.R. No. 230549; Dec. 1, 2020) p. 55

— The Court defers to the trial court in this respect, especially considering that it was in the best position to assess and determine the credibility of the witnesses presented by both parties; when the issues revolve on matters of credibility of witnesses, the findings of fact of the trial court, its calibration of the testimonies of the witnesses, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect, if not conclusive effect because the trial court has the unique opportunity to observe the demeanor of witnesses and is in the best position to discern whether they are telling the truth; having had the opportunity to observe the witnesses' demeanor and deportment on the stand, and the manner in which they gave their testimonies, the trial judge can better determine if such witnesses were telling the truth, being in the ideal position to weigh conflicting testimonies. (People *v.* Guarin *a.k.a.* "Banong"; G.R. No. 245306; Dec. 2, 2020) p. 492

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